

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE
AS PASSED BY THE

ONE HUNDRED AND TENTH LEGISLATURE

SECOND SPECIAL SESSION

September 25, 1981

AND

THIRD SPECIAL SESSION

December 9, 1981

AND

SECOND REGULAR SESSION

January 6, 1982 to April 13, 1982

AND AT THE

FOURTH SPECIAL SESSION

April 28, 1982 to April 29, 1982

AND AT THE

FIFTH SPECIAL SESSION

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J.S. McCarthy Co.
Augusta, Maine
1981

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND AND THIRD SPECIAL SESSIONS

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ONE HUNDRED AND TENTH LEGISLATURE

1981

CHAPTER 688

H.P. 2278 - L.D. 2124

AN ACT to Ensure Funding for the Eventual Decommissioning of any Nuclear Power Plant.

Be it enacted by the People of the State of Maine as follows:

35 MRSA c. 269, sub-c. III is enacted to read:

SUBCHAPTER III

DECOMMISSIONING

§3351. Short title; findings

This subchapter may be referred to as the "Nuclear Decommissioning Financing Act."

The Legislature finds that timely proper decommissioning of any nuclear power plant beginning at the time of its closing is essential to protect public health, safety and the environment at the time of closing that nuclear power plant and that the cost of decommissioning will be significant. To ensure that customers who receive the benefits of these facilities pay for these decommissioning costs, the Legislature finds that it is prudent for the State to require the licensee operating any nuclear power plant in the State to collect sufficient funds during the remaining useful life of the plant to pay for these costs. The Legislature further finds that the best way to ensure that the funds collected will be available when they are needed for decommissioning is to require that the funds be placed in a separate trust fund for each plant and invested by a trustee until they are needed for decommissioning. The Legislature further finds that it is in the public interest to have a decommissioning fund committee responsible for the prudent management of the trust fund. That committee could be licensee established, with the Public Utilities Commission approval, or publicly established, but in either case would be subject to the requirements of this Act. The Legislature further finds that funds set aside for decommissioning protect the people of the State and thus serve an essential governmental function, that payment of taxes on these funds would be an unreasonable and inappropriate burden on the ratepayers and that the income earned by the fund should be

tax exempt and payments made to the fund by the licensee should be tax deductible. The Legislature further finds that assurance is needed that funds will be available for the cost of decommissioning which would occur if a nuclear power plant is prematurely closed.

§3352. Definitions

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings.

1. Closing. "Closing" means the time at which a nuclear power plant ceases to generate electricity and is retired from active service.

2. Decommissioning. "Decommissioning" means the series of activities undertaken beginning at the time of closing of a nuclear power plant to ensure that the final disposition of the site or any radioactive components or material, but not including spent fuel, associated with the plant is accomplished safely, in compliance with all applicable state and federal laws. Decommissioning includes activities undertaken to prepare a nuclear power plant for final disposition, to monitor and maintain it after closing and to effect final disposition of any radioactive components of the nuclear power plant.

3. Decommissioning expenses. "Decommissioning expenses" means the following:

A. All reasonable costs and expenses of removing a nuclear power plant from service, including, without limitation, dismantling, mothballing, removing radioactive waste material except spent fuel to temporary or permanent storage sites, decontaminating, restoring and supervising the site, and any costs and expenses incurred in connection with proceedings before governmental regulatory authorities relating to the authorization to decommission the plant;

B. All costs of labor and services, including services of foremen, inspectors, supervisors, surveyors, engineers, counsel and accountants, performed or rendered in connection with the decommissioning of the plant, and all costs of materials, supplies, machinery, construction equipment and apparatus acquired for or in connection with the decommissioning of the plant. It is understood that any amount, exclusive of proceeds of insurance, realized by a licensee as salvage on or resale of any machinery, construction equipment and apparatus, the cost of which was charged as a decommis-

signing expense, shall be treated as a deduction from the amounts otherwise payable on account of the cost of decommissioning of the plant; and

C. All overhead costs applicable to the plant during its decommissioning period, including, but not limited to, taxes, other than taxes on or in respect of income; licenses; excises and assessments; casualties; surety bond premiums and insurance premiums.

Without limiting the generality of this subsection, amounts expended or to be paid with respect to decommissioning a nuclear power plant shall constitute part of the decommissioning expenses if they are, or when paid will be, either properly chargeable to any account related to decommissioning of a nuclear power plant in accordance with the systems of accounts then applicable to the licensee, or properly chargeable to decommissioning of a nuclear power plant in accordance with then applicable regulations of the United States Nuclear Regulatory Commission or Federal Energy Regulatory Commission or any other regulatory agency having jurisdiction.

4. Decommissioning financing plan. "Decommissioning financing plan" means the plan approved by the commission under section 3353.

5. Decommissioning fund committee. "Decommissioning fund committee" means a committee established to have overall responsibility, as described in section 3354, for a decommissioning trust fund.

6. Decommissioning trust fund or fund. "Decommissioning trust fund" or "fund" means a trust fund set up as prescribed in sections 3353 and 3355 to hold moneys for the eventual purpose of paying decommissioning expenses.

7. Escrow account. "Escrow account" means an account established under Public Utilities Commission rules to hold funds collected under an interim decommissioning financing plan promulgated under section 3353, subsection 5, until a decommissioning trust fund is established or to hold funds for other temporary purposes under this Act.

8. Licensee. "Licensee" means the holder of the operating permit from the United States Nuclear Regulatory Commission for a nuclear power plant.

9. Nuclear power plant or plant. "Nuclear power plant" or "plant" means a nuclear fission thermal power plant situated in this State.

10. Owner. "Owner" means any electrical company which owns any portion of a nuclear power plant, whether directly or through ownership of stock in a company which owns any portion of a nuclear power plant, or through membership in a holding company which owns any portion of a nuclear power plant or through other means.

11. Premature closing. "Premature closing" means the closing of a nuclear power plant before the projected date of decommissioning, as projected in the decommissioning financing plan under section 3353.

12. Prompt removal and dismantlement. "Prompt removal and dismantlement" means to immediately remove radioactive or radioactively contaminated material down to allowable residual levels which permit release of the property for unrestricted access.

13. Trustee. "Trustee" means a bank or trust company qualified to act as a fiduciary in this State.

§3353. Decommissioning financing plans; physical decommissioning plan

1. Submission of plans. Decommissioning financing plans shall be submitted as follows.

A. Any licensee receiving a certificate of public convenience and necessity under section 13-A on or after the effective date of this subchapter for a nuclear power plant shall submit a decommissioning financing plan for the plant to the commission not less than one year prior to beginning commercial operation of the plant.

B. Any licensee operating a nuclear power plant on the effective date of this subchapter shall submit a proposed decommissioning financing plan for the plant to the Public Utilities Commission as soon as possible, but no later than 60 days after the effective date of this subchapter or such later date as the Public Utilities Commission may consider appropriate.

2. Content of plan. A decommissioning financing plan submitted under subsection 1 includes:

A. An estimate of the time of closing of the nuclear power plant;

B. An estimate of the cost of decommissioning the plant expressed in dollars current in the year the plan is prepared, and based upon an engineering report

issued any time within 3 years of the date the plan is submitted to the commission;

C. The share of the estimated decommissioning expenses attributed to each electrical company to which the plant supplies power;

D. Plans for periodic review and updating of the plan, including the cost of decommissioning estimated under paragraph B, consistent with subsection 6;

E. Plans for establishing as soon as possible a decommissioning trust fund adequate to pay the cost estimated under paragraph B, consistent with subsection 4 and section 3355;

F. Plans and options for insuring against or otherwise financing any shortfall in the fund resulting from a premature closing of the nuclear power plant;

G. Reasonable assurance of responsibility in the event of insufficient assets in accordance with section 3356;

H. A general description of the stages by which decommissioning is intended to be accomplished, but only at the level of detail necessary to support the cost estimate of paragraph B;

I. If the licensee intends to establish its own decommissioning fund committee, a statement of its intent to do so, together with its proposed membership and a copy of the proposed decommissioning trust and its plan for implementing the trust and establishing the committee;

J. A fully executed decommissioning financing agreement between the licensee and each owner, evidencing each owner's acceptance of its respective share of the ultimate financial responsibility for decommissioning. In satisfaction of this requirement, the licensee may submit existing ownership agreements together with documentation from each owner of the applicability of the agreement to the case of financial responsibility for decommissioning; and

K. Any other information related to the financing of decommissioning which the commission requests.

3. Approval of plan. The plan shall be approved as follows.

A. The commission shall conduct a public hearing on the proposed decommissioning financing plan.

B. The commission shall approve the decommissioning financing plan if it finds that the licensee, in the judgment of the Public Utilities Commission, has provided reasonable assurance that:

(1) The estimated time of closing of the nuclear power plant and the estimated cost of decommissioning are reasonable;

(2) The share of the estimated cost of decommissioning for each electrical company to which the plant supplies power is reasonable;

(3) The principal and income which will have accumulated in the decommissioning trust fund at the estimated time of closing the plant will be adequate to cover the estimated cost of decommissioning, plus the expenses of administering the fund;

(4) The provisions of the proposed form of the decommissioning trust fund will ensure that the funds in the trust are judiciously invested and will adequately protect the funds until decommissioning is completed and, in the event the licensee proposes to establish its own decommissioning fund committee, that the licensee-established committee will ensure that the funds in the trust are judiciously invested and will adequately protect the funds until decommissioning is completed;

(5) The funds in the fund cannot be withdrawn unless approved by the decommissioning fund committee under section 3355, subsection 5, prior to completion of decommissioning;

(6) Contributions to the fund are equitably spread over the useful life of the plant to the extent feasible;

(7) The plans and options for insuring against or otherwise financing any shortfall in the fund resulting from a premature closing are adequate and reasonable;

(8) The owners are legally bound to accept their respective shares of the ultimate financial responsibility for decommissioning, and the plan reflects full compliance with section 3356; and

(9) The plan will periodically be reviewed and revised to reflect more closely the costs and available techniques for decommissioning. This

update shall occur at least every 5 years.

C. If the commission finds that the decommissioning financing plan does not meet the criteria under paragraph B, the commission shall reject the plan and order that it be modified as the commission deems necessary to meet those criteria.

D. The commission shall take final action on the proposed decommissioning financing plan within 180 days after the filing date. The filing date shall be the date when the commission notifies the applicant that the filing is complete. If the commission does not notify the applicant of any deficiencies in the information in the application within 60 days of receipt, the application shall be considered complete as of the date of receipt.

E. If the licensee requested approval of a licensee-established decommissioning fund committee, the commission shall approve the plan, including the plans for implementing a licensee decommissioning fund committee and a decommissioning trust fund, with such modifications as the commission finds necessary to meet the criteria of paragraph B, but only if the commission finds that the plans will reasonably ensure that the responsibilities and duties of section 3354, subsection 6, will be carried out, that the funds will be managed in order to ensure that they will be available when needed, and that the funds will only be used for decommissioning expenses and the costs of administering the trust fund.

4. Cost of decommissioning. Based upon the plan, the Public Utilities Commission shall establish the cost of decommissioning of any nuclear power plant located in the State and shall establish a schedule of monthly payments into the decommissioning trust fund established for that plant as necessary and convenient to meet that cost of decommissioning at the time of closing. The cost of decommissioning shall not include the cost of final disposal of spent nuclear fuel. The schedule shall be established so that contributions received by the licensee are paid to the fund as soon after receipt as practicable. For purposes of cost estimates, the method of decommissioning shall be the method of prompt removal and dismantling, unless the United States Nuclear Regulatory Commission or its successor requires another method. The commission shall periodically review the estimated cost of decommissioning in accordance with subsection 6 and based upon that review shall revise the schedule of monthly payments as necessary.

When establishing the cost of decommissioning under this subsection, the commission shall obtain from the licensee for information purposes a determination of any possible federal income tax liability related to funds collected for decommissioning purposes until a definitive final determination has been made by the Federal Government that no such liability exists. Notwithstanding any other provision of this subchapter, the licensee may collect additional funds to establish a segregated escrow account for payment of potential federal taxes, as approved by the Federal Energy Regulatory Commission. In the event that no final determination has been made by the Federal Government that no income tax liability exists related to funds collected for decommissioning, the licensee shall exercise all reasonable efforts to obtain such a determination. In no event shall the licensee pay any federal income tax liability amount from the decommissioning trust fund.

5. Plans required for operation. After the effective date of this subchapter, decommissioning financing plans are required as follows.

A. No licensee which receives a certificate of public convenience and necessity after the effective date of this subchapter may commence operation of a nuclear power plant, unless it has a decommissioning financing plan approved by the commission under subsection 3.

B. The Public Utilities Commission shall promulgate an interim decommissioning financing plan one year after the effective date of this subchapter for any licensee which does not have a decommissioning financing plan approved under subsection 3. Payments shall commence immediately under the interim decommissioning financing plan and be deposited in an escrow account. That escrow account may be invested in investments permitted for the trust fund under section 3355, subsection 3, paragraph B. When a decommissioning plan is approved and a decommissioning trust fund established, the interim plan shall terminate and the money in that escrow account shall be transferred to the fund.

6. Periodic review of plan. Decommissioning financing plans for nuclear power plants shall be reviewed as follows.

A. If the commission approves a decommissioning financing plan under subsection 3, the commission shall, at least every 5 years and annually in the 5 years preceding scheduled closing, and annually thereafter until decommissioning is completed, review the financing plan to assess its adequacy. If changed circumstances make a more frequent review desirable or if

the licensee requests it, the commission may review the plan after a shorter time interval. The review shall include, but not be limited to, the following considerations:

- (1) The estimated date of closing the plant;
- (2) The estimated cost of decommissioning;
- (3) The reasonableness of the method selected for cost estimate purposes;
- (4) The size and growth rate of the decommissioning trust fund, taking into account the effect of inflation; and
- (5) The adequacy of the plans for financing any shortfall required under subsection 2, paragraph F.

B. After review under paragraph A, the commission may, after public hearing, order such changes in the decommissioning financing plan as it deems necessary to make the plan comply with the criteria in subsection 3, paragraph B.

7. Physical decommissioning plan. At least 3 years prior to closing a nuclear power plant, the licensee shall submit a physical decommissioning plan to the Governor and the commission, with updates annually thereafter. In the event of premature closing, the plan shall be submitted as soon as possible.

The commission shall review the plan to ascertain its contents and determine under subsection 6 the adequacy of the decommissioning fund to pay for that plan, but the commission shall not duplicate the health and safety review conducted by the United States Nuclear Regulatory Commission or its successor. The licensee shall file with the physical decommissioning plan a list of all decommissioning-related permits which it must receive from agencies of the State. The licensee shall thereafter update its filing annually to indicate the progress of any permit applications which it has undertaken before agencies of the State. The Public Utilities Commission shall transmit copies of this information to all agencies on the list of permits and shall place this information in a separate file which shall be made available for public inspection. Those agencies shall inform the commission when they issue any licenses or permits or take any other final action. No licensee may decommission a nuclear power plant unless the physical decommissioning plan has been submitted to the commission.

§3354. Decommissioning fund committee

1. Establishment of decommissioning fund committee by the licensee. A decommissioning fund committee may be established for a particular nuclear power plant by the licensee operating that plant within one year after the effective date of this subchapter. Upon a finding by the Public Utilities Commission that this licensee-established decommissioning fund committee will be able to carry out the responsibilities and duties of subsection 6, that the fund will be managed in accordance with the requirements of section 3355 and that it is in the public interest, the commission may approve establishment of the committee by the licensee. At that time, the Governor may appoint a voting representative on the licensee-established decommissioning fund committee.

2. Establishment of a public decommissioning fund committee. In the event that the licensee elects not to establish its own decommissioning fund committee, or in the event that the Public Utilities Commission fails to approve a decommissioning fund committee proposed by the licensee, or the commission elects to terminate that committee for good cause shown, a public decommissioning fund committee shall be established consisting of 7 members, including the Treasurer of State, a member nominated by the municipal officials of any municipality containing a nuclear power plant, 4 members nominated by the Governor, including 2 from the financial community and 2 from the general public, and one member designated by the licensee. The Treasurer of State shall act as chairman.

3. Terms of public decommissioning fund committee members. Initially, the members appointed by the Governor shall draw lots for terms. There shall be a one-year term, a 2-year term, a 3-year term and a 5-year term. Thereafter, their terms shall be for 5 years. The municipal representative and the licensee's representative shall be named for 5-year terms. In the event of a vacancy, an interim appointment shall be made to fill the unexpired portion of the term. The Treasurer of State shall serve while holding that office. Other members shall serve until their replacements are sworn in.

4. Compensation. Members of the decommissioning fund committee shall receive compensation and be reimbursed for expenses as deemed reasonable by the Public Utilities Commission. They shall be paid from the decommissioning trust fund, for which services are rendered or expenses incurred. Members of a licensee-established committee shall not be entitled to any compensation under this subsection.

5. Conflict of interest. Except for the licensee's representative and members of a licensee-established decommissioning fund committee, members of the committee shall have no direct or substantial indirect financial interest in any nuclear power plant covered by this subchapter in any company which owns directly or indirectly any portion of a nuclear power plant covered by this subchapter or in any institution involved in managing or handling a decommissioning trust fund.

6. Responsibilities and duties. Whether established by the licensee or otherwise, a decommissioning fund committee is responsible for the prudent management of the decommissioning trust fund in order to assure that the principal and income which will have accumulated in the fund at the time of closing the nuclear power plant for which it was established will equal the cost established in the decommissioning financing plan approved by the commission. The specific duties of a decommissioning fund committee are to:

A. Appoint the trustee;

B. Approve selection of other financial managers, if any, by the trustee;

C. Establish investment policy;

D. Evaluate investment policy and trustee performance;

E. Establish procedures for expenditures from the fund for decommissioning and administrative expenses; and

F. Such other duties as it finds necessary to carry out their responsibilities.

7. Report; audit. The decommissioning fund committee shall report annually to the Governor, the Legislature and the Public Utilities Commission on its activities and the status of the decommissioning trust fund. It shall also report to the owners of any nuclear power plant in the State on its activities relating to that plant and on the status of the associated fund. The report shall contain a breakdown of all administrative expenses. A decommissioning fund committee shall cause an annual audit to be made of each decommissioning trust fund.

8. Separate committee for each plant. There shall be a separate decommissioning fund committee for each nuclear power plant covered by this subchapter. Members may serve on more than one decommissioning fund committee.

9. Modification. In the event and to the extent that

it is necessary in order to establish the tax exempt status of payments to or income of the decommissioning trust fund, the decommissioning fund committee shall, subject to the approval of the Public Utilities Commission, modify its structure and procedures, including if necessary changing from any licensee-established trust committee established under subsection 1 to a public trust committee established under subsection 2, provided that no such modification may be contrary to the purpose for which the trust was established under this subchapter.

§3355. Decommissioning trust fund

1. Trustee. The decommissioning fund committee shall select a trustee or trustees to execute the policies set by the decommissioning fund committee and manage the money within a decommissioning trust fund in order to ensure that it will be available when needed and, insofar as possible, consistent with protection of the principal, so that it may grow to keep pace with inflation or faster. Preference may be given to financial institutions incorporated in the State if consistent with their fiduciary responsibility, but only if they meet the criteria for trustees established by the decommissioning fund committee. That committee may, by a majority vote of its entire membership, change trustees at any time. Any trustee shall be subject to the same duties and may exercise the same powers as trustees under Title 18-A, Article VII, and the provisions of the decommissioning trust to the extent that they are not inconsistent with this subchapter. The trustee may appoint subsidiary financial managers, subject to approval by the decommissioning fund committee. Any fees charged by the trustee shall be subject to review by the Public Utilities Commission.

2. Tax exemption. The following tax exemptions apply to the decommissioning trust fund.

A. Payments to a decommissioning trust fund shall be considered a necessary operating expense of the licensee and shall be tax deductible for state income tax purposes. All income of the fund shall also be exempt from state income taxation, as long as the fund is to be used exclusively for the purposes of decommissioning and the licensee may not use the fund for any other purpose.

B. It is the intent of this subchapter that payments to a decommissioning trust fund be considered a necessary operating expense to the licensee and exempt from federal income tax. It is also the legislative intent that all income of the fund be exempt from federal income taxation.

3. Restrictions. The following restrictions apply to the decommissioning trust fund.

A. All funds collected by any licensee for decommissioning shall be immediately segregated from the company's assets and amounts not subject to refund or required to pay tax liabilities shall be transferred to the trustee for placement in the decommissioning trust fund established for the licensee's plant. Amounts collected for decommissioning, but subject to refund or required to pay tax liabilities, shall be deposited in a separate escrow account.

B. The assets in a decommissioning trust fund may only be invested in secure assets as follows:

(1) The bonds, notes, certificates of deposit or other obligations issued or guaranteed by the United States or by any agency or instrumentality of the United States;

(2) The bonds, notes, certificates of deposit or other obligations issued or guaranteed by any state or by any agency, instrumentality or political subdivision of any state, provided that securities are rated within the 2 highest grades by any rating service approved by the Superintendent of Banking;

(3) The bonds and other obligations of any United States corporation, provided that they are rated within the 2 highest grades by any rating service approved by the Superintendent of Banking; or

(4) Until a definitive final determination has been made by the Federal Government that the income of the fund is exempt from federal income taxation, the assets in the fund may be invested only in securities exempt from federal income taxation.

The assets in a fund shall not be invested in the securities of the owner of any nuclear power plant. The decommissioning fund committee may impose such other restrictions as it deems necessary or desirable.

C. Except as provided in section 3354, subsections 1, 2 and 5, a decommissioning trust fund shall be administered only by persons not normally involved with operations of the licensee or any owner of a nuclear power plant within the State.

D. Neither the licensee nor any other owner of any nuclear power plant in the State may receive any benefit from funds remaining in the decommissioning trust fund after completion of decommissioning.

E. All income of a fund shall be accumulated and added to the principal of the fund, except as otherwise provided in subsection 5.

F. Any indenture of trust governing the decommissioning trust fund is subject to review and approval by the commission. That indenture of trust shall contain a provision that it shall be amended as necessary to conform to any future changes in state law or regulation.

4. Contributions to the fund. The trustee of a decommissioning trust fund shall bill the licensee operating the nuclear power plant for which the fund was established and the licensee shall make payments to the trustee of the fund in amounts and on a schedule determined by the Public Utilities Commission in accordance with section 3353, subsection 4.

5. Expenditures from the fund; payments for costs of decommissioning. At the time of decommissioning, the decommissioning fund committee shall authorize the trustee to make payments as necessary from the fund to the licensee to cover actual decommissioning expenses in accordance with the decommissioning plan authorized by the United States Nuclear Regulatory Commission or its successor. The decommissioning fund committee may not approve any withdrawal for this purpose prior to completion of decommissioning, unless the physical decommissioning plan has been received and reviewed by the Public Utilities Commission under section 3353, subsection 7.

The decommissioning fund committee may authorize withdrawals from the fund as necessary to pay reasonable expenses for administering the fund. No other withdrawal may be made prior to the commencement of decommissioning without the approval of the commission and unless the withdrawal is for the purpose of paying reasonable expenses related to decommissioning.

6. Expenditure of money remaining after decommissioning. Upon termination of decommissioning, the commission shall conduct a final audit of the decommissioning trust fund. The commission may by rule, if the public interest requires, establish a decommissioning contingency reserve at that time. If there are assets remaining in the fund attributable to a given plant, after its decommissioning has been completed, those assets shall be returned, in propor-

tion to their payments, to the owners and any other persons who originally made payments to the licensee for decommissioning purposes in accordance with the order or orders of any regulatory agency having jurisdiction. No portion of the remaining assets in a fund may accrue to the benefit of the licensee.

An electrical utility in the State which receives remaining decommissioning funds under this subchapter shall distribute the funds equitably, under the guidance of the commission, to its customers.

7. Public Utilities Commission review for licensee-established committee. Notwithstanding any other section of this subchapter, if the decommissioning fund committee is established by the company under section 3354, subsection 1, withdrawals from the fund shall be reviewed and approved by the Public Utilities Commission. No withdrawal may be approved, except for the purpose of paying reasonable expenses related to decommissioning or to the administration of the fund.

8. Separate fund for each plant. There shall be a separate decommissioning trust fund for each nuclear power plant covered by this subchapter. The assets of these funds shall not be commingled in any way.

§3356. Responsibility for decommissioning

1. Decommissioning trust fund. In the first instance, the cost of decommissioning shall be paid from the decommissioning trust fund established for the plant being decommissioned.

2. Licensee responsible. If the assets of the decommissioning trust fund are insufficient to pay for the cost of decommissioning, the licensee shall be responsible for the additional cost.

3. Insufficient assets. In case the assets of the licensee are insufficient to cover the remaining cost of decommissioning after the decommissioning trust fund is exhausted, the owners are jointly and severally liable for the safe and proper decommissioning of that nuclear power plant. If, under this subsection, any in-state owner pays decommissioning expenses in excess of its ownership share in the plant, that owner shall have a cause of action to recover that excess from the other owners. The Attorney General shall assist in bringing such an action.

4. State not financially responsible; protective action. The State shall have no financial responsibility for

decommissioning. If the Governor finds that, because of inadequate action by the responsible parties in carrying out decommissioning, protective action is reasonably required to protect the public health and safety, the State may undertake that action. In that case, the Attorney General shall bring action against the fund, the licensee and the owners to recover the cost of that protective action. Expenses incurred by the Department of the Attorney General in bringing that action shall be paid from the decommissioning trust fund.

5. Additional expense in rates. The Public Utilities Commission shall include, as an allowable operating expense, in calculation of authorized rates, additional decommissioning funds actually supplied by an electrical utility in the State, to the extent these are just and reasonable.

§3357. Incorporation by reference; construction

To the extent that they are not in conflict with this chapter, chapters 15 and 17 shall apply to this chapter. This subchapter shall be construed liberally in order to achieve the purposes stated in this chapter.

§3358. Cost of review

The licensee shall submit to the commission, with the initial filing of a decommissioning financing plan under this subchapter, a filing fee as determined by the commission, but not to exceed \$35,000, in order to assist in covering the cost of review by the commission. Within one year after establishment of a decommissioning fund under this subchapter, the licensee may recover the licensing fee from the fund. Notwithstanding any other provision of law, money received from the filing fee shall be segregated, apportioned and expended by the Public Utilities Commission for the purposes stated in this section, with a report to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs. Any unexpended funds from the filing fee shall be transferred to the decommissioning trust fund after approval of the plan.

§3359. Enforcement

All provisions of this subchapter shall be enforced by the Attorney General, with the cost of enforcement paid from the decommissioning trust fund.