

House File 561 - Reprinted

HOUSE FILE 561
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 124)

(As Amended and Passed by the House April 26, 2011)

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
7 the construction of a nuclear generating facility with the
8 board. The application shall comply with the provisions of
9 section 476.53. In addition, the utility shall remain bound by
10 the commitments described in the March 11, 1999, board order
11 in Docket No. SPU-98-8, unless such restrictions are eased by
12 subsequent board order.

13 Sec. 2. Section 476.53, Code 2011, is amended to read as
14 follows:

15 **476.53 Electric generating and transmission facilities.**

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

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

33 *b.* The general assembly's intent with regard to the
34 reliability of electric service to Iowa consumers, as provided
35 in this subsection ~~1~~, shall be implemented by considering the

1 diversity of the types of fuel used to generate electricity,
2 the availability and reliability of fuel supplies, and the
3 impact of the volatility of fuel costs.

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

26 b. The general assembly recognizes that to maximize the
27 potential for significant job creation, economic development,
28 and competitive advantage derived from a robust nuclear
29 industry, a significant workforce is required to construct and
30 operate new nuclear power plants. Such jobs include skilled
31 trades, such as welders, pipe fitters, masons, carpenters,
32 millwrights, sheet metal workers, electricians, and heavy
33 equipment operators, in addition to nuclear reactor operators,
34 radiation protection specialists, and nuclear, mechanical, and
35 electrical engineers. In order for this state to lead the

1 nation in developing this skilled workforce and to maximize
2 economic development related to nuclear electric power
3 generation, the general assembly intends for the state to
4 undertake the following:

5 (1) Create and implement plans to assess and enhance
6 educational and training systems to develop a next-generation
7 nuclear workforce.

8 (2) Assess the adequacy and potential expansion of supply
9 chain infrastructure to support the growing nuclear industry.

10 (3) Recommend steps to attract new nuclear-related
11 businesses.

12 (4) Evaluate the economic development impact affordable
13 nuclear electric power generation will have on the expansion
14 and retention of existing industry.

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

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

25 (a) Construct a baseload electric power generating facility
26 with a nameplate generating capacity equal to or greater than
27 three hundred megawatts ~~or a.~~

28 (b) Construct a combined-cycle electric power generating
29 facility, ~~or an.~~

30 (c) Construct an alternate energy production facility as
31 defined in section 476.42, ~~or to significantly.~~

32 (d) Significantly alter an existing generating facility.

33 (i) For purposes of this subparagraph division (d), a
34 significant alteration of an existing generating facility must,
35 in order to qualify for establishment of ratemaking principles,

1 fall into one of the following categories:

2 ~~(a)~~ (A) Conversion of a coal fueled facility into a gas
3 fueled facility.

4 ~~(b)~~ (B) Addition of carbon capture and storage facilities
5 at a coal fueled facility.

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

9 ~~(d)~~ (D) Addition of a biomass fueled capability to a coal
10 fueled facility.

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

27 (2) Expresses its intent, upon completion of analyses
28 authorized pursuant to section 476.6, subsection 22, for a
29 rate-regulated utility that was subject to a revenue-sharing
30 settlement agreement with regard to its electric base rates as
31 of January 1, 2010, to file an application pursuant to section
32 476A.3 to build a nuclear generating facility including but not
33 limited to small modular reactor technology, or expresses its
34 intent to seek authority pursuant to a combined construction
35 and operating license or an early site permit from the United

1 States nuclear regulatory commission.

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

4 (a) A new baseload electric power generating facility with
5 a nameplate generating capacity equal to or greater than three
6 hundred megawatts ~~or a.~~

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

9 (c) A new alternate energy production facility as defined
10 in section 476.42.

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

13 b. In determining the applicable ratemaking principles, the
14 board shall not be limited to traditional ratemaking principles
15 or traditional cost recovery mechanisms.

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

23 (2) In determining the applicable ratemaking principles for
24 a nuclear generating facility or for a license or permit from
25 the United States nuclear regulatory commission, a ratemaking
26 principles order issued by the board shall incorporate all of
27 the following:

28 (a) Enable the utility to recover upon issuance of the
29 order, through a rider pursuant to a tariff filing, a return
30 on and a return of all prudent capitalized costs and a return
31 of all prudent noncapitalized costs associated with the
32 permitting, licensing, and construction of a nuclear generating
33 facility. The amount of such cost recovery from utility
34 customers shall be reduced by the amount of any funding of
35 such costs borne by the United States department of energy

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

1 board. A utility's commencement of cost collection shall
2 begin promptly after completion of the ratemaking principles
3 proceeding, allowing for such additional time as may be needed
4 by the board to review a compliance rider tariff filing.

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

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

24 (1) The risks to which the investor's capital is exposed
25 and not the investor's source of funds by comparing returns on
26 investments in other enterprises having corresponding risks.

27 (2) The investor-required cost of capital of the
28 rate-regulated utility so as to maintain its credit and ability
29 to attract capital.

30 (3) Neither directly or indirectly include additional debt
31 of the rate-regulated utility's parent or other affiliates
32 in the rate-regulated utility's capital structure or cost of
33 service, so long as the utility equity ratio does not exceed
34 fifty-five percent as determined in this subparagraph division
35 (c). If the rate-regulated utility's equity ratio exceeds

1 this cap, or it is anticipated it will exceed this cap, the
2 rate-regulated utility may provide a rationale to the board
3 as to why the actual capital structure is reasonable for
4 maintaining its credit, attracting capital on reasonable terms,
5 and results in reasonable costs to the rate-regulated utility's
6 retail customers. The board shall rule upon any such request
7 in a contested case proceeding.

8 (d) Allow the utility to recover return on and a return of
9 all prudent preconstruction and construction costs incurred
10 if the utility elects not to complete or is precluded from
11 completing construction of the nuclear generating facility.
12 Costs determined to be prudent in prior annual review
13 proceedings shall not subsequently be redetermined to be
14 imprudent. The utility shall recover such costs over a period
15 not to exceed the sum of the estimated construction period for
16 a nuclear unit plus its useful life as determined by the board.

17 (e) Allow the utility to recover the net book value of any
18 coal-fired generating facility entered into service prior to
19 1974 and owned by the utility as of January 1, 2010, that the
20 utility commits to retire in anticipation of the operation
21 of a new nuclear generating facility, and that the board
22 determines to be prudent. The board shall allow for the
23 recovery of a return on, and a return of the book value of, the
24 retired 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 c. In determining the applicable ratemaking principles, the
28 board shall make the following findings:

29 (1) The rate-regulated public utility has in effect a
30 board-approved energy efficiency plan as required under section
31 476.6, subsection 16.

32 (2) The Except for an application for ratemaking principles
33 subject to paragraph "a", subparagraph (2), the rate-regulated
34 public utility has demonstrated to the board that the public
35 utility has considered other sources for long-term electric

1 supply and that the facility or lease is reasonable when
2 compared to other feasible alternative sources of supply. The
3 rate-regulated public utility may satisfy the requirements of
4 this subparagraph through a competitive bidding process, under
5 rules adopted by the board, that demonstrate the facility or
6 lease is a reasonable alternative to meet its electric supply
7 needs.

8 (3) For an application for ratemaking principles subject
9 to paragraph "a", subparagraph (2), the rate-regulated utility
10 has demonstrated through a detailed business case filed with
11 the board that it is prudent to build the proposed nuclear
12 generating facility.

13 *d.* The applicable ratemaking principles shall be determined
14 in a contested case proceeding, which proceeding may be
15 combined with the proceeding for issuance of a certificate
16 conducted pursuant to chapter 476A.

17 *e.* The order setting forth the applicable ratemaking
18 principles shall be issued prior to the commencement of
19 construction or lease of the facility.

20 *f.* Following issuance of the order, the rate-regulated
21 public utility shall have the option of proceeding according to
22 either of the following:

23 (1) Withdrawing its application for a certificate pursuant
24 to chapter 476A or withdrawing its ratemaking principles
25 application.

26 (2) Proceeding with the construction or lease of the
27 facility or efforts to pursue a United States nuclear
28 regulatory commission permit or license.

29 *g.* Notwithstanding any provision of this chapter to the
30 contrary, the ratemaking principles established by the order
31 issued pursuant to paragraph "e" shall be binding with regard
32 to the specific electric power generating facility in any
33 subsequent rate proceeding.

34 *h.* Any judicial action directly or indirectly resulting
35 in a modification of the board's ratemaking principles order

1 shall be applied prospectively only. No refunds shall be made
 2 of revenues previously collected, unless the board determines
 3 such revenues to be in excess of the costs incurred or to be
 4 incurred by the utility. With respect to financial commitments
 5 made prior to any judicial action directly or indirectly
 6 resulting in a modification of the board's ratemaking
 7 principles order, the utility shall recover such costs under a
 8 cancellation costs ratemaking principle.

9 i. The board shall issue an order on the merits of a
 10 ratemaking application within one hundred eighty days after the
 11 utility files an application for ratemaking principles. The
 12 board, for good cause shown, may extend the deadline for ruling
 13 on the merits of the application for an additional period not
 14 to exceed one hundred eighty days, and by such additional time
 15 beyond that period that is agreed to by the utility.

16 4. The utilities board and the consumer advocate may
 17 employ additional ~~temporary~~ permanent staff, ~~or~~ and may
 18 contract for professional services with persons who are not
 19 state employees, as the board and the consumer advocate deem
 20 necessary to perform required functions as provided in this
 21 section, including but not limited to review of power purchase
 22 contracts, review of emission plans and budgets, and review of
 23 ratemaking principles proposed for construction or lease of a
 24 new generating facility, including a new nuclear generating
 25 facility or United States nuclear regulatory commission permit
 26 or license. The board and consumer advocate may also expend
 27 funds they deem necessary to train such employees and provide
 28 office space and equipment. Beginning July 1, 2002, there
 29 is appropriated out of any funds in the state treasury not
 30 otherwise appropriated, such sums as may be necessary to enable
 31 the board and the consumer advocate to hire, train, house,
 32 and equip additional staff and contract for services under
 33 this section. The costs of the additional staff and services
 34 shall be assessed to the utilities pursuant to the procedure
 35 in section 476.10 and section 475A.6. The utilities board and

1 consumer advocate may each hire up to five permanent employees
2 capable of performing functions required by this section. Any
3 persons employed by the board or consumer advocate to carry
4 out the duties of this section related to nuclear generating
5 facilities shall be paid at compensation rates consistent with
6 current standards in the nuclear energy industry, and new
7 salary classifications shall be established to set pay ranges
8 for skilled personnel in the nuclear engineering, nuclear
9 construction, and any other professional categories in the
10 nuclear energy industry the board and consumer advocate deem
11 appropriate, including but not limited to legal, accounting,
12 and skilled examiners and inspectors.

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

21 Sec. 3. Section 476A.6, Code 2011, is amended by adding the
22 following new subsection:

23 NEW SUBSECTION. 4. In the case of an application to
24 construct a nuclear generation facility, the applicant commits
25 to prepare plans addressing United States nuclear regulatory
26 commission and federal emergency management agency public
27 emergency preparedness and response strategy requirements
28 in the event of an accident, natural disaster, or other
29 circumstance, condition, or occurrence compromising the safety
30 and security of the facility and posing a potential threat
31 to public health, safety, or welfare. The plans shall also
32 address coordination with state emergency planning departments,
33 public safety drills, and emergency response testing in
34 response to a simulated nuclear disaster as required by the
35 rules of the United States nuclear regulatory commission and

1 the federal emergency management agency.

2 Sec. 4. ELECTRIC UTILITY RATE INCREASES — MITIGATION
3 STUDY. The utilities board of the utilities division of the
4 department of commerce shall conduct a study to identify
5 the potential impact to customer electric utility rates
6 resulting from recent federal regulations adopted by the United
7 States environmental protection agency, and strategies to
8 mitigate this impact. The study shall be undertaken with the
9 involvement of rate-regulated electric public utilities and
10 other stakeholders identified by the board. The board shall
11 submit a report regarding the results of the study by January
12 1, 2012.

13 Sec. 5. NUCLEAR ELECTRIC POWER GENERATION — ECONOMIC
14 DEVELOPMENT OPPORTUNITIES — TASK FORCE. The governor shall
15 appoint a task force to evaluate the economic development
16 opportunities created through nuclear electric power generation
17 in this state and to develop specific plans to maximize these
18 opportunities. Task force members appointed by the governor
19 shall include but not be limited to representatives from the
20 state board of regents, the community colleges, the Iowa
21 department of workforce development, the department of economic
22 development, the department of education, and utility industry
23 leaders. The governor shall appoint a chairperson from among
24 the members. The task force shall submit a report summarizing
25 its evaluation and containing recommendations to the general
26 assembly by January 1, 2012.