

# SB2095



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

SB2095

Introduced 2/14/2008, by Sen. John J. Cullerton

#### SYNOPSIS AS INTRODUCED:

220 ILCS 5/8-508.1

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

Amends the Public Utilities Act. Requires at least 15% of a nuclear decommissioning trust's funds to be invested in Illinois-based companies whose businesses are primarily devoted to (A) developing new technologies for producing or storing renewable energy or (B) reducing electricity usage. Provides an exception if a nuclear power plant is actively being decommissioned. Provides that an investment of the funds in a nuclear decommissioning trust fund shall be deemed prudent if it meets the prudent investor standards under specified federal regulations.

LRB095 19296 AMC 45588 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 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 (5) "Illinois-based company" means a company that is  
17 incorporated under the laws of Illinois or whose corporate  
18 headquarters are located in Illinois.

19 (6) "Renewable energy" means energy sources that are  
20 replenished by natural processes on a sufficiently rapid time  
21 scale.

22 (b) By 90 days after the effective date of this amendatory  
23 Act of 1988, or by the date that the unit satisfies the  
24 criteria used by the Internal Revenue Service for determining  
25 when depreciation commences for federal income tax purposes on  
26 a new generating unit, whichever is later, every public utility

1 that owns or operates, in whole or in part, a nuclear power  
2 plant shall:

3 (1) establish 2 decommissioning trusts, which shall be a  
4 "tax qualified" decommissioning trust and a "non-tax  
5 qualified" decommissioning trust and shall hold the  
6 decommissioning funds established by the public utility for all  
7 nuclear power plants pursuant to subsection (b)(2) of this  
8 Section;

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

12 (3) designate an independent trustee, subject to the  
13 approval of the Commission, to administer each of the  
14 decommissioning trusts.

15 (c) The 2 decommissioning trusts shall be known as the "tax  
16 qualified" decommissioning trust and the "non-tax qualified"  
17 decommissioning trust respectively. Each trust shall be  
18 established and maintained as follows:

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

1 1986 or any successor thereto.

2 (2) The "non-tax qualified" decommissioning trust shall be  
3 funded by the public utility for each such power plant through  
4 annual payments by the public utility that shall consist of the  
5 difference between the total amounts of decommissioning  
6 expenses collected after the effective date of this amendatory  
7 Act of 1988 through rates and charges from the public utility's  
8 customers as provided by the Commission minus the amounts  
9 contributed to the "tax qualified" trust as provided by  
10 subsection (c)(1) of this Section and deductible for federal  
11 income tax purposes in accordance with Section 468A of the  
12 Internal Revenue Code of 1986 or any successor thereto.

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

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

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

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

13 (iv) The trustee shall invest the "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, subject to the  
17 limitations specified in Section 468A of the Internal Revenue  
18 Code of 1986 or any successor thereto. For the purposes of this  
19 item (iv), an investment shall be deemed a prudent investment  
20 if it meets the prudent investor standards under 10 C.F.R.  
21 50.75 and 18 C.F.R. 35.32(a).

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

1 trust's funds in the securities or assets of any operator of a  
2 nuclear power plant. For the purposes of this item (v), an  
3 investment shall be deemed a prudent investment if it meets the  
4 prudent investor standards under 10 C.F.R. 50.75 and 18 C.F.R.  
5 35.32(a).

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

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

13 (viii) At least 15% of the trust's funds must be invested  
14 in Illinois-based companies whose businesses are primarily  
15 devoted to (A) developing new technologies for producing or  
16 storing renewable energy or (B) reducing electricity usage,  
17 including without limitation companies that manufacture energy  
18 conservation items such as hybrid automobiles, green  
19 lightbulbs, and Leadership in Energy and Environmental Design  
20 certified green buildings. If a plant is actively being  
21 decommissioned, then this requirement is waived for that  
22 plant's funds, but only during the time that the plant is  
23 actively being decommissioned.

24 (ix) The Commission may adopt by rule or regulation such  
25 further restrictions as it deems necessary for the sound  
26 management of the trust's funds, consistent with the purposes

1 of this Section.

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

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

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

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

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

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

23 (5) any other information the Commission orders the trust  
24 to provide.

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

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