

BILL ANALYSIS

Senate Research Center

C.S.H.B. 1386
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Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently there is no state mechanism in place to regulate the decommissioning costs of new nuclear electric generation units in the state. These are costs associated with final site clean up at the end of the operational life of a nuclear plant. The Nuclear Regulatory Commission requires applicants to demonstrate how they will fund such decommissioning costs in order for the applicant to obtain a license to build and operate a nuclear electric generator.

C.S.H.B. 1386 provides a structure for funding of nuclear decommissioning trusts that places the obligation on owners of the plants, with ratepayers only providing a guarantee for funding. This is the more conservative of two approaches suggested by the Public Utility Commission of Texas in its *Scope of Competition Report* and will allow developers to avoid up front funding of these costs; the other option would have placed all decommissioning costs on ratepayers. This measure is intended to encourage development of nuclear power in the state. Owners will be obligated to pay decommissioning costs with negligible risk to ratepayers.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 1 (Section 39.206, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter E, Chapter 39, Utilities Code, by adding Section 39.206 (and Section 39.207), as follows:

Sec. 39.206. NUCLEAR-POWERED ELECTRIC GENERATION UNIT DECOMMISSIONING COSTS. (a) Defines "decommissioning," "nuclear decommissioning trust," "nuclear generating unit," and "power generation company."

(b) Provides that this section applies only to a nuclear generating unit (unit) that is constructed in this state after January 1, 2007 and before December 31, 2020; and is owned by a power generation company (company).

(c) Requires a company to fund certain decommissioning costs and obligations.

(d) Requires the company to establish a nuclear decommissioning trust (trust) for a unit it owns or for the proportionate share of a unit of which it owns a part. Requires the funding obligations for the trust to begin before the unit receives its initial fuel load and begins commercial operation to generate power for sale. Requires the terms of the trust to be consistent with trust terms and conditions the federal Nuclear Regulatory Commission requires for providing financial assurance for decommissioning.

(e) Requires the Public Utility Commission of Texas (PUC), by order, to establish for a unit the amount of annual decommissioning funding necessary to meet the decommissioning obligations for the unit over the unit's operating license period as established by the federal Nuclear Regulatory Commission. Requires the company to perform a study on the costs of decommissioning to establish the decommissioning obligations before the unit begins commercial operation to generate power for sale. Requires the study to be performed by the

company at least once in each three-year period during the unit's operating license period using the most current reasonably available information on the cost of decommissioning. Requires PUC to conduct a proceeding at least once in each three-year period to review the study and other current reasonably available information on the cost of decommissioning, and to determine the reasonableness of the study.

(f) Requires the company to file an annual report to provide the status of the nuclear decommissioning trust fund (trust fund) and to update PUC as to its ability to fund the trust fund. Requires PUC, in determining the amount of the annual decommissioning funding under this subsection, to conduct a proceeding at least once in each three-year period to review the balance of each trust and the projected amount of annual decommissioning funding for the associated unit. Requires PUC by order, on the conclusion of the review proceeding, to revise the amount of annual funding for the unit in order to ensure that the trust fund is adequately funded.

(g) Requires a company to remit the appropriate amount of annual decommissioning funding to the trust created for its proportionate ownership position in a unit in accordance with PUC's funding order issued under Subsection (e) or (f). Requires PUC to take appropriate actions to ensure proper funding of the trust, including possibly terminating the company's registration to operate if the company violates this subsection.

(h) Provides that a company that owns a unit is the funds administrator of the trust for the associated unit. Requires the company, as funds administrator, to invest the trust funds in accordance with guidelines established by PUC rule and consistent with the federal Nuclear Regulatory Commission guidelines so that the decommissioning funds will be available at the time of decommissioning. Requires PUC to adopt rules to define the company's specific duties as funds administrator and requirements regarding prudent management and investment of trust funds.

(i) Requires PUC to adopt certain rules.

Sec. 39.207. NUCLEAR DECOMMISSIONING FUNDING ASSURANCE. (a) Defines "decommissioning," "nuclear decommissioning trust," "nuclear generating unit," and "power generation company."

(b) Requires PUC, in addition to the obligations set forth in Section 39.206, upon petition by a company subject to this section, to the extent that it is necessary in order to develop nuclear-powered electric generation in this state, to consider mechanisms to allow a company to provide assurances to satisfy the Nuclear Regulatory Commission's decommissioning requirements. Authorizes the mechanism to include certain methods set forth in this subsection.

(c) Requires a proceeding under Subsection (b) to be concluded within 180 days of filing. Requires an order adopted under Subsection (b) to be competitively neutral and minimize the decommissioning risk to electric customers, consistent with the development of nuclear power in this state.

(d) Requires PUC, in conjunction with the Nuclear Regulatory Commission, to investigate the development of a mechanism whereby the State of Texas could ensure that funds for decommissioning will be obtained when necessary in the same manner as if this state were the licensee under federal law. Requires PUC to file legislative recommendations regarding any changes in law that may be necessary to carry out the purposes of this subsection prior to January 15, 2009, which may be combined with the report required by Section 31.003.

(e) Requires PUC, prior to allowing a company to utilize the mechanism in Subsection (b)(7), to determine the creditworthiness of the company and is authorized, as a condition of granting a petition to utilize the mechanism in

Subsection (b) (7), to require a percentage of the cost of decommissioning a nuclear generating unit at the end of its operating license period to be paid in to a nuclear decommissioning trust before the unit commences its initial fuel load and begins commercial operation.

(f) Requires the PUC to take certain actions in considering a petition seeking electric customer recourse under Subsection (b).

(g) Requires PUC to determine the manner in which any shortfall in the actual cost of decommissioning a nuclear generating unit is to be recovered. Requires PUC, in making the determination, to look first to a power generation company subject to this section. Authorizes electric customers, to the extent that no recourse exists to the power generation company or any other entity subject to this section, to be responsible for funding any shortfall in the cost of decommissioning the nuclear generating unit if the unit is being decommissioned and the balance of the trust is not sufficient to fund the cost of decommissioning.

(h) Requires the company or any new owner or operator, if electric customers become responsible for the costs of decommissioning a unit and incur costs under this section and the unit is operational, as a condition of operating the unit, to repay the costs the electric customers incurred in the manner determined by PUC. Authorizes PUC to authorize the repayment to occur over a period established by PUC.

SECTION 2. Effective date: September 1, 2007.