

1 H.139

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

7 Statement of purpose of bill as introduced: This bill proposes to require full
8 funding of the costs of postclosure activities at nuclear energy generating
9 plants in the state; to establish that the owner and operator are each
10 independently liable for these costs; and to provide that the assets of an
11 affiliated entity shall be available to fund these costs.

12 An act relating to funding postclosure activities at nuclear energy
13 generating plants

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

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

16 Subchapter 2. Postclosure Funding; Nuclear Energy Generating Plants

17 § 271. PURPOSE

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

19 (1) to encourage the rapid return to productive use of a site once a
20 nuclear energy generating plant on the site ceases to generate electricity;

1 (2) to diminish any negative impacts to the economy of the State, to
2 government revenues, and to electric consumers from having unavailable for
3 long periods a site that is well-suited and -situated for electric generation and
4 transmission;

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

8 § 272. DEFINITIONS

9 In this subchapter:

10 (1)(A) “Affiliated entity” means any person or business organization
11 that, on or after January 1, 2003:

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

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

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

17 (i) “Business organization” includes a parent or subsidiary
18 corporation, a jointly owned or jointly controlled corporation, a limited
19 liability corporation, a joint venture, a partnership, or any other legal or
20 commercial entity.

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

5 (2) “Board” means the Public Service Board under section 3 of this title.

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

11 (4) “Department” means the Department of Public Service under
12 section 1 of this title.

13 (5) “Existing nuclear energy generating plant” means a nuclear energy
14 generating plant in existence as of January 1, 2013.

15 (6) “Greenfield condition” means removal of all above- and
16 below-ground structures, equipment, and foundations from a site and, if
17 appropriate, regrading and reseeded the land. The term includes activities that
18 occur following permanent cessation of a site’s use for generating electricity
19 from nuclear energy and decommissioning of the site’s nuclear energy
20 generating plant. The term excludes activities required by the NRC for
21 radiological decontamination.

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

10 (8) “Nuclear energy generating plant” means a facility located in
11 Vermont that produces or has produced electricity using an atomic reaction as
12 an energy source for heat to provide steam to a turbine generator. The term
13 includes a nuclear energy generating plant that has ceased producing
14 electricity.

15 (9) “Operator” means a person or entity that, on or after January 1,
16 2003, operated or operates a nuclear energy generating plant or held or holds a
17 certificate under this title allowing the person or entity to operate a nuclear
18 energy generating plant.

19 (10) “Owner” means a person or entity that, on or after January 1, 2003,
20 owned or owns a nuclear energy generating plant or held or holds a certificate

1 under this title consenting to the purchase of such a plant by the person or
2 entity.

3 (11) "Postclosure activities" means all activities and monitoring that
4 occur or are required to occur once a nuclear energy generating plant
5 permanently ceases generating electricity, including decommissioning, spent
6 fuel management, and restoration to greenfield condition.

7 § 273. OBLIGATION; POLICY; DEPARTMENT OF PUBLIC SERVICE
8 TO ENFORCE

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

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

17 (c) The Department of Public Service shall enforce this subchapter,
18 including subsections (a) and (b) of this section, through all available legal
19 means.

1 § 274. DECOMMISSIONING; WHEN IT OCCURS

2 To achieve the purposes stated in section 271 of this title, it is the law and
3 policy of this State that, to the extent consistent with federal law, the owner
4 and operator of a nuclear energy generating plant shall complete
5 decommissioning as soon as technically possible after either of the following,
6 whichever is earlier:

7 (1) permanent cessation of the plant's use for generating electricity; or

8 (2) passage of a date set by the board in a certificate under this title
9 applicable to the owner or operator for cessation of authority to operate the
10 plant.

11 § 275. SPENT FUEL MANAGEMENT FUNDING TRUST

12 (a) To achieve the purposes set out in section 271 of this title, it is the law
13 and policy of this State that, on and after July 1, 2013, the owner and operator
14 of a nuclear energy generating plant shall have in place a trust for the purpose
15 of funding the management of spent fuel associated with the plant that the
16 Board has determined to be adequate to fund the full projected cost of such
17 spent fuel management.

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

19 (1) For an existing nuclear energy generating plant, may allow periodic
20 additions of funds to the trust rather than requiring that the full projected

1 amount be in place on July 1, 2013, provided that the trust is 50 percent funded
2 by July 1, 2016, and fully funded by July 1, 2018.

3 (2) Shall not:

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

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

10 (c) With respect to an existing nuclear energy generating plant, on or before
11 July 31, 2013, the Board shall open an investigation to determine whether the
12 owner and operator of the plant have created a trust for managing spent fuel
13 that meets the requirements of this subchapter. The Board shall have full
14 authority to order revisions to the terms of the trust. The Board shall render its
15 decision in such investigation on or before October 31, 2013 and shall issue
16 such orders as it determines necessary to ensure compliance with this section.

17 § 276. GREENFIELD RESTORATION TRUST

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

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

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

7 (A) On or before July 1, 2013, the owner and operator of the plant:

8 (i) shall create a greenfield restoration trust that complies with this
9 subchapter; and

10 (ii) shall place at least \$40 million in a separate escrow account
11 controlled by a licensed agent who is independent of the owner, operator, and
12 any affiliated entity and is approved by the Board. The escrow account shall
13 be subject to Vermont law, and the escrow agent shall have the duties of a
14 trustee under Vermont law. Upon receipt of an order or directive from the
15 Board, the escrow agent shall transfer the full amount in the escrow account to
16 the trustee of the greenfield trust established under this section for placement
17 into that trust. The agent may disburse funds from the account for no other
18 purpose.

19 (B) Within the period required by the Board under subsection (b) of
20 this section, the owner and operator shall place into the greenfield trust the

1 incremental amount, if any, ordered by the Board to be placed into the trust
2 pursuant to subdivision (b)(2) of this section.

3 (C) On or before July 1, 2023, the owner and operator shall place into
4 the trust the further amount, if any, that is necessary to fund the full projected
5 cost of restoring the site of the plant to a greenfield condition. For the purpose
6 of this subdivision (C), “further amount” means an amount of funding that is in
7 addition to the amounts required under subdivisions (A) and (B) of this
8 subdivision (2).

9 (b) With respect to an existing nuclear energy generating plant, on or
10 before July 31, 2013, the Board shall open an investigation to determine
11 whether the owner and operator of the plant have created a greenfield
12 restoration trust that meets the requirements of this subchapter. The Board
13 shall have full authority to order revisions to the terms of the trust. The Board
14 shall render its decision in such investigation on or before October 31, 2013
15 and shall issue such orders as it determines necessary to ensure compliance
16 with this section. The Board’s decision also shall:

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

1 (2) direct the placement by the owner and operator into the trust, within
2 a specified period not to exceed 90 days from issuance of the decision, of the
3 incremental amount determined in subdivision (1) of this subsection; and

4 (3) be served on the escrow agent described in subdivision (a)(2)(A) of
5 this section and direct the agent to transfer all funds in the escrow account to
6 the trustee of the trust established under this section, as approved by the Board,
7 for placement into that trust. The Board shall direct that this transfer shall
8 occur within a specified period, not to exceed 90 days, following issuance of
9 its decision.

10 (c) A determination that a trust is adequate under this section shall require
11 that the trust include an amount sufficient to fund the full projected cost of
12 restoring the site of the plant to a greenfield condition regardless of whether
13 the Board exercises discretion to allow facilities or structures associated with
14 the plant to remain for nonnuclear uses rather than be removed. The Board
15 subsequently may authorize that some or all of the activities needed to achieve
16 a greenfield condition may occur once a site is no longer utilized for
17 nonnuclear commercial, industrial, or other uses consistent with the orderly
18 development of a property. Following completion of all other activities related
19 to achieving a greenfield condition, excess funds in the trust, if any, may be
20 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 (f) With respect to a trust established under this subchapter, the Board shall
2 provide for periodic monitoring of the trust, the timely addition to the trust of
3 additional funds if needed to achieve the purpose of the trust, and the return of
4 any excess funds once the purpose of the trust is achieved. A decision of the
5 Board under subsection 275(c) or 276(b) of this title shall not preclude the
6 Board from subsequently requiring the addition of funds to the trust if needed
7 to achieve its purpose.

8 (g) The liability of an owner or operator or affiliated entity to fund and
9 conduct postclosure activities at a nuclear energy generating plant shall not be
10 limited by the amount of funds in a trust or a determination by the Board under
11 this subchapter concerning the adequacy of a trust.

12 Sec. 2. SEVERABILITY

13 The provisions of this act are severable. If any provision of this act is
14 invalid or if any application thereof to any person or circumstance is invalid,
15 the invalidity shall not affect other provisions or applications which can be
16 given effect without the invalid provision or application.

17 Sec. 3. EFFECTIVE DATE

18 This act shall take effect on passage.