

1 AN ACT concerning State government.

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

4 Section 5. The Illinois Finance Authority Act is amended by  
5 changing Section 825-65 as follows:

6 (20 ILCS 3501/825-65)

7 Sec. 825-65. Clean Coal, Coal, Energy Efficiency, and  
8 Renewable Energy Project Financing.

9 (a) Findings and declaration of policy.

10 (i) It is hereby found and declared that Illinois has  
11 abundant coal resources and, in some areas of Illinois, the  
12 demand for power exceeds the generating capacity.  
13 Incentives to encourage the construction of coal-fueled  
14 electric generating plants in Illinois to ensure power  
15 generating capacity into the future and to advance clean  
16 coal technology and the use of Illinois coal are in the  
17 best interests of all of the citizens of Illinois.

18 (ii) It is further found and declared that Illinois has  
19 abundant potential and resources to develop renewable  
20 energy resource projects and that there are many  
21 opportunities to invest in cost-effective energy  
22 efficiency projects throughout the State. The development  
23 of those projects will create jobs and investment as well

1 as decrease environmental impacts and promote energy  
2 independence in Illinois. Accordingly, the development of  
3 those projects is in the best interests of all of the  
4 citizens of Illinois.

5 (iii) The Authority is authorized to issue bonds to  
6 help finance Clean Coal, Coal, Energy Efficiency, and  
7 Renewable Energy projects pursuant to this Section.

8 (b) Definitions.

9 (i) "Clean Coal Project" means (A) "clean coal  
10 facility", as defined in Section 1-10 of the Illinois Power  
11 Agency Act; (B) "clean coal SNG facility", as defined in  
12 Section 1-10 of the Illinois Power Agency Act; (C)  
13 transmission lines and associated equipment that transfer  
14 electricity from points of supply to points of delivery for  
15 projects described in this subsection (b); (D) pipelines or  
16 other methods to transfer carbon dioxide from the point of  
17 production to the point of storage or sequestration for  
18 projects described in this subsection (b); or (E) projects  
19 to provide carbon abatement technology for existing  
20 generating facilities.

21 (ii) "Coal Project" means new electric generating  
22 facilities or new gasification facilities, as defined in  
23 Section 605-332 of the Department of Commerce and Economic  
24 Opportunity Law of the Civil Administrative Code of  
25 Illinois, which may include mine-mouth power plants,  
26 projects that employ the use of clean coal technology,

1 projects to provide scrubber technology for existing  
2 energy generating plants, or projects to provide electric  
3 transmission facilities or new gasification facilities.

4 (iii) "Energy Efficiency Project" means measures that  
5 reduce the amount of electricity or natural gas required to  
6 achieve a given end use, consistent with Section 1-10 of  
7 the Illinois Power Agency Act. "Energy Efficiency Project"  
8 also includes measures that reduce the total Btus of  
9 electricity and natural gas needed to meet the end use or  
10 uses consistent with Section 1-10 of the Illinois Power  
11 Agency Act.

12 (iv) "Renewable Energy Project" means (A) a project  
13 that uses renewable energy resources, as defined in Section  
14 1-10 of the Illinois Power Agency Act; (B) a project that  
15 uses environmentally preferable technologies and practices  
16 that result in improvements to the production of renewable  
17 fuels, including but not limited to, cellulosic  
18 conversion, water and energy conservation, fractionation,  
19 alternative feedstocks, or reduced green house gas  
20 emissions; (C) transmission lines and associated equipment  
21 that transfer electricity from points of supply to points  
22 of delivery for projects described in this subsection (b);  
23 or (D) projects that use technology for the storage of  
24 renewable energy, including, without limitation, the use  
25 of battery or electrochemical storage technology for  
26 mobile or stationary applications.

1 (c) Creation of reserve funds. The Authority may establish  
2 and maintain one or more reserve funds to enhance bonds issued  
3 by the Authority for a Clean Coal Project, a Coal Project, an  
4 Energy Efficiency Project, or a Renewable Energy Project. There  
5 may be one or more accounts in these reserve funds in which  
6 there may be deposited:

7 (1) any proceeds of the bonds issued by the Authority  
8 required to be deposited therein by the terms of any  
9 contract between the Authority and its bondholders or any  
10 resolution of the Authority;

11 (2) any other moneys or funds of the Authority that it  
12 may determine to deposit therein from any other source; and

13 (3) any other moneys or funds made available to the  
14 Authority. Subject to the terms of any pledge to the owners  
15 of any bonds, moneys in any reserve fund may be held and  
16 applied to the payment of principal, premium, if any, and  
17 interest of such bonds.

18 (d) Powers and duties. The Authority has the power:

19 (1) To issue bonds in one or more series pursuant to  
20 one or more resolutions of the Authority for any Clean Coal  
21 Project, Coal Project, Energy Efficiency Project, or  
22 Renewable Energy Project authorized under this Section,  
23 within the authorization set forth in subsection (e).

24 (2) To provide for the funding of any reserves or other  
25 funds or accounts deemed necessary by the Authority in  
26 connection with any bonds issued by the Authority.

1           (3) To pledge any funds of the Authority or funds made  
2           available to the Authority that may be applied to such  
3           purpose as security for any bonds or any guarantees,  
4           letters of credit, insurance contracts or similar credit  
5           support or liquidity instruments securing the bonds.

6           (4) To enter into agreements or contracts with third  
7           parties, whether public or private, including, without  
8           limitation, the United States of America, the State or any  
9           department or agency thereof, to obtain any  
10          appropriations, grants, loans or guarantees that are  
11          deemed necessary or desirable by the Authority. Any such  
12          guarantee, agreement or contract may contain terms and  
13          provisions necessary or desirable in connection with the  
14          program, subject to the requirements established by the  
15          Act.

16          (5) To exercise such other powers as are necessary or  
17          incidental to the foregoing.

18          (e) Clean Coal Project, Coal Project, Energy Efficiency  
19          Project, and Renewable Energy Project bond authorization and  
20          financing limits. In addition to any other bonds authorized to  
21          be issued under Sections 801-40(w), 825-60, 830-25 and 845-5,  
22          the Authority may have outstanding, at any time, bonds for the  
23          purpose enumerated in this Section 825-65 in an aggregate  
24          principal amount that shall not exceed \$3,000,000,000, subject  
25          to the following limitations: (i) up to \$300,000,000 may be  
26          issued to finance projects, as described in clause (C) of

1 subsection (b) (i) and clause (C) of subsection (b) (iv) of this  
2 Section 825-65; (ii) up to \$500,000,000 may be issued to  
3 finance projects, as described in clauses (D) and (E) of  
4 subsection (b) (i) of this Section 825-65; (iii) up to  
5 \$2,000,000,000 may be issued to finance Clean Coal Projects, as  
6 described in clauses (A) and (B) of subsection (b) (i) of this  
7 Section 825-65 and Coal Projects, as described in subsection  
8 (b) (ii) of this Section 825-65; and (iv) up to \$2,000,000,000  
9 may be issued to finance Energy Efficiency Projects, as  
10 described in subsection (b) (iii) of this Section 825-65 and  
11 Renewable Energy Projects, as described in clauses (A), (B),  
12 and (D) of subsection (b) (iii) of this Section 825-65. An  
13 application for a loan financed from bond proceeds from a  
14 borrower or its affiliates for a Clean Coal Project, a Coal  
15 Project, Energy Efficiency Project, or a Renewable Energy  
16 Project may not be approved by the Authority for an amount in  
17 excess of \$450,000,000 for any borrower or its affiliates.  
18 These bonds shall not constitute an indebtedness or obligation  
19 of the State of Illinois and it shall be plainly stated on the  
20 face of each bond that it does not constitute an indebtedness  
21 or obligation of the State of Illinois, but is payable solely  
22 from the revenues, income or other assets of the Authority  
23 pledged therefor.

24 (f) The bonding authority granted under this Section is in  
25 addition to and not limited by the provisions of Section 845-5.

26 (Source: P.A. 95-470, eff. 8-27-07; 96-103, eff. 1-1-10;

1 96-817, eff. 1-1-10.)

2 Section 10. The Illinois Power Agency Act is amended by  
3 changing Section 1-10 as follows:

4 (20 ILCS 3855/1-10)

5 Sec. 1-10. Definitions.

6 "Agency" means the Illinois Power Agency.

7 "Agency loan agreement" means any agreement pursuant to  
8 which the Illinois Finance Authority agrees to loan the  
9 proceeds of revenue bonds issued with respect to a project to  
10 the Agency upon terms providing for loan repayment installments  
11 at least sufficient to pay when due all principal of, interest  
12 and premium, if any, on those revenue bonds, and providing for  
13 maintenance, insurance, and other matters in respect of the  
14 project.

15 "Authority" means the Illinois Finance Authority.

16 "Clean coal facility" means an electric generating  
17 facility that uses primarily coal as a feedstock and that  
18 captures and sequesters carbon dioxide emissions at the  
19 following levels: at least 50% of the total carbon dioxide  
20 emissions that the facility would otherwise emit if, at the  
21 time construction commences, the facility is scheduled to  
22 commence operation before 2016, at least 70% of the total  
23 carbon dioxide emissions that the facility would otherwise emit  
24 if, at the time construction commences, the facility is

1 scheduled to commence operation during 2016 or 2017, and at  
2 least 90% of the total carbon dioxide emissions that the  
3 facility would otherwise emit if, at the time construction  
4 commences, the facility is scheduled to commence operation  
5 after 2017. The power block of the clean coal facility shall  
6 not exceed allowable emission rates for sulfur dioxide,  
7 nitrogen oxides, carbon monoxide, particulates and mercury for  
8 a natural gas-fired combined-cycle facility the same size as  
9 and in the same location as the clean coal facility at the time  
10 the clean coal facility obtains an approved air permit. All  
11 coal used by a clean coal facility shall have high volatile  
12 bituminous rank and greater than 1.7 pounds of sulfur per  
13 million btu content, unless the clean coal facility does not  
14 use gasification technology and was operating as a conventional  
15 coal-fired electric generating facility on June 1, 2009 (the  
16 effective date of Public Act 95-1027).

17 "Clean coal SNG brownfield facility" means a facility that  
18 (1) has commenced construction by July 1, 2015 on an urban  
19 brownfield site in a municipality with at least 1,000,000  
20 residents; (2) uses a gasification process to produce  
21 substitute natural gas; (3) uses coal as at least 50% of the  
22 total feedstock over the term of any sourcing agreement with a  
23 utility and the remainder of the feedstock may be either  
24 petroleum coke or coal, with all such coal having a high  
25 bituminous rank and greater than 1.7 pounds of sulfur per  
26 million Btu content unless the facility reasonably determines

1 that it is necessary to use additional petroleum coke to  
2 deliver additional consumer savings, in which case the facility  
3 shall use coal for at least 35% of the total feedstock over the  
4 term of any sourcing agreement; and (4) captures and sequesters  
5 at least 85% of the total carbon dioxide emissions that the  
6 facility would otherwise emit.

7 "Clean coal SNG facility" means a facility that uses a  
8 gasification process to produce substitute natural gas, that  
9 sequesters at least 90% of the total carbon dioxide emissions  
10 that the facility would otherwise emit, that uses at least 90%  
11 coal as a feedstock, with all such coal having a high  
12 bituminous rank and greater than 1.7 pounds of sulfur per  
13 million btu content, and that has a valid and effective permit  
14 to construct emission sources and air pollution control  
15 equipment and approval with respect to the federal regulations  
16 for Prevention of Significant Deterioration of Air Quality  
17 (PSD) for the plant pursuant to the federal Clean Air Act;  
18 provided, however, a clean coal SNG brownfield facility shall  
19 not be a clean coal SNG facility.

20 "Commission" means the Illinois Commerce Commission.

21 "Costs incurred in connection with the development and  
22 construction of a facility" means:

23 (1) the cost of acquisition of all real property,  
24 fixtures, and improvements in connection therewith and  
25 equipment, personal property, and other property, rights,  
26 and easements acquired that are deemed necessary for the

1 operation and maintenance of the facility;

2 (2) financing costs with respect to bonds, notes, and  
3 other evidences of indebtedness of the Agency;

4 (3) all origination, commitment, utilization,  
5 facility, placement, underwriting, syndication, credit  
6 enhancement, and rating agency fees;

7 (4) engineering, design, procurement, consulting,  
8 legal, accounting, title insurance, survey, appraisal,  
9 escrow, trustee, collateral agency, interest rate hedging,  
10 interest rate swap, capitalized interest, contingency, as  
11 required by lenders, and other financing costs, and other  
12 expenses for professional services; and

13 (5) the costs of plans, specifications, site study and  
14 investigation, installation, surveys, other Agency costs  
15 and estimates of costs, and other expenses necessary or  
16 incidental to determining the feasibility of any project,  
17 together with such other expenses as may be necessary or  
18 incidental to the financing, insuring, acquisition, and  
19 construction of a specific project and starting up,  
20 commissioning, and placing that project in operation.

21 "Department" means the Department of Commerce and Economic  
22 Opportunity.

23 "Director" means the Director of the Illinois Power Agency.

24 "Demand-response" means measures that decrease peak  
25 electricity demand or shift demand from peak to off-peak  
26 periods.

1 "Distributed renewable energy generation device" means a  
2 device that is:

3 (1) powered by wind, solar thermal energy,  
4 photovoltaic cells and panels, biodiesel, crops and  
5 untreated and unadulterated organic waste biomass, tree  
6 waste, and hydropower that does not involve new  
7 construction or significant expansion of hydropower dams;

8 (2) interconnected at the distribution system level of  
9 either an electric utility as defined in this Section, an  
10 alternative retail electric supplier as defined in Section  
11 16-102 of the Public Utilities Act, a municipal utility as  
12 defined in Section 3-105 of the Public Utilities Act, or a  
13 rural electric cooperative as defined in Section 3-119 of  
14 the Public Utilities Act;

15 (3) located on the customer side of the customer's  
16 electric meter and is primarily used to offset that  
17 customer's electricity load; and

18 (4) limited in nameplate capacity to no more than 2,000  
19 kilowatts.

20 "Energy efficiency" means measures that reduce the amount  
21 of electricity or natural gas required to achieve a given end  
22 use. "Energy efficiency" also includes measures that reduce the  
23 total Btus of electricity and natural gas needed to meet the  
24 end use or uses.

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

1 "Facility" means an electric generating unit or a  
2 co-generating unit that produces electricity along with  
3 related equipment necessary to connect the facility to an  
4 electric transmission or distribution system.

5 "Governmental aggregator" means one or more units of local  
6 government that individually or collectively procure  
7 electricity to serve residential retail electrical loads  
8 located within its or their jurisdiction.

9 "Local government" means a unit of local government as  
10 defined in Section 1 of Article VII of the Illinois  
11 Constitution.

12 "Municipality" means a city, village, or incorporated  
13 town.

14 "Person" means any natural person, firm, partnership,  
15 corporation, either domestic or foreign, company, association,  
16 limited liability company, joint stock company, or association  
17 and includes any trustee, receiver, assignee, or personal  
18 representative thereof.

19 "Project" means the planning, bidding, and construction of  
20 a facility.

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

23 "Real property" means any interest in land together with  
24 all structures, fixtures, and improvements thereon, including  
25 lands under water and riparian rights, any easements,  
26 covenants, licenses, leases, rights-of-way, uses, and other

1 interests, together with any liens, judgments, mortgages, or  
2 other claims or security interests related to real property.

3 "Renewable energy credit" means a tradable credit that  
4 represents the environmental attributes of a certain amount of  
5 energy produced from a renewable energy resource.

6 "Renewable energy resources" includes energy and its  
7 associated renewable energy credit or renewable energy credits  
8 from wind, solar thermal energy, photovoltaic cells and panels,  
9 biodiesel, anaerobic digestion, crops and untreated and  
10 unadulterated organic waste biomass, tree waste, hydropower  
11 that does not involve new construction or significant expansion  
12 of hydropower dams, and other alternative sources of  
13 environmentally preferable energy. For purposes of this Act,  
14 landfill gas produced in the State is considered a renewable  
15 energy resource. "Renewable energy resources" does not include  
16 the incineration or burning of tires, garbage, general  
17 household, institutional, and commercial waste, industrial  
18 lunchroom or office waste, landscape waste other than tree  
19 waste, railroad crossties, utility poles, or construction or  
20 demolition debris, other than untreated and unadulterated  
21 waste wood.

22 "Revenue bond" means any bond, note, or other evidence of  
23 indebtedness issued by the Authority, the principal and  
24 interest of which is payable solely from revenues or income  
25 derived from any project or activity of the Agency.

26 "Sequester" means permanent storage of carbon dioxide by

1 injecting it into a saline aquifer, a depleted gas reservoir,  
2 or an oil reservoir, directly or through an enhanced oil  
3 recovery process that may involve intermediate storage,  
4 regardless of whether these activities are conducted by a clean  
5 coal facility, a clean coal SNG facility, a clean coal SNG  
6 brownfield facility, or a party with which a clean coal  
7 facility, clean coal SNG facility, or clean coal SNG brownfield  
8 facility has contracted for such purposes.

9 "Sourcing agreement" means (i) in the case of an electric  
10 utility, an agreement between the owner of a clean coal  
11 facility and such electric utility, which agreement shall have  
12 terms and conditions meeting the requirements of paragraph (3)  
13 of subsection (d) of Section 1-75, (ii) in the case of an  
14 alternative retail electric supplier, an agreement between the  
15 owner of a clean coal facility and such alternative retail  
16 electric supplier, which agreement shall have terms and  
17 conditions meeting the requirements of Section 16-115(d)(5) of  
18 the Public Utilities Act, and (iii) in case of a gas utility,  
19 an agreement between the owner of a clean coal SNG brownfield  
20 facility and the gas utility, which agreement shall have the  
21 terms and conditions meeting the requirements of subsection  
22 (h-1) of Section 9-220 of the Public Utilities Act.

23 "Substitute natural gas" or "SNG" means a gas manufactured  
24 by gasification of hydrocarbon feedstock, which is  
25 substantially interchangeable in use and distribution with  
26 conventional natural gas.

1 "Total resource cost test" or "TRC test" means a standard  
2 that is met if, for an investment in energy efficiency or  
3 demand-response measures, the benefit-cost ratio is greater  
4 than one. The benefit-cost ratio is the ratio of the net  
5 present value of the total benefits of the program to the net  
6 present value of the total costs as calculated over the  
7 lifetime of the measures. A total resource cost test compares  
8 the sum of avoided electric utility costs, representing the  
9 benefits that accrue to the system and the participant in the  
10 delivery of those efficiency measures, as well as other  
11 quantifiable societal benefits, including avoided natural gas  
12 utility costs, to the sum of all incremental costs of end-use  
13 measures that are implemented due to the program (including  
14 both utility and participant contributions), plus costs to  
15 administer, deliver, and evaluate each demand-side program, to  
16 quantify the net savings obtained by substituting the  
17 demand-side program for supply resources. In calculating  
18 avoided costs of power and energy that an electric utility  
19 would otherwise have had to acquire, reasonable estimates shall  
20 be included of financial costs likely to be imposed by future  
21 regulations and legislation on emissions of greenhouse gases.

22 (Source: P.A. 96-33, eff. 7-10-09; 96-159, eff. 8-10-09;  
23 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10; 97-96, eff.  
24 7-13-11; 97-239, eff. 8-2-11; 97-491, eff. 8-22-11; 97-616,  
25 eff. 10-26-11; 97-813, eff. 7-13-12.)

1 Section 15. The Public Utilities Act is amended by changing  
2 Sections 8-103 and 8-104 as follows:

3 (220 ILCS 5/8-103)

4 Sec. 8-103. Energy efficiency and demand-response  
5 measures.

6 (a) It is the policy of the State that electric utilities  
7 are required to use cost-effective energy efficiency and  
8 demand-response measures to reduce delivery load. Requiring  
9 investment in cost-effective energy efficiency and  
10 demand-response measures will reduce direct and indirect costs  
11 to consumers by decreasing environmental impacts and by  
12 avoiding or delaying the need for new generation, transmission,  
13 and distribution infrastructure. It serves the public interest  
14 to allow electric utilities to recover costs for reasonably and  
15 prudently incurred expenses for energy efficiency and  
16 demand-response measures. As used in this Section,  
17 "cost-effective" means that the measures satisfy the total  
18 resource cost test. The low-income measures described in  
19 subsection (f)(4) of this Section shall not be required to meet  
20 the total resource cost test. For purposes of this Section, the  
21 terms "energy-efficiency", "demand-response", "electric  
22 utility", and "total resource cost test" shall have the  
23 meanings set forth in the Illinois Power Agency Act. For  
24 purposes of this Section, the amount per kilowatthour means the  
25 total amount paid for electric service expressed on a per

1 kilowatthour basis. For purposes of this Section, the total  
2 amount paid for electric service includes without limitation  
3 estimated amounts paid for supply, transmission, distribution,  
4 surcharges, and add-on-taxes.

5 (b) Electric utilities shall implement cost-effective  
6 energy efficiency measures to meet the following incremental  
7 annual energy savings goals:

8 (1) 0.2% of energy delivered in the year commencing  
9 June 1, 2008;

10 (2) 0.4% of energy delivered in the year commencing  
11 June 1, 2009;

12 (3) 0.6% of energy delivered in the year commencing  
13 June 1, 2010;

14 (4) 0.8% of energy delivered in the year commencing  
15 June 1, 2011;

16 (5) 1% of energy delivered in the year commencing June  
17 1, 2012;

18 (6) 1.4% of energy delivered in the year commencing  
19 June 1, 2013;

20 (7) 1.8% of energy delivered in the year commencing  
21 June 1, 2014; and

22 (8) 2% of energy delivered in the year commencing June  
23 1, 2015 and each year thereafter.

24 Electric utilities may comply with this subsection (b) by  
25 meeting the annual incremental savings goal in the applicable  
26 year or by showing that total savings associated with measures

1 implemented on or after May 31, 2014 were equal to the sum of  
2 each annual incremental savings goal on or after June 1, 2014  
3 through the end of the applicable year.

4 (c) Electric utilities shall implement cost-effective  
5 demand-response measures to reduce peak demand by 0.1% over the  
6 prior year for eligible retail customers, as defined in Section  
7 16-111.5 of this Act, and for customers that elect hourly  
8 service from the utility pursuant to Section 16-107 of this  
9 Act, provided those customers have not been declared  
10 competitive. This requirement commences June 1, 2008 and  
11 continues for 10 years.

12 (d) Notwithstanding the requirements of subsections (b)  
13 and (c) of this Section, an electric utility shall reduce the  
14 amount of energy efficiency and demand-response measures  
15 implemented over ~~in~~ any 3-year period ~~single year~~ by an amount  
16 necessary to limit the estimated average annual increase in the  
17 amounts paid by retail customers in connection with electric  
18 service due to the cost of those measures to:

19 (1) in 2008, no more than 0.5% of the amount paid per  
20 kilowatthour by those customers during the year ending May  
21 31, 2007;

22 (2) in 2009, the greater of an additional 0.5% of the  
23 amount paid per kilowatthour by those customers during the  
24 year ending May 31, 2008 or 1% of the amount paid per  
25 kilowatthour by those customers during the year ending May  
26 31, 2007;

1           (3) in 2010, the greater of an additional 0.5% of the  
2 amount paid per kilowatthour by those customers during the  
3 year ending May 31, 2009 or 1.5% of the amount paid per  
4 kilowatthour by those customers during the year ending May  
5 31, 2007;

6           (4) in 2011, the greater of an additional 0.5% of the  
7 amount paid per kilowatthour by those customers during the  
8 year ending May 31, 2010 or 2% of the amount paid per  
9 kilowatthour by those customers during the year ending May  
10 31, 2007; and

11           (5) thereafter, the amount of energy efficiency and  
12 demand-response measures implemented for any single year  
13 shall be reduced by an amount necessary to limit the  
14 estimated average net increase due to the cost of these  
15 measures included in the amounts paid by eligible retail  
16 customers in connection with electric service to no more  
17 than the greater of 2.015% of the amount paid per  
18 kilowatthour by those customers during the year ending May  
19 31, 2007 or the incremental amount per kilowatthour paid  
20 for these measures in 2011.

21           No later than June 30, 2011, the Commission shall review  
22 the limitation on the amount of energy efficiency and  
23 demand-response measures implemented pursuant to this Section  
24 and report to the General Assembly its findings as to whether  
25 that limitation unduly constrains the procurement of energy  
26 efficiency and demand-response measures.

1           (e) Electric utilities shall be responsible for overseeing  
2 the design, development, and filing of energy efficiency and  
3 demand-response plans with the Commission. Electric utilities  
4 shall implement 100% of the demand-response measures in the  
5 plans. Electric utilities shall implement 75% of the energy  
6 efficiency measures approved by the Commission, and may, as  
7 part of that implementation, outsource various aspects of  
8 program development and implementation. The remaining 25% of  
9 those energy efficiency measures approved by the Commission  
10 shall be implemented by the Department of Commerce and Economic  
11 Opportunity, and must be designed in conjunction with the  
12 utility and the filing process. The Department may outsource  
13 development and implementation of energy efficiency measures.  
14 A minimum of 10% of the entire portfolio of cost-effective  
15 energy efficiency measures shall be procured from units of  
16 local government, municipal corporations, school districts,  
17 and community college districts. The Department shall  
18 coordinate the implementation of these measures.

19           The apportionment of the dollars to cover the costs to  
20 implement the Department's share of the portfolio of energy  
21 efficiency measures shall be made to the Department once the  
22 Department has executed rebate agreements, grants, or  
23 contracts for energy efficiency measures and provided  
24 supporting documentation for those rebate agreements, grants,  
25 and contracts to the utility. The Department is authorized to  
26 adopt any rules necessary and prescribe procedures in order to

1 ensure compliance by applicants in carrying out the purposes of  
2 rebate agreements for energy efficiency measures implemented  
3 by the Department made under this Section.

4 The details of the measures implemented by the Department  
5 shall be submitted by the Department to the Commission in  
6 connection with the utility's filing regarding the energy  
7 efficiency and demand-response measures that the utility  
8 implements.

9 A utility providing approved energy efficiency and  
10 demand-response measures in the State shall be permitted to  
11 recover costs of those measures through an automatic adjustment  
12 clause tariff filed with and approved by the Commission. The  
13 tariff shall be established outside the context of a general  
14 rate case. Each year the Commission shall initiate a review to  
15 reconcile any amounts collected with the actual costs and to  
16 determine the required adjustment to the annual tariff factor  
17 to match annual expenditures.

18 Each utility shall include, in its recovery of costs, the  
19 costs estimated for both the utility's and the Department's  
20 implementation of energy efficiency and demand-response  
21 measures. Costs collected by the utility for measures  
22 implemented by the Department shall be submitted to the  
23 Department pursuant to Section 605-323 of the Civil  
24 Administrative Code of Illinois, shall be deposited into the  
25 Energy Efficiency Portfolio Standards Fund, and shall be used  
26 by the Department solely for the purpose of implementing these

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

9 The portfolio of measures, administered by both the  
10 utilities and the Department, shall, in combination, be  
11 designed to achieve the annual savings targets described in  
12 subsections (b) and (c) of this Section, as modified by  
13 subsection (d) of this Section.

14 The utility and the Department shall agree upon a  
15 reasonable portfolio of measures and determine the measurable  
16 corresponding percentage of the savings goals associated with  
17 measures implemented by the utility or Department.

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

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

13           (f) No later than November 15, 2007, each electric utility  
14 shall file an energy efficiency and demand-response plan with  
15 the Commission to meet the energy efficiency and  
16 demand-response standards for 2008 through 2010. No later than  
17 October 1, 2010, each electric utility shall file an energy  
18 efficiency and demand-response plan with the Commission to meet  
19 the energy efficiency and demand-response standards for 2011  
20 through 2013. Every 3 years thereafter, each electric utility  
21 shall file, no later than September 1, an energy efficiency and  
22 demand-response plan with the Commission. If a utility does not  
23 file such a plan by September 1 of an applicable year, it shall  
24 face a penalty of \$100,000 per day until the plan is filed.  
25 Each utility's plan shall set forth the utility's proposals to  
26 meet the utility's portion of the energy efficiency standards

1 identified in subsection (b) and the demand-response standards  
2 identified in subsection (c) of this Section as modified by  
3 subsections (d) and (e), taking into account the unique  
4 circumstances of the utility's service territory. The  
5 Commission shall seek public comment on the utility's plan and  
6 shall issue an order approving or disapproving each plan within  
7 5 months after its submission. If the Commission disapproves a  
8 plan, the Commission shall, within 30 days, describe in detail  
9 the reasons for the disapproval and describe a path by which  
10 the utility may file a revised draft of the plan to address the  
11 Commission's concerns satisfactorily. If the utility does not  
12 refile with the Commission within 60 days, the utility shall be  
13 subject to penalties at a rate of \$100,000 per day until the  
14 plan is filed. This process shall continue, and penalties shall  
15 accrue, until the utility has successfully filed a portfolio of  
16 energy efficiency and demand-response measures. Penalties  
17 shall be deposited into the Energy Efficiency Trust Fund. In  
18 submitting proposed energy efficiency and demand-response  
19 plans and funding levels to meet the savings goals adopted by  
20 this Act the utility shall:

21 (1) Demonstrate that its proposed energy efficiency  
22 and demand-response measures will achieve the requirements  
23 that are identified in subsections (b) and (c) of this  
24 Section, as modified by subsections (d) and (e).

25 (2) Present specific proposals to implement new  
26 building and appliance standards that have been placed into

1 effect.

2 (3) Present estimates of the total amount paid for  
3 electric service expressed on a per kilowatthour basis  
4 associated with the proposed portfolio of measures  
5 designed to meet the requirements that are identified in  
6 subsections (b) and (c) of this Section, as modified by  
7 subsections (d) and (e).

8 (4) Coordinate with the Department to present a  
9 portfolio of energy efficiency measures proportionate to  
10 the share of total annual utility revenues in Illinois from  
11 households at or below 150% of the poverty level. The  
12 energy efficiency programs shall be targeted to households  
13 with incomes at or below 80% of area median income.

14 (5) Demonstrate that its overall portfolio of energy  
15 efficiency and demand-response measures, not including  
16 programs covered by item (4) of this subsection (f), are  
17 cost-effective using the total resource cost test and  
18 represent a diverse cross-section of opportunities for  
19 customers of all rate classes to participate in the  
20 programs.

21 (6) Include a proposed cost-recovery tariff mechanism  
22 to fund the proposed energy efficiency and demand-response  
23 measures and to ensure the recovery of the prudently and  
24 reasonably incurred costs of Commission-approved programs.

25 (7) Provide for an annual independent evaluation of the  
26 performance of the cost-effectiveness of the utility's

1 portfolio of measures and the Department's portfolio of  
2 measures, as well as a full review of the 3-year results of  
3 the broader net program impacts and, to the extent  
4 practical, for adjustment of the measures on a  
5 going-forward basis as a result of the evaluations. The  
6 resources dedicated to evaluation shall not exceed 3% of  
7 portfolio resources in any given year.

8 (g) No more than 3% of energy efficiency and  
9 demand-response program revenue may be allocated for  
10 demonstration of breakthrough equipment and devices.

11 (h) This Section does not apply to an electric utility that  
12 on December 31, 2005 provided electric service to fewer than  
13 100,000 customers in Illinois.

14 (i) If, after 2 years, an electric utility fails to meet  
15 the efficiency standard specified in subsection (b) of this  
16 Section, as modified by subsections (d) and (e), it shall make  
17 a contribution to the Low-Income Home Energy Assistance  
18 Program. The combined total liability for failure to meet the  
19 goal shall be \$1,000,000, which shall be assessed as follows: a  
20 large electric utility shall pay \$665,000, and a medium  
21 electric utility shall pay \$335,000. If, after 3 years, an  
22 electric utility fails to meet the efficiency standard  
23 specified in subsection (b) of this Section, as modified by  
24 subsections (d) and (e), it shall make a contribution to the  
25 Low-Income Home Energy Assistance Program. The combined total  
26 liability for failure to meet the goal shall be \$1,000,000,

1 which shall be assessed as follows: a large electric utility  
2 shall pay \$665,000, and a medium electric utility shall pay  
3 \$335,000. In addition, the responsibility for implementing the  
4 energy efficiency measures of the utility making the payment  
5 shall be transferred to the Illinois Power Agency if, after 3  
6 years, or in any subsequent 3-year period, the utility fails to  
7 meet the efficiency standard specified in subsection (b) of  
8 this Section, as modified by subsections (d) and (e). The  
9 Agency shall implement a competitive procurement program to  
10 procure resources necessary to meet the standards specified in  
11 this Section as modified by subsections (d) and (e), with costs  
12 for those resources to be recovered in the same manner as  
13 products purchased through the procurement plan as provided in  
14 Section 16-111.5. The Director shall implement this  
15 requirement in connection with the procurement plan as provided  
16 in Section 16-111.5.

17 For purposes of this Section, (i) a "large electric  
18 utility" is an electric utility that, on December 31, 2005,  
19 served more than 2,000,000 electric customers in Illinois; (ii)  
20 a "medium electric utility" is an electric utility that, on  
21 December 31, 2005, served 2,000,000 or fewer but more than  
22 100,000 electric customers in Illinois; and (iii) Illinois  
23 electric utilities that are affiliated by virtue of a common  
24 parent company are considered a single electric utility.

25 (j) If, after 3 years, or any subsequent 3-year period, the  
26 Department fails to implement the Department's share of energy

1 efficiency measures required by the standards in subsection  
2 (b), then the Illinois Power Agency may assume responsibility  
3 for and control of the Department's share of the required  
4 energy efficiency measures. The Agency shall implement a  
5 competitive procurement program to procure resources necessary  
6 to meet the standards specified in this Section, with the costs  
7 of these resources to be recovered in the same manner as  
8 provided for the Department in this Section.

9 (k) No electric utility shall be deemed to have failed to  
10 meet the energy efficiency standards to the extent any such  
11 failure is due to a failure of the Department or the Agency.

12 (Source: P.A. 96-33, eff. 7-10-09; 96-159, eff. 8-10-09;  
13 96-1000, eff. 7-2-10; 97-616, eff. 10-26-11; 97-841, eff.  
14 7-20-12.)

15 (220 ILCS 5/8-104)

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

17 (a) It is the policy of the State that natural gas  
18 utilities and the Department of Commerce and Economic  
19 Opportunity are required to use cost-effective energy  
20 efficiency to reduce direct and indirect costs to consumers. It  
21 serves the public interest to allow natural gas utilities to  
22 recover costs for reasonably and prudently incurred expenses  
23 for cost-effective energy efficiency measures.

24 (b) For purposes of this Section, "energy efficiency" means  
25 measures that reduce the amount of energy required to achieve a

1 given end use. "Energy efficiency" also includes measures that  
2 reduce the total Btus of electricity and natural gas needed to  
3 meet the end use or uses. "Cost-effective" and ~~"cost-effective"~~  
4 means that the measures satisfy the total resource cost test  
5 which, for purposes of this Section, means a standard that is  
6 met if, for an investment in energy efficiency, the  
7 benefit-cost ratio is greater than one. The benefit-cost ratio  
8 is the ratio of the net present value of the total benefits of  
9 the measures to the net present value of the total costs as  
10 calculated over the lifetime of the measures. The total  
11 resource cost test compares the sum of avoided natural gas  
12 utility costs, representing the benefits that accrue to the  
13 system and the participant in the delivery of those efficiency  
14 measures, as well as other quantifiable societal benefits,  
15 including avoided electric utility costs, to the sum of all  
16 incremental costs of end use measures (including both utility  
17 and participant contributions), plus costs to administer,  
18 deliver, and evaluate each demand-side measure, to quantify the  
19 net savings obtained by substituting demand-side measures for  
20 supply resources. In calculating avoided costs, reasonable  
21 estimates shall be included for financial costs likely to be  
22 imposed by future regulation of emissions of greenhouse gases.  
23 The low-income programs described in item (4) of subsection (f)  
24 of this Section shall not be required to meet the total  
25 resource cost test.

26 (c) Natural gas utilities shall implement cost-effective

1 energy efficiency measures to meet at least the following  
2 natural gas savings requirements, which shall be based upon the  
3 total amount of gas delivered to retail customers, other than  
4 the customers described in subsection (m) of this Section,  
5 during calendar year 2009 multiplied by the applicable  
6 percentage. Natural gas utilities may comply with this Section  
7 by meeting the annual incremental savings goal in the  
8 applicable year or by showing that total savings associated  
9 with measures implemented after May 31, 2011 were equal to the  
10 sum of each annual incremental savings requirement from May 31,  
11 2011 through the end of the applicable year:

12 (1) 0.2% by May 31, 2012;

13 (2) an additional 0.4% by May 31, 2013, increasing  
14 total savings to .6%;

15 (3) an additional 0.6% by May 31, 2014, increasing  
16 total savings to 1.2%;

17 (4) an additional 0.8% by May 31, 2015, increasing  
18 total savings to 2.0%;

19 (5) an additional 1% by May 31, 2016, increasing total  
20 savings to 3.0%;

21 (6) an additional 1.2% by May 31, 2017, increasing  
22 total savings to 4.2%;

23 (7) an additional 1.4% by May 31, 2018, increasing  
24 total savings to 5.6%;

25 (8) an additional 1.5% by May 31, 2019, increasing  
26 total savings to 7.1%; and

1           (9) an additional 1.5% in each 12-month period  
2           thereafter.

3           (d) Notwithstanding the requirements of subsection (c) of  
4           this Section, a natural gas utility shall limit the amount of  
5           energy efficiency implemented in any 3-year reporting period  
6           established by subsection (f) of Section 8-104 of this Act, by  
7           an amount necessary to limit the estimated average increase in  
8           the amounts paid by retail customers in connection with natural  
9           gas service to no more than 2% in the applicable 3-year  
10          reporting period. The energy savings requirements in  
11          subsection (c) of this Section may be reduced by the Commission  
12          for the subject plan, if the utility demonstrates by  
13          substantial evidence that it is highly unlikely that the  
14          requirements could be achieved without exceeding the  
15          applicable spending limits in any 3-year reporting period. No  
16          later than September 1, 2013, the Commission shall review the  
17          limitation on the amount of energy efficiency measures  
18          implemented pursuant to this Section and report to the General  
19          Assembly, in the report required by subsection (k) of this  
20          Section, its findings as to whether that limitation unduly  
21          constrains the procurement of energy efficiency measures.

22          (e) Natural gas utilities shall be responsible for  
23          overseeing the design, development, and filing of their  
24          efficiency plans with the Commission. The utility shall utilize  
25          75% of the available funding associated with energy efficiency  
26          programs approved by the Commission, and may outsource various

1 aspects of program development and implementation. The  
2 remaining 25% of available funding shall be used by the  
3 Department of Commerce and Economic Opportunity to implement  
4 energy efficiency measures that achieve no less than 20% of the  
5 requirements of subsection (c) of this Section. Such measures  
6 shall be designed in conjunction with the utility and approved  
7 by the Commission. The Department may outsource development and  
8 implementation of energy efficiency measures. A minimum of 10%  
9 of the entire portfolio of cost-effective energy efficiency  
10 measures shall be procured from local government, municipal  
11 corporations, school districts, and community college  
12 districts. Five percent of the entire portfolio of  
13 cost-effective energy efficiency measures may be granted to  
14 local government and municipal corporations for market  
15 transformation initiatives. The Department shall coordinate  
16 the implementation of these measures and shall integrate  
17 delivery of natural gas efficiency programs with electric  
18 efficiency programs delivered pursuant to Section 8-103 of this  
19 Act, unless the Department can show that integration is not  
20 feasible.

21 The apportionment of the dollars to cover the costs to  
22 implement the Department's share of the portfolio of energy  
23 efficiency measures shall be made to the Department once the  
24 Department has executed rebate agreements, grants, or  
25 contracts for energy efficiency measures and provided  
26 supporting documentation for those rebate agreements, grants,

1 and contracts to the utility. The Department is authorized to  
2 adopt any rules necessary and prescribe procedures in order to  
3 ensure compliance by applicants in carrying out the purposes of  
4 rebate agreements for energy efficiency measures implemented  
5 by the Department made under this Section.

6 The details of the measures implemented by the Department  
7 shall be submitted by the Department to the Commission in  
8 connection with the utility's filing regarding the energy  
9 efficiency measures that the utility implements.

10 A utility providing approved energy efficiency measures in  
11 this State shall be permitted to recover costs of those  
12 measures through an automatic adjustment clause tariff filed  
13 with and approved by the Commission. The tariff shall be  
14 established outside the context of a general rate case and  
15 shall be applicable to the utility's customers other than the  
16 customers described in subsection (m) of this Section. Each  
17 year the Commission shall initiate a review to reconcile any  
18 amounts collected with the actual costs and to determine the  
19 required adjustment to the annual tariff factor to match annual  
20 expenditures.

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, shall be deposited

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

12 The portfolio of measures, administered by both the  
13 utilities and the Department, shall, in combination, be  
14 designed to achieve the annual energy savings requirements set  
15 forth in subsection (c) of this Section, as modified by  
16 subsection (d) of this Section.

17 The utility and the Department shall agree upon a  
18 reasonable portfolio of measures and determine the measurable  
19 corresponding percentage of the savings goals associated with  
20 measures implemented by the Department.

21 No utility shall be assessed a penalty under subsection (f)  
22 of this Section for failure to make a timely filing if that  
23 failure is the result of a lack of agreement with the  
24 Department with respect to the allocation of responsibilities  
25 or related costs or target assignments. In that case, the  
26 Department and the utility shall file their respective plans

1 with the Commission and the Commission shall determine an  
2 appropriate division of measures and programs that meets the  
3 requirements of this Section.

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

16 (f) No later than October 1, 2010, each gas utility shall  
17 file an energy efficiency plan with the Commission to meet the  
18 energy efficiency standards through May 31, 2014. Every 3 years  
19 thereafter, each utility shall file, no later than October 1,  
20 an energy efficiency plan with the Commission. If a utility  
21 does not file such a plan by October 1 of the applicable year,  
22 then it shall face a penalty of \$100,000 per day until the plan  
23 is filed. Each utility's plan shall set forth the utility's  
24 proposals to meet the utility's portion of the energy  
25 efficiency standards identified in subsection (c) of this  
26 Section, as modified by subsection (d) of this Section, taking

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

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

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

26 (3) Present estimates of the total amount paid for gas

1 service expressed on a per therm basis associated with the  
2 proposed portfolio of measures designed to meet the  
3 requirements that are identified in subsection (c) of this  
4 Section, as modified by subsection (d) of this Section.

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

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

17 (6) Demonstrate that a gas utility affiliated with an  
18 electric utility that is required to comply with Section  
19 8-103 of this Act has integrated gas and electric  
20 efficiency measures into a single program that reduces  
21 program or participant costs and appropriately allocates  
22 costs to gas and electric ratepayers. The Department shall  
23 integrate all gas and electric programs it delivers in any  
24 such utilities' service territories, unless the Department  
25 can show that 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  
10 and 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 (g) No more than 3% of expenditures on energy efficiency  
17 measures may be allocated for demonstration of breakthrough  
18 equipment and devices.

19 (h) 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 (i) If, after 3 years, a gas utility fails to meet the  
24 efficiency standard specified in subsection (c) of this Section  
25 as modified by subsection (d), then it shall make a  
26 contribution to the Low-Income Home Energy Assistance Program.

1 The total liability for failure to meet the goal shall be  
2 assessed as follows:

- 3 (1) a large gas utility shall pay \$600,000;  
4 (2) a medium gas utility shall pay \$400,000; and  
5 (3) a small gas utility shall pay \$200,000.

6 For purposes of this Section, (i) a "large gas utility" is  
7 a gas utility that on December 31, 2008, served more than  
8 1,500,000 gas customers in Illinois; (ii) a "medium gas  
9 utility" is a gas utility that on December 31, 2008, served  
10 fewer than 1,500,000, but more than 500,000 gas customers in  
11 Illinois; and (iii) a "small gas utility" is a gas utility that  
12 on December 31, 2008, served fewer than 500,000 and more than  
13 100,000 gas customers in Illinois. The costs of this  
14 contribution may not be recovered from ratepayers.

15 If a gas utility fails to meet the efficiency standard  
16 specified in subsection (c) of this Section, as modified by  
17 subsection (d) of this Section, in any 2 consecutive 3-year  
18 planning periods, then the responsibility for implementing the  
19 utility's energy efficiency measures shall be transferred to an  
20 independent program administrator selected by the Commission.  
21 Reasonable and prudent costs incurred by the independent  
22 program administrator to meet the efficiency standard  
23 specified in subsection (c) of this Section, as modified by  
24 subsection (d) of this Section, may be recovered from the  
25 customers of the affected gas utilities, other than customers  
26 described in subsection (m) of this Section. The utility shall

1 provide the independent program administrator with all  
2 information and assistance necessary to perform the program  
3 administrator's duties including but not limited to customer,  
4 account, and energy usage data, and shall allow the program  
5 administrator to include inserts in customer bills. The utility  
6 may recover reasonable costs associated with any such  
7 assistance.

8 (j) No utility shall be deemed to have failed to meet the  
9 energy efficiency standards to the extent any such failure is  
10 due to a failure of the Department.

11 (k) Not later than January 1, 2012, the Commission shall  
12 develop and solicit public comment on a plan to foster  
13 statewide coordination and consistency between statutorily  
14 mandated natural gas and electric energy efficiency programs to  
15 reduce program or participant costs or to improve program  
16 performance. Not later than September 1, 2013, the Commission  
17 shall issue a report to the General Assembly containing its  
18 findings and recommendations.

19 (l) This Section does not apply to a gas utility that on  
20 January 1, 2009, provided gas service to fewer than 100,000  
21 customers in Illinois.

22 (m) Subsections (a) through (k) of this Section do not  
23 apply to customers of a natural gas utility that have a North  
24 American Industry Classification System code number that is  
25 22111 or any such code number beginning with the digits 31, 32,  
26 or 33 and (i) annual usage in the aggregate of 4 million therms

1 or more within the service territory of the affected gas  
2 utility or with aggregate usage of 8 million therms or more in  
3 this State and complying with the provisions of item (l) of  
4 this subsection (m); or (ii) using natural gas as feedstock and  
5 meeting the usage requirements described in item (i) of this  
6 subsection (m), to the extent such annual feedstock usage is  
7 greater than 60% of the customer's total annual usage of  
8 natural gas.

9 (1) Customers described in this subsection (m) of this  
10 Section shall apply, on a form approved on or before  
11 October 1, 2009 by the Department, to the Department to be  
12 designated as a self-directing customer ("SDC") or as an  
13 exempt customer using natural gas as a feedstock from which  
14 other products are made, including, but not limited to,  
15 feedstock for a hydrogen plant, on or before the 1st day of  
16 February, 2010. Thereafter, application may be made not  
17 less than 6 months before the filing date of the gas  
18 utility energy efficiency plan described in subsection (f)  
19 of this Section; however, a new customer that commences  
20 taking service from a natural gas utility after February 1,  
21 2010 may apply to become a SDC or exempt customer up to 30  
22 days after beginning service. Such application shall  
23 contain the following:

24 (A) the customer's certification that, at the time  
25 of its application, it qualifies to be a SDC or exempt  
26 customer described in this subsection (m) of this

1 Section;

2 (B) in the case of a SDC, the customer's  
3 certification that it has established or will  
4 establish by the beginning of the utility's 3-year  
5 planning period commencing subsequent to the  
6 application, and will maintain for accounting  
7 purposes, an energy efficiency reserve account and  
8 that the customer will accrue funds in said account to  
9 be held for the purpose of funding, in whole or in  
10 part, energy efficiency measures of the customer's  
11 choosing, which may include, but are not limited to,  
12 projects involving combined heat and power systems  
13 that use the same energy source both for the generation  
14 of electrical or mechanical power and the production of  
15 steam or another form of useful thermal energy or the  
16 use of combustible gas produced from biomass, or both;

17 (C) in the case of a SDC, the customer's  
18 certification that annual funding levels for the  
19 energy efficiency reserve account will be equal to 2%  
20 of the customer's cost of natural gas, composed of the  
21 customer's commodity cost and the delivery service  
22 charges paid to the gas utility, or \$150,000, whichever  
23 is less;

24 (D) in the case of a SDC, the customer's  
25 certification that the required reserve account  
26 balance will be capped at 3 years' worth of accruals

1           and that the customer may, at its option, make further  
2           deposits to the account to the extent such deposit  
3           would increase the reserve account balance above the  
4           designated cap level;

5           (E) in the case of a SDC, the customer's  
6           certification that by October 1 of each year, beginning  
7           no sooner than October 1, 2012, the customer will  
8           report to the Department information, for the 12-month  
9           period ending May 31 of the same year, on all deposits  
10          and reductions, if any, to the reserve account during  
11          the reporting year, and to the extent deposits to the  
12          reserve account in any year are in an amount less than  
13          \$150,000, the basis for such reduced deposits; reserve  
14          account balances by month; a description of energy  
15          efficiency measures undertaken by the customer and  
16          paid for in whole or in part with funds from the  
17          reserve account; an estimate of the energy saved, or to  
18          be saved, by the measure; and that the report shall  
19          include a verification by an officer or plant manager  
20          of the customer or by a registered professional  
21          engineer or certified energy efficiency trade  
22          professional that the funds withdrawn from the reserve  
23          account were used for the energy efficiency measures;

24          (F) in the case of an exempt customer, the  
25          customer's certification of the level of gas usage as  
26          feedstock in the customer's operation in a typical year

1           and that it will provide information establishing this  
2           level, upon request of the Department;

3           (G) in the case of either an exempt customer or a  
4           SDC, the customer's certification that it has provided  
5           the gas utility or utilities serving the customer with  
6           a copy of the application as filed with the Department;

7           (H) in the case of either an exempt customer or a  
8           SDC, certification of the natural gas utility or  
9           utilities serving the customer in Illinois including  
10          the natural gas utility accounts that are the subject  
11          of the application; and

12          (I) in the case of either an exempt customer or a  
13          SDC, a verification signed by a plant manager or an  
14          authorized corporate officer attesting to the  
15          truthfulness and accuracy of the information contained  
16          in the application.

17          (2) The Department shall review the application to  
18          determine that it contains the information described in  
19          provisions (A) through (I) of item (1) of this subsection  
20          (m), as applicable. The review shall be completed within 30  
21          days after the date the application is filed with the  
22          Department. Absent a determination by the Department  
23          within the 30-day period, the applicant shall be considered  
24          to be a SDC or exempt customer, as applicable, for all  
25          subsequent 3-year planning periods, as of the date of  
26          filing the application described in this subsection (m). If

1 the Department determines that the application does not  
2 contain the applicable information described in provisions  
3 (A) through (I) of item (1) of this subsection (m), it  
4 shall notify the customer, in writing, of its determination  
5 that the application does not contain the required  
6 information and identify the information that is missing,  
7 and the customer shall provide the missing information  
8 within 15 working days after the date of receipt of the  
9 Department's notification.

10 (3) The Department shall have the right to audit the  
11 information provided in the customer's application and  
12 annual reports to ensure continued compliance with the  
13 requirements of this subsection. Based on the audit, if the  
14 Department determines the customer is no longer in  
15 compliance with the requirements of items (A) through (I)  
16 of item (1) of this subsection (m), as applicable, the  
17 Department shall notify the customer in writing of the  
18 noncompliance. The customer shall have 30 days to establish  
19 its compliance, and failing to do so, may have its status  
20 as a SDC or exempt customer revoked by the Department. The  
21 Department shall treat all information provided by any  
22 customer seeking SDC status or exemption from the  
23 provisions of this Section as strictly confidential.

24 (4) Upon request, or on its own motion, the Commission  
25 may open an investigation, no more than once every 3 years  
26 and not before October 1, 2014, to evaluate the

1 effectiveness of the self-directing program described in  
2 this subsection (m).

3 (n) The applicability of this Section to customers  
4 described in subsection (m) of this Section is conditioned on  
5 the existence of the SDC program. In no event will any  
6 provision of this Section apply to such customers after January  
7 1, 2020.

8 (Source: P.A. 96-33, eff. 7-10-09; 97-813, eff. 7-13-12;  
9 97-841, eff. 7-20-12.)

10 Section 99. Effective date. This Act takes effect upon  
11 becoming law.