

1 H.36

2 Introduced by Representatives Jerman of Essex and Cheney of Norwich

3 Referred to Committee on

4 Date:

5 Subject: Energy; public service; nuclear energy generating plants; funding

6 postclosure activities; liability; trusts; sale or lease of assets by an

7 affiliated entity

8 Statement of purpose: This bill proposes to establish that each owner and  
9 operator of a nuclear energy generating plant in the state is independently  
10 liable for the full cost of postclosure activities at the plant, and that the assets  
11 of an affiliated entity shall be available to fund such cost; to define  
12 “postclosure activities” to include decommissioning, spent fuel management,  
13 and restoration to a “greenfield” condition; to require decommissioning of the  
14 plant as soon as technically possible following cessation of use or operating  
15 authority; to require an entity purchasing such a plant to have in place, on  
16 acquisition, a trust adequate at that time to fund the full projected cost of  
17 decommissioning; to require that each such plant have in place two other  
18 trusts, one with sufficient funds to support long-term spent fuel management  
19 and the other with sufficient funds to support return of the site to a greenfield  
20 condition; to establish requirements concerning each trust, including protection  
21 from bankruptcy of the plant owner or operator; to require that the owner or

1 operator notify the public service board in advance of any sale or lease of  
2 25 percent or more of the assets of an affiliated entity; and to enable the board  
3 to investigate any such sale or lease and issue such orders concerning the sale  
4 or lease as it finds to be in the public good.

5 An act relating to nuclear energy generation, postclosure funding, and trusts  
6 for decommissioning, spent fuel management, and greenfield restoration

7 It is hereby enacted by the General Assembly of the State of Vermont:

8 Sec. 1. FINDINGS

9 (a) The general assembly finds that it is necessary to take action to ensure  
10 that once the state's sole nuclear energy generating plant permanently ceases to  
11 produce electricity, sufficient funding exists for all postclosure activities to  
12 occur at the plant, including funding decommissioning, management of spent  
13 fuel, and restoration of the plant site to a greenfield condition.

14 (b) In this regard, the general assembly finds the following:

15 (1) The Vermont Yankee Nuclear Power Station and its owners.

16 (A) Vermont currently has one nuclear energy generating plant, the  
17 Vermont Yankee Nuclear Power Station (VYNPS or the station), located in the  
18 town of Vernon, Vermont.

19 (B) Entergy Nuclear Vermont Yankee, LLC (ENVY) is the owner of  
20 the station. ENVY is a limited liability corporation with three primary assets:

1 the VYNPS, any associated power contracts, and the ability to access, for the  
2 purpose of decommissioning, a decommissioning trust fund established for the  
3 station.

4 (C) Entergy Nuclear Operations, Inc. (ENO) is the operator of the  
5 station. ENO operates five other nuclear plants, with one located in  
6 Massachusetts, three in New York, and one in Michigan, and provides  
7 operations and management services to other nuclear plants that it does not  
8 operate directly.

9 (D) ENVY and ENO are indirect, wholly owned subsidiaries of  
10 Entergy Corporation (Entergy Corp.), which has its principal offices in New  
11 Orleans, Louisiana. Entergy Corp., through various intermediaries and  
12 subsidiaries, owns and operates 11 nuclear plants in the United States with  
13 10,125 MW of capacity. Entergy Corp.'s total generating capacity is  
14 approximately 27,000 MW. It is the second largest nuclear generating  
15 company in the United States. In 2009, Entergy Corp. had operating revenues  
16 of \$10.7 billion and a net profit of \$1.25 billion. During that year, Entergy  
17 Corp. received a net income of \$631 million total from its nonutility nuclear  
18 plants, including the VYNPS.

19 (2) Scheduled closure of the VYNPS on March 21, 2012.

20 (A) In 2002, ENVY and ENO became the coholders of facility  
21 operating license DPR-28, a federal license to operate the VYNPS that expires

1 at midnight on March 21, 2012. ENVY and ENO have applied to the Nuclear  
2 Regulatory Commission (NRC) for renewal of that license for a period of  
3 20 years, extending the expiration date to midnight on March 21, 2032.

4 (B) The NRC recognizes that the decision on whether a nuclear  
5 energy generating plant should continue in operation past its initial license  
6 expiration ultimately is up to non-NRC decision-makers, including the state in  
7 which the plant is located. In its 2007 supplemental environmental impact  
8 statement (EIS) on relicensing the VYNPS, the NRC stated:

9 Once an [NRC operating license] is renewed, State regulatory  
10 agencies and the owners of the plant will ultimately decide whether  
11 the plant will continue to operate based on factors such as the need  
12 for power or other matters within the State's jurisdiction or the  
13 purview of the owners. . . .

14 NRC does not have a role in the energy-planning decisions of State  
15 regulators and utility officials as to whether a particular nuclear  
16 power plant should continue to operate.

17 NRC, Generic EIS for License Renewal of Nuclear Plant: Supplement 30,  
18 Vermont Yankee Nuclear Power Station at 1-8, 1-9 (Aug. 2007).

19 (C) These statements are based on the NRC's prior recognition of the  
20 decision-making role of other entities, including the states, in whether a  
21 nuclear plant will continue to operate. In adopting its environmental impact

1 statement process and decision standard in 1996 regarding reactor license  
2 renewal, the NRC stated:

3 After the NRC makes its decision based on the safety and  
4 environmental considerations, the final decision on whether or not  
5 to continue operating the nuclear plant will be made by the utility,  
6 State, and Federal (non-NRC) decisionmakers. This final decision  
7 will be based on economics, energy reliability goals, and other  
8 objectives over which the other entities may have jurisdiction. The  
9 NRC has no authority or regulatory control over the ultimate  
10 selection of future energy alternatives . . .

11 Because the objectives of the utility and State decisionmakers will  
12 ultimately be the determining factors in whether a nuclear power  
13 plant will continue to operate, NRC's proposed decision standard  
14 is appropriate.

15 NRC, Environmental Review for Renewal of Nuclear Power Plant Operating  
16 Licenses, 61 Fed. Reg. 28467, 28473 (June 5, 1996).

17 (D) In 2002, in docket number 6545, the Vermont public service  
18 board (PSB or the board) issued a certificate of public good (CPG) (the PSB  
19 Order) to ENVY and ENO, allowing them under state law to operate the  
20 station through March 21, 2012. In issuing the CPG, the PSB relied on an

1 agreement by ENVY and ENO that the board has jurisdiction over whether the  
2 station can continue to operate beyond that date.

3 (E) Pursuant to 30 V.S.A. § 248(e)(2), in order to continue operation  
4 beyond March 21, 2012, the VYNPS must obtain the general assembly's  
5 approval and determination that continued operation of the station will  
6 promote the general welfare and subsequently must obtain a certificate of  
7 public good from the board. Pursuant to Sec. 1(a) of No. 160 of the Acts of the  
8 2005 Adj. Sess. (2006), the general assembly's approval and determination  
9 must be "expressed in law." ENVY and ENO have filed a petition stating that  
10 they seek "such approvals from [the] Board and the Vermont General  
11 Assembly as may be required to operate the Vermont Yankee Nuclear Power  
12 Station ('VY Station') after March 21, 2012."

13 (F) Pursuant to Sec. 1(f) of No. 160 of the Acts of the 2005 Adj.  
14 Sess. (2006) and chapter 157 of Title 10, the general assembly is to consider,  
15 concurrently with the question of continued operation, whether to approve the  
16 storage of spent nuclear fuel derived from the operation of the VYNPS after  
17 March 21, 2012.

18 (G) On February 24, 2010, the Vermont senate voted on S.289, a bill  
19 that proposed to approve until March 21, 2032, the continued operation of the  
20 VYNPS and associated storage of spent fuel derived from that operation. The  
21 bill failed on a vote of four in favor and 26 opposed.

1           (H) Therefore, under existing law, the VYNPS shall close on or  
2 before March 21, 2012. Yet there remain significant unresolved issues relating  
3 to funding postclosure activities at the station.

4           (3) Postclosure funding.

5           (A) Postclosure activities at the VYNPS will include  
6 decommissioning (radiological decontamination) in accordance with NRC  
7 requirements, management of spent fuel that has not been delivered to the U.S.  
8 Department of Energy (DOE), and restoration of the plant site to a greenfield  
9 condition.

10           (B) In a February 3, 2009, evaluation regarding the VYNPS, the  
11 NRC stated that ENVY and ENO had provided the following cost estimates for  
12 postclosure activities:

13           (i) \$656.1 million for decommissioning (radiological  
14 decontamination), in 2007 dollars, assuming decommissioning commences in  
15 2067 and is completed by 2072.

16           (ii) \$219 million for spent fuel management, in 2007 dollars,  
17 assuming that the federal government begins picking up spent fuel in 2042.

18           (iii) \$40 million for site restoration to a greenfield condition, in  
19 2006 dollars.

1           (4) Funding decommissioning.

2           (A) The \$656.1 million estimate of decommissioning costs by ENVY  
3 and ENO is not based on a detailed site characterization. Actual costs of  
4 decommissioning can vary significantly once site-specific conditions are  
5 included. Discovery of tritium and other radioactive material in the soil and  
6 groundwater at the Connecticut Yankee nuclear plant resulted in substantial  
7 increases in decommissioning costs at that facility, with estimates of that  
8 increase ranging from the tens of millions of dollars to \$481 million.

9           (B) In 2009, in response to NRC concerns about a potential shortfall  
10 between funding and decommissioning costs, Entergy agreed to establish a  
11 parent company guarantee of \$40 million.

12           (C) Releases of radioisotopes at the VYNPS could affect the cost of  
13 postclosure activities at the station. In January 2010, ENVY disclosed that  
14 underground pipes at the VYNPS were leaking tritium, despite its officials  
15 having testified previously, under oath, that no such pipes existed. In February  
16 2010, ENVY ceased using an on-site drinking water well next to the site's  
17 construction office building (COB); at that time, no tritium had been found in  
18 that well. Subsequently, tritium was discovered in the COB well, increasing  
19 tritium levels have been documented in on-site monitoring wells, additional  
20 leaks have occurred, and releases of radioisotopes besides tritium have been  
21 discovered at the station site.

1           (D) As of November 30, 2010, the market value of the  
2           decommissioning trust fund accounts for the VYNPS was approximately \$465  
3           million.

4           (5) Funding spent fuel management.

5           (A) Currently there are no funds specifically set aside for long-term  
6           management of spent fuel at the VYNPS. Operating revenue will be  
7           unavailable for such funding once the plant closes. The decommissioning trust  
8           is an irrevocable trust that states it is to be used for the purpose of  
9           decommissioning.

10           (B) The \$219 million estimate of spent fuel management costs by  
11           ENVY and ENO may understate the costs. ENVY and ENO have produced  
12           other estimates for such costs as high as \$384 million in 2006 dollars,  
13           assuming that the federal government begins removing spent fuel in 2057 and  
14           completes removal in 2082.

15           (C) ENVY and ENO's spent fuel management plan relies on  
16           receiving money from the federal government for that portion of the spent fuel  
17           management costs related to storage of spent fuels since 1998, the year in  
18           which the DOE was contractually obligated to begin removing spent fuel from  
19           the VYNPS to a permanent storage facility. Although a federal court has held  
20           DOE liable, DOE has still not removed any spent fuel from the site, does not  
21           plan to remove any spent fuel in the foreseeable future, and will not pay any

1 money to ENVY or ENO until after ENVY or ENO makes expenditures for  
2 managing spent fuel.

3 (D) There is no known limit to the number of years during which  
4 ENVY and ENO may have to make expenditures for managing spent fuel from  
5 the VYNPS because there is no date certain by which DOE will begin  
6 removing spent fuel from the station site.

7 (E) ENVY and ENO also have proposed to fund spent fuel  
8 management from the decommissioning trust fund. The NRC has stated that  
9 ENVY must file for an exemption to use money from the decommissioning  
10 trust fund to pay for spent fuel management.

11 (F) The use of decommissioning trust fund moneys to manage spent  
12 fuel would mean that fewer funds are available to cover the costs of  
13 decommissioning, thus threatening to delay the time at which  
14 decommissioning will occur.

15 (6) Funding greenfield restoration.

16 (A) ENVY and ENO have committed and are required by the PSB  
17 order to decommission the plant to a “greenfield” condition once the VYNPS  
18 site is no longer used for nuclear purposes or nonnuclear commercial,  
19 industrial, or similar uses. In issuing a CPG to ENVY and ENO, the PSB  
20 stated that restoration to a greenfield condition means that once radioactive

1 decontamination is completed, “the site will be restored by removal of all  
2 structures and, if appropriate, regrading and reseeded the land.”

3 (B) Currently there are no funds specifically set aside to restore the  
4 site of the station to a greenfield condition.

5 (C) ENVY and ENO’s \$40 million (2006 dollars) estimate for  
6 restoration of the site to greenfield status was not based on a detailed site  
7 characterization. Therefore, such costs could vary significantly from the  
8 estimate.

9 (7) Responsibility to fund decommissioning.

10 (A) Under the PSB order, ENVY is responsible for the cost of  
11 decommissioning and other postclosure activities and bears the risk of any  
12 shortfall in the funds available for those activities.

13 (B) ENO has stated in a filing to the PSB that, as a colicensee with  
14 ENVY, it likely would be jointly and severally liable should the resources of  
15 ENVY be inadequate to fulfill its financial responsibilities.

16 (C) Entergy Corp. has acknowledged in its SEC filings that “the  
17 liability to decommission the plant, as well as related decommissioning trust  
18 funds” was “transferred” to Entergy Corp. when the station was purchased in  
19 2002.

20 (8) In 2008, Entergy Corp., ENVY, and ENO proposed a corporate  
21 restructuring under which ENVY would no longer be a subsidiary of Entergy

1 Corp. and instead would be owned by ENEXUS Energy Corp., a highly  
2 debt-leveraged company. In 2010, the petitioners withdrew their petition for  
3 approval of this restructuring before the New York public service commission  
4 after that commission had voted to deny the petition but had not yet issued a  
5 decision. Also in 2010, the Vermont public service board denied approval of  
6 the restructuring. Other restructuring scenarios are possible and may be  
7 proposed. A corporate restructuring in which the chain of plant ownership  
8 relies heavily on debt increases the risk of insufficient funds for postclosure  
9 activities.

10 (9) The VYNPS is located near the Connecticut River, with ready access  
11 to high voltage transmission lines, a railroad, and highways. Its location is  
12 well suited for an energy generation plant or other commercial or industrial  
13 use. A lack of funding for postclosure activities at the station raises economic,  
14 energy planning, and land use issues for the state, including:

15 (A) Delay in the return of the plant site to productive use, including  
16 particularly use for electric generation.

17 (B) Lost opportunities for economic benefits from such productive  
18 use, including jobs, taxes, and economic multiplier effects.

19 (C) A risk of adverse claims against taxpayers, ratepayers, or retail  
20 electric utilities for costs associated with postclosure activities.

1       Sec. 2. 30 V.S.A. chapter 5, subchapter 2 is added to read:

2               Subchapter 2. Postclosure Funding; Nuclear Generation Plants

3       § 270. PURPOSE

4       The purposes of this subchapter include each of the following:

5               (1) To encourage the productive use of a site once a nuclear plant on the  
6       site ceases to generate electricity.

7               (2) To diminish any negative impacts to the economy of the state, to  
8       government revenues, and to electric consumers from having unavailable for  
9       long periods a site that is well-suited and -situated for electric generation and  
10       transmission.

11               (3) To reduce the risk that taxpayers, ratepayers, or retail electric  
12       utilities will experience adverse claims or costs resulting from a shortage of  
13       available funds for postclosure activities at a nuclear energy generating plant.

14       § 271. DEFINITIONS

15       In this subchapter:

16               (1)(A) “Affiliated entity” means any person or business organization  
17       that, on or after January 1, 2010:

18               (i) owned or controlled or owns or controls an interest, directly or  
19       indirectly, in the owner or operator of a nuclear energy generating plant; or

20               (ii) was or is a corporation that, directly or indirectly, was or is a  
21       parent of the owner or operator of a nuclear energy generating plant.

1           (B) For the purpose of this subdivision (1):

2                   (i) “Business organization” includes a parent or subsidiary  
3                   corporation, a jointly owned or jointly controlled corporation, a limited  
4                   liability corporation, a joint venture, a partnership, or any other legal or  
5                   commercial entity.

6                   (ii) “Interest” excludes a right or obligation of a Vermont  
7                   company, utility, or electric department that arises only because the company,  
8                   utility, or electric department is a purchaser, user, transmitter, distributor, or  
9                   reseller of power produced by the nuclear energy generating plant.

10                  (2) “Board” means the public service board under section 3 of this title.

11                  (3) “Decommission” or “decommissioning” means removal of a nuclear  
12                  energy generating plant safely from service and radiological decontamination  
13                  in accordance with the regulations of the Nuclear Regulatory Commission  
14                  (NRC). The term includes reduction of residual radioactivity to a level that  
15                  permits release of the property for unrestricted use.

16                  (4) “Department” means the department of public service under  
17                  section 1 of this title.

18                  (5) “Existing nuclear energy generating plant” means a nuclear energy  
19                  generating plant in existence as of January 1, 2011.

20                  (6) “Greenfield condition” means removal of all above- and  
21                  below-ground structures, equipment, and foundations from a site and, if

1 appropriate, regrading and reseeded the land. The term includes activities that  
2 occur following permanent cessation of a site's use for generating electricity  
3 from nuclear energy and decommissioning of the site's nuclear energy  
4 generating plant. The term excludes activities required by the NRC for  
5 radiological decontamination.

6 (7) "Managing spent fuel," "management of spent fuel," or "spent fuel  
7 management" means the control and supervision of uranium fuel that has been  
8 used in and removed from the reactor of a nuclear energy generating plant until  
9 such time as the fuel is removed from Vermont and placed in a federally  
10 certified long-term storage facility. The term includes the storage of such fuel  
11 at the site of a nuclear energy generating plant and all associated operations,  
12 security, and maintenance. The term excludes decommissioning of a nuclear  
13 energy generating plant and restoration of the site of such a plant to a  
14 greenfield condition.

15 (8) "Nuclear energy generating plant" means a facility located in  
16 Vermont that produces or has produced electricity using an atomic reaction as  
17 an energy source for heat to provide steam to a turbine generator. The term  
18 includes a nuclear energy generating plant that has ceased producing  
19 electricity.

20 (9) "Operator" means a person or entity that, on or after January 1,  
21 2010, operated or operates a nuclear energy generating plant or held or holds a

1 certificate under this title allowing the person or entity to operate a nuclear  
2 energy generating plant.

3 (10) “Owner” means a person or entity that, on or after January 1, 2010,  
4 owned or owns a nuclear energy generating plant or held or holds a certificate  
5 under this title consenting to the purchase of such a plant by the person or  
6 entity.

7 (11) “Postclosure activities” means all activities and monitoring that  
8 occur or are required to occur once a nuclear energy generating plant  
9 permanently ceases generating electricity, including decommissioning, spent  
10 fuel management, and restoration to greenfield condition.

11 § 272. OBLIGATION; POLICY; DEPARTMENT OF PUBLIC SERVICE  
12 TO ENFORCE

13 (a) Each owner and operator of a nuclear energy generating plant is and  
14 shall be independently liable for the full cost of postclosure activities at the  
15 plant.

16 (b) It is the law and policy of the state that, in the event that the combined  
17 assets of an owner and operator of a nuclear energy generating plant are or will  
18 be insufficient to fund the full cost of all postclosure activities at the plant, the  
19 assets of an affiliated entity that benefited from the generation of electricity at  
20 the plant shall be available to fund such full cost.

1       (c) The department of public service shall enforce this subchapter,  
2       including subsections (a) and (b) of this section, through all available legal  
3       means.

4       § 273. DECOMMISSIONING; WHEN IT OCCURS

5       (a) To achieve the purposes stated in section 270 of this title, it is the law  
6       and policy of this state that, to the extent consistent with federal law, the owner  
7       and operator of a nuclear energy generating plant shall complete  
8       decommissioning as soon as technically possible after either of the following,  
9       whichever is earlier:

10       (1) permanent cessation of the plant's use for generating electricity; or  
11       (2) a date set by the board in a certificate under this title applicable to  
12       the owner or operator for cessation of authority to operate the plant.

13       (b) In the event that the combined assets of the owner and operator are  
14       insufficient to fund the full cost of decommissioning a nuclear energy  
15       generating plant in accordance with subsection (a) of this section, one or more  
16       activities related to decommissioning of the plant may be delayed if the delay  
17       is approved by the public service board, on such terms and conditions that the  
18       board determines to be in the public good, and if the delayed activities  
19       commence immediately following the availability of sufficient funds, including  
20       funds made available by or obtained from an affiliated entity pursuant to  
21       subsection 272(b) or (c) of this title.

1     § 274. EXISTING NUCLEAR GENERATION PLANT; ACQUISITION;  
2             DECOMMISSIONING TRUST

3             To achieve the purposes stated in section 270 of this title, it is the law and  
4             policy of this state that a person or entity that, on or after the effective date of  
5             this act, acquires an existing nuclear energy generating plant or a controlling  
6             interest as defined in section 107 of this title in the owner or operator of such a  
7             plant, shall have in place, upon acquisition of such plant or interest, a trust for  
8             the purpose of decommissioning the plant that is adequate at the time of  
9             acquisition to fund the full projected cost of decommissioning without reliance  
10            on long-term storage of the plant for later decommissioning and shall be  
11            obligated to ensure at least on an annual basis that this trust is adequate for  
12            such purpose at all times during the future operation of the plant. For the  
13            purpose of this section, the full projected cost of decommissioning shall, at a  
14            minimum, be the amount determined in accordance with the regulations of the  
15            NRC at 10 C.F.R. § 50.75(c) (table of minimum amounts), as amended.

16     § 275. SPENT FUEL MANAGEMENT FUNDING TRUST

17            (a) To achieve the purposes set out in section 270 of this title, it is the law  
18            and policy of this state that, on and after March 22, 2012, the owner and  
19            operator of a nuclear energy generating plant shall have in place a trust for the  
20            purpose of funding the management of spent fuel associated with the plant that

1 the board has determined to be adequate to fund the full projected cost of such  
2 spent fuel management.

3 (b) In determining whether a trust is adequate under this section, the board:

4 (1) For an existing nuclear energy generating plant, may allow periodic  
5 additions of funds to the trust rather than requiring that the full projected  
6 amount be in place on March 22, 2012, provided that the trust is 50 percent  
7 funded by March 22, 2017, and fully funded by March 22, 2022.

8 (2) Shall not:

9 (A) Assume or account for any payment by the federal government  
10 for managing spent fuel associated with the plant unless and until such  
11 payment is made and placed into the trust.

12 (B) Assume that moneys from a decommissioning trust fund required  
13 by the NRC for the plant are available for managing spent fuel unless and until  
14 the NRC has affirmatively approved a request by the plant owner for such use.

15 (c) The owner and operator of an existing nuclear energy generating plant  
16 shall petition the board no later than March 31, 2011, or 21 days after the  
17 effective date of this act, whichever is later, for a determination that its  
18 proposed trust under this section meets the requirements of this subchapter,  
19 and the board shall render its decision on such petition on or before  
20 December 31, 2011.

1     § 276. GREENFIELD RESTORATION TRUST

2           (a) The owner and operator of a nuclear energy generating plant shall have  
3     in place a trust in accordance with this section for the purpose of restoring the  
4     site of the plant to a greenfield condition.

5           (1) If the trust pertains to a nuclear energy generating plant that is not an  
6     existing nuclear energy generating plant, the trust shall be one that the board  
7     has determined to be adequate to fund the full projected cost of restoring the  
8     site of the plant to a greenfield condition and shall be instituted prior to  
9     commencement of construction of the plant.

10          (2) If the trust pertains to an existing nuclear energy generating plant:

11           (A) No later than March 22, 2011, or 14 days after the effective date  
12     of this act, whichever is later, the owner and operator of the plant shall place at  
13     least \$40 million in an escrow account controlled by a licensed agent who is  
14     independent of the owner, operator, and any affiliated entity, and is approved  
15     by the board. The escrow account shall be subject to Vermont law, and the  
16     escrow agent shall have the duties of a trustee under Vermont law. Upon  
17     receipt of an order or directive from the board, including an order under  
18     subsection (b) of this section, the escrow agent shall transfer the full amount in  
19     the escrow account to the trustee of the trust established under this section for  
20     placement into that trust. The agent may disburse funds from the account for  
21     no other purpose.

1           (B) Within 30 days of a board order under subsection (b) of this  
2 section, the owner and operator shall place into the trust the incremental  
3 amount, if any, ordered by the board to be placed into the trust pursuant to  
4 subdivision (b)(2) of this section.

5           (C) No later than March 22, 2022, the owner and operator shall place  
6 into the trust the further amount, if any, that is necessary to fund the full  
7 projected cost of restoring the site of the plant to a greenfield condition. For  
8 the purpose of this subdivision (B), “further amount” means an amount of  
9 funding that is in addition to the amounts required under subdivisions (A) and  
10 (B) of this subdivision (2).

11          (b) The owner and operator of an existing nuclear energy generating plant  
12 shall petition the board no later than March 31, 2011, or 21 days after the  
13 effective date of this act, whichever is later, for a determination that its  
14 proposed trust under this section meets the requirements of this subchapter,  
15 and the board shall render its decision on such petition on or before  
16 December 31, 2011.

17          (1) The board’s decision shall independently verify and determine,  
18 based on current facts and circumstances, whether the full projected cost of  
19 restoring the plant site to a greenfield condition will exceed \$40 million and, if  
20 so, the incremental amount of that projected cost above \$40 million.

1           (2) The board's decision shall direct the institution of the trust within a  
2           specified period, not to exceed 30 days, after issuance of the decision and the  
3           placement by the owner and operator into that trust, within such 30-day period,  
4           of the incremental amount determined in subdivision (1) of this subsection.

5           (3) Upon issuance, the board shall serve its decision on the escrow agent  
6           described in subdivision (a)(2)(A) of this section and direct the agent to  
7           transfer all funds in the escrow account to the trustee of the trust established  
8           under this section, as approved by the board, for placement into that trust. The  
9           board shall direct that this transfer shall occur within a specified period, not to  
10          exceed 30 days, following issuance of its decision.

11          (c) A determination that a trust is adequate under this section shall require  
12          that the trust include an amount sufficient to fund the full projected cost of  
13          restoring the site of the plant to a greenfield condition regardless of whether  
14          the board exercises discretion to allow facilities or structures associated with  
15          the plant to remain for nonnuclear uses rather than be removed. The board  
16          subsequently may authorize that some or all of the activities needed to achieve  
17          a greenfield condition may occur once a site is no longer utilized for  
18          nonnuclear commercial, industrial, or other uses consistent with the orderly  
19          development of a property. Following completion of all other activities related  
20          to achieving a greenfield condition, excess funds in the trust, if any, may be  
21          returned in accordance with subsection 277(f) of this title.

1     § 277. TRUSTS; COMMON PROVISIONS

2           (a) In determining that a trust is adequate under this subchapter, the board  
3     shall find that the trust conforms to the requirements of this subchapter and  
4     may include such conditions and requirements as it deems necessary to protect  
5     the public good.

6           (b) Section 275 (spent fuel management funding trust) or 276 (greenfield  
7     restoration trust) of this title does not require the inclusion in a trust of funds  
8     necessary for decommissioning. A trust under section 275 or 276 of this title  
9     shall be separate from any decommissioning trust required for a plant.

10          (c) A trust under this subchapter and any included funds and financial  
11     instruments shall be subject to the laws of Vermont, shall be usable by the  
12     beneficiary only for the purpose of the trust, and shall include a spendthrift  
13     provision sufficient under Vermont law to restrain both voluntary and  
14     involuntary transfers of the beneficiary's interest.

15          (d) A trust under this subchapter shall be funded by cash, letter of credit  
16     held by and payable to the trustee, or surety bond held by and payable to the  
17     trustee that is executed by a surety company authorized to do business in this  
18     state. Any such letter of credit or surety bond shall be subject to the board's  
19     approval.

20          (e) The trustee of a trust under this subchapter shall be independent of the  
21     owner, operator, and any affiliated entity.



1 plant, without first obtaining a certificate of consent from the public service  
2 board.

3 (2) Any company owning or operating such a plant that has, in the  
4 course of obtaining a certificate from the board under this title, provided  
5 evidence that the assets, cash flow, financial resources, skill, experience, or  
6 other resources of an affiliated entity may be available or called or relied upon,  
7 in any circumstance, to satisfy, support, or mitigate its liabilities or  
8 responsibilities, shall provide no less than 180 days' prior notice to the board  
9 of any sale or lease within any 12-month period of 25 percent or more of the  
10 assets of such affiliated entity and shall provide all further information  
11 concerning such sale or lease as the board may require, within the period  
12 specified by the board. The board shall have authority to open an investigation  
13 into any such sale or lease and issue any order that it finds necessary or  
14 appropriate to promote or protect the general good of the state. For the  
15 purpose of this subsection, "affiliated entity" means any person or business  
16 organization that, on or after January 1, 2010:

17 (A) owned or controlled or owns or controls an interest, directly or  
18 indirectly, in a company that owns or operates a plant that is subject to this  
19 subsection; or

20 (B) was or is a corporation that, directly or indirectly, was or is a  
21 parent of the owner or operator of a plant subject to this subsection.

