

1-1 By: King of Parker (Senate Sponsor - Fraser) H.B. No. 1386  
1-2 (In the Senate - Received from the House April 27, 2007;  
1-3 May 1, 2007, read first time and referred to Committee on Business  
1-4 and Commerce; May 19, 2007, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;  
1-6 May 19, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1386 By: Fraser

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to regulation of the decommissioning costs of certain  
1-11 nuclear-powered commercial electric generation units.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subchapter E, Chapter 39, Utilities Code, is  
1-14 amended by adding Section 39.206 to read as follows:

1-15 Sec. 39.206. NUCLEAR-POWERED ELECTRIC GENERATION UNIT  
1-16 DECOMMISSIONING COSTS. (a) In this section:

1-17 (1) "Decommissioning" includes decommissioning and  
1-18 decontamination of a nuclear generating unit consistent with  
1-19 federal Nuclear Regulatory Commission requirements.

1-20 (2) "Nuclear decommissioning trust" means an external  
1-21 and irrevocable trust created for the purpose of funding  
1-22 decommissioning obligations for a nuclear generating unit,  
1-23 consistent with federal Nuclear Regulatory Commission  
1-24 requirements.

1-25 (3) "Nuclear generating unit" means an electric  
1-26 generating facility that uses nuclear energy to generate  
1-27 electricity for sale and is licensed by the Nuclear Regulatory  
1-28 Commission.

1-29 (4) "Power generation company" means a power  
1-30 generation company as that term is defined in Section 31.002(10),  
1-31 that is licensed by the Nuclear Regulatory Commission to operate a  
1-32 nuclear generating unit, and includes its parent and affiliates.

1-33 (b) This section applies only to a nuclear generating unit  
1-34 that:

1-35 (1) is constructed in this state after January 1, 2007  
1-36 and before December 31, 2020; and

1-37 (2) is owned by a power generation company.

1-38 (c) A power generation company shall have the  
1-39 responsibility to fund:

1-40 (1) the costs associated with funding the  
1-41 decommissioning obligations for the nuclear generating unit; or

1-42 (2) the power generation company's portion of the  
1-43 decommissioning costs for the nuclear generating unit in proportion  
1-44 to the company's ownership interest in the nuclear generating unit  
1-45 if the unit is owned by more than one person.

1-46 (3) The obligation to fund a nuclear decommissioning  
1-47 trust fund is not dischargeable in bankruptcy.

1-48 (d) The power generation company shall establish a nuclear  
1-49 decommissioning trust for a nuclear generating unit it owns or for  
1-50 the proportionate share of a nuclear generating unit of which it  
1-51 owns a part. The funding obligations for the trust must begin  
1-52 before the nuclear generating unit commences its initial fuel load  
1-53 and begins commercial operation to generate power for sale. The  
1-54 terms of the trust must be consistent with trust terms and  
1-55 conditions the federal Nuclear Regulatory Commission requires for  
1-56 providing financial assurance for decommissioning.

1-57 (e) The commission by order shall establish for a nuclear  
1-58 generating unit the amount of annual decommissioning funding  
1-59 necessary to meet the decommissioning obligations for the nuclear  
1-60 generating unit over the unit's operating license period as  
1-61 established by the federal Nuclear Regulatory Commission. The  
1-62 power generation company shall perform a study on the cost of  
1-63 decommissioning to establish the decommissioning obligations

2-1 before the nuclear generating unit begins commercial operation to  
 2-2 generate power for sale. The study shall be performed by the power  
 2-3 generation company at least once in each three year period during  
 2-4 the unit's operating license period using the most current  
 2-5 reasonably available information on the cost of decommissioning.  
 2-6 The commission shall conduct a proceeding at least once in each  
 2-7 three-year period to review the study and other current reasonably  
 2-8 available information on the cost of decommissioning and determine  
 2-9 the reasonableness of the study.

2-10 (f) The power generation company shall file an annual report  
 2-11 to provide the status of the decommissioning trust fund and to  
 2-12 update the commission as to its ability to fund the decommissioning  
 2-13 trust fund. In determining the amount of the annual  
 2-14 decommissioning funding under this subsection, at least once in  
 2-15 each three-year period, the commission shall conduct a proceeding  
 2-16 to review the balance of each nuclear decommissioning trust and the  
 2-17 projected amount of annual decommissioning funding for the  
 2-18 associated nuclear generating unit. On the conclusion of the  
 2-19 review proceeding, the commission by order shall revise the amount  
 2-20 of annual funding for the nuclear generating unit in order to ensure  
 2-21 that the nuclear decommissioning trust fund is adequately funded.

2-22 (g) A power generation company shall remit the appropriate  
 2-23 amount of annual decommissioning funding to the nuclear  
 2-24 decommissioning trust created for its proportionate ownership  
 2-25 position in a nuclear generating unit in accordance with the  
 2-26 commission's funding order issued under Subsection (e) or (f). The  
 2-27 commission shall take appropriate actions to ensure proper funding  
 2-28 of the nuclear decommissioning trust, including possibly  
 2-29 terminating the power generation company's registration to  
 2-30 operate, if the company violates this subsection.

2-31 (h) A power generation company that owns a nuclear  
 2-32 generating unit is the funds administrator of the nuclear  
 2-33 decommissioning trust for the associated nuclear generating unit.  
 2-34 The company as funds administrator shall invest the trust funds in  
 2-35 accordance with guidelines established by commission rule and  
 2-36 consistent with the federal Nuclear Regulatory Commission  
 2-37 guidelines so that the decommissioning funds, plus the amounts  
 2-38 earned from investment of the funds, will be available at the time  
 2-39 of decommissioning. The commission shall adopt rules to define the  
 2-40 company's specific duties as funds administrator and requirements  
 2-41 regarding prudent management and investment of nuclear  
 2-42 decommissioning trust funds.

2-43 (i) The commission shall adopt rules necessary to ensure  
 2-44 that:

2-45 (1) sufficient funds are remitted to a nuclear  
 2-46 decommissioning trust on an annual basis to cover the cost of  
 2-47 decommissioning a nuclear generating unit at the end of its  
 2-48 operating license period in accordance with applicable state and  
 2-49 federal laws and regulations;

2-50 (2) the periodic cost studies and reviews described in  
 2-51 Subsections (e) and (f) include all current reasonably available  
 2-52 information as determined necessary and appropriate by the  
 2-53 commission;

2-54 (3) all funds remitted to a nuclear decommissioning  
 2-55 trust are prudently managed and spent for their intended purpose;

2-56 (4) the funds remitted to a nuclear decommissioning  
 2-57 trust and the amounts earned from investing the funds, will be  
 2-58 available for, and restricted to the purpose of decommissioning of  
 2-59 the associated nuclear generating unit, including if the trust or  
 2-60 nuclear generating unit is transferred to another person.

2-61 Sec. 39.207. NUCLEAR DECOMMISSIONING FUNDING ASSURANCE.  
 2-62 (a) In this section, "decommissioning", "nuclear decommissioning  
 2-63 trust", "nuclear generating unit", and "power generation company"  
 2-64 have the same meaning as defined in Section 39.206.

2-65 (b) In addition to the obligations set forth in Section  
 2-66 39.206, upon petition by a power generation company subject to this  
 2-67 section, to the extent that it is necessary in order to develop  
 2-68 nuclear-powered electric generation in this state, the commission  
 2-69 shall consider mechanisms to allow a power generation company to

3-1 provide assurances to satisfy the Nuclear Regulatory Commission's  
3-2 decommissioning requirements. The mechanisms may include:

3-3 (1) prepayment by the power generation company of a  
3-4 portion of the amount necessary to assure decommissioning;

3-5 (2) surety, insurance or other financial guarantees;

3-6 (3) parental or other corporate guarantees;

3-7 (4) assurances through contractual obligations;

3-8 (5) the accelerated payment of amounts required under  
3-9 Section 39.206;

3-10 (6) periodic reporting of financial information  
3-11 associated with a nuclear generating unit; and,

3-12 (7) a customer recourse mechanism whereby electric  
3-13 customers provide assurance of decommissioning, pursuant to  
3-14 Subsections (e) and (f).

3-15 (c) A proceeding under Subsection (b) shall be concluded  
3-16 within 180 days of filing. An order adopted under Subsection (b)  
3-17 shall be competitively neutral and minimize the decommissioning  
3-18 risk to electric customers, consistent with the development of  
3-19 nuclear power in this state.

3-20 (d) The commission shall, in conjunction with the Nuclear  
3-21 Regulatory Commission, investigate the development of a mechanism  
3-22 whereby the State of Texas could ensure that funds for  
3-23 decommissioning will be obtained when necessary in the same manner  
3-24 as if the State of Texas were the licensee under federal law. The  
3-25 commission shall file legislative recommendations regarding any  
3-26 changes in law that may be necessary to carry out the purposes of  
3-27 this subsection prior to January 15, 2009, which may be combined  
3-28 with the report required by Section 31.003.

3-29 (e) Prior to allowing a power generation company to utilize  
3-30 the mechanism in Subsection (b)(7), the commission shall determine  
3-31 the creditworthiness of the power generation company and may, as a  
3-32 condition of granting a petition to utilize the mechanism in  
3-33 Subsection (b)(7), require a percentage of the cost of  
3-34 decommissioning a nuclear generating unit at the end of its  
3-35 operating license period to be paid into a nuclear decommissioning  
3-36 trust before the nuclear generating unit commences its initial fuel  
3-37 load and begins commercial operation.

3-38 (f) In considering a petition seeking electric customer  
3-39 recourse under Subsection (b)(7), the commission shall:

3-40 (1) require electric customers to be at risk for  
3-41 nuclear decommissioning expense to the minimum extent necessary in  
3-42 order to allow for the development of a nuclear generating unit;

3-43 (2) adopt a payment period for a power generation  
3-44 company subject to this subsection that is designed to achieve full  
3-45 funding of the decommissioning trust in a reasonable and  
3-46 expeditious manner, as necessary to allow for the development of a  
3-47 nuclear generating unit; and

3-48 (g) The commission shall determine the manner in which any  
3-49 shortfall in the actual cost of decommissioning a nuclear  
3-50 generating unit shall be recovered. In making the determination,  
3-51 the commission shall look first to a power generation company  
3-52 subject to this section. To the extent that no recourse exists to  
3-53 the power generation company or any other entity subject to this  
3-54 section, electric customers may be responsible for funding any  
3-55 shortfall in the cost of decommissioning the nuclear generating  
3-56 unit if the nuclear generating unit is being decommissioned and the  
3-57 balance of the nuclear decommissioning trust is not sufficient to  
3-58 fund the cost of decommissioning.

3-59 (h) If electric customers become responsible for the costs  
3-60 of decommissioning a nuclear generating unit and incur costs under  
3-61 this section and the nuclear generating unit is operational, as a  
3-62 condition of operating the generating unit, the power generation  
3-63 company or any new owner or operator shall repay the costs the  
3-64 electric customers incurred in the manner determined by the  
3-65 commission. The commission may authorize the repayment to occur  
3-66 over a period established by the commission.

3-67 SECTION 2. This Act takes effect September 1, 2007.

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