



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB4091

by Rep. Michael J. Madigan

#### SYNOPSIS AS INTRODUCED:

See Index

Creates the Illinois Power Authority Act. Creates the Authority as a not-for-profit State agency with a 5-member board appointed by the Governor. Grants the Authority powers relating to procurement, generation and distribution of power, and the construction and acquisition of facilities. Requires the use of Illinois coal. Sets forth other powers. Exempts the Authority from the jurisdiction of the Illinois Commerce Commission. Allows acquisition of property by eminent domain and through quick-take powers. Authorizes the acquisition or creation of not-for-profit subsidiaries. Authorizes the issuance of notes and revenue bonds. Contains provisions relating to contracts, deposit and investment of moneys, exemption from taxation, repayment of State appropriations, and equal employment opportunities. Contains other provisions. Amends the Public Utilities Act and the Eminent Domain Act to make conforming changes. Amends the Illinois Pension Code. Encourages the trustees of public employee retirement systems to invest their system's assets to the greatest extent feasible within the bounds of financial and fiduciary prudence in the Illinois Power Authority. Provides that each retirement system subject to the Code shall prepare a report to be submitted to the Governor and the General Assembly by September 1 of each year. Provides that the report shall identify investments in the Illinois Power Authority, the percentage of the system's assets invested in the Illinois Power Authority, and the actions it has undertaken to increase investments in the Illinois Power Authority. Contains a severability clause. Effective immediately.

LRB095 08900 MJR 34624 b

FISCAL NOTE ACT  
MAY APPLY

HOUSING  
AFFORDABILITY  
IMPACT NOTE ACT  
MAY APPLY

STATE DEBT  
IMPACT NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning economical power.

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

4 Section 1. Short title. This Act may be cited as the  
5 Illinois Power Authority Act.

6 Section 5. Legislative findings and declarations. The  
7 General Assembly hereby finds and declares all of the  
8 following:

9 (1) The health, welfare, and prosperity of all Illinois  
10 citizens require the provision of adequate, efficient,  
11 reliable, environmentally safe, and least-cost electric  
12 service at prices that accurately reflect the long-term  
13 average cost of such services and that are equitable to all  
14 citizens, and that public utilities and alternative retail  
15 electric suppliers have failed to provide electric service  
16 that meets all of these criteria.

17 (2) Constantly escalating and excessive costs of  
18 electricity in the State of Illinois pose a serious threat  
19 to the economic well-being, health, and safety of the  
20 residents of and the commerce and industry in the State.

21 (3) There is a lack of confidence that the electricity  
22 needs of residents, commerce, and industry can be supplied  
23 in a reliable, efficient, and economical manner in Illinois

1 because ComEd and AmerenIP, AmerenCIPS, and AmerenCILCO  
2 have (i) increased their rates unreasonably and  
3 unnecessarily; (ii) repeatedly threatened bankruptcy;  
4 (iii) failed to maintain their transmission and  
5 distribution systems in a manner that ensures reliability;  
6 and (iv) in some cases, failed to restore power to  
7 customers for more than a week after an outage.

8 (4) These excessive costs and lack of confidence have  
9 deterred commerce and industry from locating in Illinois  
10 and have caused existing commerce and industry to seriously  
11 consider moving out of the State.

12 (5) The auction that ComEd and Ameren used to procure  
13 electricity resulted in rate increases of 26% to 55%,  
14 causing consumers' electric bills to skyrocket and  
15 straining the budgets of small and large ratepayers in the  
16 State. Some bill increases have been between 100% and 300%.  
17 Further substantial rate increases have been forecast by  
18 the utilities.

19 (6) For all the these reasons, a situation threatening  
20 the economy, health, and safety exists in the State.

21 (7) Dealing with this situation in an effective manner,  
22 assuring the provision of an adequate supply of electricity  
23 in a reliable, efficient, and economic manner, and  
24 retaining existing commerce and industry in and attracting  
25 new commerce and industry to the State are matters of State  
26 concern within the scope of the State's powers.

1           (8) These matters of State concern can best be dealt  
2           with by creating a publicly-owned power authority. Such an  
3           authority can best accomplish the purposes and objectives  
4           of this Act by generating, producing, procuring, and  
5           transmitting power to residents and businesses in the  
6           State.

7           The General Assembly therefore finds that it is necessary  
8           to create the Illinois Power Authority and that the goals and  
9           objectives of such Authority shall be to:

10           (A) prepare an annual report that identifies the  
11           least-cost mix of electric generation, energy-efficiency,  
12           and demand-response resources needed to serve Illinois  
13           residents and businesses 20 years into the future;

14           (B) procure least-cost supply-side and demand-side  
15           resources through competitive procurement processes to  
16           meet the electricity needs of all retail customers in the  
17           service territories of electric utilities that on January  
18           2, 2007 served at least 100,000 customers and all other  
19           retail customers in those service territories who elect  
20           service by the Illinois Power Authority;

21           (C) construct and operate electric generation and  
22           cogeneration facilities that use indigenous coal and  
23           renewable resources, financed with bonds issued by the  
24           Illinois Power Authority; and

25           (D) sell electricity at cost to retail customers and to  
26           municipal electric utilities and rural electric

1 cooperatives.

2 The Authority's coal generating facilities will use only  
3 Illinois coal and will provide safe and adequate service at  
4 rates that will be lower than the rates that would otherwise  
5 result and will facilitate investment in more beneficial energy  
6 and demand-side management alternatives, resulting in savings  
7 for the ratepayers in the State and otherwise restoring the  
8 confidence and protecting the interests of ratepayers and the  
9 economy in the State. Moreover, the competition with  
10 investor-owned utilities by the authority will result in an  
11 improved system, and reduction of future costs, a safer, more  
12 efficient, reliable, and economical supply of electric energy.

13 The General Assembly further declares that the Authority  
14 shall use, to the fullest extent practical, all economical  
15 means of conservation, and technologies that rely on renewable  
16 energy resources, cogeneration, and improvements in energy  
17 efficiency that will benefit the interests of the ratepayers of  
18 the State.

19 Section 10. Definitions. In this Act, unless a different  
20 meaning clearly appears from the context:

21 "Acquire" means, with respect to any right, title, or  
22 interest in or to any property, the act of taking by the  
23 exercise of the power of eminent domain, or acquisition by  
24 purchase or otherwise.

25 "Act" means the Illinois Power Authority Act.

1 "Authority" means the Illinois Power Authority.

2 "Board" means the board of trustees of the Authority.

3 "Bonds" or "notes" mean the bonds, notes, or other  
4 obligations issued by the Authority pursuant to this Act.

5 "Demand-side resource" means an energy efficiency or  
6 load-management measure.

7 "Federal government" means the United States of America and  
8 any agency or instrumentality, corporate or otherwise, of the  
9 United States of America.

10 "Local government" means any unit of local government, as  
11 defined in Section 1 of Article VII of the Illinois  
12 Constitution, and any school district.

13 "Municipal cooperative" means a municipality that owns and  
14 operates its own electric distribution system.

15 "Project" means an action undertaken by the Authority that:

16 (i) causes the Authority to issue bonds, notes, or  
17 other obligations, or shares in any subsidiary  
18 corporation;

19 (ii) significantly modifies the use of an asset valued  
20 at more than \$1,000,000 owned by the Authority or involves  
21 the sale, lease, or other disposition of such an asset; or

22 (iii) commits the Authority to a contract or agreement  
23 with a total consideration of greater than \$1,000,000 and  
24 does not involve the day-to-day operations of the  
25 Authority.

26 "Prudent industry practices" at a particular time means any

1 of the practices, methods, and acts that, in the exercise of  
2 reasonable judgment in light of the facts (including but not  
3 limited to the practices, methods, and acts engaged in or  
4 approved by a significant portion of the electrical utility  
5 industry, as the case may be, prior thereto) known at the time  
6 the decision was made, would have been expected to accomplish  
7 the desired result at the lowest reasonable cost consistent  
8 with reliability, safety, and expedition. Prudent industry  
9 practices are not intended to be limited to the optimum  
10 practice, method, or act, to the exclusion of all others, but  
11 rather to be a spectrum of possible practices, methods, or  
12 acts. In evaluating whether any matter conforms to prudent  
13 industry practices, the parties shall take into account the  
14 fact that the Authority is a State agency with statutory duties  
15 and responsibilities.

16 "Real property" means lands, structures, franchises, and  
17 interests in land, including lands under water and riparian  
18 rights, and all other things and rights usually included within  
19 that term, and includes also all interests in such property  
20 less than full title, such as easements, rights-of-way, uses,  
21 leases, licenses, and all other incorporeal hereditaments and  
22 every estate, interest, or right, legal or equitable, including  
23 terms for years and liens thereon by way of judgments,  
24 mortgages, or otherwise, and also all claims for damages for  
25 that real estate.

26 "Renewable energy resources" includes energy from wind,

1 solar thermal energy, photovoltaic cells and panels, dedicated  
2 crops grown for energy production and organic waste biomass,  
3 hydropower that does not involve new construction or  
4 significant expansion of hydropower dams, and other  
5 alternative sources of environmentally preferable energy.  
6 "Renewable energy resources" does not include, however, energy  
7 from the incineration, burning, or heating of waste wood,  
8 tires, garbage, general household, institutional, and  
9 commercial waste, industrial lunchroom or office waste,  
10 landscape waste, or construction or demolition debris.

11 "Rural electric cooperative" means an electric cooperative  
12 as defined in Section 3.4 of the Electric Supplier Act.

13 "Security" means any note, stock (whether common or  
14 preferred), bond, debenture, evidence of indebtedness,  
15 transferable share, voting-trust certificate, or, in general,  
16 any interest or instrument commonly known as a "security", or  
17 any certificate of interest or participation in, temporary or  
18 interim certificate for, receipt for, or warrant or right to  
19 subscribe to or purchase any of the foregoing.

20 "State" means the State of Illinois.

21 "State agency" means any board, authority, agency,  
22 department, commission, public corporation, body politic, or  
23 instrumentality of the State.

24 "Supply-side resource" means an electric generation or  
25 cogeneration facility.

26 "Trustees" means the trustees of the Authority appointed



1 pursuant to Section 20 of this Act.

2 Section 15. Illinois Power Authority.

3 (a) For the purpose of effectuating the policy declared in  
4 Section 5 of this Act, there is hereby created a State agency  
5 to be known as the Illinois Power Authority, which shall be a  
6 body corporate and politic, a political subdivision of the  
7 State, exercising governmental and public powers, perpetual in  
8 duration, capable of suing and being sued, and having a seal,  
9 and which shall have the powers and duties enumerated in this  
10 Act, together with such others conferred upon it by law.

11 (b) The Authority shall report annually to the Governor and  
12 the General Assembly upon its operations and transactions. The  
13 annual report shall identify the Authority by its statutory  
14 name, and include a letter of transmittal in the report to the  
15 Governor and the General Assembly. The annual report shall also  
16 include, but not be limited to, the following: (1) the amount  
17 of power and energy produced by each project facility; (2) the  
18 quantity and price of any electricity procured by the Authority  
19 under wholesale contracts; (3) the kilowatt-hour sales by  
20 project facility and by customer, including all sales to  
21 investor-owned electric corporations, municipal electric  
22 systems, and rural electric cooperatives; (4) the revenues and  
23 costs as allocated by the Authority for each project facility;  
24 (5) the busbar cost for each facility; (6) the accumulated  
25 provision for depreciation for each project facility; and (7)

1 basic financial and operating information specifically  
2 detailed for the reporting year and including, but not limited  
3 to, income and expense statements, balance sheets, and changes  
4 in financial position, all in accordance with generally  
5 accepted accounting principles, debt structure, and a summary  
6 of funds on a cash basis. The requirement to provide  
7 information pursuant to this subsection is not intended to  
8 affect the Authority's responsibilities or obligations under  
9 this Act.

10 (c) The Authority is not created or organized, and its  
11 operations shall not be conducted, for the purpose of making a  
12 profit. No part of the revenues or assets of the Authority  
13 shall inure to the benefit of or be distributable to any of its  
14 trustees or officers or any other private persons, except as  
15 provided in this Act for actual services rendered.

16 Section 20. Trustees.

17 (a) The Authority shall consist of 5 trustees, each of whom  
18 shall serve respectively for terms of one, 2, 3, 4, or 5 years.  
19 Each trustee shall hold office until a successor has been  
20 appointed and qualified. The Governor shall appoint all  
21 trustees. One appointee shall serve an initial term of one  
22 year; the second appointee shall serve an initial term of 2  
23 years; the third appointee shall serve an initial term of 3  
24 years; the fourth appointee shall serve an initial term of 4  
25 years; and the fifth appointee shall serve an initial term of 5

1 years. Thereafter, all terms shall be for a period of 5 years.  
2 Three trustees shall be attorneys, certified public  
3 accountants, or professional engineers and shall each have at  
4 least 10 years of experience. Two trustees must have at least  
5 10 years of experience in one of the following fields: (i)  
6 economics, (ii) finance, (iii) accounting, (iv) physical or  
7 natural sciences, (v) natural resources, or (vi) environmental  
8 studies.

9 (b) At the expiration of the term of each trustee, the  
10 Governor shall appoint a successor, who shall hold office for a  
11 term of 5 years. In the event of a vacancy occurring in the  
12 office of the trustee by death, resignation, or otherwise, the  
13 Governor shall appoint a successor, who shall hold office for  
14 the unexpired term. Three trustees constitute a quorum for the  
15 purpose of organizing the Authority and conducting its  
16 business.

17 (c) The trustees shall receive an annual salary of \$50,000  
18 or an amount set by the Compensation Review Board, whichever is  
19 greater. Each shall be entitled to reimbursement for reasonable  
20 expenses in the performance of duties assigned under this Act.

21 (d) Notwithstanding the provisions of any other law, no  
22 trustee, officer, or employee of the State, any State agency,  
23 or any local government that is appointed a trustee shall be  
24 deemed to have forfeited or shall forfeit his or her office or  
25 employment by reason of his or her acceptance of a trusteeship  
26 on the Authority, his or her service thereon, or his or her

1 employment therewith.

2 (e) No trustee shall be employed by a public utility,  
3 independent power producer, power marketer, alternative retail  
4 electric supplier, or the Authority while serving as a trustee  
5 for 2 years prior to appointment or for 2 years after he or she  
6 leaves his or her position as a trustee.

7 (f) Trustees shall be prohibited from all of the following  
8 while serving as a trustee and for 2 years prior to the  
9 appointment or for 2 years after he or she leaves his or her  
10 position as a trustee:

11 (1) Owning or holding, directly or indirectly, 5% or  
12 more of the voting capital stock of the public utility,  
13 independent power producer, power marketer, or alternative  
14 retail electric supplier.

15 (2) Being in any chain of successive ownership of 5% or  
16 more of the voting capital stock of any public utility,  
17 independent power producer, power marketer, or alternative  
18 retail electric supplier.

19 (3) Receiving any form of compensation, fee, payment,  
20 or other consideration from a public utility, independent  
21 power producer, power marketer, or alternative retail  
22 electric supplier, including legal fees, consulting fees,  
23 bonuses, or other sums.

24 Section 25. Officers and employees; expenses. The trustees  
25 shall choose from among their own number a chairperson and

1 vice-chairperson. They shall from time to time select such  
2 officers and employees, including a chief executive officer,  
3 and such engineering, marketing, and legal officers and  
4 employees, as they may require for the performance of their  
5 duties and shall prescribe the duties and compensation of each  
6 officer and employee. They shall adopt by-laws and rules and  
7 regulations suitable to the purposes of this Act. As long as  
8 and to the extent that the Authority is dependent upon  
9 appropriations for the payment of its expenses, it shall incur  
10 no obligations for salary, office, or other expenses prior to  
11 the making of appropriations adequate to meet those expenses.

12 Section 30. General powers of the Authority.

13 (a) The Authority is authorized to procure power and energy  
14 through a competitive solicitation process and to generate its  
15 own power and energy.

16 (b) The Authority is authorized to construct, improve, and  
17 rehabilitate throughout Illinois (1) coal-fired projects that  
18 it deems necessary or desirable to contribute to the adequacy,  
19 economy, and reliability of the supply of electric power and  
20 energy; (2) cogeneration projects to save fuel and (3) other  
21 Illinois facilities using new energy technologies or renewable  
22 energy resources that in its judgment are necessary (i) to  
23 supply low-cost power and energy to residential and commercial  
24 customers; (ii) to supply industrial customers that allow  
25 construction of new generation facilities on their property or

1 expansion of existing facilities on their property if heat,  
2 power, or energy is made available to such industrial  
3 customers; and (iii) to supply the future needs of municipal  
4 electric and rural electric cooperative customers.

5 (c) The first generating facility that the Authority  
6 constructs, acquires, or completes shall be a coal-fired  
7 project that is specified under item (1) of subsection (b) of  
8 this Section. The Authority is authorized to construct,  
9 acquire, and complete coal generating, transmission, and  
10 related facilities pursuant to this Section that it deems  
11 necessary or desirable to assist in maintaining an adequate and  
12 dependable supply of electricity; except that (i) only coal  
13 from the State of Illinois shall be used at any coal generating  
14 facility that is owned or maintained by the Authority and (ii)  
15 the price to be paid pursuant to any agreement entered into  
16 with respect to the purchase, appropriation, or condemnation of  
17 any completed or partially completed facility, as the case may  
18 be, shall be subject to the approval of a majority of the  
19 trustees. The Authority is further authorized to make energy  
20 efficiency services, clean energy technologies, and power and  
21 energy available throughout the State. The acquisition of  
22 completed or partially completed facilities shall be after  
23 public hearing.

24 (d) Except as otherwise limited by this Act, the Authority  
25 shall have all of the powers necessary or convenient to carry  
26 out the purposes and provisions of this Act, including without

1 limitation, the power:

2 (1) To sue and be sued in all courts and to participate  
3 in actions and proceedings, whether judicial,  
4 administrative, arbitrative, or otherwise.

5 (2) To have a corporate seal, and to alter that seal at  
6 pleasure, and to use it by causing it or a facsimile to be  
7 affixed or impressed or reproduced in any other manner.

8 (3) To appoint officers, agents, and employees,  
9 without regard to the Personnel Code or any other personnel  
10 or civil service law, rule, or regulation of the State and  
11 in accordance with guidelines adopted by the Authority,  
12 prescribe their duties and qualifications, and fix and pay  
13 their compensation.

14 (4) To purchase, receive, take by grant, gift, devise,  
15 bequest, or otherwise, lease, or otherwise acquire, own,  
16 hold, improve, employ, use, and otherwise deal in and with,  
17 real or personal property whether tangible or intangible,  
18 or any interest therein, within the State.

19 (5) To acquire real or personal property, whether  
20 tangible or intangible, including without limitation  
21 property rights, interests in property, franchises,  
22 obligations, contracts, and debt and equity securities, by  
23 the exercise of the power of eminent domain; except that  
24 any real property acquired by the exercise of the power of  
25 eminent domain must be located within the State.

26 (6) To sell, convey, lease, exchange, transfer,

1       abandon, or otherwise dispose of, or mortgage, pledge, or  
2       create a security interest in, any of its assets,  
3       properties, or any interest therein, wherever situated.

4           (7) To purchase, take, receive, subscribe for, or  
5       otherwise acquire, hold, make a tender offer for, vote,  
6       employ, sell, lend, lease, exchange, transfer, or  
7       otherwise dispose of, mortgage, pledge, or grant a security  
8       interest in, use and otherwise deal in and with, bonds and  
9       other obligations, shares, or other securities (or  
10      interests therein) issued by others, whether engaged in a  
11      similar or different business or activity.

12          (8) To make and execute agreements, contracts, and  
13      other instruments necessary or convenient in the exercise  
14      of the powers and functions of the Authority under this  
15      Act, including contracts with any person, firm,  
16      corporation, local government, State agency, or other  
17      entity, and all State agencies and all local governments  
18      are hereby authorized to enter into and do all things  
19      necessary to perform any such agreement, contract, or other  
20      instrument with the Authority.

21          (9) To borrow money at such rate or rates of interest  
22      as the Authority may determine, issue its notes, bonds, or  
23      other obligations to evidence that indebtedness, and  
24      secure any of its obligations by mortgage or pledge of any  
25      of its property or any interest therein, wherever situated.

26          (10) To arrange for guarantees of its bonds, notes, or



1 other obligations by the federal government or by any  
2 private insurer or otherwise, and to pay any premiums  
3 therefor.

4 (11) To issue its bonds or notes or other obligations  
5 whether or not the income therefrom is exempt from federal  
6 income taxation.

7 (12) To purchase bonds, notes, or other obligations of  
8 the Authority at such price or prices as the Authority may  
9 determine.

10 (13) To lend money, invest and reinvest its funds, and  
11 take and hold real and personal property as security for  
12 the payment of funds loaned or invested.

13 (14) To procure insurance against any loss in  
14 connection with its properties or operations in such amount  
15 or amounts and from such insurers, including the federal  
16 government, as it may deem necessary or desirable, and to  
17 pay any premiums therefor.

18 (15) To negotiate and enter into agreements with  
19 trustees or receivers appointed by United States  
20 bankruptcy courts or federal district courts or in other  
21 proceedings involving adjustment of debts and authorize  
22 legal counsel for the Authority to appear in any such  
23 proceedings.

24 (16) To file a petition under Chapter 9 of Title 11 of  
25 the United States Bankruptcy Code or take other similar  
26 action for the adjustment of its debts.

1           (17) To enter into agreements to purchase power from  
2           the State, any State agency, any local government, any  
3           private entity, or any other available source at such price  
4           or prices as may be negotiated for the purchase of that  
5           power and on such terms as are consistent with the purposes  
6           of this Act.

7           (18) To enter into management agreements for the  
8           operation of any of the property or facilities owned by the  
9           Authority.

10          (19) To transfer any asset of the Authority to one or  
11          more municipal or rural electric agencies or cooperatives,  
12          for such consideration and upon such terms as the Authority  
13          may determine to be in the best interest of the citizens of  
14          the State of Illinois.

15          (20) Subject to subsection (g) of Section 60 of this  
16          Act and after holding public hearings upon reasonable  
17          public notice, with at least one hearing to be held in Cook  
18          County and at least one in Sangamon County, to fix rates  
19          and charges for the furnishing or rendition of electric  
20          power or of any related service at the lowest level  
21          consistent with sound fiscal and operating practices of the  
22          Authority and that provide for safe and adequate service.

23          (21) To enter upon any lands and within any building  
24          whenever in its judgment it may be necessary for the  
25          purpose of making surveys and examinations to accomplish  
26          any purpose authorized by this Act.

1           (22) To enter into agreements to pay annual sums in  
2           lieu of taxes to any local government with respect to any  
3           real property that is owned by the Authority and is located  
4           in that local government.

5           (23) To maintain an office or offices at such place or  
6           places in the State as it may determine.

7           (24) To make any inquiry, investigation, survey, or  
8           study that the Authority may deem necessary to enable it  
9           effectively to carry out the provisions of this Act.

10          (25) To adopt, revise, amend, and repeal rules and  
11          regulations with respect to its operations, properties,  
12          and facilities as may be necessary or convenient to carry  
13          out the purposes of this Act, subject to the provisions of  
14          the Illinois Administrative Procedure Act.

15          Section 35. Specific powers. Without limiting the  
16          generality of the powers conferred upon the Authority by  
17          Section 30 of this Act, the Authority shall have the specific  
18          power:

19               (1) To acquire, construct, improve, rehabilitate,  
20               maintain, and operate such generating, transmission, and  
21               related facilities permitted under this Act as the  
22               Authority deems necessary or desirable to maintain an  
23               adequate and dependable supply of electric power within the  
24               service area.

25               (2) To determine the location, type, size,

1 construction, lease, purchase, ownership, acquisition,  
2 use, and operation of any generating, transmission, or  
3 other related facility, except that in making such  
4 determinations relating to electric power facilities the  
5 Authority shall give primary consideration to the  
6 construction of cogeneration and other high-efficiency  
7 facilities and implementation of energy conservation and  
8 load management programs.

9 (3) To proceed with the physical construction or  
10 completion of any generating, transmission, or related  
11 facility.

12 (4) To apply to the appropriate agencies and officials  
13 of the federal and State governments for such licenses,  
14 permits, or approval of its plans or projects as it may  
15 deem necessary or advisable, and to accept such licenses,  
16 permits, or approvals as may be tendered to it by such  
17 agencies or officials, upon such terms and conditions as it  
18 may deem appropriate.

19 (5) To institute suit, or to apply to any legislative  
20 body for legislation, or to take such other action as it  
21 may deem necessary or advisable in the furtherance of the  
22 purposes of this Act and for the protection of its rights  
23 if for any reason the Authority shall fail to secure any  
24 such license, permit, or approval as it may deem necessary  
25 or advisable.

26 (6) To study means of maintaining and attracting

1 commerce and industry to the State.

2 (7) To develop programs and policies designed to  
3 implement net-metering, to promote energy efficiency and  
4 demand-response measures to shift demand from periods of  
5 high demand to periods of low demand, and to facilitate  
6 interconnection of (i) solar and wind generating  
7 equipment; (ii) farm waste electric generating equipment;  
8 and (iii) cogeneration facilities.

9 (8) To develop, with public participation, a  
10 comprehensive least-cost analysis of demand for  
11 electricity in Illinois that considers practical and  
12 economical use of conservation, renewable energy  
13 resources, and cogeneration for providing service to its  
14 customers.

15 (9) To cooperate with and to enter into contractual  
16 arrangements with private companies, public entities, any  
17 schools and universities, and municipal and rural electric  
18 cooperatives:

19 (i) with respect to the construction and operation  
20 of facilities by the Authority and the sale of all or  
21 part of the output therefrom;

22 (ii) with respect to the construction, completion,  
23 acquisition, ownership, and operation of generating  
24 facilities, fuel docks, sidings, loading or unloading  
25 equipment, storage facilities, and other subsidiary  
26 facilities and the disposition of the output of such

1           generating facilities; and  
2                   (iii) with respect to the construction,  
3           acquisition, ownership, operation, and use of  
4           transmission facilities.

5           (10) To cooperate with and to enter into contractual  
6           arrangements with local governments with respect to the  
7           construction, improvement, rehabilitation, ownership, and  
8           operation of generating facilities.

9           (11) To cooperate with and to enter into contractual  
10          arrangements, in the discretion of the Authority, with the  
11          Capital Development Board in connection with the planning,  
12          siting, development, construction, operation, and  
13          maintenance of generating facilities of the Authority.

14          Section 40. Acquisition of property by condemnation.

15          (a) In light of the importance of providing clean,  
16          affordable, and reliable power for everyone in the State of  
17          Illinois and in furtherance of the goals of this Act, the  
18          Authority has the discretionary authorities as set forth in  
19          this Section.

20          (b) In connection with the acquisition, development, and  
21          operation of electric generating facilities, the Authority has  
22          the right to enter upon, take, or damage private property or  
23          any interest therein by exercise of the power of condemnation,  
24          including quick-take powers, in the manner provided for under  
25          the Eminent Domain Act (735 ILCS 30/), that are necessary and

1 convenient for the operations of the Authority and its  
2 subsidiaries. The operations of the Authority and any of its  
3 subsidiaries are hereby recognized and declared to be affected  
4 with a public interest and all of the property used in those  
5 operations is hereby recognized and declared to be a public  
6 use.

7 Section 50. Notes of the Authority. The Authority is  
8 authorized from time to time to issue its negotiable notes in  
9 conformity with applicable provisions of the Uniform  
10 Commercial Code for any corporate purpose and to refund from  
11 time to time any notes by the issuance of new notes, whether  
12 the notes to be refunded have or have not matured. The  
13 Authority may issue notes partly to refund notes or to  
14 discharge other obligations then outstanding and partly for any  
15 other corporate purpose of the Authority. The notes may be  
16 authorized, sold, executed, and delivered in the same manner as  
17 bonds. Any resolution authorizing notes of the Authority or any  
18 issue thereof may contain any provisions that the Authority is  
19 authorized to include in any resolution authorizing bonds of  
20 the Authority or any issue thereof, and the Authority may  
21 include in any notes any terms, covenants, or conditions that  
22 it is authorized to include in any bonds.

23 Section 55. Contracts for the sale of electricity from  
24 facilities owned by the Authority.

1 (a) Contracts for the sale, transmission, and distribution  
2 of power and energy generated by the Authority's projects shall  
3 provide for the effectuation of the policies set forth in this  
4 Act relating to its projects and shall ensure recovery of:

5 (1) All operating and maintenance expenses of the  
6 projects.

7 (2) Interest on and amortization and reserve charges  
8 sufficient within 50 years after the date of issuance to  
9 retire the bonds of the Authority issued for the projects.

10 (b) The contracts shall also provide that:

11 (1) Notwithstanding any provisions in the Public  
12 Utilities Act, wholesale purchasers of power and energy  
13 from an Authority facility shall sell the power and energy  
14 to retail customers at the same price paid to purchase  
15 power and energy from the Authority.

16 (2) The purchaser shall make timely payment on all  
17 bills rendered by the Authority.

18 (3) Violation of these contract terms, as well as such  
19 other terms as the Authority may specify shall result in  
20 cancellation and termination of the contract.

21 (4) Such other terms not inconsistent with the  
22 provisions and policy of this Act as the Authority may deem  
23 advisable.

24 (c) Contracts negotiated by the Authority as provided in  
25 subsections (a) and (b) of this Section shall be entered into  
26 and executed as follows:



1           (1) After agreement upon the terms of the contracts has  
2           been reached by the Authority and its co-party or  
3           co-parties, the Authority shall promptly transmit a copy of  
4           the proposed contract to the Governor, the Secretary of  
5           State, the Attorney General, the Treasurer, the  
6           Comptroller, and the legislative leaders of the General  
7           Assembly and shall hold a public hearing or hearings upon  
8           the terms thereof. At least 30 days' notice of the hearing  
9           shall be given by publication once in each week during such  
10          period in each of 6 newspapers within the State to be  
11          selected by the Authority. Copies of proposed contracts  
12          shall be available for public inspection during that period  
13          of 30 days at the office or offices of the Authority and at  
14          such other places throughout the State as it may designate.

15          (2) Following the public hearing, the Authority shall  
16          reconsider the terms of the proposed contract or contracts  
17          and shall negotiate such changes and modifications in the  
18          contract or contracts as the Authority deems necessary or  
19          advisable.

20          (3) When the contract or contracts are finally agreed  
21          upon in terms satisfactory to the Authority and its  
22          co-party or co-parties, and that the Authority believes to  
23          be in the public interest, the Authority shall thereupon  
24          report the proposed contract or contracts, together with  
25          its recommendations and the record of the public hearings  
26          thereon, to the Governor, the Secretary of State, the

1 Attorney General, the Treasurer, the Comptroller, and the  
2 General Assembly.

3 (4) The Attorney General shall review the contract to  
4 ensure that it complies with all applicable laws and  
5 prudent industry practices. If the Attorney General  
6 determines that the contract meets all applicable laws or  
7 prudent industry practices, then the trustees shall  
8 approve the contract.

9 (5) The contract, after receiving the required number  
10 of votes by the trustees, shall be executed by the  
11 chairperson and secretary of the Authority and shall come  
12 into full force and effect and be binding upon the  
13 Authority and all other parties thereto in accordance with  
14 its terms.

15 Section 60. Revenue bonds.

16 (a) The Authority shall have the continuing power to issue  
17 revenue bonds, notes, or other evidences of indebtedness in an  
18 aggregate amount not to exceed \$4,000,000,000 for the purpose  
19 of developing, constructing, acquiring, or improving projects  
20 for acquiring and improving any property necessary and useful  
21 in connection therewith, and for the purposes of the Employee  
22 Ownership Assistance Act. The bonds must be issued under the  
23 supervision of the Illinois Finance Authority, as set forth  
24 under Section 825-13 of the Illinois Finance Authority Act. For  
25 the purpose of evidencing the obligations of the Authority to

1 repay any money borrowed, the Authority may, pursuant to  
2 resolution, from time to time issue and dispose of its interest  
3 bearing revenue bonds, notes, or other evidences of  
4 indebtedness and may also from time to time issue and dispose  
5 of such bonds, notes, or other evidences of indebtedness to  
6 refund, at maturity, at a redemption date or in advance of  
7 either, any revenue bonds, notes, or other evidences of  
8 indebtedness pursuant to redemption provisions or at any time  
9 before maturity. All such revenue bonds, notes, or other  
10 evidences of indebtedness shall be payable solely from the  
11 revenues or income to be derived from loans made with respect  
12 to projects, from the leasing or sale of the projects, or from  
13 any other funds available to the Authority for such purposes,  
14 including, when so provided by ordinance of the Authority  
15 authorizing the issuance of revenue bonds or notes. The revenue  
16 bonds, notes, or other evidences of indebtedness may bear such  
17 date or dates, may mature at such time or times not exceeding  
18 40 years from their respective dates, may bear interest at such  
19 rate or rates not exceeding the maximum rate permitted by the  
20 Bond Authorization Act, may be in such form, may carry such  
21 registration privileges, may be executed in such manner, may be  
22 payable at such place or places, may be made subject to  
23 redemption in such manner and upon such terms, with or without  
24 premium as is stated on the face thereof, may be authenticated  
25 in such manner, and may contain such terms and covenants as may  
26 be provided by an applicable resolution.

1           (b) The holder or holders of any revenue bonds, notes, or  
2 other evidences of indebtedness issued by the Authority may  
3 bring suits at law or proceedings in equity to compel the  
4 performance and observance by any corporation or person or by  
5 the Authority or any of its agents or employees of any contract  
6 or covenant made with the holders of such revenue bonds, notes,  
7 or other evidences of indebtedness, to compel such corporation,  
8 person, the Authority, and any of its agents or employees to  
9 perform any duties required to be performed for the benefit of  
10 the holders of any such revenue bonds, notes, or other  
11 evidences of indebtedness by the provision of the resolution  
12 authorizing their issuance and to enjoin such corporation,  
13 person, the Authority, and any of its agents or employees from  
14 taking any action in conflict with any such contract or  
15 covenant.

16           (c) If the Authority fails to pay the principal of or  
17 interest on any of the revenue bonds or premium, if any, as the  
18 same become due, a civil action to compel payment may be  
19 instituted in the appropriate circuit court by the holder or  
20 holders of the revenue bonds on which such default of payment  
21 exists or by an indenture trustee acting on behalf of such  
22 holders. Delivery of a summons and a copy of the complaint to  
23 the Chairperson of the Board shall constitute sufficient  
24 service to give the circuit court jurisdiction of the subject  
25 matter of such a suit and jurisdiction over the Authority and  
26 its officers named as defendants for the purpose of compelling

1 such payment. Any case, controversy, or cause of action  
2 concerning the validity of this Act relates to the revenue of  
3 the State of Illinois.

4 (d) Notwithstanding the form and tenor of any such revenue  
5 bonds, notes, or other evidences of indebtedness and in the  
6 absence of any express recital on the face of any such revenue  
7 bond, note, or other evidence of indebtedness that it is  
8 nonnegotiable, all such revenue bonds, notes, and other  
9 evidences of indebtedness shall be negotiable instruments.  
10 Pending the preparation and execution of any such revenue  
11 bonds, notes, or other evidences of indebtedness, temporary  
12 revenue bonds, notes, or evidences of indebtedness may be  
13 issued as provided by ordinance.

14 (e) To secure the payment of any or all of such revenue  
15 bonds, notes, or other evidences of indebtedness, the revenues  
16 to be received by the Authority from a lease agreement or loan  
17 agreement shall be pledged, and, for the purpose of setting  
18 forth the covenants and undertakings of the Authority in  
19 connection with the issuance thereof and the issuance of any  
20 additional revenue bonds, notes, or other evidences of  
21 indebtedness payable from such revenues, income, or other funds  
22 to be derived from projects, the Authority may execute and  
23 deliver a mortgage or trust agreement. A remedy for any breach  
24 or default of the terms of any such mortgage or trust agreement  
25 by the Authority may be by mandamus proceedings in the  
26 appropriate circuit court to compel the performance and

1 compliance therewith, but the trust agreement may prescribe by  
2 whom or on whose behalf the action may be instituted.

3 (f) The revenue bonds or notes shall be secured as provided  
4 in the authorizing ordinance which may, notwithstanding any  
5 other provision of this Act, include in addition to any other  
6 security a specific pledge or assignment of and lien on or  
7 security interest in any or all revenues or money of the  
8 Authority from whatever source which may by law be used for  
9 debt service purposes and a specific pledge or assignment of  
10 and lien on or security interest in any funds or accounts  
11 established or provided for by ordinance of the Authority  
12 authorizing the issuance of such revenue bonds or notes.

13 (g) The State of Illinois pledges to and agrees with the  
14 holders of the revenue bonds and notes of the Authority issued  
15 pursuant to this Section that the State will not limit or alter  
16 the rights and powers vested in the Authority by this Act so as  
17 to impair the terms of any contract made by the Authority with  
18 such holders or in any way impair the rights and remedies of  
19 such holders until such revenue bonds and notes, together with  
20 interest thereon, with interest on any unpaid installments of  
21 interest, and all costs and expenses in connection with any  
22 action or proceedings by or on behalf of such holders, are  
23 fully met and discharged. The Authority is authorized to  
24 include these pledges and agreements of the State in any  
25 contract with the holders of revenue bonds or notes issued  
26 pursuant to this Section.

1           (h) In the event that the Authority determines that monies  
2 of the Authority will not be sufficient for the payment of the  
3 principal of and interest on its bonds during the next State  
4 fiscal year, the Chairperson, as soon as practicable, shall  
5 certify to the Governor the amount required by the Authority to  
6 enable it to pay such principal of and interest on the bonds.  
7 The Governor shall submit the amount so certified to the  
8 General Assembly as soon as practicable, but no later than the  
9 end of the current State fiscal year. This subsection (h) shall  
10 apply only to any bonds or notes as to which the Authority  
11 shall have determined, in the resolution authorizing the  
12 issuance of the bonds or notes, that this subsection shall  
13 apply. Whenever the Authority makes such a determination, that  
14 fact shall be plainly stated on the face of the bonds or notes  
15 and that fact shall also be reported to the Governor. In the  
16 event of a withdrawal of moneys from a reserve fund established  
17 with respect to any issue or issues of bonds of the Authority  
18 to pay principal or interest on those bonds, the Chairperson of  
19 the Authority, as soon as practicable, shall certify to the  
20 Governor the amount required to restore the reserve fund to the  
21 level required in the resolution or indenture securing those  
22 bonds. The Governor shall submit the amount so certified to the  
23 General Assembly as soon as practicable, but no later than the  
24 end of the current State fiscal year. The Authority shall  
25 obtain written approval from the Governor for any bonds and  
26 notes to be issued under this Section.

1           Section 65. State and local governments not liable on bonds  
2           or notes. The bonds, notes, and other obligations of the  
3           Authority shall not be a debt of the State or of any local  
4           government, and neither the State nor any local government  
5           shall be liable thereon. The Authority shall not have the power  
6           to pledge the credit, the revenues, or the taxing power of the  
7           State or of any local government, and neither the credit, the  
8           revenues, nor the taxing power of the State or of any local  
9           government shall be, or shall be deemed to be, pledged to the  
10          payment of any bonds, notes, or other obligations of the  
11          Authority. Each evidence of indebtedness of the Authority,  
12          including the bonds and notes of the Authority, shall contain a  
13          clear and explicit statement of the provisions of this Section.

14          Section 70. Deposit and investment of moneys of the  
15          Authority.

16           (a) All moneys of the Authority from whatever source  
17           derived, except as otherwise authorized or provided in this  
18           Act, shall be paid to the treasurer of the Authority and shall  
19           be deposited forthwith in a bank or banks designated by the  
20           Authority. The moneys in such accounts shall be withdrawn on  
21           the order of such person or persons as the Authority may  
22           authorize.

23           (b) The Authority may contract with holders of any of its  
24           bonds or notes, or any trustee therefor, as to the custody,



1 collection, securing, investment, and payment of any moneys of  
2 the Authority and of any moneys held in trust or otherwise for  
3 the payment of bonds or notes, and to carry out any such  
4 contract. Moneys held in trust or otherwise for the payment of  
5 bonds or notes or in any way to secure bonds or notes and  
6 deposits of such moneys and all banks and trust companies in  
7 the State are authorized to give such security for such  
8 deposits.

9 (c) Subject to agreements with noteholders and bondholders  
10 or any trustee therefor, the Authority shall prescribe a  
11 uniform system of accounts in accordance with generally  
12 accepted accounting principles.

13 Section 75. Agreement of the State.

14 (a) The State of Illinois pledges and agrees with the  
15 holders of any obligations issued under this Act and the  
16 parties to any contracts with the Authority that the State will  
17 not limit or alter the rights vested in the Authority until  
18 those obligations together with the interest thereon are fully  
19 met and discharged and those contracts are fully performed on  
20 the part of the Authority, except that nothing in this Act  
21 precludes such limitation or alteration if adequate provision  
22 is made by law for the protection of the holders of the  
23 obligations of the Authority, or those entering into such  
24 contracts with the Authority. The Authority as agent for the  
25 State is authorized to include this pledge and agreement by the

1 State in all agreements with the holders of such obligations  
2 and in all such contracts.

3 (b) Nothing in this Act shall be construed as diminishing  
4 or enlarging any valid existing rights under any license  
5 heretofore issued pursuant to the provisions of the Federal  
6 Power Act.

7 Section 80. Exemption from taxation.

8 (a) It is hereby found and declared that the operation of  
9 the Authority is primarily for the benefit of the people of the  
10 State of Illinois, for the improvement of their health,  
11 welfare, and prosperity, and has a public purpose, and the  
12 Authority shall be regarded as performing an essential  
13 governmental function in carrying out the provisions of this  
14 Act.

15 (b) The Authority shall not be required to pay taxes or  
16 assessments upon any of the property acquired or controlled by  
17 it or upon its activities in the operation and maintenance  
18 thereof or upon income derived therefrom, except that nothing  
19 in this Act shall prevent the Authority from entering into  
20 agreements to make payments in lieu of taxes with the governing  
21 bodies of local governments with respect to property acquired  
22 for any project when those payments are based solely on the  
23 value of real property without regard to any improvement  
24 thereof by the Authority.

25 (c) The securities and other obligations issued by the

1 Authority, their transfer, and the income therefrom shall, at  
2 all times, be free from taxation by the State or any local  
3 government, except for estate and gift taxes.

4 (d) The securities and other obligations issued by the  
5 Authority, their transfer, and the income therefrom shall, at  
6 all times, be free from taxation within this State. It is  
7 furthermore declared that the object and purpose of this Act is  
8 that such projects shall be in all respects self-supporting.

9 Section 85. Repayment of State appropriations. All  
10 appropriations made by the State to the Authority shall be  
11 treated as advances by the State to the Authority, and shall be  
12 repaid to the State without interest either out of the proceeds  
13 of bonds issued by the Authority pursuant to this Act, or by  
14 the delivery of non-interest bearing bonds of the Authority to  
15 the State for all or any part of such advances, or out of  
16 excess revenues of the Authority, at such times and on such  
17 conditions as the State and the Authority mutually may agree  
18 upon.

19 Section 90. ICC lacks jurisdiction. The generation,  
20 transmission, distribution, and sale by the Authority of  
21 electricity authorized by this Act and any other function or  
22 duty of the Authority are not subject to the Public Utilities  
23 Act or to the jurisdiction of the Illinois Commerce Commission.

1           Section 95. Equal employment opportunity and  
2 minority-owned and women-owned business enterprise programs.

3           (a) All contracts entered into by the Authority pursuant to  
4 this Act of whatever nature and all documents soliciting bids  
5 or proposals therefor shall contain or make reference to the  
6 following provisions:

7           (1) The contractor will not discriminate against  
8 employees or applicants for employment because of race,  
9 creed, color, national origin, sex, age, disability, or  
10 marital status, and will undertake or continue existing  
11 programs of affirmative action to ensure that minority  
12 group persons and women are afforded equal opportunity  
13 without discrimination. Such programs shall include, but  
14 not be limited to, recruitment, employment, job  
15 assignment, promotion, upgrading, demotion, transfer,  
16 layoff, termination, rates of pay or other forms of  
17 compensation, and selection for training and retraining,  
18 including apprenticeship and on-the-job training.

19           (2) At the request of the Authority, the contractor  
20 shall request each employment agency, labor union, or  
21 authorized representative of workers with which it has a  
22 collective bargaining or other agreement or understanding  
23 and that is involved in the performance of the contract  
24 with the Authority to furnish a written statement that such  
25 employment agency, labor union, or representative shall  
26 not discriminate because of race, creed, color, national

1 origin, sex, age, disability, or marital status and that  
2 such union or representative will cooperate in the  
3 implementation of the contractor's obligations under this  
4 Act.

5 (3) The contractor shall state, in all solicitations or  
6 advertisements for employees placed by or on behalf of the  
7 contractor in the performance of the contract with the  
8 Authority, that all qualified applicants will be afforded  
9 equal employment opportunity without discrimination  
10 because of race, creed, color, national origin, sex, age,  
11 disability, or marital status.

12 (4) The contractor will include the provisions of  
13 paragraphs (1) through (3) of this subsection in every  
14 subcontract or purchase order in such a manner that the  
15 provisions will be binding upon each subcontractor or  
16 vendor as to its work in connection with the contract with  
17 the Authority.

18 (b) The Authority shall establish measures, procedures,  
19 and guidelines to ensure that contractors and subcontractors  
20 undertake meaningful programs to employ and promote qualified  
21 minority group members and women. The procedures may require,  
22 after notice in a bid solicitation, the submission of a  
23 minority and women workforce utilization program prior to the  
24 award of any contract, or at any time thereafter, and may  
25 require the submission of compliance reports relating to the  
26 operation and implementation of any workforce utilization

1 program. The Authority may take appropriate action, including  
2 the imposition of sanctions for non-compliance, to effectuate  
3 the provisions of this Section and shall be responsible for  
4 monitoring compliance with this Act.

5 (c) In the performance of projects pursuant to this Act,  
6 minority-owned and women-owned business enterprises shall be  
7 given the opportunity for meaningful participation. The  
8 Authority shall establish quantifiable standards and measures  
9 and procedures to secure meaningful participation and identify  
10 those contracts and items of work for which minority-owned and  
11 women-owned business enterprises may best bid to actively and  
12 affirmatively promote and assist their participation in  
13 projects, so as to facilitate the award of a fair share of  
14 contracts to such enterprises; except that nothing in this Act  
15 shall be construed to limit the ability of the Authority to  
16 assure that qualified minority-owned and women-owned business  
17 enterprises may participate in the program.

18 The provisions of this subsection shall not be construed to  
19 limit the ability of any minority business enterprise to bid on  
20 any contract.

21 (d) In order to implement the requirements and objectives  
22 of this Section, the Authority shall establish procedures to  
23 monitor contractors compliance with provisions hereof, provide  
24 assistance in obtaining competing qualified minority-owned and  
25 women-owned business enterprises to perform contracts proposed  
26 to be awarded, impose contractual sanctions for

1 non-compliance, and take other appropriate measures to improve  
2 the access of minority-owned and women-owned business  
3 enterprises to these contracts.

4 Section 100. Authority subject to other Acts. The Authority  
5 is subject to the provisions of the Open Meetings Act and the  
6 Freedom of Information Act.

7 Section 105. Court proceedings; venue.

8 (a) The venue of any action or proceeding questioning the  
9 validity of this Act shall be in the county in which the  
10 principal office of the Authority is located.

11 (b) If any party appeals an award of compensation for the  
12 taking by the Authority of stock or assets, that party shall  
13 post a bond in such amount, if any, as the court of competent  
14 jurisdiction shall deem appropriate to adequately protect the  
15 interests of the other party under all the circumstances.

16 (c) All tort claims are subject to the Court of Claims Act.

17 Section 905. The Illinois Pension Code is amended by  
18 changing Section 1-109.1 as follows:

19 (40 ILCS 5/1-109.1) (from Ch. 108 1/2, par. 1-109.1)

20 Sec. 1-109.1. Allocation and Delegation of Fiduciary  
21 Duties.

22 (1) Subject to the provisions of Section 22A-113 of this

1 Code and subsections (2) and (3) of this Section, the board of  
2 trustees of a retirement system or pension fund established  
3 under this Code may:

4 (a) Appoint one or more investment managers as  
5 fiduciaries to manage (including the power to acquire and  
6 dispose of) any assets of the retirement system or pension  
7 fund; and

8 (b) Allocate duties among themselves and designate  
9 others as fiduciaries to carry out specific fiduciary  
10 activities other than the management of the assets of the  
11 retirement system or pension fund.

12 (2) The board of trustees of a pension fund established  
13 under Article 5, 6, 8, 9, 10, 11, 12 or 17 of this Code may not  
14 transfer its investment authority, nor transfer the assets of  
15 the fund to any other person or entity for the purpose of  
16 consolidating or merging its assets and management with any  
17 other pension fund or public investment authority, unless the  
18 board resolution authorizing such transfer is submitted for  
19 approval to the contributors and pensioners of the fund at  
20 elections held not less than 30 days after the adoption of such  
21 resolution by the board, and such resolution is approved by a  
22 majority of the votes cast on the question in both the  
23 contributors election and the pensioners election. The  
24 election procedures and qualifications governing the election  
25 of trustees shall govern the submission of resolutions for  
26 approval under this paragraph, insofar as they may be made



1 applicable.

2 (3) Pursuant to subsections (h) and (i) of Section 6 of  
3 Article VII of the Illinois Constitution, the investment  
4 authority of boards of trustees of retirement systems and  
5 pension funds established under this Code is declared to be a  
6 subject of exclusive State jurisdiction, and the concurrent  
7 exercise by a home rule unit of any power affecting such  
8 investment authority is hereby specifically denied and  
9 preempted.

10 (4) For the purposes of this Code, "emerging investment  
11 manager" means a qualified investment adviser that manages an  
12 investment portfolio of at least \$10,000,000 but less than  
13 \$2,000,000,000 and is a "minority owned business" or "female  
14 owned business" as those terms are defined in the Business  
15 Enterprise for Minorities, Females, and Persons with  
16 Disabilities Act.

17 It is hereby declared to be the public policy of the State  
18 of Illinois to encourage the trustees of public employee  
19 retirement systems to use emerging investment managers in  
20 managing their system's assets to the greatest extent feasible  
21 within the bounds of financial and fiduciary prudence, and to  
22 take affirmative steps to remove any barriers to the full  
23 participation of emerging investment managers in investment  
24 opportunities afforded by those retirement systems.

25 Each retirement system subject to this Code shall prepare a  
26 report to be submitted to the Governor and the General Assembly

1 by September 1 of each year. The report shall identify the  
2 emerging investment managers used by the system, the percentage  
3 of the system's assets under the investment control of emerging  
4 investment managers, and the actions it has undertaken to  
5 increase the use of emerging investment managers, including  
6 encouraging other investment managers to use emerging  
7 investment managers as subcontractors when the opportunity  
8 arises.

9 The use of an emerging investment manager does not  
10 constitute a transfer of investment authority for the purposes  
11 of subsection (2) of this Section.

12 (5) For the purposes of this Code, "Illinois Power  
13 Authority" means the Authority created under the Illinois Power  
14 Authority Act.

15 It is hereby declared to be the public policy of the State  
16 of Illinois to encourage the trustees of public employee  
17 retirement systems to invest their system's assets to the  
18 greatest extent feasible within the bounds of financial and  
19 fiduciary prudence in the Illinois Power Authority.

20 Each retirement system subject to this Code shall prepare a  
21 report to be submitted to the Governor and the General Assembly  
22 by September 1 of each year. The report shall identify  
23 investments in the Illinois Power Authority, the percentage of  
24 the system's assets invested in the Illinois Power Authority,  
25 and the actions it has undertaken to increase investments in  
26 the Illinois Power Authority.

1 (Source: P.A. 94-471, eff. 8-4-05.)

2 Section 910. The Public Utilities Act is amended by  
3 changing Section 3-105 as follows:

4 (220 ILCS 5/3-105) (from Ch. 111 2/3, par. 3-105)

5 Sec. 3-105. Public utility. "Public utility" means and  
6 includes, except where otherwise expressly provided in this  
7 Section, every corporation, company, limited liability  
8 company, association, joint stock company or association,  
9 firm, partnership or individual, their lessees, trustees, or  
10 receivers appointed by any court whatsoever that owns,  
11 controls, operates or manages, within this State, directly or  
12 indirectly, for public use, any plant, equipment or property  
13 used or to be used for or in connection with, or owns or  
14 controls any franchise, license, permit or right to engage in:

15 a. the production, storage, transmission, sale,  
16 delivery or furnishing of heat, cold, power, electricity,  
17 water, or light, except when used solely for communications  
18 purposes;

19 b. the disposal of sewerage; or

20 c. the conveyance of oil or gas by pipe line.

21 "Public utility" does not include, however:

22 1. public utilities that are owned and operated by any  
23 political subdivision, public institution of higher  
24 education or municipal corporation of this State, or public

1 utilities that are owned by such political subdivision,  
2 public institution of higher education, or municipal  
3 corporation and operated by any of its lessees or operating  
4 agents;

5 2. water companies which are purely mutual concerns,  
6 having no rates or charges for services, but paying the  
7 operating expenses by assessment upon the members of such a  
8 company and no other person;

9 3. electric cooperatives as defined in Section 3-119;

10 4. the following natural gas cooperatives:

11 (A) residential natural gas cooperatives that are  
12 not-for-profit corporations established for the  
13 purpose of administering and operating, on a  
14 cooperative basis, the furnishing of natural gas to  
15 residences for the benefit of their members who are  
16 residential consumers of natural gas. For entities  
17 qualifying as residential natural gas cooperatives and  
18 recognized by the Illinois Commerce Commission as  
19 such, the State shall guarantee legally binding  
20 contracts entered into by residential natural gas  
21 cooperatives for the express purpose of acquiring  
22 natural gas supplies for their members. The Illinois  
23 Commerce Commission shall establish rules and  
24 regulations providing for such guarantees. The total  
25 liability of the State in providing all such guarantees  
26 shall not at any time exceed \$1,000,000, nor shall the

1 State provide such a guarantee to a residential natural  
2 gas cooperative for more than 3 consecutive years; and

3 (B) natural gas cooperatives that are  
4 not-for-profit corporations operated for the purpose  
5 of administering, on a cooperative basis, the  
6 furnishing of natural gas for the benefit of their  
7 members and that, prior to 90 days after the effective  
8 date of this amendatory Act of the 94th General  
9 Assembly, either had acquired or had entered into an  
10 asset purchase agreement to acquire all or  
11 substantially all of the operating assets of a public  
12 utility or natural gas cooperative with the intention  
13 of operating those assets as a natural gas cooperative;

14 5. sewage disposal companies which provide sewage  
15 disposal services on a mutual basis without establishing  
16 rates or charges for services, but paying the operating  
17 expenses by assessment upon the members of the company and  
18 no others;

19 6. the Illinois Power Authority and its subsidiaries as  
20 provided in Section 90 of the Illinois Power Authority Act  
21 ~~(Blank)~~;

22 7. cogeneration facilities, small power production  
23 facilities, and other qualifying facilities, as defined in  
24 the Public Utility Regulatory Policies Act and regulations  
25 promulgated thereunder, except to the extent State  
26 regulatory jurisdiction and action is required or

1 authorized by federal law, regulations, regulatory  
2 decisions or the decisions of federal or State courts of  
3 competent jurisdiction;

4 8. the ownership or operation of a facility that sells  
5 compressed natural gas at retail to the public for use only  
6 as a motor vehicle fuel and the selling of compressed  
7 natural gas at retail to the public for use only as a motor  
8 vehicle fuel; and

9 9. alternative retail electric suppliers as defined in  
10 Article XVI.

11 (Source: P.A. 94-738, eff. 5-4-06.)

12 Section 930. The Eminent Domain Act is amended by adding  
13 Sections 15-5-45 and 25-5-5 and by changing the heading of Part  
14 5 of Article 25 as follows:

15 (735 ILCS 30/15-5-45 new)

16 Sec. 15-5-45. Eminent domain powers in new Acts. The  
17 following provisions of law may include express grants of the  
18 power to acquire property by condemnation or eminent domain:

19 Illinois Power Authority Act.

20 (735 ILCS 30/Art. 25, Pt. 5 heading)

21 Part 5. New Quick-take Powers

22 ~~(Reserved)~~

23 (Source: P.A. 94-1055, eff. 1-1-07.)

1 (735 ILCS 30/25-5-5 new)

2 Sec. 25-5-5. Quick-take; Illinois Power Authority.  
3 Quick-take proceedings under Article 20 may be used by the  
4 Illinois Power Authority for the purposes specified in the  
5 Illinois Power Authority Act.

6 Section 990. Severability. The provisions of this Act are  
7 severable, and if any part or provision of this Act, or the  
8 application thereof to any person or circumstance, is adjudged  
9 by any court of competent jurisdiction to be invalid or  
10 unenforceable, that judgment does not affect, impair, or  
11 invalidate the remainder of this Act or the application of that  
12 provision to any other person or circumstance, but shall be  
13 confined in its operation to the provision, person, or  
14 circumstance directly involved in the controversy in which the  
15 judgment has been rendered.

16 Section 999. Effective date. This Act takes effect upon  
17 becoming law.

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INDEX

Statutes amended in order of appearance

New Act

40 ILCS 5/1-109.1 from Ch. 108 1/2, par. 1-109.1

220 ILCS 5/3-105 from Ch. 111 2/3, par. 3-105

735 ILCS 30/15-5-45 new

735 ILCS 30/Art. 25, Pt. 5

heading

735 ILCS 30/25-5-5 new