

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 ARTICLE 5

5 Section 5-1. Short title. This Article may be cited as the
6 Affordable and Clean Energy Standards (ACES) Law. References in
7 this Article to "this Law" mean this Article.

8 Section 5-5. Findings. The General Assembly finds the
9 following:

10 (1) Energy efficiency is a cost-effective resource
11 that ensures affordable and reliable energy to Illinois
12 consumers.

13 (2) It is desirable to obtain the environmental
14 quality, public health, employment, economic development,
15 rate stabilization, and fuel diversity benefits of
16 developing new renewable energy resources for use in
17 Illinois.

18 (3) The General Assembly has previously found and
19 declared that the benefits of electricity from renewable
20 energy resources accrue to the public at large, thus
21 consumers and electric utilities and alternative retail
22 electric suppliers share an interest in developing and

1 using a significant level of these environmentally
2 preferable resources in the State's electricity supply
3 portfolio.

4 (4) Energy efficiency and renewable energy in Illinois
5 are resources that are currently underutilized.

6 (5) Investment in energy efficiency and load
7 management, combined with energy efficiency codes and
8 standards, present important opportunities to increase
9 Illinois' energy security, protect Illinois energy
10 consumers from price volatility, preserve the State's
11 natural resources and pursue an improved environment in
12 Illinois.

13 (6) It serves the public interest to require public
14 utility investments in cost-effective energy efficiency
15 and load management by ensuring recovery of costs for
16 reasonable and prudently incurred expenses of energy
17 efficiency, renewable energy, and load management
18 programs.

19 (7) Investments in energy efficiency and
20 implementation of utility energy efficiency programs
21 dedicated to economically disadvantaged Illinois
22 residents, in addition to existing low-income
23 weatherization programs managed by the State of Illinois,
24 will reduce the burden of utility costs on low-income
25 customers.

26 (8) Public utility investments in cost-effective

1 energy efficiency, renewable energy, and load management,
2 combined with the adoption of efficiency codes and
3 standards, can provide significant reductions in
4 greenhouse gas emissions, regulated air emissions, water
5 consumption, and natural resource depletion and can avoid
6 or delay the need for more expensive generation,
7 transmission, and distribution infrastructure.

8 (9) Investment in cost-effective energy efficiency
9 programs and renewable energy resources by utilities is a
10 public good that can provide real and sustained relief to
11 customers whose rising energy costs continue to threaten
12 the economic well-being of residential customers,
13 businesses, and industries in the State.

14 Section 5-10. Definitions.

15 "Commission" means the Illinois Commerce Commission.

16 "Department" means the Department of Commerce and Economic
17 Opportunity.

18 "Director", unless otherwise provided, means the Director
19 of the Department of Commerce and Economic Opportunity, or the
20 Director's designee.

21 "Energy conservation" is any reduction in electric power
22 consumption or natural gas consumption resulting from
23 increased energy efficiency in the end-use applications of
24 electricity and natural gas and increased customer knowledge
25 concerning the societal impacts of energy consumption.

1 "Energy efficiency" means measures, including energy
2 conservation measures, or programs, including load management
3 programs, that target customer behavior, equipment or devices,
4 or development and demonstration of breakthrough energy
5 efficiency equipment or devices, that result in a decrease in
6 consumption of electricity or natural gas.

7 "Load management" means measures or programs that target
8 equipment or devices to decrease peak electricity demand or
9 shift demand from peak to off-peak periods.

10 "Electric utility" has the same definition as found in
11 Section 16-102 of the Public Utilities Act.

12 "Public utility" has the same definition as found in
13 Section 3-105 of the Public Utilities Act.

14 "Municipality" means any city, village, or incorporated
15 town.

16 "Planning costs" are the costs of evaluating the future
17 demand for energy services and of evaluating alternative
18 methods of satisfying that demand. Planning costs include, but
19 are not to be limited to, costs associated with: (i)
20 econometric and end-use forecasting; (ii) identification and
21 evaluation of alternative demand-side and supply-side resource
22 options; and (iii) evaluation of costs associated with
23 alternative resources.

24 "Portfolio development costs" are costs of preparing a
25 resource in a portfolio for prompt and timely acquisition.
26 Portfolio development costs include, but are not to be limited

1 to, costs associated with: (i) negotiating contracts for
2 competitively acquired resources; (ii) acquiring and holding
3 resource options; and (iii) developing and maintaining the
4 capability to rapidly acquire demand-side resources.

5 "Renewable energy resources" includes energy or renewable
6 energy credits from wind, solar thermal energy, photovoltaic
7 cells and panels, dedicated crops grown for energy production
8 and organic waste biomass, biodiesel, hydropower that does not
9 involve new construction or significant expansion of
10 hydropower dams, and other such alternative sources of
11 environmentally preferable energy. For purposes of this Law,
12 landfill gas produced in the State shall be considered a
13 renewable energy resource. "Renewable energy resources" does
14 not include energy from the incineration, burning, or heating
15 of waste wood, tires, garbage, general household,
16 institutional and commercial waste, industrial lunchroom or
17 office waste, landscape waste, or construction or demolition
18 debris.

19 "Renewable energy credit" means a tradable credit that
20 represents the environmental attributes of a certain amount of
21 energy produced from a renewable energy resource.

22 "Energy efficiency resources" means energy efficiency
23 programs designed to assist customers to use energy more
24 efficiently, reduce or control their consumption of energy, as
25 measured in kilowatts, kilowatt-hours or therms, or otherwise
26 control the level of their gas or electric utility bills.

1 "Total resource cost test" or "TRC test" means a standard
2 that is met if, for an investment in energy efficiency or load
3 management, the benefit-cost ratio is greater than one. The
4 benefit-cost ratio is the ratio of the net present value of the
5 total benefits of the program to the net present value of the
6 total costs as calculated over the lifetime of the measures.

7 Total resource cost test compares the sum of avoided
8 electric and natural gas utility costs, representing the
9 benefits that accrue to the system and the participant in the
10 delivery of those efficiency programs, to the sum of all
11 incremental costs of end-use measures that are implemented due
12 to the program (including both utility and participant
13 contributions), plus costs to administer, deliver and evaluate
14 each demand-side program, to quantify the net savings obtained
15 by substituting the demand-side program for supply resources.

16 In calculating avoided costs of power and energy that the
17 gas and electric utility would otherwise have had to acquire,
18 reasonable estimates shall be included of financial costs
19 likely to be imposed by future regulations and legislation on
20 emissions of greenhouse gases.

21 Provisions include an oversight and evaluation process
22 that shall periodically monitor and develop data on the
23 cost-effectiveness and actual productivity of demand-side
24 efficiency and conservation programs.

25 "Unit of local government" means a county, township,
26 municipality, municipal corporation, school district,

1 community college district, community college board, forest
2 preserve district, park district, fire protection district,
3 sanitary district, or other local governmental bodies
4 designated as units of local government by law.

5 Section 5-15. Utility energy efficiency programs.

6 (a) It is the policy of the State that electric and natural
7 gas utilities are required to utilize cost-effective energy
8 efficiency and load management investments in their energy
9 resource portfolios. As used in this Section, "cost-effective"
10 means that the utility's portfolio of programs, not including
11 programs covered by item (4) of subsection (g) of this Section,
12 satisfies the total resource cost test.

13 (b) Electric utilities shall use cost-effective energy
14 efficiency resources to meet the following incremental annual
15 program energy savings goals:

- 16 (1) 0.2% of energy delivered in 2008;
- 17 (2) 0.4% of energy delivered in 2009;
- 18 (3) 0.6% of energy delivered in 2010;
- 19 (4) 0.8% of energy delivered in 2011;
- 20 (5) 1% of energy delivered in 2012;
- 21 (6) 1.4% of energy delivered in 2013;
- 22 (7) 1.8% of energy delivered in 2014; and
- 23 (8) 2% of energy delivered in 2015 and each year
24 thereafter.

25 (c) Natural gas utilities shall use cost-effective energy

1 efficiency resources to meet the following incremental annual
2 program energy savings goals:

3 (1) 0.2% of total annual Mcf delivered in 2008;

4 (2) 0.4% of total annual Mcf delivered in 2009;

5 (3) 0.6% of total annual Mcf delivered in 2010;

6 (4) 0.8% of total annual Mcf delivered in 2011;

7 (5) 1% of total annual Mcf delivered in 2012;

8 (6) 1.4% of total annual Mcf delivered in 2013;

9 (7) 1.8% of total annual Mcf delivered in 2014; and

10 (8) 2% of total annual Mcf delivered in 2015 and each
11 year thereafter.

12 (d) Notwithstanding the provisions of subsections (b) and
13 (c) of this Section, if the Commission's approval of a gas or
14 electric utility's plan pursuant to subsection (f) of this
15 Section is delayed beyond March 31, 2008, but occurs prior to
16 April 1, 2009, the initial target year and each subsequent
17 target year shall be delayed by one year; the targets shall be
18 delayed by an additional year for each additional year or
19 fraction thereof that the Commission's approval is delayed. In
20 the event that the Commission's approval is delayed until after
21 March 31, 2008, but occurs before July 1, 2008, the utility
22 shall nonetheless meet one-quarter of the target for 2008 set
23 out in item (1) of subsection (b) of this Section or item (1)
24 of subsection (c) of this Section, adjusted as provided in
25 subsection (f) of this Section.

26 (e) Notwithstanding the requirements of subsections (b)

1 and (c) of this Section, an electric or natural gas utility may
2 reduce the amount of energy efficiency resources it procures to
3 meet energy savings goals in any single year by an amount
4 necessary to limit the estimated average increase due to the
5 cost of these resources being included in the amounts paid by
6 retail customers in connection with electric or gas service to
7 no more than 0.5% of the amount estimated to have been paid by
8 such customers during the preceding calendar year procurement,
9 with such limit increasing by 0.5% in each of the years 2009
10 through 2011, for a maximum cap on the allowed estimated
11 average increase due to the cost of these resources of 2%. Four
12 years from the date after Commission approval of the initial
13 energy efficiency plan filings, the Commission shall review the
14 rate limitation and report to the General Assembly its findings
15 as to whether the rate cap unduly constrains the procurement of
16 energy efficiency resources that would be cost-effective.

17 (f) Electric and natural gas utilities shall be responsible
18 for overseeing the design, development, and filing of their
19 efficiency plans with the Commission. Electric and gas public
20 utilities may administer 75% of the energy efficiency programs
21 filed with and approved with the Commission, and may, as part
22 of such administration, outsource various aspects of program
23 development and implementation. The remaining 25% of those
24 energy efficiency programs filed with and approved by the
25 Commission must be administered by the Department of Commerce
26 and Economic Opportunity, and must be designed in conjunction

1 with the utility and the filing process. The Department may, as
2 part of such administration, outsource aspects of program
3 development and administration. A minimum of 10% of the entire
4 portfolio of cost-effective energy efficiency resources shall
5 be procured from units of local government, municipal
6 corporations, school districts, and community college
7 districts. The Department of Commerce and Economic Opportunity
8 shall administer the coordination of these programs.

9 The apportionment of the dollars to cover the costs to
10 administer Department's share of the portfolio of programs
11 shall be made to the Department once the Department has
12 completed an RFP process for an individual program or programs.

13 The details of the programs administered by the Department
14 shall be submitted by the Department to the Commission in
15 connection with the utility's filing regarding the plans that
16 the utility administers.

17 Each utility shall include, in its recovery of costs, the
18 costs estimated for implementation and operation of the
19 programs administered by the utility and by the Department.
20 Costs collected by the utility that are for programs
21 administered by the Department shall be submitted to the
22 Department pursuant to Section 605-323 of the Civil
23 Administrative Code of Illinois and shall be used by the
24 Department solely for the purpose of administering the
25 programs. The Department shall report to the Commission on an
26 annual basis regarding the costs actually incurred by the

1 Department in the implementation of the programs. Any changes
2 to program costs as a result of program modifications shall be
3 appropriately reflected in amounts recovered by the utility and
4 turned over to the Department.

5 The portfolio of programs, administered by both the
6 utilities and the Department shall, in combination, be designed
7 to achieve the annual savings targets described in subsections
8 (b) and (c) of this Section, as modified by subsections (d) and
9 (e) of this Section.

10 The utility and the Department shall agree upon a
11 reasonable division of the portfolio of programs and determine
12 the measurable corresponding percentage of the savings goals
13 represented by each administrator (whether utility or
14 Department).

15 The revenue needs of the programs, as apportioned between
16 the filing utility and the Department, shall roughly correlate
17 to the savings targets and shall remain within the percentage
18 described in this subsection (f).

19 No utility shall be assessed a penalty under subsection (g)
20 of this Section for failure to make a timely filing if such
21 failure is the result of a lack of agreement with the
22 Department with respect to the division of portfolio programs
23 or related costs or target assignments. In such a case, the
24 Department and the utility shall file their respective plans
25 with the Commission and the Commission shall determine an
26 appropriate division of programs that meets the requirements of

1 this Section.

2 If Department is unable to meet incremental annual
3 performance goals for the portion of the portfolio administered
4 by the Department, then the utility and the Department shall
5 jointly submit a modified filing to the Commission explaining
6 the performance shortfall and recommending an appropriate
7 course going forward, including any program modifications that
8 may be appropriate in light of the evaluations conducted under
9 item (7) of subsection (g) of this Section. In this case, the
10 utility obligation to collect the Department's costs and turn
11 over those funds to the Department under this subsection (f)
12 shall continue only if the Commission approves the program
13 modifications proposed by the Department.

14 (g) The Commission shall adopt rules within 3 months after
15 the effective date of this Law that specify the procedure for
16 electric and gas utilities to develop and submit an energy
17 efficiency plan. Among other things, the rules shall include
18 standards for defining the components of the total resource
19 cost test. Rules shall specify the process for coordination of
20 energy efficiency program planning between the Department and
21 the utilities. Rules shall also specify the methodology for
22 establishing a price per kilowatt-hour for energy efficiency
23 projects implemented by units of local government and the
24 process by which the Department shall select these projects for
25 inclusion in each utility's energy efficiency plan. Within 3
26 months after adoption by the Commission of rules, and every 3

1 years thereafter, Illinois electric and gas utilities shall
2 file an energy efficiency plan with the Commission. If a
3 utility does not file such a plan, it shall face a penalty of
4 \$100,000 per day until the plan is filed. Each utility's plan
5 shall reflect the utility's judgment on how to meet the
6 utility's portion of the energy efficiency goals identified in
7 subsections (b) and (c) of this Section as modified by
8 subsections (d) and (e), taking into account the unique
9 circumstances of the utility's service territory. The
10 Commission shall approve or disapprove each plan within 3
11 months after its submission. If the Commission disapproves a
12 plan, the Commission shall, within 30 days, describe in detail
13 the reasons for the disapproval and describe a path by which
14 the utility may file a revised draft of the plan to address the
15 Commission's concerns satisfactorily. If the utility does not
16 refile with the Commission within 60 days, the utility shall be
17 subject to penalties at a rate of \$100,000 per day until the
18 plan is filed. This process shall continue, and penalties shall
19 accrue, until the utility has successfully filed and the
20 Commission has approved a portfolio of energy efficiency
21 programs. Penalties shall be deposited into the Energy
22 Efficiency Resources Trust Fund. In submitting proposed energy
23 efficiency program plans and funding levels to meet the savings
24 goals adopted by this Law the utility shall:

- 25 (1) Demonstrate that its proposed level of electric or
26 natural gas energy efficiency program activities and

1 funding is consistent with the adopted electric and natural
2 gas savings goals that are identified in subsections (b)
3 and (c) of this Section as modified by subsections (d) and
4 (e).

5 (2) Present specific proposals for programs that help
6 in the implementation of new building and appliance
7 standards that have been placed into effect.

8 (3) Present estimates of the net short-term and
9 long-term rate impacts associated with the proposed
10 portfolio of programs designed to meet the adopted energy
11 savings goals that are identified in subsections (b) and
12 (c) of this Section as modified by subsections (d) and (e)
13 of this Section. The utilities shall work with Commission
14 to develop a consistent format for presenting these
15 estimates in their filings.

16 (4) Coordinate with the Department and the Department
17 of Healthcare and Family Services to present a portfolio of
18 energy efficiency programs targeted to households at or
19 below 150% of the poverty level at a level proportionate to
20 those households' share of total annual utility revenues in
21 Illinois.

22 (5) Demonstrate that its overall portfolio of
23 investments in energy efficiency, not including programs
24 covered by item (4) of this subsection (g), are
25 cost-effective using the total resource cost test and
26 represent a diverse cross-section of opportunities for

1 customers of all rate classes to participate in the
2 programs.

3 (6) Include a proposed cost-recovery tariff mechanism
4 to fund the proposed energy efficiency programs and to
5 ensure the recovery of the prudently and reasonably
6 incurred costs of Commission approved programs.

7 (7) Provide for an annual independent evaluation of the
8 performance of the cost-effectiveness of the utility's
9 portfolio of programs and the Department's portfolio of
10 programs, as well as a full review of the 3-year results of
11 the broader net program impacts and, to the extent
12 practicable, for adjustment of the programs on a
13 going-forward basis as a result of the evaluations. The
14 resources dedicated to evaluation shall not exceed 3% of
15 portfolio resources in any given year.

16 (h) A public utility providing approved energy efficiency
17 programs in the State shall be permitted to recover costs of
18 those programs through an automatic adjustment clause tariff
19 filed with and approved by the Commission. The tariff may be
20 established outside the context of a general rate case. Each
21 year the Commission shall initiate a review to reconcile any
22 amounts collected with the actual costs and to determine the
23 adjustment to the annual tariff factor to match annual
24 expenditures. The determination shall be made within 90 days
25 after the date of initiation of the review.

26 (i) No more than 3% of energy efficiency program revenue

1 may be allocated for demonstration of breakthrough energy
2 efficiency equipment and devices.

3 (j) Subsection (e) of this Section shall not apply to an
4 Illinois public utility operating in an adjacent state with
5 more than 100,000 but fewer than 200,000 customers in Illinois,
6 offering energy efficiency programs under the Public Utilities
7 Act.

8 Section 5-20. Renewable portfolio standard.

9 (a) An electric utility shall procure or obtain
10 cost-effective renewable energy resources in amounts that
11 equal or exceed the following percentages of the total
12 electricity that the electric utility supplies to its retail
13 Illinois customers: 2% by December 31, 2008; 4% by December 31,
14 2009; 5% by December 31, 2010; 6% by December 31, 2011; 7% by
15 December 31, 2012; 8% by December 31, 2013; 9% by December 31,
16 2014; and 10% by December 31, 2015. It shall be the goal of the
17 State that cost-effective renewable energy resources be
18 available to supply an amount of the total electricity that
19 electric utilities supply to their retail customers that
20 continues to increase after 2015 by 1.5% per year to 25% by
21 2025. Provided, however, that if the Commission's adoption of
22 rules pursuant to subsection (f) of this Section is delayed
23 beyond March 31, 2008, but occurs prior to April 1, 2009, the
24 initial target year and each subsequent target year shall be
25 delayed by one year; the targets shall be delayed by an

1 additional year for each additional year or fraction thereof
2 that the Commission's adoption of rules is delayed. In the
3 event that the Commission's adoption of rules is delayed after
4 March 31, 2008, but occurs before July 1, 2008, the utility
5 shall nonetheless meet one-quarter of the target for 2008 of
6 electricity supplied to retail Illinois customers by December
7 31, 2008. To the extent that it is available, at least 75% of
8 the renewable energy resources used to meet these standards
9 shall come from wind generation. For purposes of this Section,
10 "cost-effective" shall mean that the costs of procuring
11 renewable energy resources do not cause the limit stated in
12 subsection (b) of this Section to be exceeded.

13 (b) For purposes of this Section, the required procurement
14 of renewable energy resources for a particular year shall be
15 measured as a percentage of the actual amount of electricity
16 (megawatt-hours) supplied by the electric utility in the
17 calendar year ending immediately prior to the procurement.

18 Notwithstanding the requirements of subsection (a) of this
19 Section, an electric utility may reduce the amount of renewable
20 energy resources procured under new contracts in any single
21 year by an amount necessary to limit the estimated average net
22 increase due to the costs of these resources included in the
23 amounts paid by retail customers in connection with electric
24 service to no more than 0.5% of the amount paid by such
25 customers during the preceding calendar year, with such limit
26 increasing by 0.5% in each of the 3 years 2009 through 2011.

1 The maximum cap on the allowed estimated average increase due
2 to the cost of these resources is 2%. No later than June 30,
3 2011, the Commission shall review the rate limitation and
4 report to the General Assembly its findings as to whether the
5 rate cap unduly constrains the procurement of renewable energy
6 resources.

7 (c) Through December 31, 2011, renewable energy resources
8 shall be counted for the purpose of meeting the renewable
9 energy standards set forth in subsection (a) of this Section
10 only if they are generated from facilities located in the
11 State, provided that cost-effective renewable resources are
12 available from such facilities. After December 31, 2011,
13 renewable energy resources located in states that adjoin
14 Illinois may be counted towards compliance with the standards
15 set forth in subsection (a) of this Section so long as such
16 resources are generated from resources that meet the definition
17 of renewable energy resources as defined by this statute. Any
18 electric utility with fewer than 90,000 but more than 50,000
19 electric customers in Illinois as of January 1, 2007 shall be
20 allowed to count renewable energy resources generated in a
21 state adjoining Illinois for the purpose of meeting the
22 renewable energy standard set forth in subsection (a) of this
23 Section if such resources are generated from a facility
24 constructed in the year 2006.

25 (d) Each electric utility shall report to the Commission on
26 compliance with these standards by April 1 of each year,

1 beginning in 2009.

2 (e) If an electric utility does not, during a calendar
3 year, procure or obtain the full amount of renewable energy
4 resources specified by the standards in subsection (a) of this
5 Section, as modified by the limitations of subsection (b) of
6 this Section, then the electric utility shall pay a penalty of
7 \$40 per megawatt-hour each year for any shortfall during such
8 year unless and until the utility makes sufficient additional
9 purchases to meet the requirement. Provided, however, that, if
10 the electric utility proves to the Commission that
11 cost-effective renewable energy resources are not available in
12 sufficient quantities to meet the renewable energy standards
13 set forth in subsection (a) of this Section, as modified by the
14 limitations of subsection (b) of this Section, and, if the
15 Commission finds that the electric utility has, in fact, proved
16 that the cost-effective renewable energy resources are not
17 available in sufficient quantities, after notice and a hearing
18 conducted in accordance with the Commission's rules of
19 practice, then the Commission shall waive the penalty. Any
20 penalty payment shall be deposited into the Renewable Energy
21 Resources Trust Fund to be used by the Department of Commerce
22 and Economic Opportunity for the sole purposes of supporting
23 the actual development, construction, and utilization of
24 renewable energy projects in the State.

25 (f) The Commission shall adopt rules as necessary within 9
26 months after the effective date of this Law to assist in

1 implementing this Section including, but not limited to,
2 methods of procurement, accounting, tracking, and reporting in
3 order to achieve the full objectives of this Section. The rules
4 shall also provide for recovery of costs incurred and the
5 pass-through to customers of any savings achieved by electric
6 utilities as a result of procuring or obtaining the renewable
7 energy resources specified under subsection (a) of this
8 Section. The rate elements and rates used for such cost
9 recovery may be established by the electric utility, subject to
10 the Commission's review and approval, outside the context of a
11 general rate case.

12 (g) In connection with their compliance with the
13 requirements of subsection (a) of this Section, electric
14 utilities may enter into long-term contracts of up to 20 years
15 in length with providers of renewable energy resources, and the
16 costs or savings associated with those contracts shall be
17 reflected in tariffed rates for the duration of those
18 contracts.

19 (h) Nothing shall prohibit an electric utility from issuing
20 a competitive solicitation for renewable energy resources in
21 order to meet the standards of subsection (a) of this Section
22 or from beginning to recover the associated costs in advance of
23 the conclusion of the rulemaking referenced in subsection (f)
24 of this Section, provided that such electric utility shall have
25 first requested and received Commission approval for the design
26 and conduct of such solicitation and the associated cost

1 recovery methodology and tariff.

2 ARTICLE 10

3 Section 10-1. Short title. This Article may be cited as the
4 Wind Energy Indemnity Fund Law. References in this Article to
5 "this Law" mean this Article.

6 Section 10-5. Definitions.

7 "Abandonment" means:

8 (1) in the case of a landowner claimant:

9 (A) failure by the wind energy company to operate a
10 wind turbine or wind turbines for the purpose for which
11 they were designed and installed, for a period of 12
12 consecutive months; and

13 (B) failure to pay the landowner moneys owed to him or
14 her in accordance with the underlying agreement, for a
15 period of 6 consecutive months;

16 (2) in the case of a county board claimant:

17 (A) failure by the wind energy company to operate a
18 wind turbine or wind turbines for the purposes for which
19 they were designed and installed, for a period of 12
20 consecutive months; and

21 (B) failure to adhere to any or all of the restrictions
22 and conditions that were part of the approval process of
23 the appropriate county authority for the granting of the

1 special use permit, conditional use permit, zoning change,
2 or zoning or permitting ordinance of any kind given in
3 order to allow the installation and operation of the wind
4 turbine or wind turbines.

5 "Board" means the governing body of the Wind Energy
6 Indemnity Fund Corporation that is created in Section 10-50.

7 "Claimant" means either a landowner or a county board
8 seeking to have a deconstruction paid for from the Wind Energy
9 Indemnity Fund and carried out by the Department of
10 Agriculture.

11 "Corporation" means the Wind Energy Indemnity Fund
12 Corporation, as established in Section 10-50.

13 "County board" has the meaning set forth in Section 1.07 of
14 the Statute on Statutes.

15 "Deconstruction" means removal of all property comprising
16 a wind energy generation facility from the property of a
17 landowner and restoration of the property to the condition in
18 which it existed immediately prior to the construction of the
19 facility, including, but not limited to, soil type and
20 topography; provided, however, that foundations, pads,
21 electrical lines, and any other underground facilities must be
22 removed to a depth of 4 feet below the surface of the ground.

23 "Department" means the Department of Agriculture.

24 "Director", unless otherwise provided, means the Director
25 of Agriculture, or the Director's designee.

26 "Fund" means the Wind Energy Indemnity Fund.

1 "Landowner" means any person with an ownership interest in
2 property subject to an underlying agreement.

3 "Person" means any individual or entity, including, but not
4 limited to, a sole proprietorship, a partnership, a
5 corporation, a cooperative, an association, a limited
6 liability company, an estate, a trust, or a governmental
7 agency.

8 "Underlying agreement" means a written arrangement with a
9 landowner, including, but not limited to, an easement, under
10 the terms of which a person constructs or intends to construct
11 a wind energy generation facility on the property of the
12 landowner.

13 "Wind energy generation facility" means all property of any
14 nature whatsoever comprising an operation designed to harness
15 wind energy and create electricity therefrom, including, but
16 not limited to, turbines, towers, roadways, concrete
17 foundations, transmission lines, and poles, all situated on,
18 under, or over the property of a landowner.

19 "Wind energy indemnity trust account" or "trust account"
20 means a trust account established by the Director of the
21 Department of Agriculture that is used for the receipt and
22 disbursement of moneys paid from the Fund.

23 "Wind turbine" means each tower, blade, and propeller
24 housing designed for wind energy generation.

25 Section 10-10. Powers and duties of the Director of the

1 Department of Agriculture. The Director has all powers
2 necessary and proper to fully and effectively execute the
3 provisions of this Law and has the general duty to implement
4 this Law. The Director's powers and duties include, but are not
5 limited to, the following:

6 (1) The Director shall serve as president of the
7 Corporation.

8 (2) The Director may take any action that may be
9 reasonable or appropriate to enforce this Law and its
10 rules.

11 Section 10-15. Administrative procedure. The Illinois
12 Administrative Procedure Act applies to this Law.

13 Section 10-20. Administrative review and venue. Final
14 administrative decisions of the Department of Agriculture are
15 subject to judicial review under Article III of the Code of
16 Civil Procedure and its rules. The term "administrative
17 decision" is defined as in Section 3-101 of the Code of Civil
18 Procedure. An action to review a final administrative decision
19 under this Law may be commenced in the circuit court of any
20 county in which any part of the transaction occurred that gave
21 rise to the claim that was the subject of the proceedings
22 before the Department of Agriculture.

23 Section 10-25. Rules. The Department of Agriculture may

1 adopt rules that are necessary for the implementation and
2 administration of this Law.

3 Section 10-30. Fund assessments.

4 (a) There is an assessment of \$10,000 for each wind turbine
5 constructed or under construction as of the effective date of
6 this Law and for each turbine constructed thereafter, under the
7 provisions of an underlying agreement. The assessment is an
8 obligation of the owner of each wind turbine and is payable in
9 one initial payment of \$5,000 and an additional \$5,000 payable
10 in equal annual installments of \$250 over a period of 20 years;
11 provided, however, that the subsequent annual installments
12 must be adjusted based on inflation, as reflected in the
13 Consumer Price Index, on an annual basis. The initial payment
14 is payable within 90 days after the effective date of this Law
15 for wind turbines already constructed or under construction,
16 and, in all other cases, prior to the commencement of
17 construction.

18 (b) All installments under this Section must be sent to the
19 Department of Agriculture and made payable to the Corporation.
20 It is the responsibility of all parties to an underlying
21 agreement to report the existence and specific provisions of
22 the underlying agreement to the Department of Agriculture.

23 (c) The Department of Agriculture shall mail all assessment
24 notices to owners of wind energy generation facilities at least
25 30 days before the assessment installment is due.

1 (d) All wind turbines already constructed, under
2 construction, or issued a building permit before the effective
3 date of this Law are to provide proof to the county of payment
4 to the Fund within 95 days after the effective date of this
5 Law. If such proof of payment is not provided, then the county
6 must order the wind energy company to stop all operation and
7 construction activities until the county receives proof of
8 payment to the Fund. For all other wind turbines, no county may
9 issue a building permit without being provided proof that the
10 above assessment has been paid to the Fund.

11 Section 10-35. Abandonment. Upon an administrative finding
12 in a hearing held by the Department of Agriculture that a
13 deconstruction has been validly determined and ordered by
14 either a court of competent jurisdiction or an arbitrator in
15 binding arbitration, and deconstruction, after a period of at
16 least 8 months, has not been completed satisfactorily, the
17 Director has all the powers for the benefit of claimants as
18 established under this Law, including, but not limited to, the
19 power to do the following:

20 (a) request the transfer of moneys from the Wind Energy
21 Indemnity Fund to the trust account for the purpose of
22 paying the cost of deconstruction in accordance with this
23 Law;

24 (b) disburse the funds in the trust account for the
25 deconstruction in accordance with this Law;

1 (c) cause the sale of the deconstructed assets;

2 (d) retain from the sale of the deconstructed assets
3 moneys adequate to cover the costs to the Department of
4 Agriculture of the deconstruction, and pay those amounts to
5 the Fund; or

6 (e) return all moneys over and above the costs to the
7 Department of Agriculture for the deconstruction to the
8 owner or owners of the deconstructed assets, or to the
9 holders of valid liens on those assets.

10 Section 10-40. Statutory lien. Except as otherwise
11 provided in this Section, the Department of Agriculture shall
12 have a lien prior and paramount to all other liens of any sort
13 on the assets of the wind energy system to the extent of the
14 costs incurred by the Department to accomplish the
15 deconstruction of the abandoned wind energy system, which
16 arises and attaches upon construction of said wind energy
17 system. The lien herein granted to the Department shall not be
18 prior and paramount to the statutory lien in favor of real
19 property taxes.

20 Section 10-45. Claims.

21 (a) A claimant shall file a complaint on forms supplied by
22 the Department of Agriculture that contains at least the
23 following:

24 (1) the name and address of the claimant;

1 (2) the name and address of the owner of the wind
2 energy generation facility in question;

3 (3) the location of the wind energy generation facility
4 in question;

5 (4) a copy of either a court decision, or the finding
6 of an arbitrator in binding arbitration proceeding, that
7 indicates a finding of abandonment of the wind energy
8 generation facility in question; a determination that the
9 underlying agreement is null, void, and of no further force
10 and effect; and an order for deconstruction of same. The
11 court order or arbitration decision must have been rendered
12 at least 8 months previously, and the time for all appeals
13 and related proceedings must have lapsed;

14 (5) evidence showing that the deconstruction ordered
15 by a court, or by an arbitrator in a proceeding for binding
16 arbitration, has not been carried to a satisfactory
17 conclusion, as defined in this Law; and

18 (6) a request that the funds necessary to perform the
19 deconstruction be paid to the Department from the Fund and
20 that the Department of Agriculture carry out the
21 deconstruction in accordance with the order of the court or
22 the arbitrator and in accordance with the definition of
23 deconstruction as contained in this Law.

24 (b) A hearing shall be held by the Department of
25 Agriculture and a decision rendered as to the validity of the
26 claimant's complaint. In the event of a finding that the

1 complaint is valid, then, within 90 days after the date, the
2 Department shall obtain at least 2 bids from contractors to
3 carry out the specific deconstruction. One bidder must be
4 chosen by the Department within the following 60 days, and the
5 Department, within 60 days thereafter, shall enter into a
6 written agreement with the successful bidder for the
7 deconstruction, which must be accomplished within 6 months
8 thereafter.

9 (c) It is the responsibility of the Department of
10 Agriculture to monitor the progress of the deconstruction and
11 provide the necessary supervisory oversight to ensure that it
12 is accomplished in accordance with the deconstruction
13 agreement and the provisions of this Act.

14 Section 10-50. Illinois Wind Energy Indemnity Fund
15 Corporation; creation; powers.

16 (a) There is hereby created the Illinois Wind Energy
17 Indemnity Fund Corporation, a political subdivision, body
18 politic, and public corporation. The governing powers of the
19 Corporation are vested in the Board of Directors composed of
20 the Director, who shall personally serve as President; the
21 Attorney General or his or her designee, who shall serve as
22 Secretary; the State Treasurer or his or her designee, who
23 shall serve as Treasurer; and the Chairman of the Illinois
24 Commerce Commission, or his or her designee. Three members of
25 the Board constitute a quorum at any meeting of the Board, and

1 the affirmative vote of 3 members is necessary for any action
2 taken by the Board at a meeting, except that a lesser number
3 may adjourn a meeting from time to time. A vacancy in the
4 membership of the Board does not impair the right of a quorum
5 to exercise all the rights and perform all the duties of the
6 Board and Corporation.

7 (b) The Corporation has the following powers, together with
8 all powers incidental or necessary to the discharge of those
9 powers in corporate form:

10 (1) to have perpetual succession by its corporate name
11 as a corporate body;

12 (2) to adopt, alter, and repeal bylaws, not
13 inconsistent with the provisions of this Law, for the
14 regulation and conduct of its affairs and business;

15 (3) to adopt and make use of a corporate seal and to
16 alter the seal at pleasure;

17 (4) to avail itself of the use of information,
18 services, facilities, and employees of the State of
19 Illinois in carrying out the provisions of this Law;

20 (5) to receive funds assessed by the Department of
21 Agriculture under this Law;

22 (6) to administer a fund, to be known as the Wind
23 Energy Indemnity Fund, by investing funds of the
24 Corporation that the Board may determine are not presently
25 needed for its corporate purposes;

26 (7) upon the request of the Director, to make payment

1 from the Fund to the Trust Account when payment is
2 necessary to pay costs of deconstruction in accordance with
3 the provisions of this Law;

4 (8) to authorize, receive, and disburse funds by
5 electronic means; and

6 (9) to have those powers that are necessary or
7 appropriate for the exercise of the powers specifically
8 conferred upon the Corporation and all incidental powers
9 that are customary in corporations.

10 (c) All assessments by the Department of Agriculture must
11 be held by the Corporation in the Fund.

12 (d) Subject to applicable law, the assets of the Fund may
13 be invested and reinvested at the discretion of the
14 Corporation, and the income from these investments must be
15 deposited into the Fund and must be available for the same
16 purposes as all other assets of the Fund.

17 (e) The assets of the Fund may not be available for any
18 purposes other than the payment of deconstruction costs under
19 this Law and the payment of refunds of amounts that the Board
20 determines have been inappropriately paid into the Fund, and
21 may not be transferred to any other fund, other than the trust
22 account when necessary to pay deconstruction costs under this
23 Law or to pay refunds authorized by the Board.

24 Section 10-55. No waiver. Neither the Board nor the
25 Director has the authority to alter, vary, or revise the

1 provisions of this Law by agreement with any claimant or other
2 entity.

3 Section 10-90. The Renewable Energy, Energy Efficiency,
4 and Coal Resources Development Law of 1997 is amended by
5 changing Sections 6-5 and 6-7 as follows:

6 (20 ILCS 687/6-5)

7 (Section scheduled to be repealed on December 16, 2007)

8 Sec. 6-5. Renewable Energy Resources and Coal Technology
9 Development Assistance Charge.

10 (a) Notwithstanding the provisions of Section 16-111 of the
11 Public Utilities Act but subject to subsection (e) of this
12 Section, each public utility, electric cooperative, as defined
13 in Section 3.4 of the Electric Supplier Act, and municipal
14 utility, as referenced in Section 3-105 of the Public Utilities
15 Act, that is engaged in the delivery of electricity or the
16 distribution of natural gas within the State of Illinois shall,
17 effective January 1, 1998, assess each of its customer accounts
18 a monthly Renewable Energy Resources and Coal Technology
19 Development Assistance Charge. The delivering public utility,
20 municipal electric or gas utility, or electric or gas
21 cooperative for a self-assessing purchaser remains subject to
22 the collection of the fee imposed by this Section. The monthly
23 charge shall be as follows:

24 (1) \$0.05 per month on each account for residential

1 electric service as defined in Section 13 of the Energy
2 Assistance Act;

3 (2) \$0.05 per month on each account for residential gas
4 service as defined in Section 13 of the Energy Assistance
5 Act;

6 (3) \$0.50 per month on each account for nonresidential
7 electric service, as defined in Section 13 of the Energy
8 Assistance Act, which had less than 10 megawatts of peak
9 demand during the previous calendar year;

10 (4) \$0.50 per month on each account for nonresidential
11 gas service, as defined in Section 13 of the Energy
12 Assistance Act, which had distributed to it less than
13 4,000,000 therms of gas during the previous calendar year;

14 (5) \$37.50 per month on each account for nonresidential
15 electric service, as defined in Section 13 of the Energy
16 Assistance Act, which had 10 megawatts or greater of peak
17 demand during the previous calendar year; and

18 (6) \$37.50 per month on each account for nonresidential
19 gas service, as defined in Section 13 of the Energy
20 Assistance Act, which had 4,000,000 or more therms of gas
21 distributed to it during the previous calendar year.

22 (b) The Renewable Energy Resources and Coal Technology
23 Development Assistance Charge assessed by electric and gas
24 public utilities shall be considered a charge for public
25 utility service.

26 (c) Fifty percent of the moneys collected pursuant to this

1 Section shall be deposited in the Renewable Energy Resources
2 Trust Fund by the Department of Revenue. The remaining 50
3 percent of the moneys collected pursuant to this Section shall
4 be deposited in the Coal Technology Development Assistance Fund
5 by the Department of Revenue for the exclusive purposes of (1)
6 capturing or sequestering carbon emissions produced by coal
7 combustion; (2) supporting research on the capture and
8 sequestration of carbon emissions produced by coal combustion;
9 and (3) improving coal miner safety ~~use under the Illinois Coal~~
10 ~~Technology Development Assistance Act.~~

11 (d) By the 20th day of the month following the month in
12 which the charges imposed by this Section were collected, each
13 utility and alternative retail electric supplier collecting
14 charges pursuant to this Section shall remit to the Department
15 of Revenue for deposit in the Renewable Energy Resources Trust
16 Fund and the Coal Technology Development Assistance Fund all
17 moneys received as payment of the charge provided for in this
18 Section on a return prescribed and furnished by the Department
19 of Revenue showing such information as the Department of
20 Revenue may reasonably require.

21 (e) The charges imposed by this Section shall only apply to
22 customers of municipal electric or gas utilities and electric
23 or gas cooperatives if the municipal electric or gas utility or
24 electric or gas cooperative makes an affirmative decision to
25 impose the charge. If a municipal electric or gas utility or an
26 electric or gas cooperative makes an affirmative decision to

1 impose the charge provided by this Section, the municipal
2 electric or gas utility or electric or gas cooperative shall
3 inform the Department of Revenue in writing of such decision
4 when it begins to impose the charge. If a municipal electric or
5 gas utility or electric or gas cooperative does not assess this
6 charge, its customers shall not be eligible for the Renewable
7 Energy Resources Program.

8 (f) The Department of Revenue may establish such rules as
9 it deems necessary to implement this Section.

10 (Source: P.A. 92-690, eff. 7-18-02.)

11 (20 ILCS 687/6-7)

12 (Section scheduled to be repealed on December 16, 2007)

13 Sec. 6-7. Repeal. The provisions of this Law are repealed
14 on December 12, 2015 ~~10 years after the effective date of this~~
15 ~~amendatory Act of 1997 unless renewed by act of the General~~
16 ~~Assembly.~~

17 (Source: P.A. 90-561, eff. 12-16-97.)

18 ARTICLE 99

19 Section 999. Effective date. This Act takes effect upon
20 becoming law.