

HB0840



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB0840

by Rep. Joyce Mason

SYNOPSIS AS INTRODUCED:

220 ILCS 5/8-508.1

from Ch. 111 2/3, par. 8-508.1

Amends the Public Utilities Act. Provides that beginning April 1, 2020, and on a bi-annual basis thereafter, the Illinois Commerce Commission shall issue a report to the General Assembly concerning the decommissioning of nuclear power plants in this State. Provides for the contents of the report.

LRB101 04966 JRG 49975 b

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Public Utilities Act is amended by changing
5 Section 8-508.1 as follows:

6 (220 ILCS 5/8-508.1) (from Ch. 111 2/3, par. 8-508.1)

7 Sec. 8-508.1. (a) As used in this Section:

8 (1) "Decommissioning" means the series of activities
9 undertaken at the time a nuclear power plant is permanently
10 retired from service to ensure that the final entombment,
11 decontamination, dismantlement, removal and disposal of
12 the plant, including the plant site, and of any radioactive
13 components and materials associated with the plant, is
14 accomplished in compliance with all applicable Illinois
15 and federal laws, and to ensure that such final disposition
16 does not pose any threat to the public health and safety.

17 (2) "Decommissioning costs" means all reasonable costs
18 and expenses incurred in connection with the entombment,
19 decontamination, dismantlement, removal and disposal of
20 the structures, systems and components of a nuclear power
21 plant at the time of decommissioning, including all
22 expenses to be incurred in connection with the preparation
23 for decommissioning, such as engineering and other

1 planning expenses, and to be incurred after the actual
2 decommissioning occurs, such as physical security and
3 radiation monitoring expenses, less proceeds of insurance,
4 salvage or resale of machinery, construction equipment or
5 apparatus the cost of which was charged as a
6 decommissioning expense.

7 (3) "Decommissioning trust" or "trust" means a
8 fiduciary account in a bank or other financial institution
9 established to hold the decommissioning funds provided
10 pursuant to subsection (b)(2) of this Section for the
11 eventual purpose of paying decommissioning costs, which
12 shall be separate from all other accounts and assets of the
13 public utility establishing the trust.

14 (4) "Nuclear power plant" or "plant" means a nuclear
15 fission thermal power plant. Each unit of a multi-unit site
16 shall be considered a separate plant.

17 (b) By 90 days after the effective date of this amendatory
18 Act of 1988, or by the date that the unit satisfies the
19 criteria used by the Internal Revenue Service for determining
20 when depreciation commences for federal income tax purposes on
21 a new generating unit, whichever is later, every public utility
22 that owns or operates, in whole or in part, a nuclear power
23 plant shall:

24 (1) establish 2 decommissioning trusts, which shall be
25 a "tax qualified" decommissioning trust and a "non-tax
26 qualified" decommissioning trust and shall hold the

1 decommissioning funds established by the public utility
2 for all nuclear power plants pursuant to subsection (b)(2)
3 of this Section;

4 (2) establish 2 decommissioning funds for each such
5 plant, each of which shall be held for a plant as a
6 separate account in a decommissioning trust; and

7 (3) designate an independent trustee, subject to the
8 approval of the Commission, to administer each of the
9 decommissioning trusts.

10 (c) The 2 decommissioning trusts shall be known as the "tax
11 qualified" decommissioning trust and the "non-tax qualified"
12 decommissioning trust respectively. Each trust shall be
13 established and maintained as follows:

14 (1) The "tax qualified" trust shall be established and
15 maintained in accordance with Section 468A of the Internal
16 Revenue Code of 1986 or any successor thereto and shall be
17 funded by the public utility for each such power plant
18 through annual payments by the public utility that shall
19 not exceed the maximum amount allowable as a deduction for
20 federal income tax purposes for the year for which the
21 payments were made, in accordance with Section 468A of the
22 Internal Revenue Code of 1986 or any successor thereto.

23 (2) The "non-tax qualified" decommissioning trust
24 shall be funded by the public utility for each such power
25 plant through annual payments by the public utility that
26 shall consist of the difference between the total amounts

1 of decommissioning expenses collected after the effective
2 date of this amendatory Act of 1988 through rates and
3 charges from the public utility's customers as provided by
4 the Commission minus the amounts contributed to the "tax
5 qualified" trust as provided by subsection (c) (1) of this
6 Section and deductible for federal income tax purposes in
7 accordance with Section 468A of the Internal Revenue Code
8 of 1986 or any successor thereto.

9 (3) The following restrictions shall apply in regard to
10 administration of each decommissioning trust:

11 (i) Distributions may be made from a nuclear
12 decommissioning trust only to satisfy the liabilities
13 of the public utility for nuclear decommissioning
14 costs relating to the nuclear power plant for which the
15 decommissioning fund was established and to pay
16 administrative costs, income taxes and other
17 incidental expenses of the trust.

18 (ii) Any assets in a nuclear decommissioning trust
19 that exceed the amount necessary to pay the nuclear
20 decommissioning costs of the nuclear power plant for
21 which the decommissioning fund was established shall
22 be refunded to the public utility that established the
23 fund for the purpose of refunds or credits, as soon as
24 practicable, to the utility's customers.

25 (iii) In the event a public utility sells or
26 otherwise disposes of its direct ownership interest,

1 or any part thereof, in a nuclear power plant with
2 respect to which a nuclear decommissioning fund has
3 been established, the assets of the fund shall be
4 distributed to the public utility to the extent of the
5 reductions in its liability for future decommissioning
6 after taking into account the liabilities of the public
7 utility for future decommissioning of such nuclear
8 power plant and the liabilities that have been assumed
9 by another entity. The public utility shall, as soon as
10 practicable, provide refunds or credits to its
11 customers representing the full amount of the
12 reductions in its liability for future
13 decommissioning.

14 (iv) The trustee shall invest the "tax qualified"
15 trust assets only in secure assets that are prudent
16 investments for assets held in trust and in such a way
17 as to attempt to maximize the after-tax return on funds
18 invested, subject to the limitations specified in
19 Section 468A of the Internal Revenue Code of 1986 or
20 any successor thereto.

21 (v) The trustee shall invest the "non-tax
22 qualified" trust assets only in secure assets that are
23 prudent investments for assets held in trust and in
24 such a way as to attempt to maximize the after-tax
25 return on funds invested. However the trustee shall not
26 invest any portion of the "non-tax qualified" trust's

1 funds in the securities or assets of any operator of a
2 nuclear power plant.

3 (vi) The "non-tax qualified" trust shall be
4 subject to the prohibitions against self-dealing
5 applicable to the "tax qualified" trust as specified in
6 Section 468A of the Internal Revenue Code of 1986, or
7 any successor thereto.

8 (vii) All income earned by the trust's funds shall
9 become a part of the trust's funds and subject to the
10 provisions of this Section.

11 (viii) The Commission may adopt by rule or
12 regulation such further restrictions as it deems
13 necessary for the sound management of the trust's
14 funds, consistent with the purposes of this Section.

15 (d) By 90 days after the effective date of this amendatory
16 Act of 1988, the Commission shall determine an appropriate
17 method to segregate, either internally or externally, all
18 decommissioning funds collected prior to the effective date of
19 this amendatory Act of 1988 by the utility from its customers,
20 and shall order any change in past decommissioning funding
21 methods that the Commission finds necessary. In making its
22 determination of the appropriate funding method, the
23 Commission shall give consideration to, but not be limited by,
24 all applicable federal regulations. The change in funding
25 method shall be phased-in over an appropriate period of time.

26 (e) The trustee of a trust shall report annually to the

1 Commission, or more frequently if ordered by the Commission.

2 The report shall include:

3 (1) the trust's State and federal tax returns;

4 (2) a report on the trust's portfolio of investments
5 and the return thereon;

6 (3) the date and amount of payments received by the
7 trust from the public utility;

8 (4) a copy of all correspondence between the trust and
9 the Internal Revenue Service; and

10 (5) any other information the Commission orders the
11 trust to provide.

12 (f) A nuclear decommissioning trust established pursuant
13 to this Section shall be exempt from taxation in Illinois.

14 (g) Beginning April 1, 2020, and on a bi-annual basis
15 thereafter, the Commission shall issue a report to the General
16 Assembly concerning the decommissioning of nuclear power
17 plants in this State. The report shall include, but not be
18 limited to, the following:

19 (1) the information collected by the Commission under
20 subsection (e) of this Section;

21 (2) the number of nuclear power plants decommissioned
22 within each bi-annual reporting period;

23 (3) the funds expended in decommissioning nuclear
24 power plants within each bi-annual reporting period;

25 (4) any upcoming or future issues concerning the
26 decommission of nuclear power plants; and

1 (5) any other information concerning the decommission
2 of nuclear power plants that the Commission may deem
3 relevant or necessary.

4 (Source: P.A. 85-1400.)