



Sen. Don Harmon

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1 AMENDMENT TO SENATE BILL 1184

2 AMENDMENT NO. _____. Amend Senate Bill 1184 by replacing
3 everything after the enacting clause with the following:

4 "ARTICLE 5

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

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

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

13 (2) It is desirable to obtain the environmental
14 quality, public health, employment, economic development,
15 rate stabilization, and fuel diversity benefits of

1 developing new renewable energy resources for use in
2 Illinois.

3 (3) The General Assembly has previously found and
4 declared that the benefits of electricity from renewable
5 energy resources accrue to the public at large, thus
6 consumers and electric utilities and alternative retail
7 electric suppliers share an interest in developing and
8 using a significant level of these environmentally
9 preferable resources in the State's electricity supply
10 portfolio.

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

13 (5) Investment in energy efficiency and load
14 management, combined with energy efficiency codes and
15 standards, present important opportunities to increase
16 Illinois' energy security, protect Illinois energy
17 consumers from price volatility, preserve the State's
18 natural resources and pursue an improved environment in
19 Illinois.

20 (6) It serves the public interest to require public
21 utility investments in cost-effective energy efficiency
22 and load management by ensuring recovery of costs for
23 reasonable and prudently incurred expenses of energy
24 efficiency, renewable energy, and load management
25 programs.

26 (7) Investments in energy efficiency and

1 implementation of utility energy efficiency programs
2 dedicated to economically-disadvantaged Illinois
3 residents, in addition to existing low-income
4 weatherization programs managed by the State of Illinois,
5 will reduce the burden of utility costs on low-income
6 customers.

7 (8) Public utility investments in cost-effective
8 energy efficiency, renewable energy, and load management,
9 combined with the adoption of efficiency codes and
10 standards, can provide significant reductions in
11 greenhouse gas emissions, regulated air emissions, water
12 consumption, and natural resource depletion and can avoid
13 or delay the need for more expensive generation,
14 transmission, and distribution infrastructure.

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

21 Section 5-10. Definitions.

22 "Commission" means the Illinois Commerce Commission.

23 "Department" means the Department of Commerce and Economic
24 Opportunity.

25 "Director", unless otherwise provided, means the Director

1 of the Department of Commerce and Economic Opportunity, or the
2 Director's designee.

3 "Energy conservation" is any reduction in electric power
4 consumption or natural gas consumption resulting from
5 increased energy efficiency in the end-use applications of
6 electricity and natural gas and increased customer knowledge
7 concerning the societal impacts of consumption.

8 "Energy efficiency" means measures, including energy
9 conservation measures, or programs, including load management
10 programs, that target customer behavior, equipment or devices,
11 or development and demonstration of breakthrough energy
12 efficiency equipment or devices, that result in a decrease in
13 consumption of electricity or natural gas.

14 "Load management" means measures or programs that target
15 equipment or devices to decrease peak electricity demand or
16 shift demand from peak to off-peak periods.

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

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

21 "Municipality" means any city, village, or incorporated
22 town.

23 "Planning costs" are the costs of evaluating the future
24 demand for energy services and of evaluating alternative
25 methods of satisfying that demand. Planning costs include, but
26 are not to be limited to, costs associated with: (i)

1 econometric and end-use forecasting; (ii) identification and
2 evaluation of alternative demand-side and supply-side resource
3 options; and (iii) evaluation of costs associated with
4 alternative resources.

5 "Portfolio development costs" are costs of preparing a
6 resource in a portfolio for prompt and timely acquisition.
7 Portfolio development costs include, but are not to be limited
8 to, costs associated with: (i) negotiating contracts for
9 competitively acquired resources; (ii) acquiring and holding
10 resource options; and (iii) developing and maintaining the
11 capability to rapidly acquire demand-side resources.

12 "Renewable energy resources" includes energy or renewable
13 energy credits from wind, solar thermal energy, photovoltaic
14 cells and panels, dedicated crops grown for energy production
15 and organic waste biomass, hydropower that does not involve new
16 construction or significant expansion of hydropower dams, and
17 other such alternative sources of environmentally preferable
18 energy. For purposes of this Law, landfill gas produced in the
19 State shall be considered a renewable energy resource.

20 "Renewable energy resources" does not include energy from the
21 incineration, burning, or heating of waste wood, tires,
22 garbage, general household, institutional and commercial
23 waste, industrial lunchroom or office waste, landscape waste,
24 or construction or demolition debris.

25 "Renewable energy credit" means a tradable credit that
26 represents the environmental attributes of a certain amount of

1 energy produced from a renewable energy resource.

2 "Energy efficiency resources" means energy efficiency
3 programs designed to assist customers to use energy more
4 efficiently, reduce or control their consumption of energy, as
5 measured in kilowatts, kilowatthours or therms, or otherwise
6 control the level of their gas or electric utility bills.

7 "Total resource cost test" or "TRC test" means a standard
8 that is met if, for an investment in energy efficiency or load
9 management, the benefit-cost ratio is greater than one. The
10 benefit-cost ratio is the ratio of the net present value of the
11 total benefits of the program to the net present value of the
12 total costs as calculated over the lifetime of the measures.

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

22 In calculating avoided costs of power and energy that the
23 gas and electric utility would otherwise have had to acquire,
24 reasonable estimates shall be included of financial costs
25 likely to be imposed by future regulations and legislation on
26 emissions of greenhouse gases.

1 Provisions include an oversight and evaluation process
2 that shall periodically monitor and develop data on the cost
3 effectiveness and actual productivity of demand-side
4 efficiency and conservation programs.

5 "Unit of local government" means a county, township,
6 municipality, municipal corporation, school district,
7 community college district, community college board, forest
8 preserve district, park district, fire protection district,
9 sanitary district, or other local governmental bodies
10 designated as units of local government by law.

11 Section 5-15. Utility energy efficiency programs.

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

19 (b) Electric utilities shall use cost-effective energy
20 efficiency resources to meet the following incremental annual
21 program energy savings goals:

- 22 (1) 0.2% of energy delivered in 2008;
- 23 (2) 0.4% of energy delivered in 2009;
- 24 (3) 0.6% of energy delivered in 2010;
- 25 (4) 0.8% of energy delivered in 2011;

- 1 (5) 1% of energy delivered in 2012; and
2 (6) 1.4% of energy delivered in 2013;
3 (7) 1.8% of energy delivered in 2014; and
4 (8) 2% of energy delivered in 2015 and each year
5 thereafter.

6 (c) Natural gas utilities shall use cost-effective energy
7 efficiency resources to meet the following incremental annual
8 program energy savings goals:

- 9 (1) 0.2% of total annual Mcf delivered in 2008;
10 (2) 0.4% of total annual Mcf delivered in 2009;
11 (3) 0.6% of total annual Mcf delivered in 2010;
12 (4) 0.8% of total annual Mcf delivered in 2011;
13 (5) 1% of total annual Mcf delivered in 2012; and
14 (6) 1.4% of total annual Mcf delivered in 2013;
15 (7) 1.8% of total annual Mcf delivered in 2014; and
16 (8) 2% of total annual Mcf delivered in 2015 and each
17 year thereafter.

18 (d) Notwithstanding the provisions of subsections (b) and
19 (c) of this Section, if the Commission's approval of a gas or
20 electric utility's plan pursuant to subsection (f) of this
21 Section is delayed beyond March 31, 2008, but occurs prior to
22 April 1, 2009, the initial target year and each subsequent
23 target year shall be delayed by one year; the targets shall be
24 delayed by an additional year for each additional year or
25 fraction thereof that the Commission's approval is delayed. In
26 the event that the Commission's approval is delayed until after

1 March 31, 2008, but occurs before July 1, 2008, the utility
2 shall nonetheless meet one-quarter of the target for 2008 set
3 out in item (1) of subsection (b) of this Section or item (1)
4 of subsection (c) of this Section, adjusted as provided in
5 subsection (f) of this Section.

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

23 (f) Electric and natural gas utilities shall be responsible
24 for overseeing the design, development, and filing of their
25 efficiency plans with the Commission. Electric and gas public
26 utilities may administer up to 75% of the energy efficiency

1 programs filed with and approved with the Commission, and may,
2 as part of such administration, outsource various aspects of
3 program development and implementation. The remaining 25% of
4 those energy efficiency programs filed with and approved by the
5 Commission must be administered by the Department of Commerce
6 and Economic Opportunity, and must be designed in conjunction
7 with the utility and the filing process. The Department may, as
8 part of such administration, outsource aspects of program
9 development and administration. A minimum of 10% of the
10 Department's portfolio of cost-effective energy efficiency
11 resources shall be procured from units of local government,
12 municipal corporations, school districts, and community
13 college districts. The Department of Commerce and Economic
14 Opportunity shall administer the coordination of these
15 programs.

16 The apportionment of the dollars to cover the costs to
17 administer Department's share of the portfolio of programs
18 shall be made to the Department once the Department has
19 completed an RFP process for an individual program or programs.

20 The details of the programs administered by the Department
21 shall be submitted by the Department to the Commission in
22 connection with the utility's filing regarding the plans that
23 the utility administers.

24 Each utility shall include, in its recovery of costs, the
25 costs estimated for implementation and operation of the
26 programs administered by the utility and by the Department.

1 Costs collected by the utility that are for programs
2 administered by the Department shall be submitted to the
3 Department pursuant to Section 605-323 of the Civil
4 Administrative Code of Illinois and shall be used by the
5 Department solely for the purpose of administering the
6 programs. The Department shall report to the Commission on an
7 annual basis regarding the costs actually incurred by the
8 Department in the implementation of the programs. Any changes
9 to program costs as a result of program modifications shall be
10 appropriately reflected in amounts recovered by the utility and
11 turned over to the Department.

12 The portfolio of programs, administered by both the
13 utilities and the Department shall, in combination, be designed
14 to achieve the annual savings targets described in subsections
15 (b) and (c) of this Section, as modified by subsections (d) and
16 (e) of this Section.

17 The utility and the Department shall agree upon a
18 reasonable division of the portfolio of programs and determine
19 the measurable corresponding percentage of the savings goals
20 represented by each administrator (whether utility or
21 Department).

22 The revenue needs of the programs, as apportioned between
23 the filing utility and the Department, shall roughly correlate
24 to the savings targets and shall remain within the percentage
25 described in this subsection (f).

26 No utility shall be assessed a penalty under subsection (g)

1 of this Section for failure to make a timely filing if such
2 failure is the result of a lack of agreement with the
3 Department with respect the division of portfolio programs or
4 related costs or target assignments. In such a case, the
5 Department and the utility shall file their respective plans
6 with the Commission and the Commission shall determine and
7 appropriate division of programs that meets the requirements of
8 this Section.

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

21 (g) The Commission shall adopt rules within 3 months after
22 the effective date of this Law that specify the procedure for
23 electric and gas utilities to develop and submit an energy
24 efficiency plan. Among other things, the rules shall include
25 standards for defining the components of the total resource
26 cost test. Rules shall specify the process for coordination of

1 energy efficiency program planning between the Department and
2 the utilities. Rules shall also specify the methodology for
3 establishing a price per kilowatthour for energy efficiency
4 projects implemented by units of local government and the
5 process by which the Department shall select these projects for
6 inclusion in each utility's energy efficiency plan. Within 3
7 months after adoption by the Commission of rules, and every 3
8 years thereafter, Illinois electric and gas utilities shall
9 file an energy efficiency plan with the Commission. If a
10 utility does not file such a plan, it shall face a penalty of
11 \$100,000 per day until the plan is filed. Each utility's plan
12 shall reflect the utility's judgment on how to meet the
13 utility's portion of the energy efficiency goals identified in
14 subsections (b) and (c) of this Section as modified by
15 subsections (d) and (e), taking into account the unique
16 circumstances of the utility's service territory. The
17 Commission shall approve or disapprove each plan within 3
18 months after its submission. If the Commission disapproves a
19 plan, the Commission shall, within 30 days, describe in detail
20 the reasons for the disapproval and describe a path by which
21 the utility may file a revised draft of the plan to address the
22 Commission's concerns satisfactorily. If the utility does not
23 re-file with the Commission within 60 days, the utility shall
24 be subject to penalties at a rate of \$100,000 per day until the
25 plan is filed. This process shall continue, and penalties shall
26 accrue, until the utility has successfully filed and the

1 Commission has approved a portfolio of energy efficiency
2 programs. Penalties shall be deposited into the Energy
3 Efficiency Resources Trust Fund. In submitting proposed energy
4 efficiency program plans and funding levels to meet the savings
5 goals adopted by this Law the utility shall:

6 (1) Demonstrate that its proposed level of electric or
7 natural gas energy efficiency program activities and
8 funding is consistent with the adopted electric and natural
9 gas savings goals that are identified in subsections (b)
10 and (c) of this Section as modified by subsections (d) and
11 (e).

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

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

23 (4) Coordinate with the Department and the Department
24 of Healthcare and Family Services to present a portfolio of
25 energy efficiency programs targeted to households at or
26 below 150% of the poverty level at a level proportionate to

1 those households' share of total annual utility revenues in
2 Illinois.

3 (5) Demonstrate that its overall portfolio of
4 investments in energy efficiency, not including programs
5 covered by item (4) of this subsection (g), are
6 cost-effective using the total resource cost test and
7 represent a diverse cross-section of opportunities for
8 customers of all rate classes to participate in the
9 programs.

10 (6) Include a proposed cost recovery tariff mechanism
11 to fund the proposed energy efficiency programs and to
12 ensure the recovery of the prudently and reasonably
13 incurred costs of Commission approved programs.

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

23 (h) A public utility providing approved energy efficiency
24 programs in the State shall be permitted to recover costs of
25 those programs through an automatic adjustment clause tariff
26 filed with and approved by the Commission. The tariff may be

1 established outside the context of a general rate case. Each
2 year the Commission shall initiate a review to reconcile any
3 amounts collected with the actual costs and to determine the
4 adjustment to the annual tariff factor to match annual
5 expenditures. The determination shall be made within 90 days
6 after the date of initiation of the review.

7 (i) No more than 3% of energy efficiency program revenue
8 may be allocated for demonstration of breakthrough energy
9 efficiency equipment and devices.

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

15 Section 5-20. Renewable portfolio standard.

16 (a) An electric utility shall procure or obtain
17 cost-effective renewable energy resources in amounts that
18 equal or exceed the following percentages of the total
19 electricity that the electric utility supplies to its retail
20 Illinois customers: 2% by December 31, 2008; 4% by December 31,
21 2009; 5% by December 31, 2010; 6% by December 31, 2011; 7% by
22 December 31, 2012; 8% by December 31, 2013; 9% by December 31,
23 2014; and 10% by December 31, 2015. It shall be the goal of the
24 State that cost-effective renewable energy resources available
25 to supply an amount of the total electricity that electric

1 utilities supply to their retail customers that continues to
2 increase after 2015 by 1.5% per year to 25% by 2025. Provided,
3 however, that if the Commission's adoption of rules pursuant to
4 subsection (f) of this Section is delayed beyond March 31,
5 2008, but occurs prior to April 1, 2009, the initial target
6 year and each subsequent target year shall be delayed by one
7 year; the targets shall be delayed by an additional year for
8 each additional year or fraction thereof that the Commission's
9 adoption of rules is delayed. In the event that the
10 Commission's adoption of rules is delayed after March 31, 2008,
11 but occurs before July 1, 2008, the utility shall nonetheless
12 meet one-quarter of the target for 2008 of electricity supplied
13 to retail Illinois customers by December 31, 2008. To the
14 extent that it is available, at least 75% of the renewable
15 energy resources used to meet these standards shall come from
16 wind generation. For purposes of this Section "cost-effective"
17 shall mean that the costs of procuring renewable energy
18 resources do not cause the limit stated in subsection (b) of
19 this Section to be exceeded.

20 (b) For purposes of this Section, the required procurement
21 of renewable energy resources for a particular year shall be
22 measured as a percentage of the actual amount of electricity
23 (megawatthours) supplied by the electric utility in the
24 calendar year ending immediately prior to the procurement.

25 Notwithstanding the requirements of subsection (a) of this
26 Section, an electric utility may reduce the amount of renewable

1 energy resources procured under new contracts in any single by
2 an amount necessary to limit the estimated average net increase
3 due to the costs of these resources included in the amounts
4 paid by retail customers in connection with electric service to
5 no more than 0.5% of the amount paid by such customers during
6 the preceding calendar year, with such limit increasing by 0.5%
7 in each of the 3 years 2009 through 2011, for a maximum cap on
8 the allowed estimated average increase due to the cost of these
9 resources of 2.5%. The maximum cap on the allowed estimated
10 average increase due to the cost of these resources is 2%. No
11 later than June 30, 2011, the Commission shall review the rate
12 limitation and report to the General Assembly its findings as
13 to whether the rate cap unduly constrains the procurement of
14 renewable energy resources.

15 (c) Through December 31, 2011, renewable energy resources
16 shall be counted for the purpose of meeting the renewable
17 energy standards set forth in subsection (a) of this Section
18 only if they are generated from facilities located in the
19 State, provided that cost-effective renewable resources are
20 available from such facilities. After December 31, 2011,
21 renewable energy resources located in states that adjoin
22 Illinois may be counted towards compliance with the standards
23 set forth in subsection (a) of this Section so long as such
24 resources are generated from resources that meet the definition
25 of renewable energy resources as defined by this statute. Any
26 electric utility with fewer than 90,000 but more than 50,000

1 customers in Illinois as of January 1, 2007 shall be allowed to
2 count renewable energy resources generated in a state adjoining
3 Illinois for the purpose of meeting the renewable energy
4 standard set forth in subsection (a) of this Section if such
5 resources are generated from a facility constructed in the year
6 2006.

7 (d) Each electric utility shall report to the Commission on
8 compliance with these standards by April 1 of each year,
9 beginning in 2009.

10 (e) If an electric utility does not, during a calendar
11 year, procure or obtain the full amount of renewable energy
12 resources specified by the standards in subsection (a) of this
13 Section, as modified by the limitations of subsection (b) of
14 this Section, then the electric utility shall pay a penalty of
15 \$40 per megawatthour each year for any shortfall during such
16 year unless and until the utility makes sufficient additional
17 purchases to meet the requirement. Provided, however, that, if
18 the electric utility proves to the Commission that
19 cost-effective renewable energy resources are not available in
20 sufficient quantities to meet the renewable energy standards
21 set forth in subsection (a) of this Section, as modified by the
22 limitations of subsection (b) of this Section, and, if the
23 Commission finds that the electric utility has, in fact, proved
24 that the cost-effective renewable energy resources are not
25 available in sufficient quantities, after notice and a hearing
26 conducted in accordance with the Commission's rules of

1 practice, then the Commission shall waive the penalty. Any
2 penalty payment shall be deposited into the Renewable Energy
3 Resources Trust Fund to be used by the Department of Commerce
4 and Economic Opportunity for the sole purposes of supporting
5 the actual development, construction, and utilization of
6 renewable energy projects in the State.

7 (f) The Commission shall adopt rules as necessary within 9
8 months after the effective date of this Law to assist in
9 implementing this Section including, but not limited to,
10 methods of procurement, accounting, tracking, and reporting in
11 order to achieve the full objectives of this Section. The rules
12 shall also provide for recovery of costs incurred and the pass
13 through to customers of any savings achieved by electric
14 utilities as a result of procuring or obtaining the renewable
15 energy resources specified under subsection (a) of this
16 Section. The rate elements and rates used for such cost
17 recovery may be established by the electric utility, subject to
18 the Commission's review and approval, outside the context of a
19 general rate case.

20 (g) In connection with their compliance with the
21 requirements of subsection (a) of this Section, electric
22 utilities may enter into long-term contracts of up to 20 years
23 in length with providers of renewable energy resources, and the
24 costs or savings associated with those contracts shall be
25 reflected in tariffed rates for the duration of those
26 contracts.

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

2 (A) failure by the wind energy company to operate a
3 wind turbine or wind turbines for the purposes for which
4 they were designed and installed, for a period of 12
5 consecutive months; and

6 (B) failure to adhere to any or all of the restrictions
7 and conditions that were part of the approval process of
8 the appropriate county authority for the granting of the
9 special use permit, conditional use permit, zoning change,
10 or zoning or permitting ordinance of any kind given in
11 order to allow the installation and operation of the wind
12 turbine or wind turbines.

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

15 "Claimant" means either a landowner or a county board
16 seeking to have a deconstruction paid for from the Wind Energy
17 Indemnity Fund and carried out by the Department of
18 Agriculture.

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

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

23 "Deconstruction" means removal of all property comprising
24 a wind energy generation facility from the property of a
25 landowner and restoration of the property to the condition in
26 which it existed immediately prior to the construction of the

1 facility, including, but not limited to, soil type and
2 topography; provided, however, that foundations, pads,
3 electrical lines, and any other underground facilities must be
4 removed to a depth of 4 feet below the surface of the ground.

5 "Department" means the Department of Agriculture.

6 "Director", unless otherwise provided, means the Director
7 of Agriculture, or the Director's designee.

8 "Fund" means the Wind Energy Indemnity Fund.

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

11 "Person" means any individual or entity, including, but not
12 limited to, a sole proprietorship, a partnership, a
13 corporation, a cooperative, an association, a limited
14 liability company, an estate, a trust, or a governmental
15 agency.

16 "Underlying agreement" means a written arrangement with a
17 landowner, including, but not limited to, an easement, under
18 the terms of which a person constructs or intends to construct
19 a wind energy generation facility on the property of the
20 landowner.

21 "Wind energy generation facility" means all property of any
22 nature whatsoever comprising an operation designed to harness
23 wind energy and create electricity therefrom, including, but
24 not limited to, turbines, towers, roadways, concrete
25 foundations, transmission lines, and poles, all situated on,
26 under, or over the property of a landowner.

1 "Wind energy indemnity trust account" or "trust account"
2 means a trust account established by the Director of the
3 Department of Agriculture that is used for the receipt and
4 disbursement of moneys paid from the Fund.

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

7 Section 10-10. Powers and duties of the Director of the
8 Department of Agriculture. The Director has all powers
9 necessary and proper to fully and effectively execute the
10 provisions of this Law and has the general duty to implement
11 this Law. The Director's powers and duties include, but are not
12 limited to, the following:

13 (1) The Director shall serve as president of the
14 Corporation.

15 (2) The Director may take any action that may be
16 reasonable or appropriate to enforce this Law and its
17 rules.

18 Section 10-15. Administrative procedure. The Illinois
19 Administrative Procedure Act applies to this Law.

20 Section 10-20. Administrative review and venue. Final
21 administrative decisions of the Department of Agriculture are
22 subject to judicial review under Article III of the Code of
23 Civil Procedure and its rules. The term "administrative

1 decision" is defined as in Section 3-101 of the Code of Civil
2 Procedure. An action to review a final administrative decision
3 under this Law may be commenced in the circuit court of any
4 county in which any part of the transaction occurred that gave
5 rise to the claim that was the subject of the proceedings
6 before the Department of Agriculture.

7 Section 10-25. Rules. The Department of Agriculture may
8 adopt rules that are necessary for the implementation and
9 administration of this Law.

10 Section 10-30. Fund assessments.

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

1 (b) All installments under this Section must be sent to the
2 Department of Agriculture and made payable to the Corporation.
3 It is the responsibility of all parties to an underlying
4 agreement to report the existence and specific provisions of
5 the underlying agreement to the Department of Agriculture.

6 (c) The Department of Agriculture shall mail all assessment
7 notices to owners of wind energy generation facilities at least
8 30 days before the assessment installment is due.

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

19 Section 10-35. Abandonment. Upon an administrative finding
20 in a hearing held by the Department of Agriculture that a
21 deconstruction has been validly determined and ordered by
22 either a court of competent jurisdiction or an arbitrator in
23 binding arbitration, and deconstruction, after a period of at
24 least 8 months, has not been completed satisfactorily, the
25 Director has all the powers for the benefit of claimants as

1 established under this Law, including, but not limited to, the
2 power to do the following:

3 (a) request the transfer of moneys from the Wind Energy
4 Indemnity Fund to the trust account for the purpose of
5 paying the cost of deconstruction in accordance with this
6 Law;

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

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

10 (d) retain from the sale of the deconstructed assets
11 moneys adequate to cover the costs to the Department of
12 Agriculture of the deconstruction, and pay those amounts to
13 the Fund; or

14 (e) return all moneys over and above the costs to the
15 Department of Agriculture for the deconstruction to the
16 owner or owners of the deconstructed assets, or to the
17 holders of valid liens on those assets.

18 Section 10-40. Statutory lien. Except as otherwise
19 provided in this Section, the Department of Agriculture shall
20 have a lien prior and paramount to all other liens of any sort
21 on the assets of the wind energy system to the extent of the
22 costs incurred by the Department to accomplish the
23 deconstruction of the abandoned wind energy system, which
24 arises and attaches upon construction of said wind energy
25 system. The lien herein granted to the Department shall not be

1 prior and paramount to the statutory lien in favor of real
2 property taxes.

3 Section 10-45. Claims.

4 (a) A claimant shall file a complaint on forms supplied by
5 the Department of Agriculture that contains at least the
6 following:

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

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

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

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

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

25 (6) a request that the funds necessary to perform the

1 deconstruction be paid to the Department from the Fund and
2 that the Department of Agriculture carry out the
3 deconstruction in accordance with the order of the court or
4 the arbitrator and in accordance with the definition of
5 deconstruction as contained in this Law.

6 (b) A hearing shall be held by the Department of
7 Agriculture and a decision rendered as to the validity of the
8 claimant's complaint. In the event of a finding that the
9 complaint is valid, then, within 90 days after the date, the
10 Department shall obtain at least 2 bids from contractors to
11 carry out the specific deconstruction. One bidder must be
12 chosen by the Department within the following 60 days, and the
13 Department, within 60 days thereafter, shall enter into a
14 written agreement with the successful bidder for the
15 deconstruction, which must be accomplished within 6 months
16 thereafter.

17 (c) It is the responsibility of the Department of
18 Agriculture to monitor the progress of the deconstruction and
19 provide the necessary supervisory oversight to ensure that it
20 is accomplished in accordance with the deconstruction
21 agreement and the provisions of this Act.

22 Section 10-50. Illinois Wind Energy Indemnity Fund
23 Corporation; creation; powers.

24 (a) There is hereby created the Illinois Wind Energy
25 Indemnity Fund Corporation, a political subdivision, body

1 politic, and public corporation. The governing powers of the
2 Corporation are vested in the Board of Directors composed of
3 the Director, who shall personally serve as President; the
4 Attorney General or his or her designee, who shall serve as
5 Secretary; the State Treasurer or his or her designee, who
6 shall serve as Treasurer; and the Chairman of the Illinois
7 Commerce Commission, or his or her designee. Three members of
8 the Board constitute a quorum at any meeting of the Board, and
9 the affirmative vote of 3 members is necessary for any action
10 taken by the Board at a meeting, except that a lesser number
11 may adjourn a meeting from time to time. A vacancy in the
12 membership of the Board does not impair the right of a quorum
13 to exercise all the rights and perform all the duties of the
14 Board and Corporation.

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

18 (1) to have perpetual succession by its corporate name
19 as a corporate body;

20 (2) to adopt, alter, and repeal by-laws, not
21 inconsistent with the provisions of this Law, for the
22 regulation and conduct of its affairs and business;

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

25 (4) to avail itself of the use of information,
26 services, facilities, and employees of the State of

1 Illinois in carrying out the provisions of this Law;

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

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

8 (7) upon the request of the Director, to make payment
9 from the Fund to the Trust Account when payment is
10 necessary to pay costs of deconstruction in accordance with
11 the provisions of this Law;

12 (8) to authorize, receive, and disburse funds by
13 electronic means; and

14 (9) to have those powers that are necessary or
15 appropriate for the exercise of the powers specifically
16 conferred upon the Corporation and all incidental powers
17 that are customary in corporations.

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

20 (d) Subject to applicable law, the assets of the Fund may
21 be invested and reinvested at the discretion of the
22 Corporation, and the income from these investments must be
23 deposited into the Fund and must be available for the same
24 purposes as all other assets of the Fund.

25 (e) The assets of the Fund may not be available for any
26 purposes other than the payment of deconstruction costs under

1 this Law and the payment of refunds of amounts that the Board
2 determines have been inappropriately paid into the Fund, and
3 may not be transferred to any other fund, other than the trust
4 account when necessary to pay deconstruction costs under this
5 Law or to pay refunds authorized by the Board.

6 Section 10-55. No waiver. Neither the Board nor the
7 Director has the authority to alter, vary, or revise the
8 provisions of this Law by agreement with any claimant or other
9 entity.

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

13 (20 ILCS 687/6-5)

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

15 Sec. 6-5. Renewable Energy Resources and Coal Technology
16 Development Assistance Charge.

17 (a) Notwithstanding the provisions of Section 16-111 of the
18 Public Utilities Act but subject to subsection (e) of this
19 Section, each public utility, electric cooperative, as defined
20 in Section 3.4 of the Electric Supplier Act, and municipal
21 utility, as referenced in Section 3-105 of the Public Utilities
22 Act, that is engaged in the delivery of electricity or the
23 distribution of natural gas within the State of Illinois shall,

1 effective January 1, 1998, assess each of its customer accounts
2 a monthly Renewable Energy Resources and Coal Technology
3 Development Assistance Charge. The delivering public utility,
4 municipal electric or gas utility, or electric or gas
5 cooperative for a self-assessing purchaser remains subject to
6 the collection of the fee imposed by this Section. The monthly
7 charge shall be as follows:

8 (1) \$0.05 per month on each account for residential
9 electric service as defined in Section 13 of the Energy
10 Assistance Act;

11 (2) \$0.05 per month on each account for residential gas
12 service as defined in Section 13 of the Energy Assistance
13 Act;

14 (3) \$0.50 per month on each account for nonresidential
15 electric service, as defined in Section 13 of the Energy
16 Assistance Act, which had less than 10 megawatts of peak
17 demand during the previous calendar year;

18 (4) \$0.50 per month on each account for nonresidential
19 gas service, as defined in Section 13 of the Energy
20 Assistance Act, which had distributed to it less than
21 4,000,000 therms of gas during the previous calendar year;

22 (5) \$37.50 per month on each account for nonresidential
23 electric service, as defined in Section 13 of the Energy
24 Assistance Act, which had 10 megawatts or greater of peak
25 demand during the previous calendar year; and

26 (6) \$37.50 per month on each account for nonresidential

1 gas service, as defined in Section 13 of the Energy
2 Assistance Act, which had 4,000,000 or more therms of gas
3 distributed to it during the previous calendar year.

4 (b) The Renewable Energy Resources and Coal Technology
5 Development Assistance Charge assessed by electric and gas
6 public utilities shall be considered a charge for public
7 utility service.

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

19 (d) By the 20th day of the month following the month in
20 which the charges imposed by this Section were collected, each
21 utility and alternative retail electric supplier collecting
22 charges pursuant to this Section shall remit to the Department
23 of Revenue for deposit in the Renewable Energy Resources Trust
24 Fund and the Coal Technology Development Assistance Fund all
25 moneys received as payment of the charge provided for in this
26 Section on a return prescribed and furnished by the Department

1 of Revenue showing such information as the Department of
2 Revenue may reasonably require.

3 (e) The charges imposed by this Section shall only apply to
4 customers of municipal electric or gas utilities and electric
5 or gas cooperatives if the municipal electric or gas utility or
6 electric or gas cooperative makes an affirmative decision to
7 impose the charge. If a municipal electric or gas utility or an
8 electric or gas cooperative makes an affirmative decision to
9 impose the charge provided by this Section, the municipal
10 electric or gas utility or electric or gas cooperative shall
11 inform the Department of Revenue in writing of such decision
12 when it begins to impose the charge. If a municipal electric or
13 gas utility or electric or gas cooperative does not assess this
14 charge, its customers shall not be eligible for the Renewable
15 Energy Resources Program.

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

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

19 ARTICLE 99

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