

1 H.58

2 Introduced by Representative Nuovo of Middlebury

3 Referred to Committee on

4 Date:

5 Subject: Energy; public service; nuclear generation; funding decommissioning

6 Statement of purpose: This bill proposes to require full funding of the

7 decommissioning of nuclear energy generating plants.

8 An act relating to fully funding the decommissioning of nuclear energy  
9 generating plants

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

11 Sec. 1. 30 V.S.A. § 107 is amended to read:

12 § 107. ACQUISITION OF CONTROL OF ONE UTILITY COMPANY BY  
13 ANOTHER; SUPERVISION

14 (a) No company shall directly or indirectly acquire a controlling interest in  
15 any company subject to the jurisdiction of the public service board, or in any  
16 company which, directly or indirectly has a controlling interest in such a  
17 company, without the approval of the public service board. Nothing in this  
18 section shall be deemed to affect the direct or indirect acquisition of a  
19 controlling interest in a company as defined in subdivision 501(3) of this title.

20 The direct acquisition of the voting securities of a company defined in

1 subdivision 501(3) shall continue to be regulated pursuant to section 515 of  
2 this title.

3 (b) Any company seeking to acquire such a controlling interest shall file a  
4 petition with the public service board which describes the acquisition and sets  
5 forth the reasons why such an acquisition should be approved. The public  
6 service board shall give notice of the petition to the department of public  
7 service and other interested persons, and may conduct a hearing. The board  
8 may grant such approval only after due notice and opportunity for hearing and  
9 upon finding that such an acquisition will promote the public good.

10 (c) If the controlling interest sought to be acquired is in a company that  
11 owns or operates a nuclear power plant, the finding that the acquisition will  
12 promote the public good shall include a determination that the nuclear plant's  
13 decommissioning fund and any other funds and financial guarantees available  
14 solely for the purpose of decommissioning are adequate at the time of the  
15 acquisition to pay for complete decommissioning and that the means are in  
16 place to assure on at least an annual basis that these funds and financial  
17 guarantees will be adequate for such purpose at all times during the future  
18 operation of the plant. The board shall further determine that all such funds  
19 and guarantees, whenever furnished and wherever situated, are protected  
20 pursuant to Vermont law from any claims or uses other than application to the

1 complete decommissioning of the plan. In this section, “decommissioning”  
2 has the meaning stated in subdivisions 254a(b)(1)–(3) of this title.

3 (d) If any company acquires such a controlling interest without the prior  
4 approval of the public service board, the board may then, after due notice and  
5 opportunity for hearing,

6 (1) approve the acquisition; or

7 (2) modify any existing certificates or orders authorizing either or both  
8 companies to own or operate a public utility business under the provisions of  
9 this title; or

10 (3) revoke any such existing certificates or orders, or revoke any orders  
11 approving the articles of incorporation of such companies; or

12 (4) declare the acquisition null and void, all as necessary to promote the  
13 public good.

14 ~~(d)~~(e) The board may by rule specify terms and conditions upon which  
15 companies shall give prior notice of acquisitions regulated by this section.

16 Any such rule may specify categories of acquisitions that may be deemed to be  
17 approved if timely notice has been filed and an investigation has not been  
18 initiated by the board.

19 ~~(e)~~(f) For the purposes of this section:

20 (1) “Controlling interest” means ten percent or more of the outstanding  
21 voting securities of a company; or such other interest as the public service

1 board determines, upon notice and opportunity for hearing following its own  
2 investigation or a petition filed by the department of public service or other  
3 interested party, to constitute the means to direct or cause the direction of the  
4 management or policies of a company. The presumption that ten percent or  
5 more of the outstanding voting securities of a company constitutes a  
6 controlling interest may be rebutted by a company under procedures  
7 established by the board by rule.

8 (2) "Voting security" means any stock or security presently entitling the  
9 owner or holder thereof to vote in the direction or management of the affairs of  
10 a company or any security issued under or pursuant to any agreement, trust or  
11 arrangement whereby a trustee or trustees or agent or agents for the owner or  
12 holder of such a security are presently entitled to vote in the direction or  
13 management of the affairs of a company.

14 (3) A specified per centum of the "outstanding voting securities of a  
15 company" means such amount of outstanding voting securities of such  
16 company as entitles the holder or holders thereof to cast that specified per  
17 centum of the aggregate votes which the holders of all the outstanding voting  
18 securities of such company are entitled to cast in the direction or management  
19 of the affairs of such company.

1 Sec. 2. 30 V.S.A. § 254a is added to read:

2 § 254a. FUNDING DECOMMISSIONING; NUCLEAR GENERATION

3 (a) Purpose. This section seeks to fully fund decommissioning of nuclear  
4 energy generating plants. Its purposes 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 (b) On and after March 22, 2012, any person or entity owning or  
15 controlling a nuclear energy generating plant, whether or not the plant is in  
16 operation, shall have in place a decommissioning trust that is adequate at all  
17 times to fund the full cost of complete decommissioning or, if  
18 decommissioning has commenced, to fund the full remaining cost of complete  
19 decommissioning and otherwise meet the requirements of this section. For the  
20 purpose of this section:

1           (1) “As soon as technically possible” excludes placing the plant in  
2           storage for later decommissioning.

3           (2) “Decommissioning” means the decommissioning of a nuclear plant  
4           in accordance with the decommissioning requirements of the Nuclear  
5           Regulatory Commission, management and storage of spent fuel, and return of  
6           the site of the plant to a greenfield condition as soon as technically possible  
7           after either of the following, whichever is earlier: the permanent cessation of  
8           the plant’s use for generation of electricity or a date set by the board in a  
9           certificate applicable to the plant, person, or company for cessation of authority  
10          to operate the plant.

11          (3) “Greenfield condition” means restoring the site by removal of all  
12          structures, equipment, and foundations and, if appropriate, regrading and  
13          reseeding the land.

14          (c) A decommissioning trust shall be funded by cash or a financial  
15          instrument or both as long as the instrument is approved by either the Nuclear  
16          Regulatory Commission or the public service board and does not rely on  
17          placing the plant in storage for later decommissioning. Such an instrument  
18          may include a guarantee by a parent corporation.

19          (d) A decommissioning trust and any included funds and financial  
20          instruments shall be subject to the laws of Vermont, shall be usable by the  
21          beneficiary only for the purpose of decommissioning, and shall include a

1 spendthrift provision sufficient under Vermont law to restrain both voluntary  
2 and involuntary transfers of the beneficiary's interest.

3 Sec. 3. 30 V.S.A. § 248(e)(2) is amended to read:

4 (2) No nuclear energy generating plant within this state may be operated  
5 beyond the date permitted in any certificate of public good granted pursuant to  
6 this title, including any certificate in force as of January 1, 2006, unless the  
7 general assembly approves and determines that the operation will promote the  
8 general welfare, and until the public service board issues a certificate of public  
9 good under this section. If the general assembly has not acted under this  
10 subsection by July 1, 2008, the board may commence proceedings under this  
11 section and under 10 V.S.A. chapter 157, relating to the storage of radioactive  
12 material, but may not issue a proposed, preliminary or final order on the merits  
13 of continued operation or certificate of public good until the general assembly  
14 determines that operation will promote the general welfare and grants approval  
15 for that operation.

16 Sec. 4. EFFECTIVE DATE; RETROACTIVE APPLICATION

17 This act shall take effect on passage and shall apply to any petition for  
18 approval or for a certificate of public good filed with the public service board  
19 on or after January 1, 2008.