AN ACT to amend the public service law, in relation to providing for decommissioning oversight boards for nuclear power plants in New York state

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

Section 1. The public service law is amended by adding a new section 174 to read as follows:

§ 174. New York state decommissioning oversight board. 1. Definitions. The following terms shall have the following meanings:

a. "Retirement" means the permanent closure of a state nuclear power plant that has been noticed to the nuclear regulatory commission ("NRC").

b. "Retiring facility" or "facility" shall mean a state nuclear power plant whose closure has been noticed to the nuclear regulatory commission, including the site on which it sits.

c. "Decommissioning period" shall broadly encompass the time commencing from the retiring facility's notice to the nuclear regulatory commission of the intent to close until the property has been released for reuse and all spent nuclear fuel has been removed from the site.

d. "Reuse" means the unrestricted use of the site under all applicable nuclear regulatory commission, other federal, state, and local nuclear, environmental, and zoning laws.

e. "Decommissioning activities" shall encompass all activities at the site of the retiring facility that are directly related to reducing residual radioactivity to a level that permits release of the property for reuse and the termination of the nuclear regulatory commission license but does not include activities associated with irradiated fuel management and site restoration activities.

f. "Licensee" shall mean the holder of the nuclear regulatory commission license for the retiring facility as of the date of any activity specified herein.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.
g. "Site" shall mean the property on which the applicable retiring facility sits.

h. "Site restoration" shall mean all activities performed to prepare the site for its next use or some desired end state.

i. "Decommissioning trust fund" shall mean the funds accumulated pursuant to nuclear regulatory commission regulations for the decommissioning of the facility, from any source, including any interest received thereon.

j. "Comments" shall mean official statements on proposed actions with regard to the retiring facility, filed with the nuclear regulatory commission or other government entity according to all applicable regulations.

k. "Spent nuclear fuel" shall mean any fuel rods and/or fuel assemblies that have been installed in the retiring facility's reactor core at any time, whether such fuel is in the reactor, is stored in spent fuel pools, is in dry storage containers, or is in any transit equipment.

l. "Spent fuel management" shall mean all activities performed to manage inventories of spent nuclear fuel and/or greater than class C waste ("GTCC") at the retiring facility following permanent cessation of operation of the reactor until the title and possession of the spent nuclear fuel and greater than class C waste is transferred to the secretary of energy, including the transfer of spent nuclear fuel from onsite dry storage to any offsite storage area, whether or not such area is owned by the licensee at such time and/or is approved by the NRC for interim or permanent nuclear waste storage.

m. "Community member" shall mean any individual residing in this state within fifty miles of the retiring facility.

2. Creation of New York state decommissioning oversight board or boards (each a "NYSDOB" or "board").

a. A New York state decommissioning oversight board shall be established for a state retiring facility within one month after the facility's future closure is noticed to the nuclear regulatory commission and it shall extend until: (i) the facility's entire decommissioning period is completed; (ii) all site restoration is completed and the site is released by all governmental authorities for reuse; and (iii) all spent nuclear fuel has been removed from the site. For any retiring facility that has already notified the nuclear regulatory commission of its closure at the time of enactment of this law, a NYSDOB shall be established as expeditiously as possible.

b. The board shall coordinate the efforts of state agencies' oversight of the decommissioning activities to ensure the retiring facility is in compliance with all state and federal regulations and make reports and recommendations to state and federal officials, as needed. Additionally, the board shall supervise the disbursement of the retiring facility's decommissioning trust fund, facilitate public involvement and transparency throughout the decommissioning process, act as a forum to both disseminate information and solicit input from the public, and supervise any other aspects of decommissioning activities, spent fuel management, and site restoration, to the full extent allowed by law.

c. Eleven members collectively known as "agency members" shall serve on the board and will consist of: the chief executive officer of the department, the secretary of state, the commissioner of environmental conservation, the commissioner of health, the director of the office of emergency management, the state comptroller, the attorney general, the president and chief executive officer of the New York state energy
research and development authority, the commissioner of labor, the pres-
ident and chief executive officer of the power authority of the state of
New York, and the commissioner of the division of homeland security and
emergency services, or their designees.

d. The governor shall appoint seven to ten members ("appointed
members"). The governor may consider and give preference to the follow-
ing individuals in order to provide representation to a diverse range of
impacted constituents:

(i) Community members who have demonstrated active engagement and have
experience researching and advocating about issues related to the facil-
ity;

(ii) Individuals representing labor unions whose members were employed
at the applicable facility as of the beginning of the decommissioning
period;

(iii) Individuals representing interested regional environmental
organizations, especially those that have been engaged in researching
and advocating to address the differential effects on any economically
disadvantaged and environmental justice communities associated with the
facility;

(iv) Individuals with scientific or technical background relevant to
nuclear power plant decommissioning or engineering;

(v) Individuals engaged in local or regional emergency planning; and

(vi) Local and/or regional elected officials.

e. There are no term limits for the agency members, who shall serve as
ex officio members. In order to help preserve continuity and organiza-
tional memory, appointed members shall serve staggered terms of three
years. If any appointed member position becomes vacant, the governor
shall appoint another member to fill the unexpired term within ninety
days of the date of the vacancy. After two terms, each appointed member
shall cycle off and be replaced by another appointee; former appointed
members may return after a break of at least one year.

f. No person who holds any relationship to or financial interest in
any company with an ownership or other financial interest in any state
nuclear plant, including related or parent companies, subsidiaries,
contractors, agents, shareholders, or others (as determined by the
state) may be appointed to the board.

g. The board shall select a vice chair from among its members. The
chief executive officer of the department shall serve as the chair. The
initial term for the first vice chair shall be one year. Subsequent
terms shall be for two years. In the event of the unavailability or
incapacity of the chair, the vice chair shall assume the duties of the
chair.

3. Board meetings. The board shall meet a minimum of four times each
year at the call of the chair for the purpose of monitoring and discuss-
ing the decommissioning trust fund; decommissioning activities; the
management of nuclear waste; the initial or revised post-shutdown decom-
missioning activities report; any license amendment request or requests;
environmental remediation; and any other modifications, amendments
and/or exemptions relating to the retiring facility, its responsibil-
ities, and/or the decommissioning process. However, once decommission-
ing activities are complete the board may reduce the number of meetings
to a minimum of once per year.

a. The chair shall provide notice to all members and to the public at
least two weeks prior to any regular meeting.

b. Meetings shall be held in Albany or at a location that is accessi-
ble to community members, and proximate to an applicable facility.
1. In response to a situation in which the physical integrity of the
2. facility and/or nuclear waste storage may have been compromised and/or
3. damaged, an emergency meeting may be called by any member of the board
4. with at least twenty-four hours notice.
5. d. A majority of the members of the board shall constitute a quorum.
6. e. The board shall act only by a vote of a majority of the members
7. attending and only at meetings called as herein provided.
8. f. All regular meetings shall be open to the public and shall include
9. an opportunity for public comment. Meetings shall be recorded and shall
10. be made available electronically for public viewing.
11. g. During any meeting of the board, it may enter executive session
12. with the agreement of a majority of its membership. The public shall be
13. notified of any executive sessions held. Executive sessions are not
14. included within the four mandatory meetings required in paragraph a of
15. subdivision four of this section.
16. 4. Powers and duties of the board. The board shall have the following
17. powers and duties:
18. a. The board’s functions shall be to: (i) advise the governor, the
19. state senate, the assembly, the agencies of the state, and the public on
20. issues related to the decommissioning of nuclear facilities, including
21. but not limited to: short-term and long-term radioactive waste storage;
22. site restoration and future use of the site; maintenance of emergency
23. planning and response funds before, during, and after decommissioning;
24. and plans for ongoing oversight or rolling stewardship of the facility
25. for as long as spent fuel or greater than class C waste remain at the
26. site; and (ii) ensure all licensee requirements are fulfilled.
27. b. The board shall produce an annual report to advise the governor and
28. legislature of the status of decommissioning; effects on the surrounding
29. communities; and any recommendations for state action in regard to any
30. post-shutdown decommissioning activities report, license amendment
31. request or requests, regulatory exemption request and/or other modifica-
32. tion or amendment relating to the retiring facility. It may produce
33. additional reports or memoranda as it deems necessary (together with the
34. annual report, the "reports")
35. c. When a post-shutdown decommissioning activities report or other
36. decommissioning plan for the retiring facility is produced, the board
37. shall:
38. (i) Review the decommissioning plans and/or the post-shutdown decom-
39. missioning activities report;
40. (ii) Alert the public to such action and provide public access to the
41. plans and/or post-shutdown decommissioning activities report;
42. (iii) Solicit and provide a forum for public comment on such plans
43. and/or post-shutdown decommissioning activities report;
44. (iv) Develop recommendations regarding the proposed plan and/or post-
45. shutdown decommissioning activities report, incorporating input from the
46. public as appropriate;
47. (v) Compile comments incorporating the board’s recommendations and
48. public comment;
49. (vi) Submit such comments to the nuclear regulatory commission during
50. the applicable comment period, as necessary, and provide a copy of the
51. comments to the governor, the legislature, applicable state agencies,
52. and the public.
53. d. When any application is made to the nuclear regulatory commission
54. to transfer or modify the facility’s commercial power reactor license,
55. including, but not limited to, license amendment request or requests or
56. license termination or transfer plans, or when an application is made to
the nuclear regulatory commission for any other permit or permits
related to the site, such as, but not limited to, exemptions from feder-
al regulations and/or the establishment or transfer of an independent
spent fuel storage installation, the board shall:
(i) Review such applications;
(ii) Alert the public to such applications and provide public access
to the application materials;
(iii) Solicit and provide a forum for public comment on such plans;
(iv) Develop recommendations regarding the proposed applications,
incorporating input from the public as appropriate;
(v) Compile comments incorporating the board's recommendations and
public comment;
(vi) Submit such comments to the nuclear regulatory commission during
the applicable comment period, as necessary, and provide a copy of the
report to the governor, the state legislature, applicable state agen-
cies, and the public.

e. When any state agency is developing a plan or reviewing a permit
application related to a retiring facility, it shall inform the board.
The board may, as it deems appropriate, review such plans or permits,
solicit public comment, and produce comments or recommendations to the
state agency.

f. The board shall periodically review reports, including the annual
audited financial statements, on the decommissioning trust fund and
other funds associated with decommissioning of or site restoration at
the facility, including fund balances, expenditures made, and reimburse-
ments received to ensure that such funds are spent according to all
applicable laws and that no shortfalls are anticipated that might affect
state, regional, or local governments. It shall advise the governor, the
legislature, and the nuclear regulatory commission of any concerns.

5. Licensee requirements. The licensee shall complete decommissioning
activities at the facility within forty years of retirement so that the
site can be returned to productive use.
(a) The licensee shall provide the following information to the board
and the legislature within the specified timeframes:
(i) As soon as possible, but no later than one week from transmission
or receipt by the licensee: a copy of any written communications and any
transcripts of verbal communications between the licensee and the nucle-
ar regulatory commission regarding:
(1) the post-shutdown decommissioning activities report for the retir-
ing facility,
(2) cleanup of the existing radioactive contamination on the site,
(3) the establishment of or modifications to an independent spent fuel
storage installation on the site or in any other location,
(4) a proposed license transfer or modification for the facility,
and/or for the storage of spent fuel at the facility.
(ii) Within a week of their completion: annual audited financial
statements, prepared in compliance with generally accepted auditing
standards adopted by the public company accounting oversight board, for
the funds held in the decommissioning trust fund of the facility,
including an independent analysis of whether the expenditures in the
financial year covered were consistent with nuclear regulatory commis-
sion regulatory requirements.
(iii) Within two weeks of the communication of a request: any other
information requested by the board that is in the possession of the
licensee and relates to site reuse; the decommissioning trust fund; the
relevant economic interests of the state or municipalities; or is other-
wise reasonably required to allow the board to complete its duties.

b. The licensee shall not use decommissioning trust funds except for
legitimate decommissioning activities as defined on the date of adoption
of this legislation. As a fundamental precept, decommissioning activ-
ities do not include the removal, storage, management or disposal of
spent nuclear fuel, legal expenses, accounting expenses, or any other
costs beyond what is necessary to terminate the nuclear regulatory
commission license.

6. Remaining funds. Any funds remaining in the decommissioning trust
fund at the end of the decommissioning period shall revert to NYSERDA to
be spent on renewable energy projects to benefit the service areas with-
in which ratepayers contributed to the decommissioning trust fund.

7. Board members’ expenses. Board members shall receive no salary for
carrying out the responsibilities pursuant to this section, but shall be
compensated for reasonable travel expenses exceeding two hundred miles.

8. Administration of the board. a. The department shall provide admin-
istrative support including scheduling meetings and securing meeting
locations; providing notice of meetings; producing minutes and
recordings of meetings; assisting in the compilation and production of
the board’s annual report; hosting a public website for the board;
contracting for services as requested by vote of a majority of the
board; and providing for materials and other reasonable and necessary
expenses of the board as the chair of the department may find appropri-
ate.

b. To support the deliberations of the board, the chair of the depart-
ment shall, upon a vote of the board, contract for the services of tech-
nical or other consultants to produce, compile, and/or analyze data
relating to the facility and to advise the board.

9. Enforcement. Whenever, on the basis of any information available to
them, the board or the attorney general finds that a licensee is in
violation of any of the requirements listed in subdivision five of this
section he or she shall issue an order requiring the licensee to comply
or bring civil action to ensure compliance.

10. Severability clause. If any provision of this law or its applica-
tion to any person or circumstance is held invalid, the invalidity shall
not affect other provisions or applications of this law which can be
given effect without the invalid provision or application, and to this
end the provisions of this law are severable.

§ 2. This act shall take effect on the one hundred eightieth day after
it shall have become a law.