



Sen. John J. Cullerton

Filed: 3/11/2008

09500SB2095sam001

LRB095 19296 MJR 48152 a

1 AMENDMENT TO SENATE BILL 2095

2 AMENDMENT NO. _____. Amend Senate Bill 2095 by replacing
3 everything after the enacting clause with the following:

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.

1 (2) "Decommissioning costs" means all reasonable costs and
2 expenses incurred in connection with the entombment,
3 decontamination, dismantlement, removal and disposal of the
4 structures, systems and components of a nuclear power plant at
5 the time of decommissioning, including all expenses to be
6 incurred in connection with the preparation for
7 decommissioning, such as engineering and other planning
8 expenses, and to be incurred after the actual decommissioning
9 occurs, such as physical security and radiation monitoring
10 expenses, less proceeds of insurance, salvage or resale of
11 machinery, construction equipment or apparatus the cost of
12 which was charged as a decommissioning expense.

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

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

23 (5) "Illinois-based company" means a company that is
24 incorporated under the laws of Illinois or whose corporate
25 headquarters are located in Illinois.

26 (6) "Renewable energy" means energy sources that are

1 replenished by natural processes on a sufficiently rapid time
2 scale.

3 (b) By 90 days after the effective date of this amendatory
4 Act of 1988, or by the date that the unit satisfies the
5 criteria used by the Internal Revenue Service for determining
6 when depreciation commences for federal income tax purposes on
7 a new generating unit, whichever is later, every public utility
8 that owns or operates, in whole or in part, a nuclear power
9 plant shall:

10 (1) establish 2 decommissioning trusts, which shall be a
11 "tax qualified" decommissioning trust and a "non-tax
12 qualified" decommissioning trust and shall hold the
13 decommissioning funds established by the public utility for all
14 nuclear power plants pursuant to subsection (b)(2) of this
15 Section;

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

19 (3) designate an independent trustee, subject to the
20 approval of the Commission, to administer each of the
21 decommissioning trusts.

22 (c) The 2 decommissioning trusts shall be known as the "tax
23 qualified" decommissioning trust and the "non-tax qualified"
24 decommissioning trust respectively. Each trust shall be
25 established and maintained as follows:

26 (1) The "tax qualified" trust shall be established and

1 maintained in accordance with Section 468A of the Internal
2 Revenue Code of 1986 or any successor thereto and shall be
3 funded by the public utility for each such power plant through
4 annual payments by the public utility that shall not exceed the
5 maximum amount allowable as a deduction for federal income tax
6 purposes for the year for which the payments were made, in
7 accordance with Section 468A of the Internal Revenue Code of
8 1986 or any successor thereto.

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

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

22 (i) Distributions may be made from a nuclear
23 decommissioning trust only to satisfy the liabilities of the
24 public utility for nuclear decommissioning costs relating to
25 the nuclear power plant for which the decommissioning fund was
26 established and to pay administrative costs, income taxes and

1 other incidental expenses of the trust.

2 (ii) Any assets in a nuclear decommissioning trust that
3 exceed the amount necessary to pay the nuclear decommissioning
4 costs of the nuclear power plant for which the decommissioning
5 fund was established shall be refunded to the public utility
6 that established the fund for the purpose of refunds or
7 credits, as soon as practicable, to the utility's customers.

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

20 (iv) The trustee shall invest the "tax qualified" trust
21 assets only in secure assets that are prudent investments for
22 assets held in trust and in such a way as to attempt to
23 maximize the after-tax return on funds invested, subject to the
24 limitations specified in Section 468A of the Internal Revenue
25 Code of 1986 or any successor thereto. For the purposes of this
26 item (iv), an investment shall be deemed a prudent investment

1 if it meets the prudent investor standards under 10 C.F.R.
2 50.75 and 18 C.F.R. 35.32(a).

3 (v) The trustee shall invest the "non-tax qualified" trust
4 assets only in secure assets that are prudent investments for
5 assets held in trust and in such a way as to attempt to
6 maximize the after-tax return on funds invested. However the
7 trustee shall not invest any portion of the "non-tax qualified"
8 trust's funds in the securities or assets of any operator of a
9 nuclear power plant. For the purposes of this item (v), an
10 investment shall be deemed a prudent investment if it meets the
11 prudent investor standards under 10 C.F.R. 50.75 and 18 C.F.R.
12 35.32(a).

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

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

20 (viii) A percentage that shall increase each year for 5
21 years after the effective date of this amendatory Act of the
22 95th General Assembly, at a maximum of 3% or \$2,000,000, of the
23 trust's funds must be invested in Illinois-based companies
24 whose businesses are primarily devoted to (A) developing new
25 technologies for producing or storing renewable energy or (B)
26 reducing electricity usage, including without limitation

1 companies that manufacture energy conservation items such as
2 hybrid automobiles, green lightbulbs, and Leadership in Energy
3 and Environmental Design certified green buildings. If a plant
4 is actively being decommissioned, then this requirement is
5 waived for that plant's funds, but only during the time that
6 the plant is actively being decommissioned.

7 (ix) The Commission may adopt by rule or regulation such
8 further restrictions as it deems necessary for the sound
9 management of the trust's funds, consistent with the purposes
10 of this Section.

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

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

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

26 (2) a report on the trust's portfolio of investments and

1 the return thereon;

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

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

6 (5) any other information the Commission orders the trust
7 to provide.

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

10 (Source: P.A. 85-1400.)".