STATE OF NEW YORK

6161--A

2019-2020 Regular Sessions

IN SENATE

May 21, 2019

Introduced by Sen. HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public service law, the labor law and the public health law, in relation to the protection of the health, safety and employment rights of employees suffering employment loss as the result of the sale or closure of a nuclear electric generation facility; and to amend the public service law, in relation to the transfer or lease of closed electric generators; and in relation to payment of prevailing wages of affected employees of the Indian Point Nuclear Power Plant

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "nuclear facility closing workers' protection act".

§ 2. The public service law is amended by adding a new section 28 to read as follows:

§ 28. Nuclear electric plants; closure or sale plan. 1. Not less than eighteen months prior to the closure or sale of a nuclear electric plant, the electric corporation owning, operating or managing such plant shall submit to the department a plan detailing the process for the closure or sale of the nuclear electric plant. Such plan shall include (a) details and specifics on the electric corporation's plan to comply with article twenty-five-A of the labor law as they apply to nuclear electric plants, and (b) a workforce retention component which shall utilize the existing labor force during the closure and decommissioning period. The workforce retention component shall include provisions that (i) any construction work which may be performed during the closure and decommissioning period, shall be performed pursuant to a project labor agreement, as defined in section two hundred twenty-two of the labor

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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law, entered into with a bona fide building and construction trades labor organization having jurisdiction over the scope of work to be performed; and (ii) any other work which may be performed pursuant to a project labor agreement, as defined in section two hundred twenty-two of the labor law, entered into with a bona fide employee organization having jurisdiction over the scope of the work to be performed. In addition, every plan submitted pursuant to this section shall be in such form and contain such information as the department shall determine to be necessary and proper. For purposes of this section, "construction work" shall include, but not be limited to, any demolition, reconstruction, excavation, rehabilitation, repair, installation, renovation or alteration, which is customarily performed by a building and construction trades organization.

2. No nuclear electric plant shall be closed or sold unless:

(a) the plan submitted pursuant to subdivision one of this section, or an amended version of such plan as may be required by the department, shall have been approved by the department;

(b) after the approval of such plan pursuant to paragraph (a) of this subdivision, the affected employees shall have been provided notice of employment loss, as required by section eight hundred sixty-b of the labor law, not less than one year prior to such closure or sale;

(c) the plan approved pursuant to paragraph (a) of this subdivision is included as a material term of every contract and plan relating to the closure of sale of the electric plant; and

(d) the department has granted its approval of every contract or plan providing for the sale or closure of the electric plant.

3. Upon a finding of the department that an electric corporation violated any provision of this section, or that any person has violated the provisions of a plan approved pursuant to this section, all contracts and plans relating to the closure or sale of the nuclear electric plant by the electric corporation shall be deemed null and void, and such corporation or person, after notice and hearing, may be liable for a civil fine of not less than five million dollars to be imposed by the department.

§ 3. Section 860-a of the labor law is amended by adding two new subdivisions 1-a and 1-b to read as follows:

1-a. "Electric corporation" shall have the same meaning as provided in subdivision thirteen of section two of the public service law.

1-b. "Electric plant" shall have the same meaning as provided in subdivision twelve of section two of the public service law.

§ 4. Section 860-b of the labor law is amended by adding a new subdivision 1-a to read as follows:

1-a. Notwithstanding the provisions of subdivision one of this section, in the case of an employer that is an electric corporation owning, operating or maintaining a nuclear electric plant, such employer shall not order a mass layoff, relocation or employment loss until its plan to implement the provisions of this article shall have been approved by the department of public service pursuant to section twenty-eight of the public service law, and thereafter, at least one year before the order takes effect, such employer gives written notice of the order to the following:

(a) affected employees and the representatives of the affected employees;

(b) the department; and

(c) the local workforce investment boards established pursuant to the federal Workforce Investment Act (P.L. 105-220) for the locality in which the mass layoff, relocation or employment loss will occur.

§ 5. Subdivision 3 of section 860-b of the labor law, as added by chapter 475 of the laws of 2008, is amended to read as follows:

3. Notwithstanding the requirements of subdivision one or one-a of this section, an employer is not required to provide notice if a mass layoff, relocation, or employment loss is necessitated by a physical calamity or an act of terrorism or war.

§ 6. The opening paragraph of subdivision 1 of section 860-g of the labor law, as added by chapter 475 of the laws of 2008, is amended to read as follows:

An employer who fails to give notice as required by paragraph (a) of subdivision one or paragraph (a) of subdivision one-a of section eight hundred sixty-b of this article before ordering a mass layoff, relocation, or employment loss is liable to each employee entitled to notice who lost his or her employment for:

§ 7. Section 860-h of the labor law is amended by adding a new subdivision 5 to read as follows:

5. Notwithstanding any other provision of this section to the contrary, if an employer that is an electric corporation owning, operating or maintaining a nuclear electric plant violates any provision of this article, such corporation, after notice and hearing, may be liable for a civil fine of not less than five million dollars to be imposed by the department.

§ 8. The labor law is amended by adding a new section 860-j to read as follows:

§ 860-j. Employment loss at a nuclear electric plant. 1. The electric corporation owning, operating or maintaining a nuclear electric plant at which there will be a mass layoff, relocation or employment loss, shall within ten days of providing notice thereof pursuant to subdivision one-a of section eight hundred sixty-b of this article shall cause to be conducted and completed an extensive health screening, in accordance with the regulations of the commissioner of health, of all employees, contractors and subcontractors working at such plant. Such health screening shall include general health screening, and screening for diseases and conditions related to employment in a nuclear electric plant.

2. Each electric corporation owning, operating or maintaining a nuclear electric plant at which there will be a mass layoff, relocation or employment loss shall establish and operate employment retraining programs for all employees, contractors and subcontractors who are affected by an employment loss. Such programs shall be conducted, subject to the supervision of the department, during the one-year notice period provided for in subdivision one-a of section eight hundred sixty-b of this article. Furthermore, training shall be provided to acquire any necessary skills and certifications for employment by any entity which is engaged in the closure or decommissioning of the nuclear electric plant. Every person who completes training pursuant to this subdivision shall be granted an employee preference.

§ 9. Subdivision 1 of section 206 of the public health law is amended by adding a new paragraph (w) to read as follows:

(w) by rule and regulation, establish standards and guidelines for the extensive health screenings of persons working in nuclear electric plants, required by subdivision one of section eight hundred sixty-j of the labor law.

§ 10. Section 70 of the public service law, as amended by chapter 226 of the laws of 2009, is amended to read as follows:

§ 70. Transfer of franchises or stocks. 1. No gas corporation [~~or~~], electric corporation **or closed electric generator** shall transfer or lease its franchise, works or system or any part of such franchise, works or system to any other person or corporation or contract for the operation of its works and system, without the written consent of the commission. Notwithstanding the foregoing, any transfer or lease with an original cost of (a) less than one hundred thousand dollars proposed by a gas [~~or~~] **corporation,** electric corporation **or closed electric generator** having annual gross revenues in excess of two hundred million dollars or (b) less than twenty-five thousand dollars proposed by a gas [~~or~~] **corporation,** electric corporation **or closed electric generator** having annual gross revenues of less than two hundred million dollars shall be effective without the commission's written consent within ninety days after such corporation notifies the commission that it plans to complete the transfer or lease and submits a description of the transfer or lease; provided, however, that the commission may determine within such ninety days after such notification and submission that the public interest requires its review and written consent.

2. The permission and approval of the commission, to the exercise of a franchise under section sixty-eight of this article, or to the assignment, transfer or lease of a franchise under this section shall not be construed to revive or validate any lapsed or invalid franchise or to enlarge or add to the powers and privileges contained in the grant of any franchise or to waive any forfeiture.

3. No gas corporation [~~or~~], electric corporation **or closed electric generator** shall directly or indirectly acquire the stock or bonds of any other corporation incorporated for, or engaged in, the same or a similar business, in this state or any other state, or proposing to operate or operating under a franchise from the same or any other municipality, neither shall any street railroad corporation acquire the stock or bonds of any electric corporation, unless authorized so to do by the commission.

4. Save where stock shall be transferred or held for the purpose of collateral security only with the consent of the commission empowered by this chapter to give such consent, no stock corporation of any description, domestic or foreign, company, including, but not limited to, a limited liability company, association, including a joint stock association, partnership, including a limited liability partnership, or person, other than a gas corporation [~~or~~], electric corporation**, closed electric generator** or street railroad corporation, shall purchase or acquire, take or hold, more than ten per centum of the voting capital stock issued by any gas corporation [~~or~~], electric corporation **or closed electric generator** organized or existing under or by virtue of the laws of this state, except that a corporation now lawfully holding a majority of the voting capital stock of any gas corporation [~~or~~], electric corporation **or closed electric generator** may with the consent of the commission acquire and hold the remainder of the voting capital stock of such gas corporation [~~or~~], electric corporation **or closed electric generator** or any portion thereof. Provided, that with the consent of such commission and upon and subject to such terms and conditions as such commission may fix and impose, any such stock corporation, company, association, partnership or person may acquire, take and hold more than ten per centum of the voting capital stock of any gas corporation [~~or~~],

electric corporation **or closed electric generator**, organized or existing under or by virtue of the laws of this state.

5. No consent shall be given by the commission to the acquisition of any stock in accordance with this section unless it shall have been shown that such acquisition is in the public interest. Nothing herein contained shall be construed to prevent the holding of any stock heretofore lawfully acquired, nor to prevent, upon the surrender or exchange of such stock pursuant to a reorganization plan, the purchase, acquisition, taking or holding of a proportionate amount of stock of any new corporation organized to take over, at foreclosure or other sale, the property of any corporation whose stock has been thus surrendered or exchanged; but the proportion of the voting capital stock of the new corporation held by a stock corporation, company, association, partnership or person and acquired by it by any such surrender or exchange of stock shall not without the consent of the commission exceed the proportion of the voting capital stock held by it in the former corporation.

6. Every contract, assignment, transfer or agreement for transfer of any stock by or through any person or corporation to any corporation, company, association, partnership or person in violation of any provision of this chapter shall be void and of no effect, and no such transfer or assignment shall be made upon the books of any such gas corporation, [~~or~~] electric corporation **or closed electric generator**, or shall be recognized as effective for any purpose.

7. No consent, permission or approval otherwise required under this section shall be necessary for the sale of the franchise, works, system, stocks or bonds by a gas [~~or~~] **corporation,** electric corporation **or closed electric generator** to a duly constituted authority of the state.

8. Any transfer or lease, as well as any decommissioning activities, by a closed electric generator of its franchise, works or system or any part of such franchise, works or system to any corporation, firm, company, partnership, limited liability company, association or person shall, to the maximum extent practicable, provide that employees of such closed electric generator with skill sets necessary for the operation of a successor corporation, firm, company, partnership, limited liability company, association or person be retained for employment with such successor and shall be paid a wage of not less than the prevailing wage in the locality where such closed electric generator is located.

9. Any construction work to be performed during the closure and decommissioning period shall be performed pursuant to a project labor agreement, as defined in section two hundred twenty-two of the labor law, entered into between a purchaser and a bona fide building and construction trades labor organization having jurisdiction over the scope of work to be performed; any other work which shall be performed concerning the closure and decommissioning period shall be performed pursuant to a labor peace agreement entered into between a purchaser and the local labor organization having jurisdiction over the scope of work to be performed. For purposes of this subdivision, the term "purchaser" shall mean any corporation, firm, company, limited liability company, or association.

§ 11. Notwithstanding any other provision of law to the contrary, the commissioner of labor shall ensure that any employees of the Indian Point Nuclear Power Plant, located at 450 Broadway, Buchanan, New York, 10511, and any successor or successors in interest to the Indian Point Nuclear Power Plant, shall be granted notice to any affected employees pursuant to section 860-b of the labor law and such employees shall be granted prevailing wages pursuant to section 220 of the labor law. Such

affected employees shall be paid a premium wage commensurate with the premium wages prevailing in the area in which the work is performed until such time as the Indian Point Nuclear Power Plant is closed.

§ 12. Notwithstanding any other provision of law to the contrary, any corporation, firm, company, partnership, limited liability company or association, hereinafter known as "purchaser" with a contract to purchase the Indian Point Nuclear Power Plant, to the extent practicable, shall maintain the current workforce through the conclusion of the purchase of such power plant. In hiring any new employees, such purchaser shall hire from a pool of current employees at the Indian Point Nuclear Power Plant unless such purchaser proves to the department of labor that such employees' skills do not meet the requirements needed for the open positions. The department of labor shall oversee the purchase, sale and employment practices of the Indian Point Nuclear Power Plant.

§ 13. This act shall take effect immediately.