

STATE OF NEW YORK

8154

IN SENATE

April 8, 2020

Introduced by Sen. HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

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:

1 Section 1. The public service law is amended by adding a new section
2 174 to read as follows:

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

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

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

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

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

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

23 f. "Licensee" shall mean the holder of the nuclear regulatory commis-
24 sion license for the retiring facility as of the date of any activity
25 specified herein.
26

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

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1 g. "Site" shall mean the property on which the applicable retiring
2 facility sits.

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

5 i. "Decommissioning trust fund" shall mean the funds accumulated
6 pursuant to nuclear regulatory commission regulations for the decommis-
7 sioning of the facility, from any source, including any interest
8 received thereon.

9 j. "Comments" shall mean official statements on proposed actions with
10 regard to the retiring facility, filed with the nuclear regulatory
11 commission or other government entity according to all applicable regu-
12 lations.

13 k. "Spent nuclear fuel" shall mean any fuel rods and/or fuel assem-
14 blies that have been installed in the retiring facility's reactor core
15 at any time, whether such fuel is in the reactor, is stored in spent
16 fuel pools, is in dry storage containers, or is in any transit equip-
17 ment.

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

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

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

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

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

51 c. Eleven members collectively known as "agency members" shall serve
52 on the board and will consist of: the chief executive officer of the
53 department, the secretary of state, the commissioner of environmental
54 conservation, the commissioner of health, the director of the office of
55 emergency management, the state comptroller, the attorney general, the
56 president and chief executive officer of the New York state energy

1 research and development authority, the commissioner of labor, the pres-
2 ident and chief executive officer of the power authority of the state of
3 New York, and the commissioner of the division of homeland security and
4 emergency services, or their designees.

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

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

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

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

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

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

23 (vi) Local and/or regional elected officials.

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

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

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

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

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

55 b. Meetings shall be held in Albany or at a location that is accessi-
56 ble to community members, and proximate to an applicable facility.

1 c. 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

1 the nuclear regulatory commission for any other permit or permits
2 related to the site, such as, but not limited to, exemptions from feder-
3 al regulations and/or the establishment or transfer of an independent
4 spent fuel storage installation, the board shall:

5 (i) Review such applications;

6 (ii) Alert the public to such applications and provide public access
7 to the application materials;

8 (iii) Solicit and provide a forum for public comment on such plans;

9 (iv) Develop recommendations regarding the proposed applications,
10 incorporating input from the public as appropriate;

11 (v) Compile comments incorporating the board's recommendations and
12 public comment;

13 (vi) Submit such comments to the nuclear regulatory commission during
14 the applicable comment period, as necessary, and provide a copy of the
15 report to the governor, the state legislature, applicable state agen-
16 cies, and the public.

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

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

30 5. Licensee requirements. The licensee shall complete decommissioning
31 activities at the facility within forty years of retirement so that the
32 site can be returned to productive use.

33 a. The licensee shall provide the following information to the board
34 and the legislature within the specified timeframes:

35 (i) As soon as possible, but no later than one week from transmission
36 or receipt by the licensee: a copy of any written communications and any
37 transcripts of verbal communications between the licensee and the nucle-
38 ar regulatory commission regarding:

39 (1) the post-shutdown decommissioning activities report for the retir-
40 ing facility,

41 (2) cleanup of the existing radioactive contamination on the site,

42 (3) the establishment of or modifications to an independent spent fuel
43 storage installation on the site or in any other location,

44 (4) a proposed license transfer or modification for the facility,
45 and/or for the storage of spent fuel at the facility.

46 (ii) Within a week of their completion: annual audited financial
47 statements, prepared in compliance with generally accepted auditing
48 standards adopted by the public company accounting oversight board, for
49 the funds held in the decommissioning trust fund of the facility,
50 including an independent analysis of whether the expenditures in the
51 financial year covered were consistent with nuclear regulatory commis-
52 sion regulatory requirements.

53 (iii) Within two weeks of the communication of a request: any other
54 information requested by the board that is in the possession of the
55 licensee and relates to site reuse; the decommissioning trust fund; the

1 relevant economic interests of the state or municipalities; or is other-
2 wise reasonably required to allow the board to complete its duties.

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

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

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

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

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

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

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

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