



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB4321

Introduced 2/27/2009, by Rep. Harry Osterman

#### SYNOPSIS AS INTRODUCED:

220 ILCS 5/8-104 new

Amends the Public Utilities Act. Provides that natural gas utilities shall implement cost-effective energy efficiency measures to meet specified cumulative natural gas savings requirements. Provides that a natural gas utility may meet 1/3 of the annual energy efficiency portfolio requirement through electricity savings associated with combined heat and power systems using an electricity-to-gas savings conversion factor, which shall be established by the Illinois Commerce Commission no later than March 1, 2010. Provides that notwithstanding the requirements of specified provisions, a natural gas utility shall limit the amount of energy efficiency implemented in any 3-year reporting period established by specified provisions by an amount necessary to limit the estimated average increase in the amounts paid by retail customers in connection with natural gas service to no more than 2% in the applicable 3-year reporting period. Provides that natural gas utilities shall be responsible for overseeing the design, development, and filing of their efficiency plans with the Commission. Contains provisions concerning the implementation of energy efficiency measures by the Department of Commerce and Economic Opportunity. Provides that each gas utility shall file an energy efficiency plan with the Commission to meet the energy efficiency standards for through May 31, 2014. Contains provisions concerning contributions by a gas utility into the Low-Income Home Energy Assistance Program. Provides that not later than January 1, 2010, the Commission shall, after an opportunity for public comment, provide the General Assembly with recommended modifications to the Act to foster statewide coordination and consistency between statutorily-mandated natural gas and electric energy efficiency programs to achieve specified goals. Effective immediately.

LRB096 11691 MJR 22371 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning utilities.

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

4 Section 5. The Public Utilities Act is amended by adding  
5 Section 8-104 as follows:

6 (220 ILCS 5/8-104 new)

7 Sec. 8-104. Natural gas energy efficiency programs.

8 (a) It is the policy of the State that natural gas  
9 utilities are required to use cost-effective energy efficiency  
10 measures to reduce direct and indirect costs to consumers. It  
11 serves the public interest to allow natural gas utilities to  
12 recover costs for reasonably and prudently incurred expenses  
13 for cost-effective energy efficiency measures.

14 (b) For purposes of this Section, "energy efficiency  
15 measures" means measures that reduce the amount of energy  
16 required to achieve a given end use and "cost-effective" means  
17 that the measures satisfy the total resource cost test which,  
18 for purposes of this Section, means a standard that is met if,  
19 for an investment in energy efficiency, the benefit-cost ratio  
20 is greater than one. The benefit-cost ratio is the ratio of the  
21 net present value of the total benefits of the measures to the  
22 net present value of the total costs as calculated over the  
23 lifetime of the measures. The total resource cost test compares

1 the sum of avoided natural gas utility costs, representing the  
2 benefits that accrue to the system and the participant in the  
3 delivery of those efficiency measures, as well as other  
4 quantifiable societal benefits, to the sum of all incremental  
5 costs of end use measures, including both utility and  
6 participant contributions, plus costs to administer, deliver,  
7 and evaluate each demand-side measure, to quantify the net  
8 savings obtained by substituting demand-side measures for  
9 supply resources. In calculating avoided costs, reasonable  
10 estimates shall be included for financial costs likely to be  
11 imposed by future regulation of emissions of greenhouse gases.  
12 The low-income programs described in item (4) of subsection (h)  
13 of this Section shall not be required to meet the total  
14 resource cost test.

15 (c) Natural gas utilities shall implement cost-effective  
16 energy efficiency measures to meet at least the following  
17 cumulative natural gas savings requirements, based upon the  
18 total amount of gas delivered during calendar year 2009:

19 (1) 0.2% by May 31, 2012;

20 (2) 0.4% by May 31, 2013;

21 (3) 0.6% by May 31, 2014;

22 (4) 0.8% by May 31, 2015;

23 (5) 1% by May 31, 2016;

24 (6) 1.2% by May 31, 2017;

25 (7) 1.4% by May 31, 2018; and

26 (8) 1.5% by May 31, 2019; and in each 12 month period

1       thereafter.

2       (d) Notwithstanding the requirements of subsection (c) of  
3 this Section, a natural gas utility may meet 1/3 of the annual  
4 energy efficiency portfolio requirement through electricity  
5 savings associated with combined heat and power systems using  
6 an electricity-to-gas savings conversion factor, which shall  
7 be established by the Commission no later than March 1, 2010.

8       For purposes of this Section:

9           (1) "Combined heat and power system" means a system  
10 that uses the same energy source both for the generation of  
11 electrical or mechanical power and the production of steam  
12 or another form of useful thermal energy, provided that the  
13 net wholesale sales of electricity by the facility will not  
14 exceed 10% of total annual electric generation by the  
15 facility.

16           (2) "Combined heat and power system savings" means the  
17 electric output, and the electricity saved due to the  
18 mechanical output, of a combined heat and power system,  
19 adjusted to reflect any increase in fuel consumption by  
20 that system as compared to the fuel that would have been  
21 required to produce an equivalent useful thermal energy  
22 output in a separate thermal-only system.

23       (e) Notwithstanding the requirements of subsection (c) of  
24 this Section, a natural gas utility shall limit the amount of  
25 energy efficiency implemented in any 3-year reporting period  
26 established by item (8) of subsection (g) of this Section by an

1 amount necessary to limit the estimated average increase in the  
2 amounts paid by retail customers in connection with natural gas  
3 service to no more than 2% in the applicable 3-year reporting  
4 period.

5 (f) Natural gas utilities shall be responsible for  
6 overseeing the design, development, and filing of their  
7 efficiency plans with the Commission. The utility shall  
8 implement 75% of the energy efficiency programs approved by the  
9 Commission, and may outsource program development,  
10 administration, and implementation. The remaining 25% of those  
11 energy efficiency measures approved by the Commission shall be  
12 implemented by the Department of Commerce and Economic  
13 Opportunity, and must be designed in conjunction with the  
14 utility and the filing process. The Department may outsource  
15 development and implementation of energy efficiency measures.  
16 A minimum of 10% of the entire portfolio of cost effective  
17 energy efficiency measures shall be procured from local  
18 government, municipal corporations, school districts, and  
19 community college districts. Up to 5% of the entire portfolio  
20 of cost-effective energy efficiency measures may be granted to  
21 local government and municipal corporations for market  
22 transformation initiatives. The Department shall coordinate  
23 the implementation of these measures.

24 The apportionment of the dollars to cover the costs to  
25 implement the Department's share of the portfolio of energy  
26 efficiency measures shall be made to the Department once the

1 Department has executed grants or contracts for energy  
2 efficiency measures and provided supporting documentation for  
3 those grants and the contracts to the utility. The details of  
4 the measures implemented by the Department shall be submitted  
5 by the Department to the Commission in connection with the  
6 utility's filing regarding the energy efficiency measures that  
7 the utility implements.

8 A utility providing approved energy efficiency measures in  
9 the State shall be permitted to recover costs of those measures  
10 through an automatic adjustment clause tariff filed with and  
11 approved by the Commission. The tariff shall be established  
12 outside the context of a general rate case. Each year the  
13 Commission shall initiate a review to reconcile any amounts  
14 collected with the actual costs and to determine the required  
15 adjustment to the annual tariff factor to match annual  
16 expenditures. In order to ensure the least-cost provision of  
17 utility service as required by this Act and to promote the  
18 efficient use of energy as required by this Section, the  
19 Commission shall not approve any charges that penalize  
20 customers for reducing their consumption of utility services.

21 Each utility shall include, in its recovery of costs, the  
22 costs estimated for both the utility's and the Department's  
23 implementation of energy efficiency measures. Costs collected  
24 by the utility for measures implemented by the Department shall  
25 be submitted to the Department pursuant to Section 605-323 of  
26 the Civil Administrative Code of Illinois and shall be used by

1 the Department solely for the purpose of implementing these  
2 measures. A utility shall not be required to advance any moneys  
3 to the Department but only to forward such funds as it has  
4 collected. The Department shall report to the Commission on an  
5 annual basis regarding the costs actually incurred by the  
6 Department in the implementation of the measures. Any changes  
7 to the costs of energy efficiency measures as a result of plan  
8 modifications shall be appropriately reflected in amounts  
9 recovered by the utility and turned over to the Department.

10 The portfolio of measures, administered by both the  
11 utilities and the Department, shall, in combination, be  
12 designed to achieve the annual savings requirements set forth  
13 in subsection (c) of this Section, as modified by subsection  
14 (e) of this Section. The utility and the Department shall agree  
15 upon a reasonable portfolio of measures and determine the  
16 measurable corresponding percentage of the savings goals  
17 associated with measures implemented by the utility or  
18 Department.

19 No utility shall be assessed a penalty under subsection (g)  
20 of this Section for failure to make a timely filing if that  
21 failure is the result of a lack of agreement with the  
22 Department with respect to the allocation of responsibilities  
23 or related costs or target assignments. In that 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 measures and programs that meets the

1 requirements of this Section.

2 If the Department is unable to meet performance  
3 requirements for the portion of the portfolio implemented by  
4 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 (8) 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  
13 modifications to the plan proposed by the Department.

14 (g) No later than November 15, 2010, each gas utility shall  
15 file an energy efficiency plan with the Commission to meet the  
16 energy efficiency standards through May 31, 2014. Every 3 years  
17 thereafter, each utility shall file an energy efficiency plan  
18 with the Commission. If a utility does not file such a plan by  
19 November 15 of the applicable year, it shall face a penalty of  
20 \$100,000 per day until the plan is filed. Each utility's plan  
21 shall set forth the utility's proposals to meet the utility's  
22 portion of the energy efficiency standards identified in  
23 subsection (c) of this Section, as modified by subsection (e)  
24 of this Section, taking into account the unique circumstances  
25 of the utility's service territory. The Commission shall seek  
26 public comment on the utility's plan and shall issue an order



1 approving or disapproving each plan within 3 months after its  
2 submission. If the Commission disapproves a plan, the  
3 Commission shall, within 30 days, describe in detail the  
4 reasons for the disapproval and describe a path by which the  
5 utility may file a revised draft of the plan to address the  
6 Commission's concerns satisfactorily. If the utility does not  
7 refile with the Commission within 60 days after the  
8 disapproval, the utility shall be subject to penalties at a  
9 rate of \$100,000 per day until the plan is filed. This process  
10 shall continue, and penalties shall accrue, until the utility  
11 has successfully filed a portfolio of energy efficiency  
12 measures. Penalties shall be deposited into the Energy  
13 Efficiency Trust Fund and the cost of any such penalties may  
14 not be recovered from ratepayers. In submitting proposed energy  
15 efficiency plans and funding levels to meet the savings goals  
16 adopted by this Act the utility shall:

17 (1) Demonstrate that its proposed energy efficiency  
18 measures will achieve the requirements that are identified  
19 in subsection (c) of this Section, as modified by  
20 subsection (e) of this Section.

21 (2) Present specific proposals to implement new  
22 building and appliance standards that have been placed into  
23 effect.

24 (3) Present estimates of the total amount paid for gas  
25 service expressed on a per-therm basis associated with the  
26 proposed portfolio of measures designed to meet the

1 requirements that are identified in subsection (c) of this  
2 Section, as modified by subsection (e) of this Section.

3 (4) Coordinate with the Department to present a  
4 portfolio of energy efficiency measures proportionate to  
5 the share of total annual utility revenues in Illinois from  
6 households at or below 150% of the poverty level. Such  
7 programs shall be targeted to households with incomes at or  
8 below 80% of area median income.

9 (5) Demonstrate that its overall portfolio of energy  
10 efficiency measures, not including programs covered by  
11 item (4) of this subsection (h), are cost effective using  
12 the total resource cost test and represent a diverse cross  
13 section of opportunities for customers of all rate classes  
14 to participate in the programs.

15 (6) Demonstrate that a gas utility affiliated with an  
16 electric utility that is required to comply with Section  
17 8-103 of this Act has integrated gas and electric  
18 efficiency measures into a single, fuel-neutral program  
19 that reduces program or participant costs and allocates  
20 costs to gas and electric ratepayers proportionately to the  
21 ratepayer benefits derived from reductions in usage of each  
22 energy source. The Department shall integrate all gas and  
23 electric programs it delivers in any such utilities'  
24 service territories, unless the Department can show that  
25 integration is not feasible or appropriate.

26 (7) Include a proposed cost recovery tariff mechanism

1 to fund the proposed energy efficiency measures and to  
2 ensure the recovery of the prudently and reasonably  
3 incurred costs of Commission approved programs.

4 (8) Provide for quarterly status reports tracking  
5 implementation of and expenditures for the utility's  
6 portfolio of measures and the Department's portfolio of  
7 measures, an annual independent review, and a full  
8 independent evaluation of the 3-year results of the  
9 performance and the cost effectiveness of the utility's and  
10 Department's portfolios of measures and broader net  
11 program impacts and, to the extent practical, for  
12 adjustment of the measures on a going forward basis as a  
13 result of the evaluations. The resources dedicated to  
14 evaluation shall not exceed 3% of portfolio resources in  
15 any given 3-year period.

16 (h) No more than 3% of expenditures on energy efficiency  
17 measures may be allocated for demonstration of breakthrough  
18 equipment and devices.

19 (i) Illinois natural gas utilities that are affiliated by  
20 virtue of a common parent company may, at the utilities'  
21 request, be considered a single natural gas utility for  
22 purposes of complying with this Section.

23 (j) If, after 3 years or at the end of any subsequent  
24 3-year period thereafter, a gas utility fails to meet the  
25 efficiency standard specified in subsection (c) of this  
26 Section, as modified by subsection (e) of this Section, hen it

1 shall make a contribution to the Low Income Home Energy  
2 Assistance Program in the amount of \$3 for each customer served  
3 by the utility on December 31, 2010. The costs of this  
4 contribution may not be recovered from ratepayers. In addition,  
5 if a gas utility fails to meet the efficiency standard  
6 specified in subsection (c) of this Section, as modified by  
7 subsection (e) of this Section, in any 2 consecutive 3-year  
8 periods, then the responsibility for implementing the  
9 utility's energy efficiency measures shall be transferred to an  
10 independent program administrator selected by the Commission.  
11 Reasonable and prudent costs incurred by the independent  
12 program administrator to meet the efficiency standard  
13 specified in subsection (c) of this Section, as modified by  
14 subsection (e) of this Section, may be recovered from the  
15 customers of the affected gas utility. The utility shall  
16 provide the independent program administrator with all  
17 information and assistance necessary to perform the program  
18 administrator's duties including, but not limited to,  
19 customer, account, and energy use data, and shall allow the  
20 program administrator to include inserts in customer bills.

21 (k) No utility shall be deemed to have failed to meet the  
22 energy efficiency standards to the extent any such failure is  
23 due to a failure of the Department.

24 (l) Not later than January 1, 2010, the Commission shall,  
25 after an opportunity for public comment, provide the General  
26 Assembly with recommended modifications to the Act to foster

1 statewide coordination and consistency between  
2 statutorily-mandated natural gas and electric energy  
3 efficiency programs to reduce program or participant costs or  
4 to improve program performance.

5 Section 99. Effective date. This Act takes effect upon  
6 becoming law.