

**COMMITTEE AMENDMENT**  
HOUSE OF REPRESENTATIVES  
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB1750 \_\_\_\_\_  
Of the printed Bill  
Page \_\_\_\_\_ Section \_\_\_\_\_ Lines \_\_\_\_\_  
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Adopted: \_\_\_\_\_

Amendment submitted by: Scott Martin

\_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 PROPOSED COMMITTEE  
4 SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 1750

By: Martin (Scott)

7 PROPOSED COMMITTEE SUBSTITUTE

8 An Act relating to nuclear energy; creating the  
9 Nuclear Energy Incentive Act; providing short title;  
10 defining terms; authorizing electric utilities to  
11 apply to the Corporation Commission for determination  
12 of need to construct nuclear power plant; stating  
13 procedures for determining need; providing for  
14 recovery of costs; authorizing Commission to  
15 promulgate rules for certain cost recovery  
16 mechanisms; providing for recovery of costs resulting  
17 from incompleteness of certain project; providing for  
18 the creation of a task force to study tax credits for  
19 nuclear power plants; stating duties; providing for  
20 membership; requiring certain qualifications;  
21 providing for travel reimbursement and staffing;  
22 requiring a report; amending 11 O.S. 2001, Section  
23 24-105, which relates to the Oklahoma Municipal Power  
24 Authority; removing prohibition from owning interest  
in nuclear power plants; repealing 11 O.S. 2001,  
Sections 24-105.1 and 24-117, which relate to  
prohibiting public power ownership of nuclear  
generation facilities; providing for codification;  
providing for noncodification; and providing an  
effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 180.21 of Title 17, unless there  
3 is created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Nuclear Energy  
5 Incentive Act".

6 SECTION 2. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 180.22 of Title 17, unless there  
8 is created a duplication in numbering, reads as follows:

9 As used in the Nuclear Energy Incentive Act:

10 1. "Cost" means, but is not limited to, all capital-related  
11 costs, including the depreciation or amortization of, return on, and  
12 taxes associated with, the operation and maintenance expenses, and  
13 the administrative and general expenses related to or resulting from  
14 the siting, licensing, design, construction, or operation of nuclear  
15 power plants and any new, enlarged, or relocated electrical  
16 transmission lines or facilities of any size which are associated  
17 with construction of or operation of nuclear power plants;

18 2. "Public utility" or "utility" means any corporation  
19 organized or doing business in this state that now owns or hereafter  
20 may own, operate, or manage any plant or equipment for the  
21 manufacture, production, transmission, delivery, or furnishing of  
22 electric current for light, heat, or power to the public;

23 3. "Nuclear power plant", "power plant" or "plant" means any  
24 physical facility, plant, or equipment for the generation or

1 production of electricity or electric power using nuclear materials  
2 as a source of fuel, power, or energy;

3 4. "Preconstruction" means that period of time, and activities  
4 completed during that period of time, after selection of a site for  
5 the construction and location of a nuclear power plant, including  
6 any related electrical transmission lines or facilities, through and  
7 including the period of time involving site-clearing work.

8 Preconstruction costs shall be afforded deferred accounting  
9 treatment and shall accrue a carrying charge equal to the allowance  
10 for funds used during construction (AFUDC) rate for the utility  
11 allowed by the Commission in the most recent rate proceeding for the  
12 utility until recovered in rates, except as modified by paragraph 3  
13 of subsection A of Section 4 of this act; and

14 5. "Commission" shall mean the Corporation Commission of the  
15 State of Oklahoma.

16 SECTION 3. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 180.23 of Title 17, unless there  
18 is created a duplication in numbering, reads as follows:

19 A. An electric utility subject to rate regulation by the  
20 Corporation Commission, or other lawfully organized electric service  
21 provider, may elect to file an application seeking a determination  
22 of need to construct a nuclear power plant. If the Commission  
23 approves the application and enters an order determining a need for  
24 construction of a nuclear power plant, the power plant will be

1 considered used and useful and its costs shall be subject to cost  
2 recovery rules promulgated by the Commission, including, but not  
3 limited to, rules governing periodic rate adjustment, as provided in  
4 Section 4 of this act. The Commission shall enter an order on an  
5 application filed pursuant to this subsection within one hundred  
6 eighty days (180) of the filing of the application, following notice  
7 and hearing.

8 B. The Commission shall be the sole forum for the determination  
9 of this matter and the issues addressed in the application, which  
10 accordingly shall not be reviewed in any other forum, or in the  
11 review of proceedings in the other forum.

12 C. In determining whether there is a need for the nuclear power  
13 plant, the Commission shall consider, at a minimum, the cost of  
14 power and energy from the nuclear power plant compared to  
15 alternatives, the benefits of fuel diversity, and other operational  
16 and cost considerations the Commission deems relevant and necessary.

17 D. The application shall include:

18 1. The reasons why the utility is proposing to build the  
19 nuclear power plant, including the power needs of the utility and  
20 the cost of nuclear power compared to alternatives;

21 2. A description of how the proposed nuclear power plant will  
22 enhance the reliability of electric power production within the  
23 state and improve the balance of power plant fuel diversity;

24

1           3. A nonbinding estimate of the cost of the nuclear power  
2 plant, including any costs associated with new, enlarged, or  
3 relocated electrical transmission lines or facilities that are  
4 necessary for the nuclear power plant to deliver power and energy;

5           4. The annualized base revenue requirement for the first twelve  
6 (12) months of operation of the nuclear power plant; and

7           5. A report of any discussions with other electric utilities  
8 regarding the potential of joint ownership of the nuclear power  
9 plant.

10          E. In making its determination, the Commission shall take into  
11 account any matters within its jurisdiction, which it deems  
12 relevant, including whether the nuclear power plant will:

13           1. Provide needed capacity and energy;

14           2. Enhance the reliability of electric power production within  
15 the state by improving the balance of fuel diversity for electric  
16 generation facilities; and

17           3. Provide a cost-effective source of energy, taking into  
18 account the need to reduce air emission compliance costs, and  
19 enhance the long-term stability and reliability of the electric  
20 grid.

21          F. No provision of the Commission rules regarding competitive  
22 procurement, including provisions for cost recovery, shall be  
23 applicable to a nuclear power plant authorized by this act. A  
24 utility shall not be required to secure competitive proposals for

1 power supply prior to making application under this act or receiving  
2 a determination of need from the Commission.

3 G. The final order of the Commission, including any order on  
4 reconsideration, shall be reviewable on appeal to the Oklahoma  
5 Supreme Court. Since delay in the determination of need will delay  
6 siting of a nuclear power plant or diminish the opportunity for  
7 savings to customers under the federal Energy Policy Act of 2005,  
8 the Supreme Court shall proceed to hear and determine the action as  
9 expeditiously as practicable and give the action precedence over  
10 matters not accorded similar precedence by law.

11 H. After the Commission issues an order determining there is  
12 need for construction of a nuclear power plant, the right of a  
13 utility to recover any costs incurred prior to commercial operation,  
14 including, but not limited to, costs associated with the siting,  
15 design, licensing, or construction of the plant and new, expanded,  
16 or relocated electrical transmission lines or facilities of any size  
17 necessary to serve the nuclear power plant, shall not be subject to  
18 challenge unless, and only to the extent, the Commission finds,  
19 based on a preponderance of the evidence adduced at a hearing before  
20 the Commission, that certain costs were imprudently incurred.  
21 Proceeding with the construction of the nuclear power plant  
22 following an order by the Commission finding the need for the  
23 nuclear power plant pursuant to the provisions of this act, shall  
24 not constitute or be evidence of imprudence. Imprudence shall not

1 include any cost increases due to events beyond the control of the  
2 utility. Further, the right to recover costs associated with a  
3 nuclear power plant by a utility may not be raised in any other  
4 forum or in the review of proceedings in the other forum. Costs  
5 incurred prior to the commencement of commercial operation of the  
6 nuclear power plant shall be recovered pursuant to the provisions of  
7 Section 4 of this act.

8 SECTION 4. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 180.24 of Title 17, unless there  
10 is created a duplication in numbering, reads as follows:

11 A. Within six (6) months following the effective date of this  
12 act, the Corporation Commission shall promulgate rules providing for  
13 alternative cost recovery mechanisms, including a periodic rate  
14 adjustment, for the recovery of costs incurred by a public utility  
15 in the siting, design, licensing, and construction of a nuclear  
16 power plant, including new, expanded, or relocated electrical  
17 transmission lines and facilities necessary to deliver electric  
18 power to or from, or to interconnect with, a nuclear power plant.  
19 The cost recovery mechanisms shall be designed to promote utility  
20 investment in nuclear power plants and allow for the recovery in  
21 rates of all prudently incurred costs, and shall include, but not be  
22 limited to:

23 1. Recovery through a periodic rate adjustment of any  
24 preconstruction costs, which periodic adjustment and cost recovery



1 shall begin before commercial operation or completion of the nuclear  
2 power plant;

3       2. Recovery through an incremental increase in the periodic  
4 rate adjustment rates of the utility of the carrying costs on the  
5 projected construction cost balance associated with the nuclear  
6 power plant. To encourage investment and provide certainty, for  
7 applications submitted to the Commission pursuant to the Nuclear  
8 Energy Incentive Act, the associated carrying costs shall be equal  
9 to the existing pretax AFUDC rate for the utility which is presumed  
10 to be appropriate, unless determined otherwise by the Commission,  
11 and as modified by paragraph 3 of this subsection; and

12       3. Recovery through a periodic rate adjustment of an enhanced  
13 rate of return during the preconstruction period and the first  
14 portion of the service life of the facility, which shall be between  
15 twelve (12) and twenty-five (25) years as determined by the  
16 Commission. The enhanced rate of return shall be calculated by  
17 adding two hundred (200) basis points to the approved general or  
18 overall rate of return for the utility, and shall apply only to the  
19 facility that is the subject of the rate adjustment clause.

20       B. When the nuclear power plant is placed in commercial  
21 service, the utility shall be allowed to increase its base rate  
22 charges by the projected annual revenue requirements of the nuclear  
23 power plant based on the annual revenue requirements of the plant  
24 for the first twelve (12) months of operation. The rate of return

1 on the nuclear power plant for the first portion of the service life  
2 on the nuclear power plant shall be calculated using the enhanced  
3 rate of return calculated by adding two hundred (200) basis points  
4 to the last general or overall rate of return for the utility  
5 approved by the Commission prior to the commercial in-service date  
6 of the nuclear power plant or to the overall rate of return approved  
7 in the most recent rate case following commercial operation. If an  
8 existing electric generating power plant, owned by the utility and  
9 operated to provide power to its customers, is retired as a result  
10 of operation of the nuclear power plant, the Commission shall allow  
11 for the recovery, through an increase in charges, of the net book  
12 value of the retired plant, over a period not to exceed five (5)  
13 years.

14 C. Following the final order by the Commission approving the  
15 determination of need for the nuclear power plant and until the  
16 commencement of commercial operation of the nuclear power plant, the  
17 utility shall annually report to the Commission the budgeted and  
18 actual costs of the nuclear power plant as compared to the estimated  
19 in-service costs of the nuclear power plant provided by the utility  
20 as required by this act.

21 D. If the utility elects not to complete or is precluded from  
22 completing construction of the nuclear power plant, including any  
23 new, expanded, or relocated electrical transmission lines or  
24 facilities, the utility shall be allowed to recover all prudent

1 preconstruction and construction costs incurred following the  
2 issuance of a final order by the Commission determining there is a  
3 need for the nuclear power plant and electrical transmission lines  
4 and facilities. The utility shall recover the costs through a rate  
5 adjustment mechanism over a period equal to the period during which  
6 the costs were incurred, or five (5) years, whichever is greater.  
7 The unrecovered balance during the recovery period will accrue  
8 interest at the weighted average cost of capital for the utility.

9 SECTION 5. NEW LAW A new section of law not to be  
10 codified in the Oklahoma Statutes reads as follows:

11 A. No later than thirty (30) days following the effective date  
12 of this act, a task force shall be appointed to study and make  
13 recommendations on an appropriate tax credit for entities investing  
14 in a nuclear power plant located in this state. The task force  
15 shall review the tax credit provided in Section 2357.32A of Title 68  
16 of the Oklahoma Statutes for the production and sale of electricity  
17 by zero-emission facilities located in this state and determine if  
18 that tax credit or a similar tax credit at least equal to that tax  
19 credit should be extended for the purchase of electricity generated  
20 by a nuclear power plant located in this state.

21 B. Nine (9) members shall be appointed as follows:

22 1. The Secretary of Energy shall be the chair of the task  
23 force;

24 2. Two members shall be appointed by the Governor;

1           3. Three members shall be appointed by the President Pro  
2 Tempore of the Senate; and

3           4. Three members shall be appointed by the Speaker of the House  
4 of Representatives.

5           C. Each appointing authority shall appoint members with  
6 knowledge of the electric generation industry or financial expertise  
7 relating to electric generation.

8           D. Members shall serve without compensation but shall be  
9 eligible for travel reimbursement in accordance with the State  
10 Travel Reimbursement Act to be paid by the appointing authority.

11          E. Staffing and administrative duties shall be provided as  
12 directed by the Secretary of Energy.

13          F. The task force shall report its recommendations to the  
14 Governor, the President Pro Tempore of the Senate and the Speaker of  
15 the House of Representatives no later than December 1, 2010.

16          SECTION 6.        AMENDATORY        11 O.S. 2001, Section 24-105, is  
17 amended to read as follows:

18          Section 24-105. Definitions. As used in this act the following  
19 words shall have the following meanings unless the context clearly  
20 indicates otherwise:

21          (a) "Authority" shall mean the Oklahoma Municipal Power  
22 Authority hereby created and any successor or successors thereto.  
23 Any change in name or composition of the Authority shall in no way  
24 affect the vested rights of any person under the provisions of this

1 act or impair the obligations of any contracts existing under this  
2 act.

3 (b) "Board of Directors" shall mean the Board of Directors  
4 elected by the election committee as set forth in Section 4 24-104  
5 of this ~~act~~ title which shall exercise all the powers and manage and  
6 control all the affairs and property of the Authority unless  
7 otherwise specifically provided herein or in the bylaws of the  
8 Authority as in effect from time to time.

9 (c) "Bonds" shall mean any revenue bonds, notes or other  
10 evidences of obligations of the Authority issued by the Authority  
11 under the provisions of this act, including, without limitation,  
12 bond anticipation notes and refunding bonds.

13 (d) "Eligible public agency" shall mean any municipality,  
14 authority or other public body which owns, maintains or operates an  
15 electrical energy generation, transmission or distribution system  
16 within the State of Oklahoma on the date on which this act becomes  
17 law.

18 (e) "Person" shall mean (i) any natural person; (ii) any  
19 eligible public agency as defined herein; (iii) any public trust as  
20 defined herein; (iv) the United States, any state, any municipality,  
21 political subdivision, municipal corporation, unit of local  
22 government, governmental unit or public corporation created by or  
23 pursuant to the laws of the United States or any state, or any  
24 board, corporation or other entity or body declared by the laws of

1 the United States or any state to be a department, agency or  
2 instrumentality thereof; (v) any corporation, not for profit  
3 corporation, firm, partnership, cooperative association, electric  
4 cooperative or business trust of any nature whatsoever organized and  
5 existing under the laws of the United States or any state; or (vi)  
6 any foreign country, any political subdivision or governmental unit  
7 of any foreign country or any corporation, not for profit  
8 corporation, firm, partnership, cooperative association, electric  
9 cooperative or business trust of any nature whatsoever organized and  
10 existing under the laws of any foreign country or of any political  
11 subdivision or governmental entity thereof.

12 (f) "Project" shall mean any plant, works, system, facilities  
13 and real and personal property of any nature whatsoever, together  
14 with all parts thereof and appurtenances thereto, located within or  
15 without the State of Oklahoma, used or useful in the generation,  
16 production, transmission, purchase, sale, exchange or interchange of  
17 electrical energy and in the acquisition, extraction, processing,  
18 transportation or storage ~~of~~ of fuel of any kind for any such  
19 purposes or any interest in, or right to the use, services, output  
20 or capacity, of any such plant, works, system or facilities;  
21 ~~provided, however, a project shall not include (i) any interest in~~  
22 ~~any plant for the generation of electrical energy which is to be~~  
23 ~~owned jointly with any investor-owned utility if such plant is not~~  
24 ~~existing on May 10, 1981, or (ii) any interest in any nuclear~~

1 ~~powered generating plant. For purposes of this definition, a plant~~  
2 ~~shall be considered to be existing if construction shall have been~~  
3 ~~commenced at the plant site, if orders have been placed for major~~  
4 ~~components of equipment or if the plant is to consist of an~~  
5 ~~additional unit at the site of an already existing unit which will~~  
6 ~~use in common any of the existing facilities at such site.~~

7 (g) "Public trust" shall mean any public trust created and  
8 existing under the provisions of the Trusts for Furtherance of  
9 Public Functions Law, as provided by Sections 176 et seq. of Title  
10 60 of the Oklahoma Statutes, and the Oklahoma Trust Act, as provided  
11 by Sections 175 et seq. of Title 60 of the Oklahoma Statutes, which  
12 has as its beneficiary a municipality and which owns, maintains or  
13 operates an electrical energy generation, transmission or  
14 distribution system serving the residents and consumers of such  
15 municipality and existing on the date on which this act becomes law  
16 or created hereafter with an eligible public agency as the  
17 beneficiary.

18 SECTION 7. REPEALER 11 O.S. 2001, Sections 24-105.1 and  
19 24-117, are hereby repealed.

20 SECTION 8. This act shall become effective November 1, 2009.

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22 52-1-6845 KB 02/16/09  
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