

# 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. Defi-  
4 initions. The following terms shall have the following meanings:

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

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

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

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

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

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

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.