

**House File 561 - Introduced**

HOUSE FILE 561

BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 124)

**A BILL FOR**

1 An Act relating to the permitting, licensing, construction, and  
2 operation of nuclear generation facilities.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 476.6, subsection 22, Code 2011, is  
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. *d.* A rate-regulated electric utility that  
4 was subject to a revenue sharing settlement agreement with  
5 regard to its electric base rates as of January 1, 2010, shall  
6 file an application for ratemaking principles applicable to the  
7 construction of a nuclear generating facility with the board.  
8 The application shall comply with the provisions of section  
9 476.53.

10 Sec. 2. Section 476.53, Code 2011, is amended to read as  
11 follows:

12 **476.53 Electric generating and transmission facilities.**

13 1. It is the intent of the general assembly to attract  
14 the development of electric power generating and transmission  
15 facilities within the state in sufficient quantity to ensure  
16 reliable electric service to Iowa consumers and provide  
17 economic benefits to the state. It is also the intent of the  
18 general assembly to encourage rate-regulated public utilities  
19 to consider altering existing electric generating facilities,  
20 where reasonable, to manage carbon emission intensity in  
21 order to facilitate the transition to a carbon-constrained  
22 environment.

23 ~~2.~~ *a.* The general assembly's intent with regard to the  
24 development of electric power generating and transmission  
25 facilities, or the significant alteration of an existing  
26 generating facility, as provided in this subsection ~~1~~, shall be  
27 implemented in a manner that is cost-effective and compatible  
28 with the environmental policies of the state, as expressed in  
29 Title XI.

30 *b.* The general assembly's intent with regard to the  
31 reliability of electric service to Iowa consumers, as provided  
32 in this subsection ~~1~~, shall be implemented by considering the  
33 diversity of the types of fuel used to generate electricity,  
34 the availability and reliability of fuel supplies, and the  
35 impact of the volatility of fuel costs.

1     2. It is also the intent of the general assembly to  
2 encourage the prudent development of baseload nuclear  
3 electric power generation. Nuclear generation has a long-term  
4 proven record of providing a safe, reliable, and secure  
5 source of electricity in the United States and offers the  
6 potential for significant job creation, substantial economic  
7 development benefits, and the production of electricity at  
8 significantly reduced levels of regulated air emissions when  
9 compared to output from other thermal generation sources.  
10 Further, the general assembly recognizes that meeting  
11 stringent environmental permit requirements is expensive and  
12 creates significant cost burdens on customers and employers  
13 attributable to the imposition of additional comprehensive  
14 and costly regulations by the United States environmental  
15 protection agency that dramatically increase costs to  
16 customers. Finally, the general assembly recognizes that  
17 development of nuclear electric power generation requires  
18 significant capital investment and a substantial period of  
19 time for successful nuclear generation development, siting,  
20 permitting, licensing, and deployment.

21     3. a. The board shall specify in advance, by order  
22 issued after a contested case proceeding, the ratemaking  
23 principles that will apply when the costs of the electric power  
24 generating facility or alternate energy production facility  
25 are included in regulated electric rates, whether collected  
26 through base rates or through a rider approved under paragraph  
27 "b", subparagraph (2), subparagraph division (a), whenever a  
28 rate-regulated public utility does any of the following:

29       (1) Files an application pursuant to section 476A.3 to  
30 construct do any of the following in Iowa a:

31       (a) Construct a baseload electric power generating facility  
32 with a nameplate generating capacity equal to or greater than  
33 three hundred megawatts or a.

34       (b) Construct a combined-cycle electric power generating  
35 facility, or an.

1     (c) Construct an alternate energy production facility as  
2 defined in section 476.42, or to significantly.

3     (d) Significantly alter an existing generating facility.

4     (i) For purposes of this subparagraph division (d), a  
5 significant alteration of an existing generating facility must,  
6 in order to qualify for establishment of ratemaking principles,  
7 fall into one of the following categories:

8     (a) (A) Conversion of a coal fueled facility into a gas  
9 fueled facility.

10    (b) (B) Addition of carbon capture and storage facilities  
11 at a coal fueled facility.

12    (c) (C) Addition of gas fueled capability to a coal fueled  
13 facility, in order to convert the facility to one that will  
14 rely primarily on gas for future generation.

15    (d) (D) Addition of a biomass fueled capability to a coal  
16 fueled facility.

17     (ii) With respect to a significant alteration of an existing  
18 generating facility, an original facility shall not be required  
19 to be either a baseload or a combined-cycle facility. Only  
20 the incremental investment undertaken by a utility under  
21 subparagraph ~~divisions (a), (b), (c), or (d)~~ subdivision (i),  
22 subparagraph part (A), (B), (C), or (D) shall be eligible to  
23 apply the ratemaking principles established by the order issued  
24 pursuant to paragraph "e". ~~Facilities for which advanced~~  
25 ~~ratemaking principles are obtained pursuant to this section~~  
26 ~~shall not be subject to a subsequent board review pursuant to~~  
27 ~~section 476.6, subsection 21 to the extent that the investment~~  
28 ~~has been considered by the board under this section. To the~~  
29 ~~extent an eligible utility has been authorized to make capital~~  
30 ~~investments subject to section 476.6, subsection 21, such~~  
31 ~~investments shall not be eligible for ratemaking principles~~  
32 ~~pursuant to this section.~~

33     (2) Expresses its intent, upon completion of analyses  
34 authorized pursuant to section 476.6, subsection 22, for a  
35 rate-regulated utility that was subject to a revenue-sharing

1 settlement agreement with regard to its electric base rates as  
2 of January 1, 2010, to file an application pursuant to section  
3 476A.3 to build a nuclear generating facility including but not  
4 limited to small modular reactor technology, or expresses its  
5 intent to seek authority pursuant to a combined construction  
6 and operating license or an early site permit from the United  
7 States nuclear regulatory commission.

8 ~~(2)~~ (3) Leases or owns in Iowa, in whole or in part, a any  
9 of the following:

10 (a) A new baseload electric power generating facility with  
11 a nameplate generating capacity equal to or greater than three  
12 hundred megawatts ~~or a.~~

13 (b) A combined-cycle electric power generating facility,  
14 ~~or a.~~

15 (c) A new alternate energy production facility as defined  
16 in section 476.42.

17 (d) A new nuclear generating facility including but not  
18 limited to small modular reactor technology.

19 *b.* In determining the applicable ratemaking principles, the  
20 board shall not be limited to traditional ratemaking principles  
21 or traditional cost recovery mechanisms.

22 (1) Among the principles and mechanisms the board may  
23 consider, the board has the authority to approve ratemaking  
24 principles proposed by a rate-regulated public utility that  
25 provide for reasonable restrictions upon the ability of  
26 the public utility to seek a general increase in electric  
27 rates under section 476.6 for at least three years after the  
28 generating facility begins providing service to Iowa customers.

29 (2) In determining the applicable ratemaking principles for  
30 a nuclear generating facility or for a license or permit from  
31 the United States nuclear regulatory commission, a ratemaking  
32 principles order issued by the board shall incorporate all of  
33 the following:

34 (a) Enable the utility to recover upon issuance of the  
35 order, through a rider pursuant to a tariff filing, a return

1 on and a return of all prudent capitalized costs and a return  
2 of all prudent noncapitalized costs associated with the  
3 permitting, licensing, and construction of a nuclear generating  
4 facility. The amount of such cost recovery from utility  
5 customers shall be reduced by the amount of any funding of  
6 such costs borne by the United States department of energy  
7 or any other governmental entity, and costs recovered from  
8 any joint owners of the nuclear generating facility. A  
9 determination of all prudent costs recoverable pursuant to  
10 this subparagraph division shall be made and the level and  
11 rate of the recovery of such charges reset annually to reflect  
12 the level of reasonable costs related to pursuit of a United  
13 States nuclear regulatory commission permit or license or  
14 construction costs expected to be incurred in the next twelve  
15 months. A determination shall also be made of any adjustment  
16 required to balance the preceding period's actual expenditures  
17 and financing costs with what had been projected and included  
18 in costs recoverable for the preceding period. If applicable,  
19 the utility shall report to the board annually the budgeted  
20 and actual costs as compared to the estimated total in-service  
21 cost of the nuclear generating facility that was presented  
22 in the last annual filing, as projected through the expected  
23 in-service date of the nuclear generating facility. Following  
24 issuance of the board's ratemaking principles order, the  
25 utility shall file an application with the board on an annual  
26 basis providing such information, with the understanding  
27 that some cost components may be higher than estimated and  
28 other cost components may be lower. Each annual proceeding  
29 shall be completed by the board within ninety days from the  
30 date of filing the application. The complete methodology  
31 for determination of prudent costs shall be addressed as a  
32 ratemaking principle. All United States nuclear regulatory  
33 commission permitting or licensing costs are to be recovered  
34 over a period not to exceed the estimated construction period  
35 for a nuclear generating facility as determined by the board.

1 All nuclear generating facility construction costs are to be  
2 recovered over a period not to exceed the sum of the estimated  
3 construction period for a nuclear unit, plus its useful life  
4 as determined by the board. A utility's commencement of  
5 cost collection shall begin promptly after completion of the  
6 ratemaking principles proceeding, allowing for such additional  
7 time as may be needed by the board to review a compliance rider  
8 tariff filing.

9 (b) Enable the utility to recover in rates all prudently  
10 incurred expenses and costs, including but not limited to  
11 ongoing operations and maintenance costs, decommissioning  
12 funding and site restoration costs, and taxes for such a new  
13 nuclear generating facility.

14 (c) Base the allowed debt, preferred stock, and equity  
15 percentages on a capital structure calculated using the  
16 average of the utility's actual thirteen-month balances for  
17 long-term debt, preferred stock, and common equity. The  
18 long-term debt and preferred stock thirteen-month balances  
19 shall include adjustments for thirteen-month balances of  
20 unamortized discount, premium, expense, and any gain or loss  
21 on reacquired securities. The costs of long-term debt and  
22 preferred stock shall reflect the actual embedded interest and  
23 dividend rate for each issue as well as any annual amortization  
24 of unamortized discount, premium, expense, and any gain or loss  
25 on reacquired securities. The costs of common equity shall  
26 reflect the following:

27 (1) The risks to which the investor's capital is exposed and  
28 not the investor's source of funds.

29 (2) The investor-required cost of capital of the  
30 rate-regulated utility.

31 (3) Neither directly or indirectly include additional debt  
32 of the rate-regulated utility's parent or other affiliates  
33 in the rate-regulated utility's capital structure or cost of  
34 service.

35 (d) Allow the utility to recover return on and a return of

1 all prudent preconstruction and construction costs incurred  
2 if the utility elects not to complete or is precluded from  
3 completing construction of the nuclear generating facility.  
4 Costs determined to be prudent in prior annual review  
5 proceedings shall not subsequently be redetermined to be  
6 imprudent. The utility shall recover such costs over a period  
7 not to exceed the sum of the estimated construction period for  
8 a nuclear unit plus its useful life as determined by the board.

9 (e) Allow the utility to recover the net book value of  
10 any generating facility that the utility commits to retire  
11 in anticipation of the operation of a new nuclear generating  
12 facility, and that the board determines to be prudent. The  
13 board shall allow for the recovery of a return on, and a return  
14 of the book value of, the retired generating facility over  
15 a period not greater than the remaining useful life of the  
16 facility prior to a determination to retire the facility.

17 c. In determining the applicable ratemaking principles, the  
18 board shall make the following findings:

19 (1) The rate-regulated public utility has in effect a  
20 board-approved energy efficiency plan as required under section  
21 476.6, subsection 16.

22 (2) ~~The~~ Except for an application for ratemaking principles  
23 subject to paragraph "a", subparagraph (2), the rate-regulated  
24 public utility has demonstrated to the board that the public  
25 utility has considered other sources for long-term electric  
26 supply and that the facility or lease is reasonable when  
27 compared to other feasible alternative sources of supply. The  
28 rate-regulated public utility may satisfy the requirements of  
29 this subparagraph through a competitive bidding process, under  
30 rules adopted by the board, that demonstrate the facility or  
31 lease is a reasonable alternative to meet its electric supply  
32 needs.

33 (3) For an application for ratemaking principles subject  
34 to paragraph "a", subparagraph (2), the rate-regulated utility  
35 has demonstrated through a detailed business case filed with



1 the board that it is prudent to build the proposed nuclear  
2 generating facility.

3 *d.* The applicable ratemaking principles shall be determined  
4 in a contested case proceeding, which proceeding may be  
5 combined with the proceeding for issuance of a certificate  
6 conducted pursuant to chapter 476A.

7 *e.* The order setting forth the applicable ratemaking  
8 principles shall be issued prior to the commencement of  
9 construction or lease of the facility.

10 *f.* Following issuance of the order, the rate-regulated  
11 public utility shall have the option of proceeding according to  
12 either of the following:

13 (1) Withdrawing its application for a certificate pursuant  
14 to chapter 476A or withdrawing its ratemaking principles  
15 application.

16 (2) Proceeding with the construction or lease of the  
17 facility or efforts to pursue a United States nuclear  
18 regulatory commission permit or license.

19 *g.* Notwithstanding any provision of this chapter to the  
20 contrary, the ratemaking principles established by the order  
21 issued pursuant to paragraph "e" shall be binding with regard  
22 to the specific electric power generating facility in any  
23 subsequent rate proceeding.

24 *h.* Any judicial action directly or indirectly resulting  
25 in a modification of the board's ratemaking principles order  
26 shall be applied prospectively only. No refunds shall be made  
27 of revenues previously collected, unless the board determines  
28 such revenues to be in excess of the costs incurred or to be  
29 incurred by the utility. With respect to financial commitments  
30 made prior to any judicial action directly or indirectly  
31 resulting in a modification of the board's ratemaking  
32 principles order, the utility shall recover such costs under a  
33 cancellation costs ratemaking principle.

34 4. The utilities board and the consumer advocate may employ  
35 additional temporary staff, or may contract for professional

1 services with persons who are not state employees, as the  
2 board and the consumer advocate deem necessary to perform  
3 required functions as provided in this section, including but  
4 not limited to review of power purchase contracts, review of  
5 emission plans and budgets, and review of ratemaking principles  
6 proposed for construction or lease of a new generating  
7 facility, including a new nuclear generating facility or  
8 United States nuclear regulatory commission permit or license.  
9 Beginning July 1, 2002, there is appropriated out of any funds  
10 in the state treasury not otherwise appropriated, such sums as  
11 may be necessary to enable the board and the consumer advocate  
12 to hire additional staff and contract for services under this  
13 section. The costs of the additional staff and services shall  
14 be assessed to the utilities pursuant to the procedure in  
15 section 476.10 and section 475A.6.

16 5. Facilities for which advanced ratemaking principles are  
17 obtained pursuant to this section shall not be subject to a  
18 subsequent board review pursuant to section 476.6, subsection  
19 21, to the extent that the investment has been considered  
20 by the board under this section. To the extent an eligible  
21 utility has been authorized to make capital investments subject  
22 to section 476.6, subsection 21, such investments shall not be  
23 eligible for ratemaking principles pursuant to this section.

24 Sec. 3. ELECTRIC UTILITY RATE INCREASES — MITIGATION  
25 STUDY. The utilities board of the utilities division of the  
26 department of commerce shall conduct a study to identify  
27 the potential impact to customer electric utility rates  
28 resulting from recent federal regulations adopted by the United  
29 States environmental protection agency, and strategies to  
30 mitigate this impact. The study shall be undertaken with the  
31 involvement of rate-regulated electric public utilities and  
32 other stakeholders identified by the board. The board shall  
33 submit a report regarding the results of the study by January  
34 1, 2012.

35

EXPLANATION

1 This bill relates to the permitting, licensing,  
2 construction, and operation of nuclear generation facilities.

3 The bill provides that it is the intent of the general  
4 assembly to encourage the prudent development of baseload  
5 nuclear electric power generation, noting that nuclear  
6 generation has a long-term proven record of providing a safe,  
7 reliable, and secure source of electricity, and offers the  
8 potential for significant job creation, substantial economic  
9 development benefits, and the production of electricity at  
10 significantly reduced levels of regulated air emissions when  
11 compared to output from other thermal generation sources.  
12 The bill provides that the general assembly also recognizes  
13 that meeting stringent environmental permit requirements is  
14 expensive and creates significant cost burdens on customers  
15 and employers attributable to the imposition of additional  
16 comprehensive and costly regulations by the United States  
17 environmental protection agency that dramatically increase  
18 costs to customers. The bill provides that the general  
19 assembly additionally recognizes that development of nuclear  
20 electric power generation requires significant capital  
21 investment and a substantial period of time for successful  
22 nuclear generation development, siting, licensing, and  
23 deployment.

24 The bill requires a rate-regulated electric utility that  
25 was subject to a revenue sharing settlement agreement with  
26 regard to its electric base rates as of January 1, 2010, to  
27 file an application for ratemaking principles applicable to the  
28 construction of a nuclear generating facility with the Iowa  
29 utilities board, and that the application shall comply with the  
30 provisions of Code section 476.53.

31 The bill makes significant modifications to Code section  
32 476.53 consistent with the potential construction of a nuclear  
33 generating facility. The bill provides that the board shall  
34 specify in advance the ratemaking principles that will apply  
35 when a rate-regulated public utility expresses its intent, upon

1 completion of analyses authorized pursuant to Code section  
2 476.6, subsection 22 for a rate-regulated utility that was  
3 subject to a revenue-sharing settlement agreement with regard  
4 to its electric base rates as of January 1, 2010, to file an  
5 application pursuant to Code section 476A.3 to build a nuclear  
6 generating facility, including but not limited to small modular  
7 reactor technology, or expresses its intent to seek authority  
8 pursuant to a combined construction and operating license or  
9 an early site permit from the United States nuclear regulatory  
10 commission, or leases or owns in whole or in part such a  
11 facility.

12 The bill provides that in determining the applicable  
13 ratemaking principles for a nuclear generating facility or for  
14 a license or permit from the United States nuclear regulatory  
15 commission, a ratemaking principles order issued by the board  
16 shall incorporate several components. The bill states that  
17 after the order is issued, the utility may recover from utility  
18 customers a return on and a return of all prudent capitalized  
19 costs and a return of all prudent noncapitalized costs  
20 associated with, the permitting, licensing, and construction  
21 of a facility, reduced by the amount of any funding of such  
22 costs borne by the United States department of energy or any  
23 other governmental entity, and costs recovered from any joint  
24 owners of the nuclear generating facility. The bill provides  
25 that the determination of prudent costs and the level and rate  
26 of the recovery of charges shall be reset annually to reflect  
27 the level of reasonable costs related to pursuit of a United  
28 States nuclear regulatory commission permit or license or  
29 construction costs expected to be incurred by the utility in  
30 the next 12 months. A determination shall also be made of any  
31 adjustment required to balance the preceding period's actual  
32 expenditures and financing costs with what had been projected  
33 and included in costs recoverable for the preceding period.  
34 The bill directs a utility, if applicable, to report to the  
35 board annually the budgeted and actual costs as compared to

1 the estimated total in-service cost of the nuclear generating  
2 facility that was presented in the last annual filing, as  
3 projected through the expected in-service date of the nuclear  
4 generating facility. The bill provides that after the order  
5 is issued, a utility shall file an application with the board  
6 on an annual basis providing the budgeted versus actual cost  
7 information, and that each annual proceeding shall be completed  
8 by the board within 90 days from the date of filing the  
9 application.

10 The bill states that all United States nuclear regulatory  
11 commission permitting or licensing costs are to be recovered  
12 over a period not to exceed the estimated construction period  
13 for a nuclear generating facility as determined by the board,  
14 and that all nuclear generating facility construction costs  
15 are to be recovered over a period not to exceed the sum of  
16 the estimated construction period for a nuclear unit, plus  
17 its useful life as determined by the board. The bill also  
18 states that a utility's commencement of cost collection shall  
19 begin promptly after completion of the ratemaking principles  
20 proceeding, allowing for such additional time as may be needed  
21 by the board to review a compliance rider tariff filing.

22 The bill provides that the order shall additionally enable  
23 the utility to recover in rates all prudently incurred expenses  
24 and costs, including but not limited to ongoing operations  
25 and maintenance costs, decommissioning funding and site  
26 restoration costs, and taxes for a new nuclear generating  
27 facility. Further, the order shall base the allowed debt,  
28 preferred stock, and equity percentages on a capital structure  
29 calculated using the average of the utility's actual 13-month  
30 balances for long-term debt, preferred stock, and common  
31 equity. The bill states that the costs of long-term debt and  
32 preferred stock shall reflect the actual embedded interest and  
33 dividend rate for each issue as well as any annual amortization  
34 of unamortized discount, premium, expense, and any gain or  
35 loss on reacquired securities, and that the cost of common

1 equity shall reflect the risks to which the investor's capital  
2 is exposed and not the investor's source of funds, and the  
3 investor-required cost of capital of the rate-regulated  
4 utility, and shall neither directly nor indirectly include  
5 additional debt of the rate-regulated utility's parent or other  
6 affiliates in the rate-regulated utility's capital structure  
7 or cost of service.

8 The bill provides that the order shall allow the utility to  
9 recover return on and a return of all prudent preconstruction  
10 and construction costs incurred if the utility elects not  
11 to complete or is precluded from completing construction of  
12 the nuclear generating facility, and that costs determined  
13 to be prudent in prior annual review proceedings shall not  
14 subsequently be redetermined to be imprudent. The bill states  
15 that a utility shall recover costs over a period not to exceed  
16 the sum of the estimated construction period for a nuclear  
17 unit plus its useful life as determined by the board. The  
18 bill states that the order shall further allow the utility to  
19 recover the net book value of any generating facility that the  
20 utility commits to retire in anticipation of the operation of a  
21 new nuclear generating facility, and that the board determines  
22 to be prudent, and that the board shall allow for the recovery  
23 of a return on, and return of the book value of, the retired  
24 generating facility over a period not greater than the  
25 remaining useful life of the facility prior to a determination  
26 to retire the facility.

27 The bill exempts a rate-regulated public utility applying  
28 for ratemaking principles with regard to a nuclear generating  
29 facility from requirements that a utility must demonstrate to  
30 the board that it has considered other sources for long-term  
31 electric supply and that the facility or a lease of a facility  
32 is reasonable when compared to other feasible alternative  
33 sources of supply. The bill adds an application requirement  
34 with regard to a nuclear generating facility requiring a  
35 rate-regulated utility to demonstrate through a detailed

1 business case filed with the board that it is prudent to build  
2 the proposed facility.

3 The bill provides that any judicial action directly  
4 or indirectly resulting in a modification of the board's  
5 ratemaking principles order shall be applied prospectively  
6 only, and that no refunds shall be made of revenues previously  
7 collected, unless the board determines such revenues to be in  
8 excess of the costs incurred or to be incurred by the utility.

9 The bill removes the word "temporary" from provisions  
10 regarding staff which the utilities board and the consumer  
11 advocate may employ, or may contract with, to perform required  
12 functions pursuant to Code section 476.53 as amended by the  
13 bill.

14 The bill directs the board to conduct a study to identify  
15 the potential impact to customer electric utility rates  
16 resulting from recent federal regulations adopted by the United  
17 States environmental protection agency, and strategies to  
18 mitigate this impact. The study shall be undertaken with the  
19 involvement of rate-regulated electric public utilities and  
20 other stakeholders identified by the board. The bill requires  
21 the board to submit a report regarding the results of the study  
22 by January 1, 2012.

23 The bill makes additional conforming changes and relocation  
24 of specified provisions consistent with expanding applicable  
25 ratemaking principles in connection with a nuclear generating  
26 facility.