



Sen. David Koehler

**Filed: 10/22/2013**

09800SB0635sam001

LRB098 04420 RPM 49123 a

1 AMENDMENT TO SENATE BILL 635

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 635 by replacing  
3 everything after the enacting clause with the following:

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

6 (220 ILCS 5/8-104)

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

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

15 (b) For purposes of this Section, "energy efficiency" means  
16 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" means that the  
4 measures satisfy the total resource cost test which, for  
5 purposes of this Section, means a standard that is met if, for  
6 an investment in energy efficiency, the benefit-cost ratio is  
7 greater than one. The benefit-cost ratio is the ratio of the  
8 net present value of the total benefits of the measures to the  
9 net present value of the total costs as calculated over the  
10 lifetime of the measures. The total resource cost test compares  
11 the sum of avoided natural gas utility costs, representing the  
12 benefits that accrue to the system and the participant in the  
13 delivery of those efficiency measures, as well as other  
14 quantifiable societal benefits, including avoided electric  
15 utility costs, to the sum of all incremental costs of end use  
16 measures (including both utility and participant  
17 contributions), plus costs to administer, deliver, and  
18 evaluate each demand-side measure, to quantify the net savings  
19 obtained by substituting demand-side measures for supply  
20 resources. In calculating avoided costs, reasonable estimates  
21 shall be included for financial costs likely to be imposed by  
22 future regulation of emissions of greenhouse gases. The  
23 low-income programs described in item (4) of subsection (f) of  
24 this Section shall not be required to meet the total resource  
25 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 cumulative annual  
9 savings within a 3-year planning period associated with  
10 measures implemented after May 31, 2011 were equal to the sum  
11 of each annual incremental savings requirement from May 31,  
12 2011 through the end of the applicable year:

13 (1) 0.2% by May 31, 2012;

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

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

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

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

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

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

26 (8) an additional 1.5% by May 31, 2019, increasing

1 total savings to 7.1%; and

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Department and the utility shall file their respective plans  
2 with the Commission and the Commission shall determine an  
3 appropriate division of measures and programs that meets the  
4 requirements of this Section.

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

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



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

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

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

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

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

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

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

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

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

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

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

24          (i) If, after 3 years, a gas utility fails to meet the  
25          efficiency standard specified in subsection (c) of this Section  
26          as modified by subsection (d), then it shall make a

1 contribution to the Low-Income Home Energy Assistance Program.  
2 The total liability for failure to meet the goal shall be  
3 assessed as follows:

4 (1) a large gas utility shall pay \$600,000;

5 (2) a medium gas utility shall pay \$400,000; and

6 (3) a small gas utility shall pay \$200,000.

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

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

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

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

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

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

23 (m) Subsections (a) through (k) of this Section do not  
24 apply to customers of a natural gas utility that have a North  
25 American Industry Classification System code number that is  
26 22111 or any such code number beginning with the digits 31, 32,

1 or 33 and (i) annual usage in the aggregate of 4 million therms  
2 or more within the service territory of the affected gas  
3 utility or with aggregate usage of 8 million therms or more in  
4 this State and complying with the provisions of item (l) of  
5 this subsection (m); or (ii) using natural gas as feedstock and  
6 meeting the usage requirements described in item (i) of this  
7 subsection (m), to the extent such annual feedstock usage is  
8 greater than 60% of the customer's total annual usage of  
9 natural gas.

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

1 ~~Department, between September 1, 2013 and September 30,~~  
2 ~~2013. Customer applications that are approved by the~~  
3 ~~Department under this amendatory Act of the 98th General~~  
4 ~~Assembly shall be considered to be a self-directing~~  
5 ~~customer or exempt customer, as applicable, for the current~~  
6 ~~3 year planning period effective December 1, 2013. Such~~  
7 application shall contain the following:

8 (A) the customer's certification that, at the time  
9 of its application, it qualifies to be a SDC or exempt  
10 customer described in this subsection (m) of this  
11 Section;

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

1 (C) in the case of a SDC, the customer's  
2 certification that annual funding levels for the  
3 energy efficiency reserve account will be equal to 2%  
4 of the customer's cost of natural gas, composed of the  
5 customer's commodity cost and the delivery service  
6 charges paid to the gas utility, or \$150,000, whichever  
7 is less;

8 (D) in the case of a SDC, the customer's  
9 certification that the required reserve account  
10 balance will be capped at 3 years' worth of accruals  
11 and that the customer may, at its option, make further  
12 deposits to the account to the extent such deposit  
13 would increase the reserve account balance above the  
14 designated cap level;

15 (E) in the case of a SDC, the customer's  
16 certification that by October 1 of each year, beginning  
17 no sooner than October 1, 2012, the customer will  
18 report to the Department information, for the 12-month  
19 period ending May 31 of the same year, on all deposits  
20 and reductions, if any, to the reserve account during  
21 the reporting year, and to the extent deposits to the  
22 reserve account in any year are in an amount less than  
23 \$150,000, the basis for such reduced deposits; reserve  
24 account balances by month; a description of energy  
25 efficiency measures undertaken by the customer and  
26 paid for in whole or in part with funds from the



1           reserve account; an estimate of the energy saved, or to  
2           be saved, by the measure; and that the report shall  
3           include a verification by an officer or plant manager  
4           of the customer or by a registered professional  
5           engineer or certified energy efficiency trade  
6           professional that the funds withdrawn from the reserve  
7           account were used for the energy efficiency measures;

8           (F) in the case of an exempt customer, the  
9           customer's certification of the level of gas usage as  
10          feedstock in the customer's operation in a typical year  
11          and that it will provide information establishing this  
12          level, upon request of the Department;

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

17          (H) in the case of either an exempt customer or a  
18          SDC, certification of the natural gas utility or  
19          utilities serving the customer in Illinois including  
20          the natural gas utility accounts that are the subject  
21          of the application; and

22          (I) in the case of either an exempt customer or a  
23          SDC, a verification signed by a plant manager or an  
24          authorized corporate officer attesting to the  
25          truthfulness and accuracy of the information contained  
26          in the application.

1           (2) The Department shall review the application to  
2 determine that it contains the information described in  
3 provisions (A) through (I) of item (1) of this subsection  
4 (m), as applicable. The review shall be completed within 30  
5 days after the date the application is filed with the  
6 Department. Absent a determination by the Department  
7 within the 30-day period, the applicant shall be considered  
8 to be a SDC or exempt customer, as applicable, for all  
9 subsequent 3-year planning periods, as of the date of  
10 filing the application described in this subsection (m). If  
11 the Department determines that the application does not  
12 contain the applicable information described in provisions  
13 (A) through (I) of item (1) of this subsection (m), it  
14 shall notify the customer, in writing, of its determination  
15 that the application does not contain the required  
16 information and identify the information that is missing,  
17 and the customer shall provide the missing information  
18 within 15 working days after the date of receipt of the  
19 Department's notification.

20           (3) The Department shall have the right to audit the  
21 information provided in the customer's application and  
22 annual reports to ensure continued compliance with the  
23 requirements of this subsection. Based on the audit, if the  
24 Department determines the customer is no longer in  
25 compliance with the requirements of items (A) through (I)  
26 of item (1) of this subsection (m), as applicable, the

1 Department shall notify the customer in writing of the  
2 noncompliance. The customer shall have 30 days to establish  
3 its compliance, and failing to do so, may have its status  
4 as a SDC or exempt customer revoked by the Department. The  
5 Department shall treat all information provided by any  
6 customer seeking SDC status or exemption from the  
7 provisions of this Section as strictly confidential.

8 (4) Upon request, or on its own motion, the Commission  
9 may open an investigation, no more than once every 3 years  
10 and not before October 1, 2014, to evaluate the  
11 effectiveness of the self-directing program described in  
12 this subsection (m).

13 Customers described in this subsection (m) that were  
14 approved by the Department in February 2013 shall be considered  
15 to be a self-directing customer or exempt customer, as  
16 applicable, for the current 3-year planning period effective  
17 December 1, 2013.

18 (n) The applicability of this Section to customers  
19 described in subsection (m) of this Section is conditioned on  
20 the existence of the SDC program. In no event will any  
21 provision of this Section apply to such customers after January  
22 1, 2020.

23 (Source: P.A. 97-813, eff. 7-13-12; 97-841, eff. 7-20-12;  
24 98-90, eff. 7-15-13; 98-225, eff. 8-9-13; revised 9-9-13.)

25 Section 99. Effective date. This Act takes effect upon

1 becoming law.".