

SB1851



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB1851

Introduced 2/15/2019, by Sen. Sue Rezin

SYNOPSIS AS INTRODUCED:

220 ILCS 5/8-508.1

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

Amends the Public Utilities Act. Makes a technical change in the definition of "decommissioning".

LRB101 09475 JRG 54573 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 ~~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 the
12 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 and
15 federal laws, and to ensure that such final disposition does
16 not pose any threat to the public health and safety.

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

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

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

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

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

23 (1) establish 2 decommissioning trusts, which shall be a
24 "tax qualified" decommissioning trust and a "non-tax
25 qualified" decommissioning trust and shall hold the
26 decommissioning funds established by the public utility for all

1 nuclear power plants pursuant to subsection (b)(2) of this
2 Section;

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

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

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

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

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

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

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

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

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

21 (iii) In the event a public utility sells or otherwise
22 disposes of its direct ownership interest, or any part thereof,
23 in a nuclear power plant with respect to which a nuclear
24 decommissioning fund has been established, the assets of the
25 fund shall be distributed to the public utility to the extent
26 of the reductions in its liability for future decommissioning

1 after taking into account the liabilities of the public utility
2 for future decommissioning of such nuclear power plant and the
3 liabilities that have been assumed by another entity. The
4 public utility shall, as soon as practicable, provide refunds
5 or credits to its customers representing the full amount of the
6 reductions in its liability for future decommissioning.

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

13 (v) The trustee shall invest the "non-tax qualified" trust
14 assets only in secure assets that are prudent investments for
15 assets held in trust and in such a way as to attempt to
16 maximize the after-tax return on funds invested. However the
17 trustee shall not invest any portion of the "non-tax qualified"
18 trust's funds in the securities or assets of any operator of a
19 nuclear power plant.

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

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

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

5 (d) By 90 days after the effective date of this amendatory
6 Act of 1988, the Commission shall determine an appropriate
7 method to segregate, either internally or externally, all
8 decommissioning funds collected prior to the effective date of
9 this amendatory Act of 1988 by the utility from its customers,
10 and shall order any change in past decommissioning funding
11 methods that the Commission finds necessary. In making its
12 determination of the appropriate funding method, the
13 Commission shall give consideration to, but not be limited by,
14 all applicable federal regulations. The change in funding
15 method shall be phased-in over an appropriate period of time.

16 (e) The trustee of a trust shall report annually to the
17 Commission, or more frequently if ordered by the Commission.
18 The report shall include:

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

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

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

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

26 (5) any other information the Commission orders the trust

1 to provide.

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

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