



Rep. George Scully Jr.

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LRB095 11114 MJR 38234 a

1 AMENDMENT TO SENATE BILL 1592

2 AMENDMENT NO. _____. Amend Senate Bill 1592 by replacing
3 everything after the enacting clause with the following:

4 "ARTICLE 1

5 Section 1-1. Short title. This Article may be cited as the
6 Illinois Power Agency Act. References in this Article to "this
7 Act" mean this Article.

8 Section 1-5. Legislative declarations and findings. The
9 General Assembly finds and declares:

10 (1) The health, welfare, and prosperity of all Illinois
11 citizens require the provision of adequate, reliable,
12 affordable, efficient, and environmentally sustainable
13 electric service at the lowest total cost over time, taking
14 into account any benefits of price stability.

15 (2) The transition to retail competition is not

1 complete. Some customers, especially residential and small
2 commercial customers, have failed to benefit from lower
3 electricity costs from retail and wholesale competition.

4 (3) Escalating prices for electricity in Illinois pose
5 a serious threat to the economic well-being, health, and
6 safety of the residents of and the commerce and industry of
7 the State.

8 (4) To protect against this threat to economic
9 well-being, health, and safety it is necessary to improve
10 the process of procuring electricity to serve Illinois
11 residents, to promote investment in energy efficiency and
12 demand-response measures, and to support development of
13 clean coal technologies and renewable resources.

14 (5) Procuring a diverse electricity supply portfolio
15 will ensure the lowest total cost over time for adequate,
16 reliable, efficient, and environmentally sustainable
17 electric service.

18 (6) Including cost-effective renewable resources in
19 that portfolio will reduce long-term direct and indirect
20 costs to consumers by decreasing environmental impacts and
21 by avoiding or delaying the need for new generation,
22 transmission, and distribution infrastructure.

23 (7) Energy efficiency, demand-response measures, and
24 renewable energy are resources currently underused in
25 Illinois.

26 The General Assembly therefore finds that it is necessary

1 to create the Illinois Power Agency and that the goals and
2 objectives of that Agency are to accomplish each of the
3 following:

4 (A) Develop electricity procurement plans to ensure
5 adequate, reliable, affordable, efficient, and
6 environmentally sustainable electric service at the lowest
7 total cost over time, taking into account any benefits of
8 price stability, for electric utilities that on December
9 31, 2005 provided electric service to at least 100,000
10 customers in Illinois. The procurement plan shall be
11 updated on an annual basis and shall include renewable
12 energy resources sufficient to achieve the standards
13 specified in this Act.

14 (B) Conduct competitive procurement processes to
15 procure the supply resources identified in the procurement
16 plan.

17 (C) Develop electric generation and co-generation
18 facilities that use indigenous coal or renewable
19 resources, or both, financed with bonds issued by the
20 Illinois Finance Authority.

21 (D) Supply electricity from the Agency's facilities at
22 cost to one or more of the following: municipal electric
23 systems, governmental aggregators, or rural electric
24 cooperatives in Illinois.

25 Section 1-10. Definitions.

1 "Agency" means the Illinois Power Agency.

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

10 "Authority" means the Illinois Finance Authority.

11 "Commission" means the Illinois Commerce Commission.

12 "Costs incurred in connection with the development and
13 construction of a facility" means:

14 (1) the cost of acquisition of all real property and
15 improvements in connection therewith and equipment and
16 other property, rights, and easements acquired that are
17 deemed necessary for the operation and maintenance of the
18 facility;

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

21 (3) all origination, commitment, utilization,
22 facility, placement, underwriting, syndication, credit
23 enhancement, and rating agency fees;

24 (4) engineering, design, procurement, consulting,
25 legal, accounting, title insurance, survey, appraisal,
26 escrow, trustee, collateral agency, interest rate hedging,

1 interest rate swap, capitalized interest and other
2 financing costs, and other expenses for professional
3 services; and

4 (5) the costs of plans, specifications, site study and
5 investigation, installation, surveys, other Agency costs
6 and estimates of costs, and other expenses necessary or
7 incidental to determining the feasibility of any project,
8 together with such other expenses as may be necessary or
9 incidental to the financing, insuring, acquisition, and
10 construction of a specific project and placing that project
11 in operation.

12 "Department" means the Department of Commerce and Economic
13 Opportunity.

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

15 "Demand-response" means measures that decrease peak
16 electricity demand or shift demand from peak to off-peak
17 periods.

18 "Energy efficiency" means measures that reduce the amount
19 of electricity required to achieve a given end use.

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

22 "Facility" means an electric generating unit or a
23 co-generating unit that produces electricity along with
24 related equipment necessary to connect the facility to an
25 electric transmission or distribution system.

26 "Governmental aggregator" means one or more units of local

1 government that individually or collectively procure
2 electricity to serve residential retail electrical loads
3 located within its or their jurisdiction.

4 "Local government" means a unit of local government as
5 defined in Article VII of Section 1 of the Illinois
6 Constitution.

7 "Municipality" means a city, village, or incorporated
8 town.

9 "Person" means any natural person, firm, partnership,
10 corporation, either domestic or foreign, company, association,
11 limited liability company, joint stock company, or association
12 and includes any trustee, receiver, assignee, or personal
13 representative thereof.

14 "Project" means the planning, bidding, and construction of
15 a facility.

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

18 "Real property" means any interest in land together with
19 all structures, fixtures, and improvements thereon, including
20 lands under water and riparian rights, any easements,
21 covenants, licenses, leases, rights-of-way, uses, and other
22 interests, together with any liens, judgments, mortgages, or
23 other claims or security interests related to real property.

24 "Renewable energy credit" means a tradable credit that
25 represents the environmental attributes of a certain amount of
26 energy produced from a renewable energy resource.

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

17 "Revenue bond" means any bond, note, or other evidence of
18 indebtedness issued by the Authority, the principal and
19 interest of which is payable solely from revenues or income
20 derived from any project or activity of the Agency.

21 "Total resource cost test" or "TRC test" means a standard
22 that is met if, for an investment in energy efficiency or
23 demand-response measures, the benefit-cost ratio is greater
24 than one. The benefit-cost ratio is the ratio of the net
25 present value of the total benefits of the program to the net
26 present value of the total costs as calculated over the

1 lifetime of the measures. A total resource cost test compares
2 the sum of avoided electric utility costs, representing the
3 benefits that accrue to the system and the participant in the
4 delivery of those efficiency measures, to the sum of all
5 incremental costs of end-use measures that are implemented due
6 to the program (including both utility and participant
7 contributions), plus costs to administer, deliver, and
8 evaluate each demand-side program, to quantify the net savings
9 obtained by substituting the demand-side program for supply
10 resources. In calculating avoided costs of power and energy
11 that an electric utility would otherwise have had to acquire,
12 reasonable estimates shall be included of financial costs
13 likely to be imposed by future regulations and legislation on
14 emissions of greenhouse gases.

15 Section 1-15. Illinois Power Agency.

16 (a) For the purpose of effectuating the policy declared in
17 Section 1-5 of this Act, a State agency known as the Illinois
18 Power Agency is created. The Agency shall exercise governmental
19 and public powers, be perpetual in duration, and have the
20 powers and duties enumerated in this Act, together with such
21 others conferred upon it by law.

22 (b) The Agency is not created or organized, and its
23 operations shall not be conducted, for the purpose of making a
24 profit. No part of the revenues or assets of the Agency shall
25 inure to the benefit of or be distributable to any of its

1 employees or any other private persons, except as provided in
2 this Act for actual services rendered.

3 Section 1-20. General powers of the Agency.

4 (a) The Agency is authorized to do each of the following:

5 (1) Develop electricity procurement plans to ensure
6 adequate, reliable, affordable, efficient, and
7 environmentally sustainable electric service at the lowest
8 total cost over time, taking into account any benefits of
9 price stability, for electric utilities that on December
10 31, 2005 provided electric service to at least 100,000
11 customers in Illinois. The procurement plans shall be
12 updated on an annual basis and shall include electricity
13 generated from renewable resources sufficient to achieve
14 the standards specified in this Act.

15 (2) Conduct competitive procurement processes to
16 procure the supply resources identified in the procurement
17 plan, pursuant to Section 16-111.5 of the Public Utilities
18 Act.

19 (3) Develop electric generation and co-generation
20 facilities that use indigenous coal or renewable
21 resources, or both, financed with bonds issued by the
22 Illinois Finance Authority.

23 (4) Supply electricity from the Agency's facilities at
24 cost to one or more of the following: municipal electric
25 systems, governmental aggregators, or rural electric

1 cooperatives in Illinois.

2 (b) Except as otherwise limited by this Act, the Agency has
3 all of the powers necessary or convenient to carry out the
4 purposes and provisions of this Act, including without
5 limitation, each of the following:

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

9 (2) To use the services of the Illinois Finance
10 Authority necessary to carry out the Agency's purposes.

11 (3) To negotiate and enter into loan agreements and
12 other agreements with the Illinois Finance Authority.

13 (4) To obtain and employ personnel and hire consultants
14 that are necessary to fulfill the Agency's purposes, and to
15 make expenditures for that purpose within the
16 appropriations for that purpose.

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

22 (6) To acquire real or personal property, whether
23 tangible or intangible, including without limitation
24 property rights, interests in property, franchises,
25 obligations, contracts, and debt and equity securities,
26 and to do so by the exercise of the power of eminent domain

1 in accordance with Section 1-21; except that any real
2 property acquired by the exercise of the power of eminent
3 domain must be located within the State.

4 (7) To sell, convey, lease, exchange, transfer,
5 abandon, or otherwise dispose of, or mortgage, pledge, or
6 create a security interest in, any of its assets,
7 properties, or any interest therein, wherever situated.

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

16 (9) To make and execute agreements, contracts, and
17 other instruments necessary or convenient in the exercise
18 of the powers and functions of the Agency under this Act,
19 including contracts with any person, local government,
20 State agency, or other entity; and all State agencies and
21 all local governments are authorized to enter into and do
22 all things necessary to perform any such agreement,
23 contract, or other instrument with the Agency. No such
24 agreement, contract, or other instrument shall exceed 40
25 years.

26 (10) To lend money, invest and reinvest its funds in

1 accordance with the Public Funds Investment Act, and take
2 and hold real and personal property as security for the
3 payment of funds loaned or invested.

4 (11) To borrow money at such rate or rates of interest
5 as the Agency may determine, issue its notes, bonds, or
6 other obligations to evidence that indebtedness, and
7 secure any of its obligations by mortgage or pledge of its
8 real or personal property, machinery, equipment,
9 structures, fixtures, inventories, revenues, grants, and
10 other funds as provided or any interest therein, wherever
11 situated.

12 (12) To enter into agreements with the Illinois Finance
13 Authority to issue bonds whether or not the income
14 therefrom is exempt from federal taxation.

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

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

1 (15) To file a petition under Chapter 9 of Title 11 of
2 the United States Bankruptcy Code or take other similar
3 action for the adjustment of its debts.

4 (16) To enter into management agreements for the
5 operation of any of the property or facilities owned by the
6 Agency.

7 (17) To enter into an agreement to transfer and to
8 transfer any land, facilities, fixtures, or equipment of
9 the Agency to one or more municipal electric systems,
10 governmental aggregators, or rural electric agencies or
11 cooperatives, for such consideration and upon such terms as
12 the Agency may determine to be in the best interest of the
13 citizens of Illinois.

14 (18) To enter upon any lands and within any building
15 whenever in its judgment it may be necessary for the
16 purpose of making surveys and examinations to accomplish
17 any purpose authorized by this Act.

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

20 (20) To request information, and to make any inquiry,
21 investigation, survey, or study that the Agency may deem
22 necessary to enable it effectively to carry out the
23 provisions of this Act.

24 (21) To accept and expend appropriations.

25 (22) To engage in any activity or operation that is
26 incidental to and in furtherance of efficient operation to

1 accomplish the Agency's purposes.

2 (23) To adopt, revise, amend, and repeal rules with
3 respect to its operations, properties, and facilities as
4 may be necessary or convenient to carry out the purposes of
5 this Act, subject to the provisions of the Illinois
6 Administrative Procedure Act and Sections 1-22 and 1-35 of
7 this Act.

8 (24) To establish and collect charges and fees as
9 described in this Act.

10 Section 1-21. Eminent domain. The Agency may take and
11 acquire possession by eminent domain of any property or
12 interest in property that the Agency is authorized to acquire
13 under this Act for the construction, maintenance, or operation
14 of a facility with the consent in writing of the Governor,
15 after following the provisions of Section 1-85(a) of this Act,
16 to acquire by private purchase, or by condemnation in the
17 manner provided for the exercise of the power of eminent domain
18 under the Eminent Domain Act. The power of condemnation shall
19 be exercised, however, solely for the purposes of one or more
20 of the following: siting, rights of way, and easements
21 appurtenant. The Agency shall not exercise its powers of
22 condemnation until it has used reasonable good faith efforts to
23 acquire the property before filing a petition for condemnation
24 and may thereafter use those powers when it determines that the
25 condemnation of the property rights is necessary to avoid

1 unreasonable delay or economic hardship to the progress of
2 activities carried out in the exercise of powers granted under
3 this Act. Before use of the power of condemnation for projects,
4 the Agency shall hold a public hearing to receive comments on
5 the exercise of the power of condemnation. The Agency shall use
6 the information received at the hearing in making its final
7 decision on the exercise of the power of condemnation. The
8 hearing shall be held in a location reasonably accessible to
9 the public interested in the decision. The Agency shall
10 promulgate guidelines for the conduct of the hearing. The
11 Agency shall conduct a feasibility study showing that the
12 taking is necessary to accomplish the purposes of this Act and
13 that is adequate to meet the environmental standards set forth
14 by the State and the federal governments. The Agency may not
15 exercise the authority provided in Article 20 of the Eminent
16 Domain Act (quick-take procedure) providing for immediate
17 possession in those proceedings. The Agency does not have the
18 power to exercise eminent domain over the property of any
19 public utility or any person owning an electric generating
20 plant.

21 Section 1-22. Authority of the Illinois Commerce
22 Commission. Nothing in this Act infringes upon the authority
23 granted to the Commission.

24 Section 1-25. Agency subject to other laws. Unless

1 otherwise stated, the Agency is subject to the provisions of
2 all applicable laws, including but not limited to, each of the
3 following:

- 4 (1) The State Records Act.
- 5 (2) The Illinois Procurement Code.
- 6 (3) The Freedom of Information Act.
- 7 (4) The State Property Control Act.
- 8 (5) The Personnel Code.
- 9 (6) The State Officials and Employees Ethics Act.

10 Section 1-30.1. Administrative Procedure Act applies. The
11 provisions of the Illinois Administrative Procedure Act are
12 expressly adopted and incorporated into this Act, and apply to
13 all administrative rules and procedures of the Agency.

14 Section 1-30.2. Administrative Review Law applies. Any
15 final administrative decision of the Agency, or of the Director
16 of the Agency, that is not subject to review by the Commission,
17 is subject to review under the provisions of the Administrative
18 Review Law.

19 Section 1-30.3. Illinois State Auditing Act applies. For
20 purposes of the Illinois State Auditing Act, the Agency is a
21 "State agency" within the meaning of the Act and is subject to
22 the jurisdiction of the Auditor General.

1 Section 1-35. Agency rules. The Agency shall adopt rules as
2 may be necessary and appropriate for the operation of the
3 Agency. In addition to other rules relevant to the operation of
4 the Agency, the Agency shall adopt rules that accomplish each
5 of the following:

6 (1) Establish procedures for monitoring the
7 administration of any contract administered directly or
8 indirectly by the Agency; except that the procedures shall
9 not extend to executed contracts between electric
10 utilities and their suppliers.

11 (2) Establish procedures for the recovery of costs
12 incurred in connection with the development and
13 construction of a facility should the Agency cancel a
14 project, provided that no such costs shall be passed on to
15 public utilities or their customers or paid from the
16 Illinois Power Agency Operations Fund.

17 (3) Implement accounting rules and a system of
18 accounts, in accordance with State law, permitting all
19 reporting (i) required by the State, (ii) required under
20 this Act, (iii) required by the Authority, or (iv) required
21 under the Public Utilities Act.

22 The Agency shall not adopt any rules that infringe upon the
23 authority granted to the Commission.

24 Section 1-40. Illinois Power Agency Operations Fund.

25 (a) The Illinois Power Agency Operations Fund is created as

1 a special fund in the State treasury.

2 (b) The Illinois Power Agency Operations Fund shall be
3 administered by the Agency for the Agency's operations as
4 specified in this Section.

5 (c) All moneys used by the Agency from the Illinois Power
6 Agency Operations Fund are subject to appropriation by the
7 General Assembly.

8 (d) All disbursements from the Illinois Power Agency
9 Operations Fund shall be made only upon warrants of the State
10 Comptroller drawn upon the State Treasurer as custodian of the
11 Fund upon vouchers signed by the Director or by the person or
12 persons designated by the Director for that purpose. The
13 Comptroller is authorized to draw the warrant upon vouchers so
14 signed. The State Treasurer shall accept all warrants so signed
15 and shall be released from liability for all payments made on
16 those warrants.

17 Section 1-45. Illinois Power Agency Facilities Fund.

18 (a) The Illinois Power Agency Facilities Fund is created as
19 a special fund in the State treasury.

20 (b) The Illinois Power Agency Facilities Fund shall be
21 administered by the Agency for costs incurred in connection
22 with the development and construction of a facility by the
23 Agency as well as costs incurred in connection with the
24 operation and maintenance of an Agency facility.

25 (c) All moneys used by the Agency from the Illinois Power

1 Agency Facilities Fund are subject to appropriation by the
2 General Assembly.

3 (d) All disbursements from the Illinois Power Agency
4 Facilities Fund shall be made only upon warrants of the State
5 Comptroller drawn upon the State Treasurer as custodian of the
6 Fund upon vouchers signed by the Director or by the person or
7 persons designated by the Director for that purpose. The
8 Comptroller is authorized to draw the warrant upon vouchers so
9 signed. The State Treasurer shall accept all warrants so signed
10 and shall be released from liability for all payments made on
11 those warrants.

12 Section 1-50. Illinois Power Agency Debt Service Fund.

13 (a) The Illinois Power Agency Debt Service Fund is created
14 as a special fund in the State treasury.

15 (b) The Illinois Power Agency Debt Service Fund shall be
16 administered by the Agency for retirement of revenue bonds
17 issued for any Agency facility.

18 Section 1-55. Operations Funding. The Agency shall adopt
19 rules regarding charges and fees it is expressly authorized to
20 collect in order to fund the operations of the Agency. These
21 charges and fees shall be deposited into the Illinois Power
22 Agency Operations Fund.

23 Section 1-57. Facility financing.

1 (a) The Agency shall have the power (1) to borrow from the
2 Authority, through one or more Agency loan agreements, the net
3 proceeds of revenue bonds for costs incurred in connection with
4 the development and construction of a facility, provided that
5 the stated maturity date of any of those revenue bonds shall
6 not exceed 40 years from their respective issuance dates, (2)
7 to accept prepayments from purchasers of electric energy from a
8 project and to apply the same to costs incurred in connection
9 with the development and construction of a facility, subject to
10 any obligation to refund the same under the circumstances
11 specified in the purchasers' contract for the purchase and sale
12 of electric energy from that project, (3) to enter into leases
13 or similar arrangements to finance the property constituting a
14 part of a project and associated costs incurred in connection
15 with the development and construction of a facility, provided
16 that the term of any such lease or similar arrangement shall
17 not exceed 40 years from its inception, and (4) to enter into
18 agreements for the sale of revenue bonds that bear interest at
19 a rate or rates not exceeding the maximum rate permitted by the
20 Bond Authorization Act. All Agency loan agreements shall
21 include terms making the obligations thereunder subject to
22 redemption before maturity.

23 (b) The Agency may from time to time engage the services of
24 the Authority, attorneys, appraisers, architects, engineers,
25 accountants, credit analysts, bond underwriters, bond
26 trustees, credit enhancement providers, and other financial

1 professionals and consultants, if the Agency deems it
2 advisable.

3 (c) The Agency may pledge, as security for the payment of
4 its revenue bonds in respect of a project, (1) revenues derived
5 from the operation of the project in part or whole, (2) the
6 real and personal property, machinery, equipment, structures,
7 fixtures, and inventories directly associated with the
8 project, (3) grants or other revenues or taxes expected to be
9 received by the Agency directly linked to the project, (4)
10 payments to be made by another governmental unit or other
11 entity pursuant to a service, user, or other similar agreement
12 with that governmental unit or other entity that is a result of
13 the project, (5) any other revenues or moneys deposited or to
14 be deposited directly linked to the project, (6) all design,
15 engineering, procurement, construction, installation,
16 management, and operation agreements associated with the
17 project, (7) any reserve or debt service funds created under
18 the agreements governing the indebtedness, (8) the Illinois
19 Power Agency Facilities Fund or the Illinois Power Agency Debt
20 Service Fund, or (9) any combination thereof. Any such pledge
21 shall be authorized in a writing, signed by the Director of the
22 Agency, and then signed by the Governor of Illinois. At no time
23 shall the funds contained in the Illinois Power Agency Trust
24 Fund be pledged or used in any way to pay for the indebtedness
25 of the Agency. The Director shall not authorize the issuance or
26 grant of any pledge until he or she has certified that any

1 associated project is in full compliance with Sections 1-85 and
2 1-86 of this Act. The certification shall be duly attached or
3 referenced in the agreements reflecting the pledge. Any such
4 pledge made by the Agency shall be valid and binding from the
5 time the pledge is made. The revenues, property, or funds that
6 are pledged and thereafter received by the Agency shall
7 immediately be subject to the lien of the pledge without any
8 physical delivery thereof or further act; and, subject only to
9 the provisions of prior liens, the lien of the pledge shall be
10 valid and binding as against all parties having claims of any
11 kind in tort, contract, or otherwise against the Agency
12 irrespective of whether the parties have notice thereof. All
13 bonds issued on behalf of the Agency must be issued by the
14 Authority and must be revenue bonds. These revenue bonds may be
15 taxable or tax-exempt.

16 (d) All indebtedness issued by or on behalf of the Agency,
17 including, without limitation, any revenue bonds issued by the
18 Authority on behalf of the Agency, shall not be a debt of the
19 State, the Authority, any political subdivision thereof (other
20 than the Agency to the extent provided in agreements governing
21 the indebtedness), any local government, any governmental
22 aggregator as defined in the this Act, or any local government,
23 and none of the State, the Authority, any political subdivision
24 thereof (other than the Agency to the extent provided in
25 agreements governing the indebtedness), any local government,
26 or any government aggregator shall be liable thereon. Neither

1 the Authority nor the Agency shall have the power to pledge the
2 credit, the revenues, or the taxing power of the State, any
3 political subdivision thereof (other than the Agency), any
4 governmental aggregator, or of any local government, and
5 neither the credit, the revenues, nor the taxing power of the
6 State, any political subdivision thereof (other than the
7 Agency), any governmental aggregator, or any local government
8 shall be, or shall be deemed to be, pledged to the payment of
9 any revenue bonds, notes, or other obligations of the Agency.
10 In addition, the agreements governing any issue of indebtedness
11 shall provide that all holders of that indebtedness, by virtue
12 of their acquisition thereof, have agreed to waive and release
13 all claims and causes of action against the State of Illinois
14 in respect of the indebtedness or any project associated
15 therewith based on any theory of law. However, the waiver shall
16 not prohibit the holders of indebtedness issued on behalf of
17 the Agency from filing any cause of action against or
18 recovering damages from the Agency, recovering from any
19 property or funds pledged to secure the indebtedness, or
20 recovering from any property or funds to which the Agency holds
21 title, provided the property or funds are directly associated
22 with the project for which the indebtedness was specifically
23 issued. Each evidence of indebtedness of the Agency, including
24 the revenue bonds issued by the Authority on behalf of the
25 Agency, shall contain a clear and explicit statement of the
26 provisions of this Section.

1 (e) The Agency may from time to time enter into an
2 agreement or agreements to defease indebtedness issued on its
3 behalf or to refund, at maturity, at a redemption date or in
4 advance of either, any indebtedness issued on its behalf or
5 pursuant to redemption provisions or at any time before
6 maturity. All such refunding indebtedness shall be subject to
7 the requirements set forth in subsections (a), (c), and (d) of
8 this Section. No revenue bonds issued to refund or advance
9 refund revenue bonds issued under this Section may mature later
10 than the longest maturity date of the series of bonds being
11 refunded. After the aggregate original principal amount of
12 revenue bonds authorized in this Section has been issued, the
13 payment of any principal amount of those revenue bonds does not
14 authorize the issuance of additional revenue bonds (except
15 refunding revenue bonds).

16 (f) If the Agency fails to pay the principal of, interest,
17 or premium, if any, on any indebtedness as the same becomes
18 due, a civil action to compel payment may be instituted in the
19 appropriate circuit court by the holder or holders of the
20 indebtedness on which the default of payment exists or by any
21 administrative agent, collateral agent, or indenture trustee
22 acting on behalf of those holders. Delivery of a summons and a
23 copy of the complaint to the Director of the Agency shall
24 constitute sufficient service to give the circuit court
25 jurisdiction over the subject matter of the suit and
26 jurisdiction over the Agency and its officers named as

1 defendants for the purpose of compelling that payment. Any
2 case, controversy, or cause of action concerning the validity
3 of this Act shall relate to the revenue of the Agency. Any such
4 claims and related proceedings are subject in all respects to
5 the provisions of subsection (d) of this Section. The State of
6 Illinois shall not be liable or in any other way financially
7 responsible for any indebtedness issued by or on behalf of the
8 Agency or the performance or non-performance of any covenants
9 associated with any such indebtedness. The foregoing statement
10 shall not prohibit the holders of any indebtedness issued on
11 behalf of the Agency from filing any cause of action against or
12 recovering damages from the Agency recovering from any property
13 pledged to secure that indebtedness or recovering from any
14 property or funds to which the Agency holds title provided such
15 property or funds are directly associated with the project for
16 which the indebtedness is specifically issued.

17 (g) Upon each delivery of the revenue bonds authorized to
18 be issued by the Authority under this Act, the Agency shall
19 compute and certify to the State Comptroller the total amount
20 of principal of and interest on the Agency loan agreement
21 supporting the revenue bonds issued that will be payable in
22 order to retire those revenue bonds and the amount of principal
23 of and interest on the Agency loan agreement that will be
24 payable on each payment date during the then current and each
25 succeeding fiscal year. As soon as possible after the first day
26 of each month, beginning on the date set forth in the Agency

1 loan agreement where that date specifies when the Agency shall
2 begin setting aside revenues and other moneys for repayment of
3 the revenue bonds per the agreed to schedule, the Agency shall
4 certify to the Comptroller and the Comptroller shall order
5 transferred and the Treasurer shall transfer from the Illinois
6 Power Agency Facilities Fund to the Illinois Power Agency Debt
7 Service Fund for each month remaining in the State fiscal year
8 a sum of money, appropriated for that purpose, equal to the
9 result of the amount of principal of and interest on those
10 revenue bonds payable on the next payment date divided by the
11 number of full calendar months between the date of those
12 revenue bonds, and the first such payment date, and thereafter
13 divided by the number of months between each succeeding payment
14 date after the first. The Comptroller is authorized and
15 directed to draw warrants on the State Treasurer from the
16 Illinois Power Agency Facilities Fund and the Illinois Power
17 Agency Debt Service Fund for the amount of all payments of
18 principal and interest on the Agency loan agreement relating to
19 the Authority revenue bonds issued under this Act. The State
20 Treasurer or the State Comptroller shall deposit or cause to be
21 deposited any amount of grants or other revenues expected to be
22 received by the Agency that the Agency has pledged to the
23 payment of revenue bonds directly into the Illinois Power
24 Agency Debt Service Fund.

25 Section 1-60. Moneys made available by private or public

1 entities.

2 (a) The Agency may apply for, receive, expend, allocate, or
3 disburse funds and moneys made available by public or private
4 entities, including, but not limited to, contracts, private or
5 public financial gifts, bequests, grants, or donations from
6 individuals, corporations, foundations, or public or private
7 institutions of higher learning. All funds received by the
8 Agency from these sources shall be deposited:

9 (1) into the Illinois Power Agency Operations Fund, if
10 for general Agency operations, to be held by the State
11 Treasurer as ex officio custodian, and subject to the
12 Comptroller-Treasurer, voucher-warrant system; or

13 (2) into the Illinois Power Agency Facilities Fund, if
14 for costs incurred in connection with the development and
15 construction of a facility by the Agency, to be held by the
16 State Treasurer as ex officio custodian, and subject to the
17 Comptroller-Treasurer, voucher-warrant system.

18 Any funds received, expended, allocated, or disbursed
19 shall be expended by the Agency for the purposes as indicated
20 by the grantor, donor, or, in the case of funds or moneys given
21 or donated for no specific purposes, for any purpose deemed
22 appropriate by the Director in administering the
23 responsibilities of the Agency as set forth in this Act.

24 Section 1-65. Appropriations for operations.

25 (a) The General Assembly may appropriate moneys from the

1 General Revenue Fund for the operation of the Illinois Power
2 Agency in Fiscal Year 2008 not to exceed \$1,250,000 and in
3 Fiscal Year 2009 not to exceed \$1,500,000. These appropriated
4 funds shall constitute an advance that the Agency shall repay
5 without interest to the State in Fiscal Year 2010 and in Fiscal
6 Year 2011. Beginning with Fiscal Year 2010, the operation of
7 the Agency shall be funded solely from moneys in the Illinois
8 Power Agency Operations Fund with no liability or obligation
9 imposed on the State by those operations.

10 Section 1-70. Agency officials.

11 (a) The Agency shall have a Director who meets the
12 qualifications specified in Section 5-222 of the Civil
13 Administrative Code of Illinois (20 ILCS 5/5-222).

14 (b) Within the Illinois Power Agency, the Agency shall
15 establish a Planning and Procurement Bureau and a Resource
16 Development Bureau. Each Bureau shall report to the Director.

17 (c) The Chief of the Planning and Procurement Bureau shall
18 be appointed by the Director and (i) shall have at least 10
19 years of direct experience in electricity supply planning and
20 procurement and (ii) shall also hold an advanced degree in risk
21 management, law, business, or a related field.

22 (d) The Chief of the Resource Development Bureau shall be
23 appointed by the Director and (i) shall have at least 10 years
24 of direct experience in electric generating project
25 development and (ii) shall also hold an advanced degree in

1 economics, engineering, law, business, or a related field.

2 (e) The Director shall receive an annual salary of \$100,000
3 or as set by the Compensation Review Board, whichever is
4 higher. The Bureau Chiefs shall each receive an annual salary
5 of \$85,000 or as set by the Compensation Review Board,
6 whichever is higher.

7 (f) The Director and Bureau Chiefs shall not, for 2 years
8 prior to appointment or for 2 years after he or she leaves his
9 or her position, be employed by an electric utility,
10 independent power producer, power marketer, or alternative
11 retail electric supplier regulated by the Commission or the
12 Federal Energy Regulatory Commission.

13 (g) The Director and Bureau Chiefs are prohibited from: (i)
14 owning, directly or indirectly, 5% or more of the voting
15 capital stock of an electric utility, independent power
16 producer, power marketer, or alternative retail electric
17 supplier; (ii) being in any chain of successive ownership of 5%
18 or more of the voting capital stock of any electric utility,
19 independent power producer, power marketer, or alternative
20 retail electric supplier; (iii) receiving any form of
21 compensation, fee, payment, or other consideration from an
22 electric utility, independent power producer, power marketer,
23 or alternative retail electric supplier, including legal fees,
24 consulting fees, bonuses, or other sums. These limitations do
25 not apply to any compensation received pursuant to a defined
26 benefit plan or other form of deferred compensation, provided

1 that the individual has otherwise severed all ties to the
2 utility, power producer, power marketer, or alternative retail
3 electric supplier.

4 Section 1-75. Planning and Procurement Bureau. The
5 Planning and Procurement Bureau has the following duties and
6 responsibilities:

7 (a) The Planning and Procurement Bureau shall each
8 year, beginning in 2008, develop procurement plans and
9 conduct competitive procurement processes in accordance
10 with the requirements of Section 16-111.5 of the Public
11 Utilities Act for the eligible retail customers of electric
12 utilities that on December 31, 2005 provided electric
13 service to at least 100,000 customers in Illinois. For the
14 purposes of this Section, the term "eligible retail
15 customers" has the same definition as found in Section
16 16-111.5(a) of the Public Utilities Act.

17 (1) The Agency shall each year, beginning in 2008,
18 as needed, issue a request for qualifications for
19 experts or expert consulting firms to develop the
20 procurement plans in accordance with Section 16-111.5
21 of the Public Utilities Act. In order to qualify an
22 expert or expert consulting firm must have:

23 (A) direct previous experience assembling
24 large-scale power supply plans or portfolios for
25 end-use customers;

1 (B) an advanced degree in economics,
2 mathematics, engineering, risk management, or a
3 related area of study;

4 (C) 10 years of experience in the electricity
5 sector, including managing supply risk;

6 (D) expertise in wholesale electricity market
7 rules, including those established by the Federal
8 Energy Regulatory Commission and regional
9 transmission organizations;

10 (E) expertise in credit protocols and
11 familiarity with contract protocols;

12 (F) adequate resources to perform and fulfill
13 the required functions and responsibilities; and

14 (G) the absence of a conflict of interest and
15 inappropriate bias for or against potential
16 bidders or the affected electric utilities.

17 (2) The Agency shall each year, as needed, issue a
18 request for qualifications for a procurement
19 administrator to conduct the competitive procurement
20 processes in accordance with Section 16-111.5 of the
21 Public Utilities Act. In order to qualify an expert or
22 expert consulting firm must have:

23 (A) direct previous experience administering a
24 large-scale competitive procurement process;

25 (B) an advanced degree in economics,
26 mathematics, engineering, or a related area of

1 study;

2 (C) 10 years of experience in the electricity
3 sector, including risk management experience;

4 (D) expertise in wholesale electricity market
5 rules, including those established by the Federal
6 Energy Regulatory Commission and regional
7 transmission organizations;

8 (E) expertise in credit and contract
9 protocols;

10 (F) adequate resources to perform and fulfill
11 the required functions and responsibilities; and

12 (G) the absence of a conflict of interest and
13 inappropriate bias for or against potential
14 bidders or the affected electric utilities.

15 (3) The Agency shall provide affected utilities
16 and other interested parties with the lists of
17 qualified experts or expert consulting firms
18 identified through the request for qualifications
19 processes that are under consideration to develop the
20 procurement plans and to serve as the procurement
21 administrator. The Agency shall also provide each
22 qualified expert's or expert consulting firm's
23 response to the request for qualifications. All
24 information provided under this subparagraph shall
25 also be provided to the Commission. The Agency may
26 provide by rule for fees associated with supplying the

1 information to utilities and other interested parties.
2 These parties shall, within 5 business days, notify the
3 Agency in writing if they object to any experts or
4 expert consulting firms on the lists. Objections shall
5 be based on:

6 (A) failure to satisfy qualification criteria;

7 (B) identification of a conflict of interest;

8 or

9 (C) evidence of inappropriate bias for or
10 against potential bidders or the affected
11 utilities.

12 The Agency shall remove experts or expert
13 consulting firms from the lists within 10 days if there
14 is a reasonable basis for an objection and provide the
15 updated lists to the affected utilities and other
16 interested parties. If the Agency fails to remove an
17 expert or expert consulting firm from a list, an
18 objecting party may seek review by the Commission
19 within 5 days thereafter by filing a petition, and the
20 Commission shall render a ruling on the petition within
21 10 days. There is no right of appeal of the
22 Commission's ruling.

23 (4) The Agency shall issue requests for proposals
24 to the qualified experts or expert consulting firms to
25 develop a procurement plan for the affected utilities
26 and to serve as procurement administrator.

1 (5) The Agency shall select an expert or expert
2 consulting firm to develop procurement plans based on
3 the proposals submitted and shall award one-year
4 contracts to those selected with an option for the
5 Agency for a one-year renewal.

6 (6) The Agency shall select an expert or expert
7 consulting firm, with approval of the Commission, to
8 serve as procurement administrator based on the
9 proposals submitted. If the Commission rejects, within
10 5 days, the Agency's selection, the Agency shall submit
11 another recommendation within 3 days based on the
12 proposals submitted. The Agency shall award a one-year
13 contract to the expert or expert consulting firm so
14 selected with Commission approval with an option for
15 the Agency for a one-year renewal.

16 (b) The experts or expert consulting firms retained by
17 the Agency shall, as appropriate, prepare procurement
18 plans, and conduct a competitive procurement process as
19 prescribed in Section 16-111.5 of the Public Utilities Act,
20 to ensure adequate, reliable, affordable, efficient, and
21 environmentally sustainable electric service at the lowest
22 total cost over time, taking into account any benefits of
23 price stability, for eligible retail customers of electric
24 utilities that on December 31, 2005 provided electric
25 service to at least 100,000 customers in the State of
26 Illinois.

1 (c) Renewable portfolio standard.

2 (1) The procurement plans shall include
3 cost-effective renewable energy resources. A minimum
4 percentage of each utility's total supply to serve the
5 load of eligible retail customers, as defined in
6 Section 16-111.5(a) of the Public Utilities Act,
7 procured for each of the following years shall be
8 generated from cost-effective renewable energy
9 resources: at least 2% by June 1, 2008; at least 4% by
10 June 1, 2009; at least 5% by June 1, 2010; at least 6%
11 by June 1, 2011; at least 7% by June 1, 2012; at least
12 8% by June 1, 2013; at least 9% by June 1, 2014; at
13 least 10% by June 1, 2015; and increasing by at least
14 1.5% each year thereafter to at least 25% by June 1,
15 2025. To the extent that it is available, at least 75%
16 of the renewable energy resources used to meet these
17 standards shall come from wind generation. For
18 purposes of this Section, "cost-effective" means that
19 the costs of procuring renewable energy resources do
20 not cause the limit stated in paragraph (2) of this
21 subsection (c) to be exceeded.

22 (2) For purposes of this subsection (c), the
23 required procurement of cost-effective renewable
24 energy resources for a particular year shall be
25 measured as a percentage of the actual amount of
26 electricity (megawatt-hours) supplied by the electric

1 utility to eligible retail customers in the planning
2 year ending immediately prior to the procurement. For
3 purposes of this subsection (c), the amount per
4 kilowatthour means the total amount paid for electric
5 service expressed on a per kilowatthour basis. For
6 purposes of this subsection (c), the total amount paid
7 for electric service includes without limitation
8 amounts paid for supply, transmission, distribution,
9 surcharges, and add-on taxes.

10 Notwithstanding the requirements of this
11 subsection (c), the total of renewable energy
12 resources procured pursuant to the procurement plan
13 for any single year shall be reduced by an amount
14 necessary to limit the annual estimated average net
15 increase due to the costs of these resources included
16 in the amounts paid by eligible retail customers in
17 connection with electric service to:

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

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

26 (C) in 2010, the greater of an additional 0.5%

1 of the amount paid per kilowatthour by those
2 customers during the year ending May 31, 2009 or
3 1.5% of the amount paid per kilowatthour by those
4 customers during the year ending May 31, 2007;

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

10 (E) thereafter, the amount of renewable energy
11 resources procured pursuant to the procurement
12 plan for any single year shall be reduced by an
13 amount necessary to limit the estimated average
14 net increase due to the cost of these resources
15 included in the amounts paid by eligible retail
16 customers in connection with electric service to
17 no more than the greater of 2.015% of the amount
18 paid per kilowatthour by those customers during
19 the year ending May 31, 2007 or the incremental
20 amount per kilowatthour paid for these resources
21 in 2011.

22 No later than June 30, 2011, the Commission shall
23 review the limitation on the amount of renewable energy
24 resources procured pursuant to this subsection (c) and
25 report to the General Assembly its findings as to
26 whether that limitation unduly constrains the

1 procurement of cost-effective renewable energy
2 resources.

3 (3) Through June 1, 2011, renewable energy
4 resources shall be counted for the purpose of meeting
5 the renewable energy standards set forth in paragraph
6 (1) of this subsection (c) only if they are generated
7 from facilities located in the State, provided that
8 cost-effective renewable energy resources are
9 available from those facilities. If those
10 cost-effective resources are not available in
11 Illinois, they shall be procured in states that adjoin
12 Illinois and may be counted towards compliance. If
13 those cost-effective resources are not available in
14 Illinois or in states that adjoin Illinois, they shall
15 be purchased elsewhere and shall be counted towards
16 compliance. After June 1, 2011, cost-effective
17 renewable energy resources located in Illinois and in
18 states that adjoin Illinois may be counted towards
19 compliance with the standards set forth in paragraph
20 (1) of this subsection (c). If those cost-effective
21 resources are not available in Illinois or in states
22 that adjoin Illinois, they shall be purchased
23 elsewhere and shall be counted towards compliance.

24 (4) The electric utility shall retire all
25 renewable energy credits used to comply with the
26 standard.

1 (d) The draft procurement plans are subject to public
2 comment, as required by Section 16-111.5 of the Public
3 Utilities Act.

4 (e) The Agency shall submit the final procurement plan
5 to the Commission. The Agency shall revise a procurement
6 plan if the Commission determines that it does not meet the
7 standards set forth in Section 16-111.5 of the Public
8 Utilities Act.

9 (f) The Agency shall assess fees to each affected
10 utility to recover the costs incurred in preparation of the
11 annual procurement plan for the utility.

12 (g) The Agency shall assess fees to each bidder to
13 recover the costs incurred in connection with a competitive
14 procurement process.

15 Section 1-80. Resource Development Bureau. The Resource
16 Development Bureau has the following duties and
17 responsibilities:

18 (a) At the Agency's discretion, conduct feasibility
19 studies on the construction of any facility. Funding for a
20 study shall come from either:

21 (i) fees assessed by the Agency on municipal
22 electric systems, governmental aggregators, unit or
23 units of local government, or rural electric
24 cooperatives requesting the feasibility study; or

25 (ii) an appropriation from the General Assembly.

1 (b) If the Agency undertakes the construction of a
2 facility, moneys generated from the sale of revenue bonds
3 by the Authority for the facility shall be used to
4 reimburse the source of the money used for the facility's
5 feasibility study.

6 (c) The Agency may develop, finance, construct, or
7 operate electric generation and co-generation facilities
8 that use indigenous coal or renewable resources, or both,
9 financed with bonds issued by the Authority on behalf of
10 the Agency. Preference shall be given to technologies that
11 enable carbon capture and sites in locations where the
12 geology is suitable for carbon sequestration.

13 (1) The Agency may enter into contractual
14 arrangements with private and public entities,
15 including but not limited to municipal electric
16 systems, governmental aggregators, and rural electric
17 cooperatives, to plan, site, construct, improve,
18 rehabilitate, and operate those electric generation
19 and co-generation facilities. No contract shall be
20 entered into by the Agency that would jeopardize the
21 tax-exempt status of any bond issued in connection with
22 a project for which the Agency entered into the
23 contract.

24 (2) The Agency shall hold at least one public
25 hearing before entering into any such contractual
26 arrangements. At least 30-days' notice of the hearing

1 shall be given by publication once in each week during
2 that period in 6 newspapers within the State, at least
3 one of which has a circulation area that includes the
4 location of the proposed facility.

5 (3) The first facility that the Agency develops,
6 finances, or constructs shall be a facility that uses
7 coal produced in Illinois. The Agency may, however,
8 also develop, finance, or construct renewable energy
9 facilities after work on the first facility has
10 commenced.

11 (4) The Agency may not develop, finance, or
12 construct a nuclear power plant.

13 (5) The Agency shall assess fees to applicants
14 seeking to partner with the Agency on projects.

15 (d) Use of electricity generated by the Agency's
16 facilities. The Agency may supply electricity produced by
17 the Agency's facilities to municipal electric systems,
18 governmental aggregators, or rural electric cooperatives
19 in Illinois. The electricity shall be supplied at cost.

20 (1) Contracts to supply power and energy from the
21 Agency's facilities shall provide for the effectuation
22 of the policies set forth in this Act.

23 (2) The contracts shall also provide that,
24 notwithstanding any provision in the Public Utilities
25 Act, entities supplied with power and energy from an
26 Agency facility shall supply the power and energy to

1 retail customers at the same price paid to purchase
2 power and energy from the Agency.

3 (e) Electric utilities shall not be required to purchase
4 electricity directly or indirectly from facilities developed
5 or sponsored by the Agency.

6 (f) The Agency may sell excess capacity and excess energy
7 into the wholesale electric market at prevailing market rates;
8 provided, however, the Agency may not sell excess capacity or
9 excess energy through the procurement process described in
10 Section 16-111.5 of the Public Utilities Act.

11 (g) The Agency shall not directly sell electric power and
12 energy to retail customers. Nothing in this paragraph shall be
13 construed to prohibit sales to municipal electric systems,
14 governmental aggregators, or rural electric cooperatives.

15 Section 1-85. Construction of facilities. The Agency may
16 begin construction of a facility costing the Agency more than
17 \$100,000,000 only if the Agency demonstrates each of the
18 following:

19 (a) After conducting a study, that the construction and
20 operation of the facility is feasible.

21 (b) That the project does not materially adversely
22 affect overall real property taxes in the taxing
23 jurisdictions where the facility is to be located.

24 (c) That the Agency has received all required federal,
25 State, and local government licenses, permits, or approval

1 for the facility.

2 (d) That the Agency has obtained binding written
3 commitments from municipal electric systems, governmental
4 aggregators, or rural electric cooperatives constituting
5 agreements to purchase, in the aggregate, at least 75% of
6 the anticipated output of the facility for a time period
7 long enough to ensure recovery of:

8 (1) all costs, including interest, amortization
9 charges, and reserve charges, sufficient to retire
10 revenue bonds issued for costs incurred in connection
11 with the development and construction of a facility;
12 and

13 (2) all operating, capital, administrative, and
14 general expenses for the continued operation of the
15 facility, including fiscal reserves, and any
16 depreciation charges or costs.

17 (e) That the Agency has a reasonable plan to sell the
18 remaining anticipated output of the facility to municipal
19 electric systems, governmental aggregators, or rural
20 electric cooperatives.

21 Section 1-86. General Assembly approval. For projects
22 costing the Agency \$1,000,000,000 or more, in addition to the
23 provisions of Section 1-85, the General Assembly must adopt a
24 joint resolution of the House of Representatives and the Senate
25 approving the construction of the facility.

1 Section 1-87. Management and operating agreements. For
2 projects costing the Agency \$1,000,000,000 or more, the Agency
3 shall enter into management and operating agreements for the
4 relevant facility or facilities. Solicitation for any such
5 management and operating agreement shall be pursuant to a
6 request for proposals. The agreements must comply with the
7 Internal Revenue Code and its regulations and shall not
8 jeopardize the tax-exempt status of any bond issued in
9 connection with a project for which the Agency entered into the
10 agreement.

11 Section 1-90. Distribution and transmission facilities.
12 The Agency shall not own or acquire distribution or
13 transmission facilities except as necessary to connect an
14 Agency facility to an electric transmission or distribution
15 system.

16 Section 1-95. Insurance. Upon the Authority's issuance of
17 revenue bonds for an Agency facility, the Agency shall purchase
18 an insurance policy to cover those construction and operation
19 costs associated with the facility. The policy shall remain in
20 effect for the time period under which the Agency may accrue
21 any liabilities associated with the facility.

22 Section 1-100. Timely payment to Agency. Any party

1 receiving electricity shall make timely payment on all bills
2 rendered by the Agency. Any violation of contractual terms by a
3 party receiving electricity from an Agency facility is grounds
4 for cancellation and termination of the contract.

5 Section 1-105. Deposit of revenue. All revenue from
6 contracts described in Section 1-80(d) shall be deposited into
7 the Illinois Power Agency Facilities Fund.

8 Section 1-110. State Police reimbursement. The Agency
9 shall reimburse the Department of State Police for any expenses
10 associated with security at facilities from the Illinois Power
11 Agency Facilities Fund.

12 Section 1-115. Revenue from real estate. All revenue from
13 any sale, conveyance, lease, exchange, transfer, abandonment,
14 or other disposition of real property shall be deposited into
15 the Illinois Power Agency Facilities Fund.

16 Section 1-120. Protection of confidential and proprietary
17 information. The Agency shall provide adequate protection for
18 confidential and proprietary information furnished, delivered,
19 or filed by any person, corporation, or other entity.

20 Section 1-125. Agency annual reports. The Agency shall
21 report annually to the Governor and the General Assembly on the

1 operations and transactions of the Agency. The annual report
2 shall include, but not be limited to, each of the following:

3 (1) The quantity, price, and term of all contracts for
4 electricity procured under the procurement plans for
5 electric utilities.

6 (2) The quantity, price, and rate impact of all
7 renewable resources purchased under the electricity
8 procurement plans for electric utilities.

9 (3) The quantity, price, and rate impact of all energy
10 efficiency and demand response measures purchased for
11 electric utilities.

12 (4) The amount of power and energy produced by each
13 Agency facility.

14 (5) The quantity of electricity supplied by each Agency
15 facility to municipal electric systems, governmental
16 aggregators, or rural electric cooperatives in Illinois.

17 (6) The revenues as allocated by the Agency to each
18 facility.

19 (7) The costs as allocated by the Agency to each
20 facility.

21 (8) The accumulated depreciation for each facility.

22 (9) The status of any projects under development.

23 (10) Basic financial and operating information
24 specifically detailed for the reporting year and
25 including, but not limited to, income and expense
26 statements, balance sheets, and changes in financial

1 position, all in accordance with generally accepted
2 accounting principles, debt structure, and a summary of
3 funds on a cash basis.

4 Section 1-130. Home rule preemption.

5 (a) The authorization to impose any new taxes or fees
6 specifically related to the generation of electricity by, the
7 capacity to generate electricity by, or the emissions into the
8 atmosphere by electric generating facilities after the
9 effective date of this Act is an exclusive power and function
10 of the State. A home rule unit may not levy any new taxes or
11 fees specifically related to the generation of electricity by,
12 the capacity to generate electricity by, or the emissions into
13 the atmosphere by electric generating facilities after the
14 effective date of this Act. This Section is a denial and
15 limitation on home rule powers and functions under subsection
16 (g) of Section 6 of Article VII of the Illinois Constitution.

17 (b) This Section is repealed on January 1, 2019.

18 ARTICLE 5

19 Section 5-900. The Freedom of Information Act is amended by
20 changing Section 7 as follows:

21 (5 ILCS 140/7) (from Ch. 116, par. 207)

22 Sec. 7. Exemptions.

1 (1) The following shall be exempt from inspection and
2 copying:

3 (a) Information specifically prohibited from
4 disclosure by federal or State law or rules and regulations
5 adopted under federal or State law.

6 (b) Information that, if disclosed, would constitute a
7 clearly unwarranted invasion of personal privacy, unless
8 the disclosure is consented to in writing by the individual
9 subjects of the information. The disclosure of information
10 that bears on the public duties of public employees and
11 officials shall not be considered an invasion of personal
12 privacy. Information exempted under this subsection (b)
13 shall include but is not limited to:

14 (i) files and personal information maintained with
15 respect to clients, patients, residents, students or
16 other individuals receiving social, medical,
17 educational, vocational, financial, supervisory or
18 custodial care or services directly or indirectly from
19 federal agencies or public bodies;

20 (ii) personnel files and personal information
21 maintained with respect to employees, appointees or
22 elected officials of any public body or applicants for
23 those positions;

24 (iii) files and personal information maintained
25 with respect to any applicant, registrant or licensee
26 by any public body cooperating with or engaged in

1 professional or occupational registration, licensure
2 or discipline;

3 (iv) information required of any taxpayer in
4 connection with the assessment or collection of any tax
5 unless disclosure is otherwise required by State
6 statute;

7 (v) information revealing the identity of persons
8 who file complaints with or provide information to
9 administrative, investigative, law enforcement or
10 penal agencies; provided, however, that identification
11 of witnesses to traffic accidents, traffic accident
12 reports, and rescue reports may be provided by agencies
13 of local government, except in a case for which a
14 criminal investigation is ongoing, without
15 constituting a clearly unwarranted per se invasion of
16 personal privacy under this subsection; and

17 (vi) the names, addresses, or other personal
18 information of participants and registrants in park
19 district, forest preserve district, and conservation
20 district programs.

21 (c) Records compiled by any public body for
22 administrative enforcement proceedings and any law
23 enforcement or correctional agency for law enforcement
24 purposes or for internal matters of a public body, but only
25 to the extent that disclosure would:

26 (i) interfere with pending or actually and

1 reasonably contemplated law enforcement proceedings
2 conducted by any law enforcement or correctional
3 agency;

4 (ii) interfere with pending administrative
5 enforcement proceedings conducted by any public body;

6 (iii) deprive a person of a fair trial or an
7 impartial hearing;

8 (iv) unavoidably disclose the identity of a
9 confidential source or confidential information
10 furnished only by the confidential source;

11 (v) disclose unique or specialized investigative
12 techniques other than those generally used and known or
13 disclose internal documents of correctional agencies
14 related to detection, observation or investigation of
15 incidents of crime or misconduct;

16 (vi) constitute an invasion of personal privacy
17 under subsection (b) of this Section;

18 (vii) endanger the life or physical safety of law
19 enforcement personnel or any other person; or

20 (viii) obstruct an ongoing criminal investigation.

21 (d) Criminal history record information maintained by
22 State or local criminal justice agencies, except the
23 following which shall be open for public inspection and
24 copying:

25 (i) chronologically maintained arrest information,
26 such as traditional arrest logs or blotters;

1 (ii) the name of a person in the custody of a law
2 enforcement agency and the charges for which that
3 person is being held;

4 (iii) court records that are public;

5 (iv) records that are otherwise available under
6 State or local law; or

7 (v) records in which the requesting party is the
8 individual identified, except as provided under part
9 (vii) of paragraph (c) of subsection (1) of this
10 Section.

11 "Criminal history record information" means data
12 identifiable to an individual and consisting of
13 descriptions or notations of arrests, detentions,
14 indictments, informations, pre-trial proceedings, trials,
15 or other formal events in the criminal justice system or
16 descriptions or notations of criminal charges (including
17 criminal violations of local municipal ordinances) and the
18 nature of any disposition arising therefrom, including
19 sentencing, court or correctional supervision,
20 rehabilitation and release. The term does not apply to
21 statistical records and reports in which individuals are
22 not identified and from which their identities are not
23 ascertainable, or to information that is for criminal
24 investigative or intelligence purposes.

25 (e) Records that relate to or affect the security of
26 correctional institutions and detention facilities.

1 (f) Preliminary drafts, notes, recommendations,
2 memoranda and other records in which opinions are
3 expressed, or policies or actions are formulated, except
4 that a specific record or relevant portion of a record
5 shall not be exempt when the record is publicly cited and
6 identified by the head of the public body. The exemption
7 provided in this paragraph (f) extends to all those records
8 of officers and agencies of the General Assembly that
9 pertain to the preparation of legislative documents.

10 (g) Trade secrets and commercial or financial
11 information obtained from a person or business where the
12 trade secrets or information are proprietary, privileged
13 or confidential, or where disclosure of the trade secrets
14 or information may cause competitive harm, including:

15 (i) All information determined to be confidential
16 under Section 4002 of the Technology Advancement and
17 Development Act.

18 (ii) All trade secrets and commercial or financial
19 information obtained by a public body, including a
20 public pension fund, from a private equity fund or a
21 privately held company within the investment portfolio
22 of a private equity fund as a result of either
23 investing or evaluating a potential investment of
24 public funds in a private equity fund. The exemption
25 contained in this item does not apply to the aggregate
26 financial performance information of a private equity

1 fund, nor to the identity of the fund's managers or
2 general partners. The exemption contained in this item
3 does not apply to the identity of a privately held
4 company within the investment portfolio of a private
5 equity fund, unless the disclosure of the identity of a
6 privately held company may cause competitive harm.

7 Nothing contained in this paragraph (g) shall be construed
8 to prevent a person or business from consenting to disclosure.

9 (h) Proposals and bids for any contract, grant, or
10 agreement, including information which if it were
11 disclosed would frustrate procurement or give an advantage
12 to any person proposing to enter into a contractor
13 agreement with the body, until an award or final selection
14 is made. Information prepared by or for the body in
15 preparation of a bid solicitation shall be exempt until an
16 award or final selection is made.

17 (i) Valuable formulae, computer geographic systems,
18 designs, drawings and research data obtained or produced by
19 any public body when disclosure could reasonably be
20 expected to produce private gain or public loss. The
21 exemption for "computer geographic systems" provided in
22 this paragraph (i) does not extend to requests made by news
23 media as defined in Section 2 of this Act when the
24 requested information is not otherwise exempt and the only
25 purpose of the request is to access and disseminate
26 information regarding the health, safety, welfare, or

1 legal rights of the general public.

2 (j) Test questions, scoring keys and other examination
3 data used to administer an academic examination or
4 determined the qualifications of an applicant for a license
5 or employment.

6 (k) Architects' plans, engineers' technical
7 submissions, and other construction related technical
8 documents for projects not constructed or developed in
9 whole or in part with public funds and the same for
10 projects constructed or developed with public funds, but
11 only to the extent that disclosure would compromise
12 security, including but not limited to water treatment
13 facilities, airport facilities, sport stadiums, convention
14 centers, and all government owned, operated, or occupied
15 buildings.

16 (l) Library circulation and order records identifying
17 library users with specific materials.

18 (m) Minutes of meetings of public bodies closed to the
19 public as provided in the Open Meetings Act until the
20 public body makes the minutes available to the public under
21 Section 2.06 of the Open Meetings Act.

22 (n) Communications between a public body and an
23 attorney or auditor representing the public body that would
24 not be subject to discovery in litigation, and materials
25 prepared or compiled by or for a public body in
26 anticipation of a criminal, civil or administrative

1 proceeding upon the request of an attorney advising the
2 public body, and materials prepared or compiled with
3 respect to internal audits of public bodies.

4 (o) Information received by a primary or secondary
5 school, college or university under its procedures for the
6 evaluation of faculty members by their academic peers.

7 (p) Administrative or technical information associated
8 with automated data processing operations, including but
9 not limited to software, operating protocols, computer
10 program abstracts, file layouts, source listings, object
11 modules, load modules, user guides, documentation
12 pertaining to all logical and physical design of
13 computerized systems, employee manuals, and any other
14 information that, if disclosed, would jeopardize the
15 security of the system or its data or the security of
16 materials exempt under this Section.

17 (q) Documents or materials relating to collective
18 negotiating matters between public bodies and their
19 employees or representatives, except that any final
20 contract or agreement shall be subject to inspection and
21 copying.

22 (r) Drafts, notes, recommendations and memoranda
23 pertaining to the financing and marketing transactions of
24 the public body. The records of ownership, registration,
25 transfer, and exchange of municipal debt obligations, and
26 of persons to whom payment with respect to these

1 obligations is made.

2 (s) The records, documents and information relating to
3 real estate purchase negotiations until those negotiations
4 have been completed or otherwise terminated. With regard to
5 a parcel involved in a pending or actually and reasonably
6 contemplated eminent domain proceeding under the Eminent
7 Domain Act, records, documents and information relating to
8 that parcel shall be exempt except as may be allowed under
9 discovery rules adopted by the Illinois Supreme Court. The
10 records, documents and information relating to a real
11 estate sale shall be exempt until a sale is consummated.

12 (t) Any and all proprietary information and records
13 related to the operation of an intergovernmental risk
14 management association or self-insurance pool or jointly
15 self-administered health and accident cooperative or pool.

16 (u) Information concerning a university's adjudication
17 of student or employee grievance or disciplinary cases, to
18 the extent that disclosure would reveal the identity of the
19 student or employee and information concerning any public
20 body's adjudication of student or employee grievances or
21 disciplinary cases, except for the final outcome of the
22 cases.

23 (v) Course materials or research materials used by
24 faculty members.

25 (w) Information related solely to the internal
26 personnel rules and practices of a public body.

1 (x) Information contained in or related to
2 examination, operating, or condition reports prepared by,
3 on behalf of, or for the use of a public body responsible
4 for the regulation or supervision of financial
5 institutions or insurance companies, unless disclosure is
6 otherwise required by State law.

7 (y) Information the disclosure of which is restricted
8 under Section 5-108 of the Public Utilities Act.

9 (z) Manuals or instruction to staff that relate to
10 establishment or collection of liability for any State tax
11 or that relate to investigations by a public body to
12 determine violation of any criminal law.

13 (aa) Applications, related documents, and medical
14 records received by the Experimental Organ Transplantation
15 Procedures Board and any and all documents or other records
16 prepared by the Experimental Organ Transplantation
17 Procedures Board or its staff relating to applications it
18 has received.

19 (bb) Insurance or self insurance (including any
20 intergovernmental risk management association or self
21 insurance pool) claims, loss or risk management
22 information, records, data, advice or communications.

23 (cc) Information and records held by the Department of
24 Public Health and its authorized representatives relating
25 to known or suspected cases of sexually transmissible
26 disease or any information the disclosure of which is

1 restricted under the Illinois Sexually Transmissible
2 Disease Control Act.

3 (dd) Information the disclosure of which is exempted
4 under Section 30 of the Radon Industry Licensing Act.

5 (ee) Firm performance evaluations under Section 55 of
6 the Architectural, Engineering, and Land Surveying
7 Qualifications Based Selection Act.

8 (ff) Security portions of system safety program plans,
9 investigation reports, surveys, schedules, lists, data, or
10 information compiled, collected, or prepared by or for the
11 Regional Transportation Authority under Section 2.11 of
12 the Regional Transportation Authority Act or the St. Clair
13 County Transit District under the Bi-State Transit Safety
14 Act.

15 (gg) Information the disclosure of which is restricted
16 and exempted under Section 50 of the Illinois Prepaid
17 Tuition Act.

18 (hh) Information the disclosure of which is exempted
19 under the State Officials and Employees Ethics Act.

20 (ii) Beginning July 1, 1999, information that would
21 disclose or might lead to the disclosure of secret or
22 confidential information, codes, algorithms, programs, or
23 private keys intended to be used to create electronic or
24 digital signatures under the Electronic Commerce Security
25 Act.

26 (jj) Information contained in a local emergency energy

1 plan submitted to a municipality in accordance with a local
2 emergency energy plan ordinance that is adopted under
3 Section 11-21.5-5 of the Illinois Municipal Code.

4 (kk) Information and data concerning the distribution
5 of surcharge moneys collected and remitted by wireless
6 carriers under the Wireless Emergency Telephone Safety
7 Act.

8 (ll) Vulnerability assessments, security measures, and
9 response policies or plans that are designed to identify,
10 prevent, or respond to potential attacks upon a community's
11 population or systems, facilities, or installations, the
12 destruction or contamination of which would constitute a
13 clear and present danger to the health or safety of the
14 community, but only to the extent that disclosure could
15 reasonably be expected to jeopardize the effectiveness of
16 the measures or the safety of the personnel who implement
17 them or the public. Information exempt under this item may
18 include such things as details pertaining to the
19 mobilization or deployment of personnel or equipment, to
20 the operation of communication systems or protocols, or to
21 tactical operations.

22 (mm) Maps and other records regarding the location or
23 security of ~~a utility's~~ generation, transmission,
24 distribution, storage, gathering, treatment, or switching
25 facilities owned by a utility or by the Illinois Power
26 Agency.

1 (nn) Law enforcement officer identification
2 information or driver identification information compiled
3 by a law enforcement agency or the Department of
4 Transportation under Section 11-212 of the Illinois
5 Vehicle Code.

6 (oo) Records and information provided to a residential
7 health care facility resident sexual assault and death
8 review team or the Executive Council under the Abuse
9 Prevention Review Team Act.

10 (pp) Information provided to the predatory lending
11 database created pursuant to Article 3 of the Residential
12 Real Property Disclosure Act, except to the extent
13 authorized under that Article.

14 (qq) Defense budgets and petitions for certification
15 of compensation and expenses for court appointed trial
16 counsel as provided under Sections 10 and 15 of the Capital
17 Crimes Litigation Act. This subsection (qq) shall apply
18 until the conclusion of the trial of the case, even if the
19 prosecution chooses not to pursue the death penalty prior
20 to trial or sentencing.

21 (rr) Information contained in or related to proposals,
22 bids, or negotiations related to electric power
23 procurement under Section 1-75 of the Illinois Power Agency
24 Act and Section 16-111.5 of the Public Utilities Act that
25 is determined to be confidential and proprietary by the
26 Illinois Power Agency or by the Illinois Commerce

1 Commission.

2 (2) This Section does not authorize withholding of
3 information or limit the availability of records to the public,
4 except as stated in this Section or otherwise provided in this
5 Act.

6 (Source: P.A. 93-43, eff. 7-1-03; 93-209, eff. 7-18-03; 93-237,
7 eff. 7-22-03; 93-325, eff. 7-23-03, 93-422, eff. 8-5-03;
8 93-577, eff. 8-21-03; 93-617, eff. 12-9-03; 94-280, eff.
9 1-1-06; 94-508, eff. 1-1-06; 94-664, eff. 1-1-06; 94-931, eff.
10 6-26-06; 94-953, eff. 6-27-06; 94-1055, eff. 1-1-07; revised
11 8-3-06.)

12 Section 5-905. The Civil Administrative Code of Illinois is
13 amended by changing Sections 5-15 and 5-20 and by adding
14 Section 5-222 as follows:

15 (20 ILCS 5/5-15) (was 20 ILCS 5/3)

16 Sec. 5-15. Departments of State government. The
17 Departments of State government are created as follows:

18 The Department on Aging.

19 The Department of Agriculture.

20 The Department of Central Management Services.

21 The Department of Children and Family Services.

22 The Department of Commerce and Economic Opportunity.

23 The Department of Corrections.

24 The Department of Employment Security.

1 The Emergency Management Agency.

2 The Department of Financial Institutions.

3 The Department of Healthcare and Family Services.

4 The Department of Human Rights.

5 The Department of Human Services.

6 The Illinois Power Agency.

7 The Department of Insurance.

8 The Department of Juvenile Justice.

9 The Department of Labor.

10 The Department of the Lottery.

11 The Department of Natural Resources.

12 The Department of Professional Regulation.

13 ~~The Department of Public Aid.~~

14 The Department of Public Health.

15 The Department of Revenue.

16 The Department of State Police.

17 The Department of Transportation.

18 The Department of Veterans' Affairs.

19 (Source: P.A. 93-25, eff. 6-20-03; 93-1029, eff. 8-25-04;

20 94-696, eff. 6-1-06; revised 9-14-06.)

21 (20 ILCS 5/5-20) (was 20 ILCS 5/4)

22 Sec. 5-20. Heads of departments. Each department shall have
23 an officer as its head who shall be known as director or
24 secretary and who shall, subject to the provisions of the Civil
25 Administrative Code of Illinois, execute the powers and

1 discharge the duties vested by law in his or her respective
2 department.

3 The following officers are hereby created:

4 Director of Aging, for the Department on Aging.

5 Director of Agriculture, for the Department of
6 Agriculture.

7 Director of Central Management Services, for the
8 Department of Central Management Services.

9 Director of Children and Family Services, for the
10 Department of Children and Family Services.

11 Director of Commerce and Economic Opportunity, for the
12 Department of Commerce and Economic Opportunity.

13 Director of Corrections, for the Department of
14 Corrections.

15 Director of Emergency Management Agency, for the Emergency
16 Management Agency.

17 Director of Employment Security, for the Department of
18 Employment Security.

19 Director of Financial Institutions, for the Department of
20 Financial Institutions.

21 Director of Healthcare and Family Services, for the
22 Department of Healthcare and Family Services.

23 Director of Human Rights, for the Department of Human
24 Rights.

25 Secretary of Human Services, for the Department of Human
26 Services.

1 Director of the Illinois Power Agency, for the Illinois
2 Power Agency.

3 Director of Insurance, for the Department of Insurance.

4 Director of Juvenile Justice, for the Department of
5 Juvenile Justice.

6 Director of Labor, for the Department of Labor.

7 Director of the Lottery, for the Department of the Lottery.

8 Director of Natural Resources, for the Department of
9 Natural Resources.

10 Director of Professional Regulation, for the Department of
11 Professional Regulation.

12 ~~Director of Public Aid, for the Department of Public Aid.~~

13 Director of Public Health, for the Department of Public
14 Health.

15 Director of Revenue, for the Department of Revenue.

16 Director of State Police, for the Department of State
17 Police.

18 Secretary of Transportation, for the Department of
19 Transportation.

20 Director of Veterans' Affairs, for the Department of
21 Veterans' Affairs.

22 (Source: P.A. 93-25, eff. 6-20-03; 93-1029, eff. 8-25-04;
23 94-696, eff. 6-1-06; revised 9-14-06.)

24 (20 ILCS 5/5-222 new)

25 Sec. 5-222. Director of the Illinois Power Agency. The

1 Director of the Illinois Power Agency must have at least 15
2 years of combined experience in the electric industry,
3 electricity policy, or electricity markets and must possess:
4 (i) general knowledge of the responsibilities of being a
5 director, (ii) managerial experience, and (iii) an advanced
6 degree in economics, risk management, law, business,
7 engineering, or a related field.

8 Section 5-910. The Renewable Energy, Energy Efficiency,
9 and Coal Resources Development Law of 1997 is amended by
10 changing Sections 6-5 and 6-7 as follows:

11 (20 ILCS 687/6-5)

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

13 Sec. 6-5. Renewable Energy Resources and Coal Technology
14 Development Assistance Charge.

15 (a) Notwithstanding the provisions of Section 16-111 of the
16 Public Utilities Act but subject to subsection (e) of this
17 Section, each public utility, electric cooperative, as defined
18 in Section 3.4 of the Electric Supplier Act, and municipal
19 utility, as referenced in Section 3-105 of the Public Utilities
20 Act, that is engaged in the delivery of electricity or the
21 distribution of natural gas within the State of Illinois shall,
22 effective January 1, 1998, assess each of its customer accounts
23 a monthly Renewable Energy Resources and Coal Technology
24 Development Assistance Charge. The delivering public utility,

1 municipal electric or gas utility, or electric or gas
2 cooperative for a self-assessing purchaser remains subject to
3 the collection of the fee imposed by this Section. The monthly
4 charge shall be as follows:

5 (1) \$0.05 per month on each account for residential
6 electric service as defined in Section 13 of the Energy
7 Assistance Act;

8 (2) \$0.05 per month on each account for residential gas
9 service as defined in Section 13 of the Energy Assistance
10 Act;

11 (3) \$0.50 per month on each account for nonresidential
12 electric service, as defined in Section 13 of the Energy
13 Assistance Act, which had less than 10 megawatts of peak
14 demand during the previous calendar year;

15 (4) \$0.50 per month on each account for nonresidential
16 gas service, as defined in Section 13 of the Energy
17 Assistance Act, which had distributed to it less than
18 4,000,000 therms of gas during the previous calendar year;

19 (5) \$37.50 per month on each account for nonresidential
20 electric service, as defined in Section 13 of the Energy
21 Assistance Act, which had 10 megawatts or greater of peak
22 demand during the previous calendar year; and

23 (6) \$37.50 per month on each account for nonresidential
24 gas service, as defined in Section 13 of the Energy
25 Assistance Act, which had 4,000,000 or more therms of gas
26 distributed to it during the previous calendar year.

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

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

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

26 (e) The charges imposed by this Section shall only apply to

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

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

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

16 (20 ILCS 687/6-7)

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

18 Sec. 6-7. Repeal. The provisions of this Law are repealed
19 on December 12, 2015 ~~10 years after the effective date of this~~
20 ~~amendatory Act of 1997 unless renewed by act of the General~~
21 ~~Assembly.~~

22 (Source: P.A. 90-561, eff. 12-16-97.)

23 Section 5-915. The Illinois Finance Authority Act is
24 amended by adding Section 825-90 and by changing Sections

1 801-40 and 845-5 as follows:

2 (20 ILCS 3501/801-40)

3 Sec. 801-40. In addition to the powers otherwise authorized
4 by law and in addition to the foregoing general corporate
5 powers, the Authority shall also have the following additional
6 specific powers to be exercised in furtherance of the purposes
7 of this Act.

8 (a) The Authority shall have power (i) to accept grants,
9 loans or appropriations from the federal government or the
10 State, or any agency or instrumentality thereof, to be used for
11 the operating expenses of the Authority, or for any purposes of
12 the Authority, including the making of direct loans of such
13 funds with respect to projects, and (ii) to enter into any
14 agreement with the federal government or the State, or any
15 agency or instrumentality thereof, in relationship to such
16 grants, loans or appropriations.

17 (b) The Authority shall have power to procure and enter
18 into contracts for any type of insurance and indemnity
19 agreements covering loss or damage to property from any cause,
20 including loss of use and occupancy, or covering any other
21 insurable risk.

22 (c) The Authority shall have the continuing power to issue
23 bonds for its corporate purposes. Bonds may be issued by the
24 Authority in one or more series and may provide for the payment
25 of any interest deemed necessary on such bonds, of the costs of

1 issuance of such bonds, of any premium on any insurance, or of
2 the cost of any guarantees, letters of credit or other similar
3 documents, may provide for the funding of the reserves deemed
4 necessary in connection with such bonds, and may provide for
5 the refunding or advance refunding of any bonds or for accounts
6 deemed necessary in connection with any purpose of the
7 Authority. The bonds may bear interest payable at any time or
8 times and at any rate or rates, notwithstanding any other
9 provision of law to the contrary, and such rate or rates may be
10 established by an index or formula which may be implemented or
11 established by persons appointed or retained therefor by the
12 Authority, or may bear no interest or may bear interest payable
13 at maturity or upon redemption prior to maturity, may bear such
14 date or dates, may be payable at such time or times and at such
15 place or places, may mature at any time or times not later than
16 40 years from the date of issuance, may be sold at public or
17 private sale at such time or times and at such price or prices,
18 may be secured by such pledges, reserves, guarantees, letters
19 of credit, insurance contracts or other similar credit support
20 or liquidity instruments, may be executed in such manner, may
21 be subject to redemption prior to maturity, may provide for the
22 registration of the bonds, and may be subject to such other
23 terms and conditions all as may be provided by the resolution
24 or indenture authorizing the issuance of such bonds. The holder
25 or holders of any bonds issued by the Authority may bring suits
26 at law or proceedings in equity to compel the performance and

1 observance by any person or by the Authority or any of its
2 agents or employees of any contract or covenant made with the
3 holders of such bonds and to compel such person or the
4 Authority and any of its agents or employees to perform any
5 duties required to be performed for the benefit of the holders
6 of any such bonds by the provision of the resolution
7 authorizing their issuance, and to enjoin such person or the
8 Authority and any of its agents or employees from taking any
9 action in conflict with any such contract or covenant.
10 Notwithstanding the form and tenor of any such bonds and in the
11 absence of any express recital on the face thereof that it is
12 non-negotiable, all such bonds shall be negotiable
13 instruments. Pending the preparation and execution of any such
14 bonds, temporary bonds may be issued as provided by the
15 resolution. The bonds shall be sold by the Authority in such
16 manner as it shall determine. The bonds may be secured as
17 provided in the authorizing resolution by the receipts,
18 revenues, income and other available funds of the Authority and
19 by any amounts derived by the Authority from the loan agreement
20 or lease agreement with respect to the project or projects; and
21 bonds may be issued as general obligations of the Authority
22 payable from such revenues, funds and obligations of the
23 Authority as the bond resolution shall provide, or may be
24 issued as limited obligations with a claim for payment solely
25 from such revenues, funds and obligations as the bond
26 resolution shall provide. The Authority may grant a specific

1 pledge or assignment of and lien on or security interest in
2 such rights, revenues, income, or amounts and may grant a
3 specific pledge or assignment of and lien on or security
4 interest in any reserves, funds or accounts established in the
5 resolution authorizing the issuance of bonds. Any such pledge,
6 assignment, lien or security interest for the benefit of the
7 holders of the Authority's bonds shall be valid and binding
8 from the time the bonds are issued without any physical
9 delivery or further act, and shall be valid and binding as
10 against and prior to the claims of all other parties having
11 claims against the Authority or any other person irrespective
12 of whether the other parties have notice of the pledge,
13 assignment, lien or security interest. As evidence of such
14 pledge, assignment, lien and security interest, the Authority
15 may execute and deliver a mortgage, trust agreement, indenture
16 or security agreement or an assignment thereof. A remedy for
17 any breach or default of the terms of any such agreement by the
18 Authority may be by mandamus proceedings in any court of
19 competent jurisdiction to compel the performance and
20 compliance therewith, but the agreement may prescribe by whom
21 or on whose behalf such action may be instituted. It is
22 expressly understood that the Authority may, but need not,
23 acquire title to any project with respect to which it exercises
24 its authority.

25 (d) With respect to the powers granted by this Act, the
26 Authority may adopt rules and regulations prescribing the

1 procedures by which persons may apply for assistance under this
2 Act. Nothing herein shall be deemed to preclude the Authority,
3 prior to the filing of any formal application, from conducting
4 preliminary discussions and investigations with respect to the
5 subject matter of any prospective application.

6 (e) The Authority shall have power to acquire by purchase,
7 lease, gift or otherwise any property or rights therein from
8 any person useful for its purposes, whether improved for the
9 purposes of any prospective project, or unimproved. The
10 Authority may also accept any donation of funds for its
11 purposes from any such source. The Authority shall have no
12 independent power of condemnation but may acquire any property
13 or rights therein obtained upon condemnation by any other
14 authority, governmental entity or unit of local government with
15 such power.

16 (f) The Authority shall have power to develop, construct
17 and improve either under its own direction, or through
18 collaboration with any approved applicant, or to acquire
19 through purchase or otherwise, any project, using for such
20 purpose the proceeds derived from the sale of its bonds or from
21 governmental loans or grants, and to hold title in the name of
22 the Authority to such projects.

23 (g) The Authority shall have power to lease pursuant to a
24 lease agreement any project so developed and constructed or
25 acquired to the approved tenant on such terms and conditions as
26 may be appropriate to further the purposes of this Act and to

1 maintain the credit of the Authority. Any such lease may
2 provide for either the Authority or the approved tenant to
3 assume initially, in whole or in part, the costs of
4 maintenance, repair and improvements during the leasehold
5 period. In no case, however, shall the total rentals from any
6 project during any initial leasehold period or the total loan
7 repayments to be made pursuant to any loan agreement, be less
8 than an amount necessary to return over such lease or loan
9 period (1) all costs incurred in connection with the
10 development, construction, acquisition or improvement of the
11 project and for repair, maintenance and improvements thereto
12 during the period of the lease or loan; provided, however, that
13 the rentals or loan repayments need not include costs met
14 through the use of funds other than those obtained by the
15 Authority through the issuance of its bonds or governmental
16 loans; (2) a reasonable percentage additive to be agreed upon
17 by the Authority and the borrower or tenant to cover a properly
18 allocable portion of the Authority's general expenses,
19 including, but not limited to, administrative expenses,
20 salaries and general insurance, and (3) an amount sufficient to
21 pay when due all principal of, interest and premium, if any on,
22 any bonds issued by the Authority with respect to the project.
23 The portion of total rentals payable under clause (3) of this
24 subsection (g) shall be deposited in such special accounts,
25 including all sinking funds, acquisition or construction
26 funds, debt service and other funds as provided by any

1 resolution, mortgage or trust agreement of the Authority
2 pursuant to which any bond is issued.

3 (h) The Authority has the power, upon the termination of
4 any leasehold period of any project, to sell or lease for a
5 further term or terms such project on such terms and conditions
6 as the Authority shall deem reasonable and consistent with the
7 purposes of the Act. The net proceeds from all such sales and
8 the revenues or income from such leases shall be used to
9 satisfy any indebtedness of the Authority with respect to such
10 project and any balance may be used to pay any expenses of the
11 Authority or be used for the further development, construction,
12 acquisition or improvement of projects. In the event any
13 project is vacated by a tenant prior to the termination of the
14 initial leasehold period, the Authority shall sell or lease the
15 facilities of the project on the most advantageous terms
16 available. The net proceeds of any such disposition shall be
17 treated in the same manner as the proceeds from sales or the
18 revenues or income from leases subsequent to the termination of
19 any initial leasehold period.

20 (i) The Authority shall have the power to make loans to
21 persons to finance a project, to enter into loan agreements
22 with respect thereto, and to accept guarantees from persons of
23 its loans or the resultant evidences of obligations of the
24 Authority.

25 (j) The Authority may fix, determine, charge and collect
26 any premiums, fees, charges, costs and expenses, including,

1 without limitation, any application fees, commitment fees,
2 program fees, financing charges or publication fees from any
3 person in connection with its activities under this Act.

4 (k) In addition to the funds established as provided
5 herein, the Authority shall have the power to create and
6 establish such reserve funds and accounts as may be necessary
7 or desirable to accomplish its purposes under this Act and to
8 deposit its available monies into the funds and accounts.

9 (l) At the request of the governing body of any unit of
10 local government, the Authority is authorized to market such
11 local government's revenue bond offerings by preparing bond
12 issues for sale, advertising for sealed bids, receiving bids at
13 its offices, making the award to the bidder that offers the
14 most favorable terms or arranging for negotiated placements or
15 underwritings of such securities. The Authority may, at its
16 discretion, offer for concurrent sale the revenue bonds of
17 several local governments. Sales by the Authority of revenue
18 bonds under this Section shall in no way imply State guarantee
19 of such debt issue. The Authority may require such financial
20 information from participating local governments as it deems
21 necessary in order to carry out the purposes of this subsection

22 (1).

23 (m) The Authority may make grants to any county to which
24 Division 5-37 of the Counties Code is applicable to assist in
25 the financing of capital development, construction and
26 renovation of new or existing facilities for hospitals and

1 health care facilities under that Act. Such grants may only be
2 made from funds appropriated for such purposes from the Build
3 Illinois Bond Fund.

4 (n) The Authority may establish an urban development action
5 grant program for the purpose of assisting municipalities in
6 Illinois which are experiencing severe economic distress to
7 help stimulate economic development activities needed to aid in
8 economic recovery. The Authority shall determine the types of
9 activities and projects for which the urban development action
10 grants may be used, provided that such projects and activities
11 are broadly defined to include all reasonable projects and
12 activities the primary objectives of which are the development
13 of viable urban communities, including decent housing and a
14 suitable living environment, and expansion of economic
15 opportunity, principally for persons of low and moderate
16 incomes. The Authority shall enter into grant agreements from
17 monies appropriated for such purposes from the Build Illinois
18 Bond Fund. The Authority shall monitor the use of the grants,
19 and shall provide for audits of the funds as well as recovery
20 by the Authority of any funds determined to have been spent in
21 violation of this subsection (n) or any rule or regulation
22 promulgated hereunder. The Authority shall provide technical
23 assistance with regard to the effective use of the urban
24 development action grants. The Authority shall file an annual
25 report to the General Assembly concerning the progress of the
26 grant program.

1 (o) The Authority may establish a Housing Partnership
2 Program whereby the Authority provides zero-interest loans to
3 municipalities for the purpose of assisting in the financing of
4 projects for the rehabilitation of affordable multi-family
5 housing for low and moderate income residents. The Authority
6 may provide such loans only upon a municipality's providing
7 evidence that it has obtained private funding for the
8 rehabilitation project. The Authority shall provide 3 State
9 dollars for every 7 dollars obtained by the municipality from
10 sources other than the State of Illinois. The loans shall be
11 made from monies appropriated for such purpose from the Build
12 Illinois Bond Fund. The total amount of loans available under
13 the Housing Partnership Program shall not exceed \$30,000,000.
14 State loan monies under this subsection shall be used only for
15 the acquisition and rehabilitation of existing buildings
16 containing 4 or more dwelling units. The terms of any loan made
17 by the municipality under this subsection shall require
18 repayment of the loan to the municipality upon any sale or
19 other transfer of the project.

20 (p) The Authority may award grants to universities and
21 research institutions, research consortiums and other
22 not-for-profit entities for the purposes of: remodeling or
23 otherwise physically altering existing laboratory or research
24 facilities, expansion or physical additions to existing
25 laboratory or research facilities, construction of new
26 laboratory or research facilities or acquisition of modern

1 equipment to support laboratory or research operations
2 provided that such grants (i) be used solely in support of
3 project and equipment acquisitions which enhance technology
4 transfer, and (ii) not constitute more than 60 percent of the
5 total project or acquisition cost.

6 (q) Grants may be awarded by the Authority to units of
7 local government for the purpose of developing the appropriate
8 infrastructure or defraying other costs to the local government
9 in support of laboratory or research facilities provided that
10 such grants may not exceed 40% of the cost to the unit of local
11 government.

12 (r) The Authority may establish a Direct Loan Program to
13 make loans to individuals, partnerships or corporations for the
14 purpose of an industrial project, as defined in Section 801-10
15 of this Act. For the purposes of such program and not by way of
16 limitation on any other program of the Authority, the Authority
17 shall have the power to issue bonds, notes, or other evidences
18 of indebtedness including commercial paper for purposes of
19 providing a fund of capital from which it may make such loans.
20 The Authority shall have the power to use any appropriations
21 from the State made especially for the Authority's Direct Loan
22 Program for additional capital to make such loans or for the
23 purposes of reserve funds or pledged funds which secure the
24 Authority's obligations of repayment of any bond, note or other
25 form of indebtedness established for the purpose of providing
26 capital for which it intends to make such loans under the

1 Direct Loan Program. For the purpose of obtaining such capital,
2 the Authority may also enter into agreements with financial
3 institutions and other persons for the purpose of selling loans
4 and developing a secondary market for such loans. Loans made
5 under the Direct Loan Program may be in an amount not to exceed
6 \$300,000 and shall be made for a portion of an industrial
7 project which does not exceed 50% of the total project. No loan
8 may be made by the Authority unless approved by the affirmative
9 vote of at least 8 members of the board. The Authority shall
10 establish procedures and publish rules which shall provide for
11 the submission, review, and analysis of each direct loan
12 application and which shall preserve the ability of each board
13 member to reach an individual business judgment regarding the
14 propriety of making each direct loan. The collective discretion
15 of the board to approve or disapprove each loan shall be
16 unencumbered. The Authority may establish and collect such fees
17 and charges, determine and enforce such terms and conditions,
18 and charge such interest rates as it determines to be necessary
19 and appropriate to the successful administration of the Direct
20 Loan Program. The Authority may require such interests in
21 collateral and such guarantees as it determines are necessary
22 to protect the Authority's interest in the repayment of the
23 principal and interest of each loan made under the Direct Loan
24 Program.

25 (s) The Authority may guarantee private loans to third
26 parties up to a specified dollar amount in order to promote

1 economic development in this State.

2 (t) The Authority may adopt rules and regulations as may be
3 necessary or advisable to implement the powers conferred by
4 this Act.

5 (u) The Authority shall have the power to issue bonds,
6 notes or other evidences of indebtedness, which may be used to
7 make loans to units of local government which are authorized to
8 enter into loan agreements and other documents and to issue
9 bonds, notes and other evidences of indebtedness for the
10 purpose of financing the protection of storm sewer outfalls,
11 the construction of adequate storm sewer outfalls, and the
12 provision for flood protection of sanitary sewage treatment
13 plans, in counties that have established a stormwater
14 management planning committee in accordance with Section
15 5-1062 of the Counties Code. Any such loan shall be made by the
16 Authority pursuant to the provisions of Section 820-5 to 820-60
17 of this Act. The unit of local government shall pay back to the
18 Authority the principal amount of the loan, plus annual
19 interest as determined by the Authority. The Authority shall
20 have the power, subject to appropriations by the General
21 Assembly, to subsidize or buy down a portion of the interest on
22 such loans, up to 4% per annum.

23 (v) The Authority may accept security interests as provided
24 in Sections 11-3 and 11-3.3 of the Illinois Public Aid Code.

25 (w) Moral Obligation. In the event that the Authority
26 determines that monies of the Authority will not be sufficient

1 for the payment of the principal of and interest on its bonds
2 during the next State fiscal year, the Chairperson, as soon as
3 practicable, shall certify to the Governor the amount required
4 by the Authority to enable it to pay such principal of and
5 interest on the bonds. The Governor shall submit the amount so
6 certified to the General Assembly as soon as practicable, but
7 no later than the end of the current State fiscal year. This
8 subsection shall apply only to any bonds or notes as to which
9 the Authority shall have determined, in the resolution
10 authorizing the issuance of the bonds or notes, that this
11 subsection shall apply. Whenever the Authority makes such a
12 determination, that fact shall be plainly stated on the face of
13 the bonds or notes and that fact shall also be reported to the
14 Governor. In the event of a withdrawal of moneys from a reserve
15 fund established with respect to any issue or issues of bonds
16 of the Authority to pay principal or interest on those bonds,
17 the Chairperson of the Authority, as soon as practicable, shall
18 certify to the Governor the amount required to restore the
19 reserve fund to the level required in the resolution or
20 indenture securing those bonds. The Governor shall submit the
21 amount so certified to the General Assembly as soon as
22 practicable, but no later than the end of the current State
23 fiscal year. The Authority shall obtain written approval from
24 the Governor for any bonds and notes to be issued under this
25 Section. In addition to any other bonds authorized to be issued
26 under Sections 825-60, 825-65(e), 830-25 and 845-5, the

1 principal amount of Authority bonds outstanding issued under
2 this Section 801-40(w) or under 20 ILCS 3850/1-80 or 30 ILCS
3 360/2-6(c), which have been assumed by the Authority, shall not
4 exceed \$150,000,000. This subsection (w) shall in no way be
5 applied to any bonds issued by the Authority on behalf of the
6 Illinois Power Agency under Section 825-90 of this Act.

7 (Source: P.A. 93-205, eff. 1-1-04; 94-91, eff. 7-1-05.)

8 (20 ILCS 3501/825-90 new)

9 Sec. 825-90. Illinois Power Agency Bonds.

10 (a) In this Section:

11 "Agency" means the Illinois Power Agency.

12 "Agency loan agreement" means any agreement pursuant to
13 which the Illinois Finance Authority agrees to loan the
14 proceeds of its revenue bonds issued with respect to a specific
15 Illinois Power Agency project to the Illinois Power Agency upon
16 terms providing for loan repayment installments at least
17 sufficient to pay when due all principal of, interest and
18 premium, if any, on any revenue bonds of the Authority, if any,
19 issued with respect to the Illinois Power Agency project, and
20 providing for maintenance, insurance, and other matters as may
21 be deemed desirable by the Authority.

22 "Authority" means the Illinois Finance Authority.

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

24 "Facility" means an electric generating unit or a
25 co-generating unit that produces electricity along with

1 related equipment necessary to connect the facility to an
2 electric transmission or distribution system.

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

7 "Local government" means a unit of local government as
8 defined in Section 1 of Article VII of the Illinois
9 Constitution of 1970.

10 "Project" means any project as defined in the Illinois
11 Power Agency Act.

12 "Real property" means any interest in land, together with
13 all structures, fixtures, and improvements thereon, including
14 lands under water and riparian rights, any easements,
15 covenants, licenses, leases, rights-of-way, uses, and other
16 interests, together with any liens, judgments, mortgages, or
17 other claims or security interests related to real property.

18 "Revenue bond" means any bond, note, or other evidence of
19 indebtedness issued by the Illinois Finance Authority on behalf
20 of the Illinois Power Agency, the principal and interest of
21 which is payable solely from revenues or income derived from
22 any project or activity of the Agency.

23 (b) Powers and duties; Illinois Power Agency Program. The
24 Authority has the power:

25 (1) To accept from time to time pursuant to an Agency
26 loan agreement any pledge or a pledge agreement by the

1 Agency subject to the requirements and limitations of the
2 Illinois Power Agency Act.

3 (2) To issue revenue bonds in one or more series
4 pursuant to one or more resolutions of the Authority to
5 loan funds to the Agency pursuant to one or more Agency
6 loan agreements meeting the requirements of the Illinois
7 Power Agency Act and providing for the payment of any
8 interest deemed necessary on those revenue bonds, paying
9 for the cost of issuance of those revenue bonds, providing
10 for the payment of the cost of any guarantees, letters of
11 credit, insurance contracts or other similar credit
12 support or liquidity instruments, or providing for the
13 funding of any reserves deemed necessary in connection with
14 those revenue bonds and refunding or advance refunding of
15 any such revenue bonds and the interest and any premium
16 thereon, pursuant to this Act. Authority for the agreements
17 shall conform to the requirements of the Illinois Power
18 Agency Act. The Authority may issue up to \$4,000,000,000
19 aggregate principal amount of revenue bonds, the net
20 proceeds of which shall be loaned to the Agency pursuant to
21 one or more Agency loan agreements. No revenue bonds issued
22 to refund or advance refund revenue bonds issued under this
23 Section may mature later than the longest maturity date of
24 the series of bonds being refunded. After the aggregate
25 original principal amount of revenue bonds authorized in
26 this Section has been issued, the payment of any principal

1 amount of those revenue bonds does not authorize the
2 issuance of additional revenue bonds (except refunding
3 revenue bonds). Such revenue bond authorization is in
4 addition to any other bonds authorized in this Act. All
5 bonds issued on behalf of the Agency must be issued by the
6 Authority and must be revenue bonds. These revenue bonds
7 may be taxable or tax-exempt.

8 (3) To provide for the funding of any reserves or other
9 funds or accounts deemed necessary by the Authority on
10 behalf of the Agency in connection with its issuance of
11 Agency revenue bonds.

12 (4) To accept the pledge of any Agency revenue,
13 including any payments thereon, and any other property or
14 funds of the Agency or funds made available to the
15 Authority through the applicable Agency loan agreement
16 with the Agency that may be applied to such purpose, as
17 security for any revenue bonds or any guarantees, letters
18 of credit, insurance contracts, or similar credit support
19 or liquidity instruments securing the revenue bonds.

20 (5) To enter into agreements or contracts with third
21 parties, whether public or private, including without
22 limitation the United States of America, the State, or any
23 department or agency thereof, to obtain any grants, loans,
24 or guarantees that are deemed necessary or desirable by the
25 Authority. Any such guarantee, agreement, or contract may
26 contain terms and provisions necessary or desirable in

1 connection with the program, subject to the requirements
2 established by this Article.

3 (6) To charge reasonable fees to defray the cost of
4 obtaining letters of credit, insurance contracts, or other
5 similar documents, and to charge such other reasonable fees
6 to defray the cost of trustees, depositories, paying
7 agents, legal counsel, bond registrars, escrow agents, and
8 other administrative expenses. Any such fees shall be
9 payable by the Agency, in such amounts and at such times as
10 the Authority shall determine.

11 (7) To obtain and maintain guarantees, letters of
12 credit, insurance contracts, or similar credit support or
13 liquidity instruments that are deemed necessary or
14 desirable in connection with any revenue bonds or other
15 obligations of the Authority for any Agency revenue bonds.

16 (8) To provide technical assistance, at the request of
17 the Agency, with respect to the financing or refinancing
18 for any public purpose.

19 (9) To sell, transfer, or otherwise defease revenue
20 bonds issued on behalf of the Agency at the request and
21 authorization of the Agency.

22 (10) To enter into agreements or contracts with any
23 person necessary or appropriate to place the payment
24 obligations of the Agency relating to revenue bonds in
25 whole or in part on any interest rate basis, cash flow
26 basis, or other basis desired by the Authority, including

1 without limitation agreements or contracts commonly known
2 as "interest rate swap agreements", "forward payment
3 conversion agreements", and "futures", or agreements or
4 contracts to exchange cash flows or a series of payments,
5 or agreements or contracts, including without limitation
6 agreements or contracts commonly known as "options",
7 "puts" or "calls", to hedge payment, rate spread, or
8 similar exposure; provided, that any such agreement or
9 contract shall not constitute an obligation for borrowed
10 money, and shall not be taken into account under Section
11 845-5 of this Act or any other debt limit of the Authority
12 or the State of Illinois.

13 (11) To make and enter into all other agreements and
14 contracts and execute all instruments necessary or
15 incidental to performance of its duties and the execution
16 of its powers under this Article.

17 (12) To contract for and finance the costs of audits
18 and to contract for and finance the cost of project
19 monitoring. Any such contract shall be executed only after
20 it has been jointly negotiated by the Authority and the
21 Agency.

22 (13) To exercise such other powers as are necessary or
23 incidental to the foregoing.

24 (c) Illinois Power Agency participation. The Agency is
25 authorized to voluntarily participate in this program as
26 described in the Illinois Power Agency Act. The Authority may

1 issue revenue bonds on behalf of the Agency pursuant to an
2 Agency loan agreement entered into by the parties as set forth
3 in the Illinois Power Agency Act. Any proceeds from the sale of
4 those revenue bonds shall be deposited into the Illinois Power
5 Agency Facilities Fund to be used by the Agency for the
6 purposes set forth in the Illinois Power Agency Act.

7 (d) Pledge of revenues by the Agency. Any pledge of
8 revenues or other moneys made by the Agency shall be binding
9 from the time the pledge is made. Revenues and other moneys so
10 pledged shall be held in the Illinois Power Agency Facilities
11 Fund, Illinois Power Agency Debt Service Fund, or other funds
12 as directed by the Agency loan agreement. Revenues or other
13 moneys so pledged and thereafter received by the State
14 Treasurer shall immediately be subject to the lien of the
15 pledge without any physical delivery thereof or further act,
16 and the lien of any pledge shall be binding against all parties
17 having claims of any kind of tort, contract, or otherwise
18 against the Authority, irrespective of whether the parties have
19 notice thereof. Neither the resolution nor any other instrument
20 by which a pledge is created need be filed or recorded except
21 in the records of the Authority. The State pledges to and
22 agrees with the holders of revenue bonds, and the beneficial
23 owners of the revenue bonds issued on behalf of the Agency,
24 that the State shall not limit or restrict the rights hereby
25 vested in the Authority to purchase, acquire, hold, sell, or
26 defease revenue bonds or other investments or to establish and

1 collect such fees or other charges as may be convenient or
2 necessary to produce sufficient revenues to meet the expenses
3 of operation of the Authority, and to fulfill the terms of any
4 agreement made with the holders of the revenue bonds issued by
5 the Authority on behalf of the Agency or in any way impair the
6 rights or remedies of the holders of those revenue bonds or the
7 beneficial owners of the revenue bonds until those revenue
8 bonds are fully paid and discharged or provision for their
9 payment has been made. The revenue bonds shall not be a debt of
10 the State, the Authority, any political subdivision thereof
11 (other than the Agency to the extent provided therein), any
12 governmental aggregator as defined in the Illinois Power Agency
13 Act, or any local government, and neither the State, the
14 Authority, any political subdivision thereof (other than the
15 Agency to the extent provided therein), any governmental
16 aggregator, nor any local government shall be liable thereon.
17 The Authority shall not have the power to pledge the credit,
18 the revenues, or the taxing power of the State, any political
19 subdivision thereof (other than the Agency to the extent
20 provided in the Agency loan agreement relating to the revenue
21 bonds in question), any governmental aggregator, or of any
22 local government, and neither the credit, the revenues, nor the
23 taxing power of the State, any political subdivision thereof
24 (other than the Agency to the extent provided in the Agency
25 loan agreement relating to the revenue bonds in question), any
26 governmental aggregator, or of any local government shall be,

1 or shall be deemed to be, pledged to the payment of any revenue
2 bonds, or obligations of the Agency.

3 (e) Exemption from taxation. The creation of the Illinois
4 Power Agency is in all respects for the benefit of the people
5 of Illinois and for the improvement of their health, safety,
6 welfare, comfort, and security, and its purposes are public
7 purposes. In consideration thereof, the revenue bonds issued on
8 behalf of the Agency pursuant to this Act and the income from
9 these revenue bonds may be free from all taxation by the State
10 or its political subdivisions, except for estate, transfer, and
11 inheritance taxes. The exemption from taxation provided by the
12 preceding sentence shall apply to the income on any revenue
13 bonds issued on behalf of the Agency only if the Authority with
14 concurrence of the Agency in its sole judgment determines that
15 the exemption enhances the marketability of the revenue bonds
16 or reduces the interest rates that would otherwise be borne by
17 the revenue bonds and that the project for which the revenue
18 bonds will be issued will be owned by the Agency or another
19 governmental entity and that the project is used for public
20 consumption. For purposes of Section 250 of the Illinois Income
21 Tax Act, the exemption of the Agency shall terminate after all
22 of the revenue bonds have been paid. The amount of the income
23 that shall be added and then subtracted on the Illinois income
24 tax return of a taxpayer, subject to Section 203 of the
25 Illinois Income Tax Act, from federal adjusted gross income or
26 federal taxable income in computing Illinois base income shall

1 be the interest net of any bond premium amortization.

2 (20 ILCS 3501/845-5)

3 Sec. 845-5. Bond limitations.

4 (a) The Authority may not have outstanding at any one time
5 bonds for any of its corporate purposes in an aggregate
6 principal amount exceeding \$25,200,000,000, excluding bonds
7 issued to refund the bonds of the Authority or bonds of the
8 Predecessor Authorities.

9 (b) The Authority may not have outstanding at any one time
10 revenue bonds in an aggregate principal amount exceeding
11 \$4,000,000,000 on behalf of the Illinois Power Agency as set
12 forth in Section 825-90. Any such revenue bonds issued on
13 behalf of the Illinois Power Agency pursuant to this Act shall
14 not be counted against the bond authorization limit set forth
15 in subsection (a).

16 (Source: P.A. 93-205, eff. 1-1-04; 93-1101, eff. 3-31-05;
17 94-1068, eff. 8-1-06.)

18 Section 5-920. The State Finance Act is amended by adding
19 Sections 5.680, 5.681, 5.682, 5.683, and 6z-75 and by changing
20 Section 8h as follows:

21 (30 ILCS 105/5.680 new)

22 Sec. 5.680. The Illinois Power Agency Operations Fund.

1 (30 ILCS 105/5.681 new)

2 Sec. 5.681. The Illinois Power Agency Facilities Fund.

3 (30 ILCS 105/5.682 new)

4 Sec. 5.682. The Illinois Power Agency Debt Service Fund.

5 (30 ILCS 105/5.683 new)

6 Sec. 5.683. The Illinois Power Agency Trust Fund.

7 (30 ILCS 105/6z-75 new)

8 Sec. 6z-75. The Illinois Power Agency Trust Fund.

9 (a) Creation. The Illinois Power Agency Trust Fund is
10 created as a special fund in the State treasury. The State
11 Treasurer shall be the custodian of the Fund. Amounts in the
12 Fund, both principal and interest not appropriated, shall be
13 invested as provided by law.

14 (b) Funding and investment.

15 (1) The Illinois Power Agency Trust Fund may accept,
16 receive, and administer any grants, loans, or other funds
17 made available to it by any source. Any such funds received
18 by the Fund shall not be considered income, but shall be
19 added to the principal of the Fund.

20 (2) The investments of the Fund shall be managed by the
21 Illinois State Board of Investment, for the purpose of
22 obtaining a total return on investments for the long term,
23 as provided for under Article 22A of the Illinois Pension

1 Code.

2 (c) Investment proceeds. Subject to the provisions of
3 subsection (d) of this Section, the General Assembly may
4 annually appropriate from the Illinois Power Agency Trust Fund
5 to the Illinois Power Agency Operations Fund an amount not to
6 exceed 90% of the annual investment income earned by the Fund
7 to the Illinois Power Agency. Any investment income not
8 appropriated by the General Assembly in a given fiscal year
9 shall be added to the principal of the Fund, and thereafter
10 considered a part thereof and not subject to appropriation as
11 income earned by the Fund.

12 (d) Expenditures.

13 (1) During Fiscal Year 2008 and Fiscal Year 2009, the
14 General Assembly shall not appropriate any of the
15 investment income earned by the Illinois Power Agency Trust
16 Fund to the Illinois Power Agency.

17 (2) During Fiscal Year 2010 and Fiscal Year 2011, the
18 General Assembly shall appropriate a portion of the
19 investment income earned by the Illinois Power Agency Trust
20 Fund to repay to the General Revenue Fund of the State of
21 Illinois those amounts, if any, appropriated from the
22 General Revenue Fund for the operation of the Illinois
23 Power Agency during Fiscal Year 2008 and Fiscal Year 2009,
24 so that at the end of Fiscal Year 2011, the entire amount,
25 if any, appropriated from the General Revenue Fund for the
26 operation of the Illinois Power Agency during Fiscal Year

1 2008 and Fiscal Year 2009 will be repaid in full to the
2 General Revenue Fund.

3 (3) In Fiscal Year 2012 and thereafter, the General
4 Assembly shall consider the need to balance its
5 appropriations from the investment income earned by the
6 Fund with the need to provide for the growth of the
7 principal of the Illinois Power Agency Trust Fund in order
8 to ensure that the Fund is able to produce sufficient
9 investment income to fund the operations of the Illinois
10 Power Agency in future years.

11 (4) If the Illinois Power Agency shall cease
12 operations, then, unless otherwise provided for by law or
13 appropriation, the principal and any investment income
14 earned by the Fund shall be transferred into the
15 Supplemental Low-Income Energy Assistance Program (LIHEAP)
16 Fund under Section 13 of the Energy Assistance Act of 1989.

17 (e) Implementation. The provisions of this Section shall
18 not be operative until the Illinois Power Agency Trust Fund has
19 accumulated a principal balance of \$25,000,000.

20 (30 ILCS 105/8h)

21 Sec. 8h. Transfers to General Revenue Fund.

22 (a) Except as otherwise provided in this Section and
23 Section 8n of this Act, and ~~(e), (d), or (e)~~, notwithstanding
24 any other State law to the contrary, the Governor may, through
25 June 30, 2007, from time to time direct the State Treasurer and

1 Comptroller to transfer a specified sum from any fund held by
2 the State Treasurer to the General Revenue Fund in order to
3 help defray the State's operating costs for the fiscal year.
4 The total transfer under this Section from any fund in any
5 fiscal year shall not exceed the lesser of (i) 8% of the
6 revenues to be deposited into the fund during that fiscal year
7 or (ii) an amount that leaves a remaining fund balance of 25%
8 of the July 1 fund balance of that fiscal year. In fiscal year
9 2005 only, prior to calculating the July 1, 2004 final
10 balances, the Governor may calculate and direct the State
11 Treasurer with the Comptroller to transfer additional amounts
12 determined by applying the formula authorized in Public Act
13 93-839 to the funds balances on July 1, 2003. No transfer may
14 be made from a fund under this Section that would have the
15 effect of reducing the available balance in the fund to an
16 amount less than the amount remaining unexpended and unreserved
17 from the total appropriation from that fund estimated to be
18 expended for that fiscal year. This Section does not apply to
19 any funds that are restricted by federal law to a specific use,
20 to any funds in the Motor Fuel Tax Fund, the Intercity
21 Passenger Rail Fund, the Hospital Provider Fund, the Medicaid
22 Provider Relief Fund, the Teacher Health Insurance Security
23 Fund, the Reviewing Court Alternative Dispute Resolution Fund,
24 the Voters' Guide Fund, the Foreign Language Interpreter Fund,
25 the Lawyers' Assistance Program Fund, the Supreme Court Federal
26 Projects Fund, the Supreme Court Special State Projects Fund,

1 the Supplemental Low-Income Energy Assistance Fund, the Good
2 Samaritan Energy Trust Fund, the Low-Level Radioactive Waste
3 Facility Development and Operation Fund, the Horse Racing
4 Equity Trust Fund, or the Hospital Basic Services Preservation
5 Fund, or to any funds to which subsection (f) of Section 20-40
6 of the Nursing and Advanced Practice Nursing Act applies. No
7 transfers may be made under this Section from the Pet
8 Population Control Fund. Notwithstanding any other provision
9 of this Section, for fiscal year 2004, the total transfer under
10 this Section from the Road Fund or the State Construction
11 Account Fund shall not exceed the lesser of (i) 5% of the
12 revenues to be deposited into the fund during that fiscal year
13 or (ii) 25% of the beginning balance in the fund. For fiscal
14 year 2005 through fiscal year 2007, no amounts may be
15 transferred under this Section from the Road Fund, the State
16 Construction Account Fund, the Criminal Justice Information
17 Systems Trust Fund, the Wireless Service Emergency Fund, or the
18 Mandatory Arbitration Fund.

19 In determining the available balance in a fund, the
20 Governor may include receipts, transfers into the fund, and
21 other resources anticipated to be available in the fund in that
22 fiscal year.

23 The State Treasurer and Comptroller shall transfer the
24 amounts designated under this Section as soon as may be
25 practicable after receiving the direction to transfer from the
26 Governor.

1 (a-5) Transfers directed to be made under this Section on
2 or before February 28, 2006 that are still pending on May 19,
3 2006 (the effective date of Public Act 94-774) ~~this amendatory~~
4 ~~Act of the 94th General Assembly~~ shall be redirected as
5 provided in Section 8n of this Act.

6 (b) This Section does not apply to: (i) the Ticket For The
7 Cure Fund; (ii) any fund established under the Community Senior
8 Services and Resources Act; or (iii) on or after January 1,
9 2006 (the effective date of Public Act 94-511), the Child Labor
10 and Day and Temporary Labor Enforcement Fund.

11 (c) This Section does not apply to the Demutualization
12 Trust Fund established under the Uniform Disposition of
13 Unclaimed Property Act.

14 (d) This Section does not apply to moneys set aside in the
15 Illinois State Podiatric Disciplinary Fund for podiatric
16 scholarships and residency programs under the Podiatric
17 Scholarship and Residency Act.

18 (e) Subsection (a) does not apply to, and no transfer may
19 be made under this Section from, the Pension Stabilization
20 Fund.

21 (f) Subsection (a) does not apply to, and no transfer may
22 be made under this Section from, the Illinois Power Agency
23 Operations Fund, the Illinois Power Agency Facilities Fund, the
24 Illinois Power Agency Debt Service Fund, and the Illinois Power
25 Agency Trust Fund.

26 (Source: P.A. 93-32, eff. 6-20-03; 93-659, eff. 2-3-04; 93-674,

1 eff. 6-10-04; 93-714, eff. 7-12-04; 93-801, eff. 7-22-04;
2 93-839, eff. 7-30-04; 93-1054, eff. 11-18-04; 93-1067, eff.
3 1-15-05; 94-91, eff. 7-1-05; 94-120, eff. 7-6-05; 94-511, eff.
4 1-1-06; 94-535, eff. 8-10-05; 94-639, eff. 8-22-05; 94-645,
5 eff. 8-22-05; 94-648, eff. 1-1-06; 94-686, eff. 11-2-05;
6 94-691, eff. 11-2-05; 94-726, eff. 1-20-06; 94-773, eff.
7 5-18-06; 94-774, eff. 5-19-06; 94-804, eff. 5-26-06; 94-839,
8 eff. 6-6-06; revised 6-19-06.)

9 Section 5-925. The Illinois Procurement Code is amended by
10 changing Sections 1-10, 1-15.15, 1-15.25, 15-1, 20-10, 30-20,
11 30-22, 30-25, 35-15, 35-20, 35-25, 35-30, 35-35, 35-40, and
12 50-70 as follows:

13 (30 ILCS 500/1-10)

14 Sec. 1-10. Application.

15 (a) This Code applies only to procurements for which
16 contractors were first solicited on or after July 1, 1998. This
17 Code shall not be construed to affect or impair any contract,
18 or any provision of a contract, entered into based on a
19 solicitation prior to the implementation date of this Code as
20 described in Article 99, including but not limited to any
21 covenant entered into with respect to any revenue bonds or
22 similar instruments. All procurements for which contracts are
23 solicited between the effective date of Articles 50 and 99 and
24 July 1, 1998 shall be substantially in accordance with this

1 Code and its intent.

2 (b) This Code shall apply regardless of the source of the
3 funds with which the contracts are paid, including federal
4 assistance moneys. This Code shall not apply to:

5 (1) Contracts between the State and its political
6 subdivisions or other governments, or between State
7 governmental bodies except as specifically provided in
8 this Code.

9 (2) Grants, except for the filing requirements of
10 Section 20-80.

11 (3) Purchase of care.

12 (4) Hiring of an individual as employee and not as an
13 independent contractor, whether pursuant to an employment
14 code or policy or by contract directly with that
15 individual.

16 (5) Collective bargaining contracts.

17 (6) Purchase of real estate.

18 (7) Contracts necessary to prepare for anticipated
19 litigation, enforcement actions, or investigations,
20 provided that the chief legal counsel to the Governor shall
21 give his or her prior approval when the procuring agency is
22 one subject to the jurisdiction of the Governor, and
23 provided that the chief legal counsel of any other
24 procuring entity subject to this Code shall give his or her
25 prior approval when the procuring entity is not one subject
26 to the jurisdiction of the Governor.

1 (8) Contracts for services to Northern Illinois
2 University by a person, acting as an independent
3 contractor, who is qualified by education, experience, and
4 technical ability and is selected by negotiation for the
5 purpose of providing non-credit educational service
6 activities or products by means of specialized programs
7 offered by the university.

8 (9) Procurement expenditures by the Illinois
9 Conservation Foundation when only private funds are used.

10 (c) This Code does not apply to the electric power
11 procurement process provided for under Section 1-75 of the
12 Illinois Power Agency Act and Section 16-111.5 of the Public
13 Utilities Act.

14 (Source: P.A. 91-627, eff. 8-19-99; 91-904, eff. 7-6-00;
15 92-797, eff. 8-15-02.)

16 (30 ILCS 500/1-15.15)

17 Sec. 1-15.15. Chief Procurement Officer. "Chief
18 Procurement Officer" means:

19 (1) for procurements for construction and
20 construction-related services committed by law to the
21 jurisdiction or responsibility of the Capital Development
22 Board, the executive director of the Capital Development Board.

23 (2) for procurements for all construction,
24 construction-related services, operation of any facility, and
25 the provision of any service or activity committed by law to

1 the jurisdiction or responsibility of the Illinois Department
2 of Transportation, including the direct or reimbursable
3 expenditure of all federal funds for which the Department of
4 Transportation is responsible or accountable for the use
5 thereof in accordance with federal law, regulation, or
6 procedure, the Secretary of Transportation.

7 (3) for all procurements made by a public institution of
8 higher education, a representative designated by the Governor.

9 (4) for all procurements made by the Illinois Power Agency,
10 the Director of the Illinois Power Agency.

11 (5) ~~(4)~~ for all other procurements, the Director of the
12 Department of Central Management Services.

13 (Source: P.A. 90-572, eff. 2-6-98.)

14 (30 ILCS 500/1-15.25)

15 Sec. 1-15.25. Construction agency. "Construction agency"
16 means the Capital Development Board for construction or
17 remodeling of State-owned facilities; the Illinois Department
18 of Transportation for construction or maintenance of roads,
19 highways, bridges, and airports; the Illinois Toll Highway
20 Authority for construction or maintenance of toll highways; the
21 Illinois Power Agency for construction, maintenance, and
22 expansion of Agency-owned facilities, as defined in Section
23 1-10 of the Illinois Power Agency Act; and any other State
24 agency entering into construction contracts as authorized by
25 law or by delegation from the chief procurement officer.

1 (Source: P.A. 90-572, eff. 2-6-98.)

2 (30 ILCS 500/15-1)

3 Sec. 15-1. Publisher. The Department of Central Management
4 Services is the State agency responsible for publishing its
5 volumes of the Illinois Procurement Bulletin. The Capital
6 Development Board is responsible for publishing its volumes of
7 the Illinois Procurement Bulletin. The Department of
8 Transportation is responsible for publishing its volumes of the
9 Illinois Procurement Bulletin. The higher education chief
10 procurement officer is responsible for publishing the higher
11 education volumes of the Illinois Procurement Bulletin. The
12 Illinois Power Agency is the State agency responsible for
13 publishing its volumes of the Illinois Procurement Bulletin.

14 Each volume of the Illinois Procurement Bulletin shall be
15 available electronically and may be available in print.
16 References in this Code to the publication and distribution of
17 the Illinois Procurement Bulletin include both its print and
18 electronic formats.

19 (Source: P.A. 90-572, eff. date - See Sec. 99-5.)

20 (30 ILCS 500/20-10)

21 Sec. 20-10. Competitive sealed bidding.

22 (a) Conditions for use. All contracts shall be awarded by
23 competitive sealed bidding except as otherwise provided in
24 Section 20-5.

1 (b) Invitation for bids. An invitation for bids shall be
2 issued and shall include a purchase description and the
3 material contractual terms and conditions applicable to the
4 procurement.

5 (c) Public notice. Public notice of the invitation for bids
6 shall be published in the Illinois Procurement Bulletin at
7 least 14 days before the date set in the invitation for the
8 opening of bids.

9 (d) Bid opening. Bids shall be opened publicly in the
10 presence of one or more witnesses at the time and place
11 designated in the invitation for bids. The name of each bidder,
12 the amount of each bid, and other relevant information as may
13 be specified by rule shall be recorded. After the award of the
14 contract, the winning bid and the record of each unsuccessful
15 bid shall be open to public inspection.

16 (e) Bid acceptance and bid evaluation. Bids shall be
17 unconditionally accepted without alteration or correction,
18 except as authorized in this Code. Bids shall be evaluated
19 based on the requirements set forth in the invitation for bids,
20 which may include criteria to determine acceptability such as
21 inspection, testing, quality, workmanship, delivery, and
22 suitability for a particular purpose. Those criteria that will
23 affect the bid price and be considered in evaluation for award,
24 such as discounts, transportation costs, and total or life
25 cycle costs, shall be objectively measurable. The invitation
26 for bids shall set forth the evaluation criteria to be used.

1 (f) Correction or withdrawal of bids. Correction or
2 withdrawal of inadvertently erroneous bids before or after
3 award, or cancellation of awards of contracts based on bid
4 mistakes, shall be permitted in accordance with rules. After
5 bid opening, no changes in bid prices or other provisions of
6 bids prejudicial to the interest of the State or fair
7 competition shall be permitted. All decisions to permit the
8 correction or withdrawal of bids based on bid mistakes shall be
9 supported by written determination made by a State purchasing
10 officer.

11 (g) Award. The contract shall be awarded with reasonable
12 promptness by written notice to the lowest responsible and
13 responsive bidder whose bid meets the requirements and criteria
14 set forth in the invitation for bids, except when a State
15 purchasing officer determines it is not in the best interest of
16 the State and by written explanation determines another bidder
17 shall receive the award. The explanation shall appear in the
18 appropriate volume of the Illinois Procurement Bulletin.

19 (h) Multi-step sealed bidding. When it is considered
20 impracticable to initially prepare a purchase description to
21 support an award based on price, an invitation for bids may be
22 issued requesting the submission of unpriced offers to be
23 followed by an invitation for bids limited to those bidders
24 whose offers have been qualified under the criteria set forth
25 in the first solicitation.

26 (i) Alternative procedures. Notwithstanding any other

1 provision of this Act to the contrary, the Director of the
2 Illinois Power Agency may create alternative bidding
3 procedures to be used in procuring professional services under
4 Section 1-75(a) of the Illinois Power Agency Act and Section
5 16-111.5(c) of the Public Utilities Act. These alternative
6 procedures shall be set forth together with the other criteria
7 contained in the invitation for bids, and shall appear in the
8 appropriate volume of the Illinois Procurement Bulletin.

9 (Source: P.A. 90-572, eff. date - See Sec. 99-5.)

10 (30 ILCS 500/30-20)

11 Sec. 30-20. Prequalification.

12 (a) The Capital Development Board shall promulgate rules
13 for the development of prequalified supplier lists for
14 construction and construction-related professional services
15 and the periodic updating of those lists. Construction and
16 construction-related professional services contracts over
17 \$25,000 may be awarded to any qualified suppliers.

18 (b) The Illinois Power Agency shall promulgate rules for
19 the development of prequalified supplier lists for
20 construction and construction-related professional services
21 and the periodic updating of those lists. Construction and
22 construction related professional services contracts over
23 \$25,000 may be awarded to any qualified suppliers, pursuant to
24 a competitive bidding process.

25 (Source: P.A. 90-572, eff. date - See Sec. 99-5.)

1 (30 ILCS 500/30-22)

2 Sec. 30-22. Construction contracts; responsible bidder
3 requirements. To be considered a responsible bidder on a
4 construction contract for purposes of this Code, a bidder must
5 comply with all of the following requirements and must present
6 satisfactory evidence of that compliance to the appropriate
7 construction agency:

8 (1) The bidder must comply with all applicable laws
9 concerning the bidder's entitlement to conduct business in
10 Illinois.

11 (2) The bidder must comply with all applicable
12 provisions of the Prevailing Wage Act.

13 (3) The bidder must comply with Subchapter VI ("Equal
14 Employment Opportunities") of Chapter 21 of Title 42 of the
15 United States Code (42 U.S.C. 2000e and following) and with
16 Federal Executive Order No. 11246 as amended by Executive
17 Order No. 11375.

18 (4) The bidder must have a valid Federal Employer
19 Identification Number or, if an individual, a valid Social
20 Security Number.

21 (5) The bidder must have a valid certificate of
22 insurance showing the following coverages: general
23 liability, professional liability, product liability,
24 workers' compensation, completed operations, hazardous
25 occupation, and automobile.

1 (6) The bidder and all bidder's subcontractors must
2 participate in applicable apprenticeship and training
3 programs approved by and registered with the United States
4 Department of Labor's Bureau of Apprenticeship and
5 Training.

6 (7) For contracts with the Illinois Power Agency, the
7 Director of the Illinois Power Agency may establish
8 additional requirements for responsible bidders. These
9 additional requirements, if established, shall be set
10 forth together with the other criteria contained in the
11 invitation for bids, and shall appear in the appropriate
12 volume of the Illinois Procurement Bulletin.

13 The provisions of this Section shall not apply to federally
14 funded construction projects if such application would
15 jeopardize the receipt or use of federal funds in support of
16 such a project.

17 (Source: P.A. 93-642, eff. 6-1-04.)

18 (30 ILCS 500/30-25)

19 Sec. 30-25. Retention of a percentage of contract price.
20 Whenever any contract entered into by a construction agency for
21 the repair, remodeling, renovation, or construction of a
22 building or structure, for the construction or maintenance of a
23 highway, as those terms are defined in Article 2 of the
24 Illinois Highway Code, for the construction or maintenance of
25 facilities as that term is defined under Section 1-10 of the

1 Illinois Power Agency Act, or for the reclamation of abandoned
2 lands as those terms are defined in Article I of the Abandoned
3 Mined Lands and Water Reclamation Act provides for the
4 retention of a percentage of the contract price until final
5 completion and acceptance of the work, upon the request of the
6 contractor and with the approval of the construction agency the
7 amount so retained may be deposited under a trust agreement
8 with an Illinois bank or financial institution of the
9 contractor's choice and subject to the approval of the
10 construction agency. The contractor shall receive any interest
11 on the deposited amount. Upon application by the contractor,
12 the trust agreement must contain, at a minimum, the following
13 provisions:

14 (1) the amount to be deposited subject to the trust;

15 (2) the terms and conditions of payment in case of
16 default by the contractor;

17 (3) the termination of the trust agreement upon
18 completion of the contract; and

19 (4) the contractor shall be responsible for obtaining
20 the written consent of the bank trustee and for any costs
21 or service fees.

22 The trust agreement may, at the discretion of the
23 construction agency and upon request of the contractor, become
24 effective at the time of the first partial payment in
25 accordance with existing statutes and rules.

26 (Source: P.A. 90-572, eff. date - See Sec. 99-5.)

1 (30 ILCS 500/35-15)

2 Sec. 35-15. Prequalification.

3 (a) The Director of Central Management Services, the
4 Illinois Power Agency, and the higher education chief
5 procurement officer shall each develop appropriate and
6 reasonable prequalification standards and categories of
7 professional and artistic services.

8 (b) The prequalifications and categorizations shall be
9 submitted to the Procurement Policy Board and published for
10 public comment prior to their submission to the Joint Committee
11 on Administrative Rules for approval.

12 (c) The Director of Central Management Services, the
13 Illinois Power Agency, and the higher education chief
14 procurement officer shall each also assemble and maintain a
15 comprehensive list of prequalified and categorized businesses
16 and persons.

17 (d) Prequalification shall not be used to bar or prevent
18 any qualified business or person for bidding or responding to
19 invitations for bid or proposal.

20 (Source: P.A. 90-572, eff. date - See Sec. 99-5.)

21 (30 ILCS 500/35-20)

22 Sec. 35-20. Uniformity in procurement.

23 (a) The Director of Central Management Services, the
24 Illinois Power Agency, and the higher education chief

1 procurement officer shall each develop, cause to be printed,
2 and distribute uniform documents for the solicitation, review,
3 and acceptance of all professional and artistic services.

4 (b) All chief procurement officers, State purchasing
5 officers, and their designees shall use the appropriate uniform
6 procedures and forms specified in this Code for all
7 professional and artistic services.

8 (c) These forms shall include in detail, in writing, at
9 least:

- 10 (1) a description of the goal to be achieved;
- 11 (2) the services to be performed;
- 12 (3) the need for the service;
- 13 (4) the qualifications that are necessary; and
- 14 (5) a plan for post-performance review.

15 (Source: P.A. 90-572, eff. date - See Sec. 99-5.)

16 (30 ILCS 500/35-25)

17 Sec. 35-25. Uniformity in contract.

18 (a) The Director of Central Management Services, the
19 Illinois Power Agency, and the higher education chief
20 procurement officer shall each develop, cause to be printed,
21 and distribute uniform documents for the contracting of
22 professional and artistic services.

23 (b) All chief procurement officers, State purchasing
24 officers, and their designees shall use the appropriate uniform
25 contracts and forms in contracting for all professional and

1 artistic services.

2 (c) These contracts and forms shall include in detail, in
3 writing, at least:

4 (1) the detail listed in subsection (c) of Section
5 35-20;

6 (2) the duration of the contract, with a schedule of
7 delivery, when applicable;

8 (3) the method for charging and measuring cost (hourly,
9 per day, etc.);

10 (4) the rate of remuneration; and

11 (5) the maximum price.

12 (Source: P.A. 90-572, eff. date - See Sec. 99-5.)

13 (30 ILCS 500/35-30)

14 Sec. 35-30. Awards.

15 (a) All State contracts for professional and artistic
16 services, except as provided in this Section, shall be awarded
17 using the competitive request for proposal process outlined in
18 this Section.

19 (b) For each contract offered, the chief procurement
20 officer, State purchasing officer, or his or her designee shall
21 use the appropriate standard solicitation forms available from
22 the Department of Central Management Services, the Illinois
23 Power Agency, or the higher education chief procurement
24 officer.

25 (c) Prepared forms shall be submitted to the Department of

1 Central Management Services, the Illinois Power Agency, or the
2 higher education chief procurement officer, whichever is
3 appropriate, for publication in its Illinois Procurement
4 Bulletin and circulation to the Department of Central
5 Management Services' or the higher education chief procurement
6 officer's list of prequalified vendors. Notice of the offer or
7 request for proposal shall appear at least 14 days before the
8 response to the offer is due.

9 (d) All interested respondents shall return their
10 responses to the Department of Central Management Services, the
11 Illinois Power Agency, or the higher education chief
12 procurement officer, whichever is appropriate, which shall
13 open and record them. The Department or higher education chief
14 procurement officer then shall forward the responses, together
15 with any information it has available about the qualifications
16 and other State work of the respondents.

17 (e) After evaluation, ranking, and selection, the
18 responsible chief procurement officer, State purchasing
19 officer, or his or her designee shall notify the Department of
20 Central Management Services, the Illinois Power Agency, or the
21 higher education chief procurement officer, whichever is
22 appropriate, of the successful respondent and shall forward a
23 copy of the signed contract for the Department's, Agency's, or
24 higher education chief procurement officer's file. The
25 Department, Agency, or higher education chief procurement
26 officer shall publish the names of the responsible procurement

1 decision-maker, the agency letting the contract, the
2 successful respondent, a contract reference, and value of the
3 let contract in the next appropriate volume of the Illinois
4 Procurement Bulletin.

5 (f) For all professional and artistic contracts with
6 annualized value that exceeds \$25,000, evaluation and ranking
7 by price are required. Any chief procurement officer or State
8 purchasing officer, but not their designees, may select an
9 offeror other than the lowest bidder by price. In any case,
10 when the contract exceeds the \$25,000 threshold ~~threshold~~ and
11 the lowest bidder is not selected, the chief procurement
12 officer or the State purchasing officer shall forward together
13 with the contract notice of who the low bidder was and a
14 written decision as to why another was selected to the
15 Department of Central Management Services, the Illinois Power
16 Agency, or the higher education chief procurement officer,
17 whichever is appropriate. The Department, Agency, or higher
18 education chief procurement officer shall publish as provided
19 in subsection (e) of Section 35-30, but shall include notice of
20 the chief procurement officer's or State purchasing officer's
21 written decision.

22 (g) The Department of Central Management Services, the
23 Illinois Power Agency, and higher education chief procurement
24 officer may each refine, but not contradict, this Section by
25 promulgating rules for submission to the Procurement Policy
26 Board and then to the Joint Committee on Administrative Rules.

1 Any refinement shall be based on the principles and procedures
2 of the federal Architect-Engineer Selection Law, Public Law
3 92-582 Brooks Act, and the Architectural, Engineering, and Land
4 Surveying Qualifications Based Selection Act; except that
5 pricing shall be an integral part of the selection process.

6 (Source: P.A. 90-572, eff. date - See Sec. 99-5; revised
7 10-19-05.)

8 (30 ILCS 500/35-35)

9 Sec. 35-35. Exceptions.

10 (a) Exceptions to Section 35-30 are allowed for sole source
11 procurements, emergency procurements, and at the discretion of
12 the chief procurement officer or the State purchasing officer,
13 but not their designees, for professional and artistic
14 contracts that are nonrenewable, one year or less in duration,
15 and have a value of less than \$20,000.

16 (b) All exceptions granted under this Article must still be
17 submitted to the Department of Central Management Services, the
18 Illinois Power Agency, or the higher education chief
19 procurement officer, whichever is appropriate, and published
20 as provided for in subsection (f) of Section 35-30, shall name
21 the authorizing chief procurement officer or State purchasing
22 officer, and shall include a brief explanation of the reason
23 for the exception.

24 (Source: P.A. 90-572, eff. date - See Sec. 99-5.)

1 (30 ILCS 500/35-40)

2 Sec. 35-40. Subcontractors.

3 (a) Any contract granted under this Article shall state
4 whether the services of a subcontractor will be used. The
5 contract shall include the names and addresses of all
6 subcontractors and the expected amount of money each will
7 receive under the contract.

8 (b) If at any time during the term of a contract, a
9 contractor adds or changes any subcontractors, he or she shall
10 promptly notify, in writing, the Department of Central
11 Management Services, the Illinois Power Agency, or the higher
12 education chief procurement officer, whichever is appropriate,
13 and the responsible chief procurement officer, State
14 purchasing officer, or their designee of the names and
15 addresses and the expected amount of money each new or replaced
16 subcontractor will receive.

17 (Source: P.A. 90-572, eff. date - See Sec. 99-5.)

18 (30 ILCS 500/50-70)

19 Sec. 50-70. Additional provisions. This Code is subject to
20 applicable provisions of the following Acts:

- 21 (1) Article 33E of the Criminal Code of 1961;
22 (2) the Illinois Human Rights Act;
23 (3) the Discriminatory Club Act;
24 (4) the Illinois Governmental Ethics Act;
25 (5) the State Prompt Payment Act;

- 1 (6) the Public Officer Prohibited Activities Act; ~~and~~
2 (7) the Drug Free Workplace Act; and-
3 (8) the Illinois Power Agency Act.

4 (Source: P.A. 90-572, eff. 2-6-98.)

5 Section 5-930. The State Property Control Act is amended by
6 changing Section 1.02 as follows:

7 (30 ILCS 605/1.02) (from Ch. 127, par. 133b3)

8 Sec. 1.02. "Property" means State owned property and
9 includes all real estate, with the exception of rights of way
10 for State water resource and highway improvements, traffic
11 signs and traffic signals, and with the exception of common
12 school property; and all tangible personal property with the
13 exception of properties specifically exempted by the
14 administrator, provided that any property originally
15 classified as real property which has been detached from its
16 structure shall be classified as personal property.

17 "Property" does not include property owned by the Illinois
18 Medical District Commission and leased or occupied by others
19 for purposes permitted under the Illinois Medical District Act.

20 "Property" also does not include property owned and held by the
21 Illinois Medical District Commission for redevelopment.

22 "Property" does not include property described under
23 Section 5 of Public Act 92-371 with respect to depositing the
24 net proceeds from the sale or exchange of the property as

1 provided in Section 10 of that Act.

2 "Property" does not include that property described under
3 Section 5 of Public Act 94-405 ~~this amendatory Act of the 94th~~
4 ~~General Assembly.~~

5 "Property" does not include real property owned or operated
6 by the Illinois Power Agency or any electricity generated on
7 that real property or by the Agency. For purposes of this
8 subsection only, "real property" includes any interest in land,
9 all buildings and improvements located thereon, and all
10 fixtures and equipment used or designed for the production and
11 transmission of electricity located thereon.

12 (Source: P.A. 94-405, eff. 8-2-05; revised 8-31-05.)

13 Section 5-935. The Public Utilities Act is amended by
14 changing Sections 3-105, 4-404, 4-502, 8-403, 16-101A, 16-111,
15 and 16-113 and by adding Sections 12-103, 16-103.1, 16-111.5,
16 16-111.5A, 16-111.6, 16-126.1, and 16-127 as follows:

17 (220 ILCS 5/3-105) (from Ch. 111 2/3, par. 3-105)

18 Sec. 3-105. Public utility.

19 (a) "Public utility" means and includes, except where
20 otherwise expressly provided in this Section, every
21 corporation, company, limited liability company, association,
22 joint stock company or association, firm, partnership or
23 individual, their lessees, trustees, or receivers appointed by
24 any court whatsoever that owns, controls, operates or manages,

1 within this State, directly or indirectly, for public use, any
2 plant, equipment or property used or to be used for or in
3 connection with, or owns or controls any franchise, license,
4 permit or right to engage in:

5 (1) ~~a.~~ the production, storage, transmission, sale,
6 delivery or furnishing of heat, cold, power, electricity,
7 water, or light, except when used solely for communications
8 purposes;

9 (2) ~~b.~~ the disposal of sewerage; or

10 (3) ~~c.~~ the conveyance of oil or gas by pipe line.

11 (b) "Public utility" does not include, however:

12 (1)~~.-~~ public utilities that are owned and operated by
13 any political subdivision, public institution of higher
14 education or municipal corporation of this State, or public
15 utilities that are owned by such political subdivision,
16 public institution of higher education, or municipal
17 corporation and operated by any of its lessees or operating
18 agents;

19 (2)~~.-~~ water companies which are purely mutual concerns,
20 having no rates or charges for services, but paying the
21 operating expenses by assessment upon the members of such a
22 company and no other person;

23 (3)~~.-~~ electric cooperatives as defined in Section
24 3-119;

25 (4)~~.-~~ the following natural gas cooperatives:

26 (A) residential natural gas cooperatives that are

1 not-for-profit corporations established for the
2 purpose of administering and operating, on a
3 cooperative basis, the furnishing of natural gas to
4 residences for the benefit of their members who are
5 residential consumers of natural gas. For entities
6 qualifying as residential natural gas cooperatives and
7 recognized by the Illinois Commerce Commission as
8 such, the State shall guarantee legally binding
9 contracts entered into by residential natural gas
10 cooperatives for the express purpose of acquiring
11 natural gas supplies for their members. The Illinois
12 Commerce Commission shall establish rules and
13 regulations providing for such guarantees. The total
14 liability of the State in providing all such guarantees
15 shall not at any time exceed \$1,000,000, nor shall the
16 State provide such a guarantee to a residential natural
17 gas cooperative for more than 3 consecutive years; and

18 (B) natural gas cooperatives that are
19 not-for-profit corporations operated for the purpose
20 of administering, on a cooperative basis, the
21 furnishing of natural gas for the benefit of their
22 members and that, prior to 90 days after the effective
23 date of this amendatory Act of the 94th General
24 Assembly, either had acquired or had entered into an
25 asset purchase agreement to acquire all or
26 substantially all of the operating assets of a public

1 utility or natural gas cooperative with the intention
2 of operating those assets as a natural gas cooperative;
3 (5) sewage disposal companies which provide sewage
4 disposal services on a mutual basis without establishing
5 rates or charges for services, but paying the operating
6 expenses by assessment upon the members of the company and
7 no others;

8 (6) (Blank);

9 (7) cogeneration facilities, small power production
10 facilities, and other qualifying facilities, as defined in
11 the Public Utility Regulatory Policies Act and regulations
12 promulgated thereunder, except to the extent State
13 regulatory jurisdiction and action is required or
14 authorized by federal law, regulations, regulatory
15 decisions or the decisions of federal or State courts of
16 competent jurisdiction;

17 (8) the ownership or operation of a facility that
18 sells compressed natural gas at retail to the public for
19 use only as a motor vehicle fuel and the selling of
20 compressed natural gas at retail to the public for use only
21 as a motor vehicle fuel; ~~and~~

22 (9) alternative retail electric suppliers as defined
23 in Article XVI; ~~and~~

24 (10) the Illinois Power Agency.

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

1 (220 ILCS 5/4-404)

2 Sec. 4-404. Protection of confidential and proprietary
3 information. The Commission shall provide adequate protection
4 for confidential and proprietary information furnished,
5 delivered or filed by any person, corporation or other entity,
6 including proprietary information provided to the Commission
7 by the Illinois Power Agency.

8 (Source: P.A. 90-561, eff. 12-16-97.)

9 (220 ILCS 5/4-502)

10 Sec. 4-502. Small public utility or telecommunications
11 carrier; acquisition by capable utility; Commission
12 determination; procedure.

13 (a) The Commission may provide for the acquisition of a
14 small public utility or telecommunications carrier by a capable
15 public utility or telecommunications carrier, if the
16 Commission, after notice and an opportunity to be heard,
17 determines one or more of the following:

18 (1) the small public utility or telecommunications
19 carrier is failing to provide safe, adequate, or reliable
20 service;

21 (2) the small public utility or telecommunications
22 carrier no longer possesses sufficient technical,
23 financial, or managerial resources and abilities to
24 provide the service or services for which its certificate
25 was originally granted;

1 (3) the small public utility or telecommunications
2 carrier has been actually or effectively abandoned by its
3 owners or operators;

4 (4) the small public utility or telecommunications
5 carrier has defaulted on a bond, note, or loan issued or
6 guaranteed by a department, office, commission, board,
7 authority, or other unit of State government;

8 (5) the small public utility or telecommunications
9 carrier has wilfully failed to comply with any provision of
10 this Act, any other provision of State or federal law, or
11 any rule, regulation, order, or decision of the Commission;
12 or

13 (6) the small public utility or telecommunications
14 carrier has wilfully allowed property owned or controlled
15 by it to be used in violation of this Act, any other
16 provision of State or federal law, or any rule, regulation,
17 order, or decision of the Commission.

18 (b) As used in this Section, "small public utility or
19 telecommunications carrier" means a public utility or
20 telecommunications carrier that regularly provides service to
21 fewer than 7,500 customers.

22 (c) In making a determination under subsection (a), the
23 Commission shall consider all of the following:

24 (1) The financial, managerial, and technical ability
25 of the small public utility or telecommunications carrier.

26 (2) The financial, managerial, and technical ability

1 of all proximate public utilities or telecommunications
2 carriers providing the same type of service.

3 (3) The expenditures that may be necessary to make
4 improvements to the small public utility or
5 telecommunications carrier to assure compliance with
6 applicable statutory and regulatory standards concerning
7 the adequacy, efficiency, safety, or reasonableness of
8 utility service.

9 (4) The expansion of the service territory of the
10 acquiring capable public utility or telecommunications
11 carrier to include the service area of the small public
12 utility or telecommunications carrier to be acquired.

13 (5) Whether the rates charged by the acquiring capable
14 public utility or telecommunications carrier to its
15 acquisition customers will increase unreasonably because
16 of the acquisition.

17 (6) Any other matter that may be relevant.

18 (d) For the purposes of this Section, a "capable public
19 utility or telecommunications carrier" means a public utility,
20 as defined under Section 3-105 of this Act, including those
21 entities listed in items (1) through (5) of subsection (b)
22 ~~subsections 1 through 5~~ of Section 3-105, or a
23 telecommunications carrier, as defined under Section 13-202 of
24 this Act, including those entities listed in subsections (a)
25 and (b) of Section 13-202, that:

26 (1) regularly provides the same type of service as the

1 small public utility or telecommunications carrier, to
2 7,500 or more customers, and provides safe, adequate, and
3 reliable service to those customers; however, public
4 utility or telecommunications carrier that would otherwise
5 be a capable public utility except for the fact that it has
6 fewer than 7,500 customers may elect to be a capable public
7 utility or telecommunications carrier for the purposes of
8 this Section regardless of the number of its customers and
9 regardless of whether or not it is proximate to the small
10 public utility or telecommunications carrier to be
11 acquired;

12 (2) is not an affiliated interest of the small public
13 utility or telecommunications carrier;

14 (3) agrees to acquire the small public utility or
15 telecommunications carrier that is the subject of the
16 proceeding, under the terms and conditions contained in the
17 Commission order approving the acquisition; and

18 (4) is financially, managerially, and technically
19 capable of acquiring and operating the small public utility
20 or telecommunications carrier in compliance with
21 applicable statutory and regulatory standards.

22 (e) The Commission may, on its own motion or upon petition,
23 initiate a proceeding in order to determine whether an order of
24 acquisition should be entered. Upon the establishment of a
25 prima facie case that the acquisition of the small public
26 utility or telecommunications carrier would be in the public

1 interest and in compliance with the provisions of this Section
2 all of the following apply:

3 (1) The small public utility or telecommunications
4 carrier that is the subject of the acquisition proceedings
5 has the burden of proving its ability to render safe,
6 adequate, and reliable service at just and reasonable
7 rates.

8 (2) The small public utility or telecommunications
9 carrier that is the subject of the acquisition proceedings
10 may present evidence to demonstrate the practicality and
11 feasibility of the following alternatives to acquisition:

12 (A) the reorganization of the small public utility
13 or telecommunications carrier under new management;

14 (B) the entering of a contract with another public
15 utility, telecommunications carrier, or a management
16 or service company to operate the small public utility
17 or telecommunications carrier;

18 (C) the appointment of a receiver to operate the
19 small public utility or telecommunications carrier, in
20 accordance with the provisions of Section 4-501 of this
21 Act; or

22 (D) the merger of the small public utility or
23 telecommunications carrier with one or more other
24 public utilities or telecommunications carriers.

25 (3) A public utility or telecommunications carrier
26 that desires to acquire the small public utility or

1 telecommunications carrier has the burden of proving that
2 it is a capable public utility or telecommunications
3 carrier.

4 (f) Subject to the determinations and considerations
5 required by subsections (a), (b), (c), (d) and (e) of this
6 Section, the Commission shall issue an order concerning the
7 acquisition of the small public utility or telecommunications
8 carrier by a capable public utility or telecommunications
9 carrier. If the Commission finds that the small public utility
10 or telecommunications carrier should be acquired by the capable
11 public utility or telecommunications carrier, the order shall
12 also provide for the extension of the service area of the
13 acquiring capable public utility or telecommunications
14 carrier.

15 (g) The price for the acquisition of the small public
16 utility or telecommunications carrier shall be determined by
17 agreement between the small public utility or
18 telecommunications carrier and the acquiring capable public
19 utility or telecommunications carrier subject to a
20 determination by the Commission that the price is reasonable.
21 If the small public utility or telecommunications carrier and
22 the acquiring capable public utility or telecommunications
23 carrier are unable to agree on the acquisition price or the
24 Commission disapproves the acquisition price upon which they
25 have agreed, the Commission shall issue an order directing the
26 acquiring capable public utility or telecommunications carrier

1 to acquire the small public utility or telecommunications
2 carrier by following the procedure prescribed for the exercise
3 of the powers of eminent domain under Section 8-509 of this
4 Act.

5 (h) The Commission may, in its discretion and for a
6 reasonable period of time after the date of acquisition, allow
7 the acquiring capable public utility or telecommunications
8 carrier to charge and collect rates from the customers of the
9 acquired small public utility or telecommunications carrier
10 under a separate tariff.

11 (i) A capable public utility or telecommunications carrier
12 ordered by the Commission to acquire a small public utility or
13 telecommunications carrier shall submit to the Commission for
14 approval before the acquisition a plan, including a timetable,
15 for bringing the small public utility or telecommunications
16 carrier into compliance with applicable statutory and
17 regulatory standards.

18 (Source: P.A. 91-357, eff. 7-29-99.)

19 (220 ILCS 5/8-403) (from Ch. 111 2/3, par. 8-403)

20 Sec. 8-403. The Commission shall design and implement
21 policies which encourage the economical utilization of
22 cogeneration and small power production, as these terms are
23 defined in Section 3-105, item (7) of subsection (b) paragraph
24 7, including specifically, but not limited to, the cogeneration
25 or production of heat, steam or electricity by municipal

1 corporations or any other political subdivision of this State.
2 No public utility shall discriminate in any way with respect to
3 the conditions or price for provision of maintenance power,
4 standby power and supplementary power as these terms are
5 defined by current Commission rules, or for any other service.
6 The prices charged by a utility for maintenance power, standby
7 power, supplementary power and all other such services shall be
8 cost-based and just and reasonable.

9 The Commission shall conduct a study of procedures and
10 policies to encourage the full and economical utilization of
11 cogeneration and small power production including, but not
12 limited to, (1) requiring utilities to pay full avoided costs,
13 including long-term avoided capacity costs to cogenerators and
14 small power producers and (2) requiring utilities to make
15 available upon request of the State or a unit of local
16 government, transmission and distribution services to transmit
17 electrical energy produced by cogeneration or small power
18 production facilities located in any structure or on any real
19 property of the State or unit of local government to other
20 locations of this State or a unit of local government. The
21 Commission shall report on this study, with recommendation for
22 legislative consideration, to the General Assembly by March 1,
23 1986.

24 (Source: P.A. 84-1118.)

1 Sec. 12-103. Energy efficiency and demand-response
2 measures.

3 (a) It is the policy of the State that electric utilities
4 are required to use cost-effective energy efficiency and
5 demand-response measures to reduce delivery load. Requiring
6 investment in cost-effective energy efficiency and
7 demand-response measures will reduce direct and indirect costs
8 to consumers by decreasing environmental impacts and by
9 avoiding or delaying the need for new generation, transmission,
10 and distribution infrastructure. It serves the public interest
11 to allow electric utilities to recover costs for reasonably and
12 prudently incurred expenses for energy efficiency and
13 demand-response measures. As used in this Section,
14 "cost-effective" means that the measures satisfy the total
15 resource cost test. The low-income measures described in
16 subsection (f) (4) of this Section shall not be required to meet
17 the total resource cost test. For purposes of this Section, the
18 terms "energy-efficiency", "demand-response", and "total
19 resource cost test" shall have the meanings set forth in the
20 Illinois Power Agency Act. For purposes of this Section, the
21 amount per kilowatthour means the total amount paid for
22 electric service expressed on a per kilowatthour basis. For
23 purposes of this Section, the total amount paid for electric
24 service includes without limitation estimated amounts paid for
25 supply, transmission, distribution, surcharges, and
26 add-on-taxes.

1 (b) Electric utilities shall implement cost-effective
2 energy efficiency measures to meet the following incremental
3 annual energy savings goals:

4 (1) 0.2% of energy delivered in the year commencing
5 June 1, 2008;

6 (2) 0.4% of energy delivered in the year commencing
7 June 1, 2009;

8 (3) 0.6% of energy delivered in the year commencing
9 June 1, 2010;

10 (4) 0.8% of energy delivered in the year commencing
11 June 1, 2011;

12 (5) 1% of energy delivered in the year commencing June
13 1, 2012;

14 (6) 1.4% of energy delivered in the year commencing
15 June 1, 2013;

16 (7) 1.8% of energy delivered in the year commencing
17 June 1, 2014; and

18 (8) 2% of energy delivered in the year commencing June
19 1, 2015 and each year thereafter.

20 (c) Electric utilities shall implement cost-effective
21 demand-response measures to reduce peak demand by 0.1% over the
22 prior year for eligible retail customers, as defined in Section
23 16-111.5 of this Act. This requirement commences June 1, 2008
24 and continues for 10 years.

25 (d) Notwithstanding the requirements of subsections (b)
26 and (c) of this Section, an electric utility shall reduce the

1 amount of energy efficiency and demand-response measures
2 implemented in any single year by an amount necessary to limit
3 the estimated average increase in the amounts paid by retail
4 customers in connection with electric service due to the cost
5 of those measures to:

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

9 (2) in 2009, the greater of an additional 0.5% of
10 the amount paid per kilowatthour by those customers during
11 the year ending May 31, 2008 or 1% of the amount paid per
12 kilowatthour by those customers during the year ending May
13 31, 2007;

14 (3) in 2010, the greater of an additional 0.5% of
15 the amount paid per kilowatthour by those customers during
16 the year ending May 31, 2009 or 1.5% of the amount paid per
17 kilowatthour by those customers during the year ending May
18 31, 2007;

19 (4) in 2011, the greater of an additional 0.5% of
20 the amount paid per kilowatthour by those customers during
21 the year ending May 31, 2010 or 2% of the amount paid per
22 kilowatthour by those customers during the year ending May
23 31, 2007; and

24 (5) thereafter, the amount of energy efficiency
25 and demand-response measures implemented for any single
26 year shall be reduced by an amount necessary to limit the

1 estimated average net increase due to the cost of these
2 measures included in the amounts paid by eligible retail
3 customers in connection with electric service to no more
4 than the greater of 2.015% of the amount paid per
5 kilowatthour by those customers during the year ending May
6 31, 2007 or the incremental amount per kilowatthour paid
7 for these measures in 2011.

8 No later than June 30, 2011, the Commission shall review
9 the limitation on the amount of energy efficiency and
10 demand-response measures implemented pursuant to this Section
11 and report to the General Assembly its findings as to whether
12 that limitation unduly constrains the procurement of energy
13 efficiency and demand-response measures.

14 (e) Electric utilities shall be responsible for overseeing
15 the design, development, and filing of energy efficiency and
16 demand-response plans with the Commission. Electric utilities
17 shall implement 100% of the demand-response measures in the
18 plans. Electric utilities shall implement 75% of the energy
19 efficiency measures approved by the Commission, and may, as
20 part of that implementation, outsource various aspects of
21 program development and implementation. The remaining 25% of
22 those energy efficiency measures approved by the Commission
23 shall be implemented by the Department of Commerce and Economic
24 Opportunity, and must be designed in conjunction with the
25 utility and the filing process. The Department may outsource
26 development and implementation of energy efficiency measures.

1 A minimum of 10% of the entire portfolio of cost-effective
2 energy efficiency measures shall be procured from units of
3 local government, municipal corporations, school districts,
4 and community college districts. The Department shall
5 coordinate the implementation of these measures.

6 The apportionment of the dollars to cover the costs to
7 implement the Department's share of the portfolio of energy
8 efficiency measures shall be made to the Department once the
9 Department has executed grants or contracts for energy
10 efficiency measures and provided supporting documentation for
11 those grants and the contracts to the utility.

12 The details of the measures implemented by the Department
13 shall be submitted by the Department to the Commission in
14 connection with the utility's filing regarding the energy
15 efficiency and demand-response measures that the utility
16 implements.

17 A utility providing approved energy efficiency and
18 demand-response measures in the State shall be permitted to
19 recover costs of those measures through an automatic adjustment
20 clause tariff filed with and approved by the Commission. The
21 tariff shall be established outside the context of a general
22 rate case. Each year the Commission shall initiate a review to
23 reconcile any amounts collected with the actual costs and to
24 determine the required adjustment to the annual tariff factor
25 to match annual expenditures.

26 Each utility shall include, in its recovery of costs, the

1 costs estimated for both the utility's and the Department's
2 implementation of energy efficiency and demand-response
3 measures. Costs collected by the utility for measures
4 implemented by the Department shall be submitted to the
5 Department pursuant to Section 605-323 of the Civil
6 Administrative Code of Illinois and shall be used by the
7 Department solely for the purpose of implementing these
8 measures. A utility shall not be required to advance any moneys
9 to the Department but only to forward such funds as it has
10 collected. The Department shall report to the Commission on an
11 annual basis regarding the costs actually incurred by the
12 Department in the implementation of the measures. Any changes
13 to the costs of energy efficiency measures as a result of plan
14 modifications shall be appropriately reflected in amounts
15 recovered by the utility and turned over to the Department.

16 The portfolio of measures, administered by both the
17 utilities and the Department, shall, in combination, be
18 designed to achieve the annual savings targets described in
19 subsections (b) and (c) of this Section, as modified by
20 subsection (d) of this Section.

21 The utility and the Department shall agree upon a
22 reasonable portfolio of measures and determine the measurable
23 corresponding percentage of the savings goals associated with
24 measures implemented by the utility or Department.

25 No utility shall be assessed a penalty under subsection (f)
26 of this Section for failure to make a timely filing if that

1 failure is the result of a lack of agreement with the
2 Department with respect to the allocation of responsibilities
3 or related costs or target assignments. In that case, the
4 Department and the utility shall file their respective plans
5 with the Commission and the Commission shall determine an
6 appropriate division of measures and programs that meets the
7 requirements of this Section.

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

20 (f) No later than November 15, 2007, each electric utility
21 shall file an energy efficiency and demand-response plan with
22 the Commission to meet the energy efficiency and
23 demand-response standards for 2008 through 2010. Every 3 years
24 thereafter, each electric utility shall file an energy
25 efficiency and demand-response plan with the Commission. If a
26 utility does not file such a plan, it shall face a penalty of

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

- 24 (1) Demonstrate that its proposed energy efficiency
25 and demand-response measures will achieve the requirements
26 that are identified in subsections (b) and (c) of this

1 Section, as modified by subsections (d) and (e).

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

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

11 (4) Coordinate with the Department and the Department
12 of Healthcare and Family Services to present a portfolio of
13 energy efficiency measures targeted to households at or
14 below 150% of the poverty level at a level proportionate to
15 those households' share of total annual utility revenues in
16 Illinois.

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

24 (6) Include a proposed cost-recovery tariff mechanism
25 to fund the proposed energy efficiency and demand-response
26 measures and to ensure the recovery of the prudently and

1 reasonably incurred costs of Commission-approved programs.

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

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

14 (h) This Section does not apply to an electric utility that
15 on December 31, 2005 provided electric service to fewer than
16 100,000 customers in Illinois.

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

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

20 For purposes of this Section, (i) a "large electric
21 utility" is an electric utility that, on December 31, 2005,
22 served more than 2,000,000 electric customers in Illinois; (ii)
23 a "medium electric utility" is an electric utility that, on
24 December 31, 2005, served 2,000,000 or fewer but more than
25 100,000 electric customers in Illinois; and (iii) Illinois
26 electric utilities that are affiliated by virtue of a common

1 parent company are considered a single electric utility.

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

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

15 (220 ILCS 5/16-101A)

16 Sec. 16-101A. Legislative findings.

17 (a) The citizens and businesses of the State of Illinois
18 have been well-served by a comprehensive electrical utility
19 system which has provided safe, reliable, and affordable
20 service. The electrical utility system in the State of Illinois
21 has historically been subject to State and federal regulation,
22 aimed at assuring the citizens and businesses of the State of
23 safe, reliable, and affordable service, while at the same time
24 assuring the utility system of a return on its investment.

25 (b) Competitive forces are affecting the market for

1 electricity as a result of recent federal regulatory and
2 statutory changes and the activities of other states.
3 Competition in the electric services market may create
4 opportunities for new products and services for customers and
5 lower costs for users of electricity. Long-standing regulatory
6 relationships need to be altered to accommodate the competition
7 that could fundamentally alter the structure of the electric
8 services market.

9 (c) With the advent of increasing competition in this
10 industry, the State has a continued interest in assuring that
11 the safety, reliability, and affordability of electrical power
12 is not sacrificed to competitive pressures, and to that end,
13 intends to implement safeguards to assure that the industry
14 continues to operate the electrical system in a manner that
15 will serve the public's interest. Under the existing regulatory
16 framework, the industry has been encouraged to undertake
17 certain investments in its physical plant and personnel to
18 enhance its efficient operation, the cost of which it has been
19 permitted to pass on to consumers. The State has an interest in
20 providing the existing utilities a reasonable opportunity to
21 obtain a return on certain investments on which they depended
22 in undertaking those commitments in the first instance while,
23 at the same time, not permitting new entrants into the industry
24 to take unreasonable advantage of the investments made by the
25 formerly regulated industry.

26 (d) A competitive wholesale and retail market must benefit

1 all Illinois citizens. The Illinois Commerce Commission should
2 act to promote the development of an effectively competitive
3 electricity market that operates efficiently and is equitable
4 to all consumers. Consumer protections must be in place to
5 ensure that all customers continue to receive safe, reliable,
6 affordable, and environmentally safe electric service.

7 (e) All consumers must benefit in an equitable and timely
8 fashion from the lower costs for electricity that result from
9 retail and wholesale competition and receive sufficient
10 information to make informed choices among suppliers and
11 services. The use of renewable resources and energy efficiency
12 resources should be encouraged in competitive markets.

13 (f) The efficiency of electric markets depends both upon
14 the competitiveness of supply and upon the
15 price-responsiveness of the demand for service. Therefore, to
16 ensure the lowest total cost of service and to enhance the
17 reliability of service, all classes of the electricity
18 customers of electric utilities should have access to and be
19 able to voluntarily use real-time pricing and other
20 price-response and demand-response mechanisms.

21 (g) Including cost-effective renewable resources in a
22 diverse electricity supply portfolio will reduce long-term
23 direct and indirect costs to consumers by decreasing
24 environmental impacts and by avoiding or delaying the need for
25 new generation, transmission, and distribution infrastructure.
26 It serves the public interest to allow electric utilities to

1 recover costs for reasonably and prudently incurred expenses
2 for electricity generated by renewable resources.

3 (Source: P.A. 94-977, eff. 6-30-06.)

4 (220 ILCS 5/16-103.1 new)

5 Sec. 16-103.1. Tariffed service to Unit Owners'
6 Associations. An electric utility that serves at least
7 2,000,000 customers must provide tariffed service to Unit
8 Owners' Associations, as defined by Section 2 of the
9 Condominium Property Act, for condominium properties that are
10 not restricted to nonresidential use at rates that do not
11 exceed on average the rates offered to residential customers on
12 an annual basis. Within 10 days after the effective date of
13 this amendatory Act, the electric utility shall provide the
14 tariffed service to Unit Owners' Associations required by this
15 Section and shall reinstate any residential all-electric
16 discount applicable to any Unit Owners' Association that
17 received such a discount on December 31, 2006. For purposes of
18 this Section, "residential customers" means those retail
19 customers of an electric utility that receive (i) electric
20 utility service for household purposes distributed to a
21 dwelling of 2 or fewer units that is billed under a residential
22 rate or (ii) electric utility service for household purposes
23 distributed to a dwelling unit or units that is billed under a
24 residential rate and is registered by a separate meter for each
25 dwelling unit.

1 (220 ILCS 5/16-111)

2 Sec. 16-111. Rates and restructuring transactions during
3 mandatory transition period; restructuring and other
4 transactions.

5 (a) During the mandatory transition period,
6 notwithstanding any provision of Article IX of this Act, and
7 except as provided in subsections (b), ~~(d), (e),~~ and (f) of
8 this Section, the Commission shall not (i) initiate, authorize
9 or order any change by way of increase (other than in
10 connection with a request for rate increase which was filed
11 after September 1, 1997 but prior to October 15, 1997, by an
12 electric utility serving less than 12,500 customers in this
13 State), (ii) initiate or, unless requested by the electric
14 utility, authorize or order any change by way of decrease,
15 restructuring or unbundling (except as provided in Section
16 16-109A), in the rates of any electric utility that were in
17 effect on October 1, 1996, or (iii) in any order approving any
18 application for a merger pursuant to Section 7-204 that was
19 pending as of May 16, 1997, impose any condition requiring any
20 filing for an increase, decrease, or change in, or other review
21 of, an electric utility's rates or enforce any such condition
22 of any such order; provided, however, that this subsection
23 shall not prohibit the Commission from:

24 (1) approving the application of an electric utility to
25 implement an alternative to rate of return regulation or a

1 regulatory mechanism that rewards or penalizes the
2 electric utility through adjustment of rates based on
3 utility performance, pursuant to Section 9-244;

4 (2) authorizing an electric utility to eliminate its
5 fuel adjustment clause and adjust its base rate tariffs in
6 accordance with subsection (b), (d), or (f) of Section
7 9-220 of this Act, to fix its fuel adjustment factor in
8 accordance with subsection (c) of Section 9-220 of this
9 Act, or to eliminate its fuel adjustment clause in
10 accordance with subsection (e) of Section 9-220 of this
11 Act;

12 (3) ordering into effect tariffs for delivery services
13 and transition charges in accordance with Sections 16-104
14 and 16-108, for real-time pricing in accordance with
15 Section 16-107, or the options required by Section 16-110
16 and subsection (n) of 16-112, allowing a billing experiment
17 in accordance with Section 16-106, or modifying delivery
18 services tariffs in accordance with Section 16-109; or

19 (4) ordering or allowing into effect any tariff to
20 recover charges pursuant to Sections 9-201.5, 9-220.1,
21 9-221, 9-222 (except as provided in Section 9-222.1),
22 16-108, and 16-114 of this Act, Section 5-5 of the
23 Electricity Infrastructure Maintenance Fee Law, Section
24 6-5 of the Renewable Energy, Energy Efficiency, and Coal
25 Resources Development Law of 1997, and Section 13 of the
26 Energy Assistance Act.

1 After December 31, 2004, the provisions of this subsection
2 (a) shall not apply to an electric utility whose average
3 residential retail rate was less than or equal to 90% of the
4 average residential retail rate for the "Midwest Utilities", as
5 that term is defined in subsection (b) of this Section, based
6 on data reported on Form 1 to the Federal Energy Regulatory
7 Commission for calendar year 1995, and which served between
8 150,000 and 250,000 retail customers in this State on January
9 1, 1995 unless the electric utility or its holding company has
10 been acquired by or merged with an affiliate of another
11 electric utility subsequent to January 1, 2002. This exemption
12 shall be limited to this subsection (a) and shall not extend to
13 any other provisions of this Act.

14 (b) Notwithstanding the provisions of subsection (a), each
15 Illinois electric utility serving more than 12,500 customers in
16 Illinois shall file tariffs (i) reducing, effective August 1,
17 1998, each component of its base rates to residential retail
18 customers by 15% from the base rates in effect immediately
19 prior to January 1, 1998 and (ii) if the public utility
20 provides electric service to (A) more than 500,000 customers
21 but less than 1,000,000 customers in this State on January 1,
22 1999, reducing, effective May 1, 2002, each component of its
23 base rates to residential retail customers by an additional 5%
24 from the base rates in effect immediately prior to January 1,
25 1998, or (B) at least 1,000,000 customers in this State on
26 January 1, 1999, reducing, effective October 1, 2001, each

1 component of its base rates to residential retail customers by
2 an additional 5% from the base rates in effect immediately
3 prior to January 1, 1998. Provided, however, that (A) if an
4 electric utility's average residential retail rate is less than
5 or equal to the average residential retail rate for a group of
6 Midwest Utilities (consisting of all investor-owned electric
7 utilities with annual system peaks in excess of 1000 megawatts
8 in the States of Illinois, Indiana, Iowa, Kentucky, Michigan,
9 Missouri, Ohio, and Wisconsin), based on data reported on Form
10 1 to the Federal Energy Regulatory Commission for calendar year
11 1995, then it shall only be required to file tariffs (i)
12 reducing, effective August 1, 1998, each component of its base
13 rates to residential retail customers by 5% from the base rates
14 in effect immediately prior to January 1, 1998, (ii) reducing,
15 effective October 1, 2000, each component of its base rates to
16 residential retail customers by the lesser of 5% of the base
17 rates in effect immediately prior to January 1, 1998 or the
18 percentage by which the electric utility's average residential
19 retail rate exceeds the average residential retail rate of the
20 Midwest Utilities, based on data reported on Form 1 to the
21 Federal Energy Regulatory Commission for calendar year 1999,
22 and (iii) reducing, effective October 1, 2002, each component
23 of its base rates to residential retail customers by an
24 additional amount equal to the lesser of 5% of the base rates
25 in effect immediately prior to January 1, 1998 or the
26 percentage by which the electric utility's average residential

1 retail rate exceeds the average residential retail rate of the
2 Midwest Utilities, based on data reported on Form 1 to the
3 Federal Energy Regulatory Commission for calendar year 2001;
4 and (B) if the average residential retail rate of an electric
5 utility serving between 150,000 and 250,000 retail customers in
6 this State on January 1, 1995 is less than or equal to 90% of
7 the average residential retail rate for the Midwest Utilities,
8 based on data reported on Form 1 to the Federal Energy
9 Regulatory Commission for calendar year 1995, then it shall
10 only be required to file tariffs (i) reducing, effective August
11 1, 1998, each component of its base rates to residential retail
12 customers by 2% from the base rates in effect immediately prior
13 to January 1, 1998; (ii) reducing, effective October 1, 2000,
14 each component of its base rates to residential retail
15 customers by 2% from the base rate in effect immediately prior
16 to January 1, 1998; and (iii) reducing, effective October 1,
17 2002, each component of its base rates to residential retail
18 customers by 1% from the base rates in effect immediately prior
19 to January 1, 1998. Provided, further, that any electric
20 utility for which a decrease in base rates has been or is
21 placed into effect between October 1, 1996 and the dates
22 specified in the preceding sentences of this subsection, other
23 than pursuant to the requirements of this subsection, shall be
24 entitled to reduce the amount of any reduction or reductions in
25 its base rates required by this subsection by the amount of
26 such other decrease. The tariffs required under this subsection

1 shall be filed 45 days in advance of the effective date.
2 Notwithstanding anything to the contrary in Section 9-220 of
3 this Act, no restatement of base rates in conjunction with the
4 elimination of a fuel adjustment clause under that Section
5 shall result in a lesser decrease in base rates than customers
6 would otherwise receive under this subsection had the electric
7 utility's fuel adjustment clause not been eliminated.

8 (c) Any utility reducing its base rates by 15% on August 1,
9 1998 pursuant to subsection (b) shall include the following
10 statement on its bills for residential customers from August 1
11 through December 31, 1998: "Effective August 1, 1998, your
12 rates have been reduced by 15% by the Electric Service Customer
13 Choice and Rate Relief Law of 1997 passed by the Illinois
14 General Assembly.". Any utility reducing its base rates by 5%
15 on August 1, 1998, pursuant to subsection (b) shall include the
16 following statement on its bills for residential customers from
17 August 1 through December 31, 1998: "Effective August 1, 1998,
18 your rates have been reduced by 5% by the Electric Service
19 Customer Choice and Rate Relief Law of 1997 passed by the
20 Illinois General Assembly.".

21 Any utility reducing its base rates by 2% on August 1, 1998
22 pursuant to subsection (b) shall include the following
23 statement on its bills for residential customers from August 1
24 through December 31, 1998: "Effective August 1, 1998, your
25 rates have been reduced by 2% by the Electric Service Customer
26 Choice and Rate Relief Law of 1997 passed by the Illinois

1 General Assembly.".

2 (d) (Blank.) ~~During the mandatory transition period, but~~
3 ~~not before January 1, 2000, and notwithstanding the provisions~~
4 ~~of subsection (a), an electric utility may request an increase~~
5 ~~in its base rates if the electric utility demonstrates that the~~
6 ~~2 year average of its earned rate of return on common equity,~~
7 ~~calculated as its net income applicable to common stock divided~~
8 ~~by the average of its beginning and ending balances of common~~
9 ~~equity using data reported in the electric utility's Form 1~~
10 ~~report to the Federal Energy Regulatory Commission but adjusted~~
11 ~~to remove the effects of accelerated depreciation or~~
12 ~~amortization or other transition or mitigation measures~~
13 ~~implemented by the electric utility pursuant to subsection (g)~~
14 ~~of this Section and the effect of any refund paid pursuant to~~
15 ~~subsection (e) of this Section, is below the 2 year average for~~
16 ~~the same 2 years of the monthly average yields of 30 year U.S.~~
17 ~~Treasury bonds published by the Board of Governors of the~~
18 ~~Federal Reserve System in its weekly H.15 Statistical Release~~
19 ~~or successor publication. The Commission shall review the~~
20 ~~electric utility's request, and may review the justness and~~
21 ~~reasonableness of all rates for tariffed services, in~~
22 ~~accordance with the provisions of Article IX of this Act,~~
23 ~~provided that the Commission shall consider any special or~~
24 ~~negotiated adjustments to the revenue requirement agreed to~~
25 ~~between the electric utility and the other parties to the~~
26 ~~proceeding. In setting rates under this Section, the Commission~~

1 ~~shall exclude the costs and revenues that are associated with~~
2 ~~competitive services and any billing or pricing experiments~~
3 ~~conducted under Section 16-106.~~

4 (e) (Blank.) ~~For the purposes of this subsection (e) all~~
5 ~~calculations and comparisons shall be performed for the~~
6 ~~Illinois operations of multijurisdictional utilities. During~~
7 ~~the mandatory transition period, notwithstanding the~~
8 ~~provisions of subsection (a), if the 2 year average of an~~
9 ~~electric utility's earned rate of return on common equity,~~
10 ~~calculated as its net income applicable to common stock divided~~
11 ~~by the average of its beginning and ending balances of common~~
12 ~~equity using data reported in the electric utility's Form 1~~
13 ~~report to the Federal Energy Regulatory Commission but adjusted~~
14 ~~to remove the effect of any refund paid under this subsection~~
15 ~~(e), and further adjusted to include the annual amortization of~~
16 ~~any difference between the consideration received by an~~
17 ~~affiliated interest of the electric utility in the sale of an~~
18 ~~asset which had been sold or transferred by the electric~~
19 ~~utility to the affiliated interest subsequent to the effective~~
20 ~~date of this amendatory Act of 1997 and the consideration for~~
21 ~~which such asset had been sold or transferred to the affiliated~~
22 ~~interest, with such difference to be amortized ratably from the~~
23 ~~date of the sale by the affiliated interest to December 31,~~
24 ~~2006, exceeds the 2 year average of the Index for the same 2~~
25 ~~years by 1.5 or more percentage points, the electric utility~~
26 ~~shall make refunds to customers beginning the first billing day~~

1 ~~of April in the following year in the manner described in~~
2 ~~paragraph (3) of this subsection. For purposes of this~~
3 ~~subsection (c), the "Index" shall be the sum of (A) the average~~
4 ~~for the 12 months ended September 30 of the monthly average~~
5 ~~yields of 30 year U.S. Treasury bonds published by the Board of~~
6 ~~Governors of the Federal Reserve System in its weekly H.15~~
7 ~~Statistical Release or successor publication for each year 1998~~
8 ~~through 2006, and (B) (i) 4.00 percentage points for each of~~
9 ~~the 12-month periods ending September 30, 1998 through~~
10 ~~September 30, 1999 or 8.00 percentage points if the electric~~
11 ~~utility's average residential retail rate is less than or equal~~
12 ~~to 90% of the average residential retail rate for the "Midwest~~
13 ~~Utilities", as that term is defined in subsection (b) of this~~
14 ~~Section, based on data reported on Form 1 to the Federal Energy~~
15 ~~Regulatory Commission for calendar year 1995, and the electric~~
16 ~~utility served between 150,000 and 250,000 retail customers on~~
17 ~~January 1, 1995, (ii) 7.00 percentage points for each of the~~
18 ~~12-month periods ending September 30, 2000 through September~~
19 ~~30, 2006 if the electric utility was providing service to at~~
20 ~~least 1,000,000 customers in this State on January 1, 1999, or~~
21 ~~9.00 percentage points if the electric utility's average~~
22 ~~residential retail rate is less than or equal to 90% of the~~
23 ~~average residential retail rate for the "Midwest Utilities", as~~
24 ~~that term is defined in subsection (b) of this Section, based~~
25 ~~on data reported on Form 1 to the Federal Energy Regulatory~~
26 ~~Commission for calendar year 1995 and the electric utility~~

1 ~~served between 150,000 and 250,000 retail customers in this~~
2 ~~State on January 1, 1995, (iii) 11.00 percentage points for~~
3 ~~each of the 12-month periods ending September 30, 2000 through~~
4 ~~September 30, 2006, but only if the electric utility's average~~
5 ~~residential retail rate is less than or equal to 90% of the~~
6 ~~average residential retail rate for the "Midwest Utilities", as~~
7 ~~that term is defined in subsection (b) of this Section, based~~
8 ~~on data reported on Form 1 to the Federal Energy Regulatory~~
9 ~~Commission for calendar year 1995, the electric utility served~~
10 ~~between 150,000 and 250,000 retail customers in this State on~~
11 ~~January 1, 1995, and the electric utility offers delivery~~
12 ~~services on or before June 1, 2000 to retail customers whose~~
13 ~~annual electric energy use comprises 33% of the kilowatt hour~~
14 ~~sales to that group of retail customers that are classified~~
15 ~~under Division D, Groups 20 through 39 of the Standard~~
16 ~~Industrial Classifications set forth in the Standard~~
17 ~~Industrial Classification Manual published by the United~~
18 ~~States Office of Management and Budget, excluding the kilowatt~~
19 ~~hour sales to those customers that are eligible for delivery~~
20 ~~services pursuant to Section 16-104(a)(1)(i), and offers~~
21 ~~delivery services to its remaining retail customers classified~~
22 ~~under Division D, Groups 20 through 39 on or before October 1,~~
23 ~~2000, and, provided further, that the electric utility commits~~
24 ~~not to petition pursuant to Section 16-108(f) for entry of an~~
25 ~~order by the Commission authorizing the electric utility to~~
26 ~~implement transition charges for an additional period after~~

1 ~~December 31, 2006, or (iv) 5.00 percentage points for each of~~
2 ~~the 12-month periods ending September 30, 2000 through~~
3 ~~September 30, 2006 for all other electric utilities or 7.00~~
4 ~~percentage points for such utilities for each of the 12-month~~
5 ~~periods ending September 30, 2000 through September 30, 2006~~
6 ~~for any such utility that commits not to petition pursuant to~~
7 ~~Section 16 108(f) for entry of an order by the Commission~~
8 ~~authorizing the electric utility to implement transition~~
9 ~~charges for an additional period after December 31, 2006 or~~
10 ~~11.00 percentage points for each of the 12-month periods ending~~
11 ~~September 30, 2005 and September 30, 2006 for each electric~~
12 ~~utility providing service to fewer than 6,500, or between~~
13 ~~75,000 and 150,000, electric retail customers in this State on~~
14 ~~January 1, 1995 if such utility commits not to petition~~
15 ~~pursuant to Section 16 108(f) for entry of an order by the~~
16 ~~Commission authorizing the electric utility to implement~~
17 ~~transition charges for an additional period after December 31,~~
18 ~~2006.~~

19 ~~(1) For purposes of this subsection (c), "excess~~
20 ~~earnings" means the difference between (A) the 2-year~~
21 ~~average of the electric utility's earned rate of return on~~
22 ~~common equity, less (B) the 2-year average of the sum of~~
23 ~~(i) the Index applicable to each of the 2 years and (ii)~~
24 ~~1.5 percentage points; provided, that "excess earnings"~~
25 ~~shall never be less than zero.~~

26 ~~(2) On or before March 31 of each year 2000 through~~

1 ~~2007 each electric utility shall file a report with the~~
2 ~~Commission showing its earned rate of return on common~~
3 ~~equity, calculated in accordance with this subsection, for~~
4 ~~the preceding calendar year and the average for the~~
5 ~~preceding 2 calendar years.~~

6 ~~(3) If an electric utility has excess earnings,~~
7 ~~determined in accordance with paragraphs (1) and (2) of~~
8 ~~this subsection, the refunds which the electric utility~~
9 ~~shall pay to its customers beginning the first billing day~~
10 ~~of April in the following year shall be calculated and~~
11 ~~applied as follows:~~

12 ~~(i) The electric utility's excess earnings shall~~
13 ~~be multiplied by the average of the beginning and~~
14 ~~ending balances of the electric utility's common~~
15 ~~equity for the 2 year period in which excess earnings~~
16 ~~occurred.~~

17 ~~(ii) The result of the calculation in (i) shall be~~
18 ~~multiplied by 0.50 and then divided by a number equal~~
19 ~~to 1 minus the electric utility's composite federal and~~
20 ~~State income tax rate.~~

21 ~~(iii) The result of the calculation in (ii) shall~~
22 ~~be divided by the sum of the electric utility's~~
23 ~~projected total kilowatt-hour sales to retail~~
24 ~~customers plus projected kilowatt hours to be~~
25 ~~delivered to delivery services customers over a one~~
26 ~~year period beginning with the first billing date in~~

1 ~~April in the succeeding year to determine a cents per~~
2 ~~kilowatt hour refund factor.~~

3 ~~(iv) The cents per kilowatt hour refund factor~~
4 ~~calculated in (iii) shall be credited to the electric~~
5 ~~utility's customers by applying the factor on the~~
6 ~~customer's monthly bills to each kilowatt hour sold or~~
7 ~~delivered until the total amount calculated in (ii) has~~
8 ~~been paid to customers.~~

9 (f) During the mandatory transition period, an electric
10 utility may file revised tariffs reducing the price of any
11 tariffed service offered by the electric utility for all
12 customers taking that tariffed service, which shall be
13 effective 7 days after filing.

14 (g) Until all classes of tariffed services are declared
15 competitive ~~During the mandatory transition period,~~ an
16 electric utility may, without obtaining any approval of the
17 Commission other than that provided for in this subsection and
18 notwithstanding any other provision of this Act or any rule or
19 regulation of the Commission that would require such approval:

20 (1) implement a reorganization, other than a merger of
21 2 or more public utilities as defined in Section 3-105 or
22 their holding companies;

23 (2) retire generating plants from service;

24 (3) sell, assign, lease or otherwise transfer assets to
25 an affiliated or unaffiliated entity and as part of such
26 transaction enter into service agreements, power purchase

1 agreements, or other agreements with the transferee;
2 provided, however, that the prices, terms and conditions of
3 any power purchase agreement must be approved or allowed
4 into effect by the Federal Energy Regulatory Commission; or

5 (4) use any accelerated cost recovery method including
6 accelerated depreciation, accelerated amortization or
7 other capital recovery methods, or record reductions to the
8 original cost of its assets.

9 In order to implement a reorganization, retire generating
10 plants from service, or sell, assign, lease or otherwise
11 transfer assets pursuant to this Section, the electric utility
12 shall comply with subsections (c) and (d) of Section 16-128, if
13 applicable, and subsection (k) of this Section, if applicable,
14 and provide the Commission with at least 30 days notice of the
15 proposed reorganization or transaction, which notice shall
16 include the following information:

17 (i) a complete statement of the entries that the
18 electric utility will make on its books and records of
19 account to implement the proposed reorganization or
20 transaction together with a certification from an
21 independent certified public accountant that such
22 entries are in accord with generally accepted
23 accounting principles and, if the Commission has
24 previously approved guidelines for cost allocations
25 between the utility and its affiliates, a
26 certification from the chief accounting officer of the

1 utility that such entries are in accord with those cost
2 allocation guidelines;

3 (ii) a description of how the electric utility will
4 use proceeds of any sale, assignment, lease or transfer
5 to retire debt or otherwise reduce or recover the costs
6 of services provided by such electric utility;

7 (iii) a list of all federal approvals or approvals
8 required from departments and agencies of this State,
9 other than the Commission, that the electric utility
10 has or will obtain before implementing the
11 reorganization or transaction;

12 (iv) an irrevocable commitment by the electric
13 utility that it will not, as a result of the
14 transaction, impose any stranded cost charges that it
15 might otherwise be allowed to charge retail customers
16 under federal law or increase the transition charges
17 that it is otherwise entitled to collect under this
18 Article XVI; and

19 (v) if the electric utility proposes to sell,
20 assign, lease or otherwise transfer a generating plant
21 that brings the amount of net dependable generating
22 capacity transferred pursuant to this subsection to an
23 amount equal to or greater than 15% of the electric
24 utility's net dependable capacity as of the effective
25 date of this amendatory Act of 1997, and enters into a
26 power purchase agreement with the entity to which such

1 generating plant is sold, assigned, leased, or
2 otherwise transferred, the electric utility also
3 agrees, if its fuel adjustment clause has not already
4 been eliminated, to eliminate its fuel adjustment
5 clause in accordance with subsection (b) of Section
6 9-220 for a period of time equal to the length of any
7 such power purchase agreement or successor agreement,
8 or until January 1, 2005, whichever is longer; if the
9 capacity of the generating plant so transferred and
10 related power purchase agreement does not result in the
11 elimination of the fuel adjustment clause under this
12 subsection, and the fuel adjustment clause has not
13 already been eliminated, the electric utility shall
14 agree that the costs associated with the transferred
15 plant that are included in the calculation of the rate
16 per kilowatt-hour to be applied pursuant to the
17 electric utility's fuel adjustment clause during such
18 period shall not exceed the per kilowatt-hour cost
19 associated with such generating plant included in the
20 electric utility's fuel adjustment clause during the
21 full calendar year preceding the transfer, with such
22 limit to be adjusted each year thereafter by the Gross
23 Domestic Product Implicit Price Deflator.

24 (vi) In addition, if the electric utility proposes
25 to sell, assign, or lease, (A) either (1) an amount of
26 generating plant that brings the amount of net

1 dependable generating capacity transferred pursuant to
2 this subsection to an amount equal to or greater than
3 15% of its net dependable capacity on the effective
4 date of this amendatory Act of 1997, or (2) one or more
5 generating plants with a total net dependable capacity
6 of 1100 megawatts, or (B) transmission and
7 distribution facilities that either (1) bring the
8 amount of transmission and distribution facilities
9 transferred pursuant to this subsection to an amount
10 equal to or greater than 15% of the electric utility's
11 total depreciated original cost investment in such
12 facilities, or (2) represent an investment of
13 \$25,000,000 in terms of total depreciated original
14 cost, the electric utility shall provide, in addition
15 to the information listed in subparagraphs (i) through
16 (v), the following information: (A) a description of
17 how the electric utility will meet its service
18 obligations under this Act in a safe and reliable
19 manner and (B) the electric utility's projected earned
20 rate of return on common equity, ~~calculated in~~
21 ~~accordance with subsection (d) of this Section,~~ for
22 each year from the date of the notice through December
23 31, 2006 both with and without the proposed
24 transaction. If the Commission has not issued an order
25 initiating a hearing on the proposed transaction
26 within 30 days after the date the electric utility's

1 notice is filed, the transaction shall be deemed
2 approved. The Commission may, after notice and
3 hearing, prohibit the proposed transaction if it makes
4 either or both of the following findings: (1) that the
5 proposed transaction will render the electric utility
6 unable to provide its tariffed services in a safe and
7 reliable manner, or (2) that there is a strong
8 likelihood that consummation of the proposed
9 transaction will result in the electric utility being
10 entitled to request an increase in its base rates
11 ~~during the mandatory transition period pursuant to~~
12 ~~subsection (d) of this Section.~~ Any hearing initiated
13 by the Commission into the proposed transaction shall
14 be completed, and the Commission's final order
15 approving or prohibiting the proposed transaction
16 shall be entered, within 90 days after the date the
17 electric utility's notice was filed. Provided,
18 however, that a sale, assignment, or lease of
19 transmission facilities to an independent system
20 operator that meets the requirements of Section 16-126
21 shall not be subject to Commission approval under this
22 Section.

23 In any proceeding conducted by the Commission
24 pursuant to this subparagraph (vi), intervention shall
25 be limited to parties with a direct interest in the
26 transaction which is the subject of the hearing and any

1 statutory consumer protection agency as defined in
2 subsection (d) of Section 9-102.1. Notwithstanding the
3 provisions of Section 10-113 of this Act, any
4 application seeking rehearing of an order issued under
5 this subparagraph (vi), whether filed by the electric
6 utility or by an intervening party, shall be filed
7 within 10 days after service of the order.

8 The Commission shall not in any subsequent proceeding or
9 otherwise, review such a reorganization or other transaction
10 authorized by this Section, but shall retain the authority to
11 allocate costs as stated in Section 16-111(i). An entity to
12 which an electric utility sells, assigns, leases or transfers
13 assets pursuant to this subsection (g) shall not, as a result
14 of the transactions specified in this subsection (g), be deemed
15 a public utility as defined in Section 3-105. Nothing in this
16 subsection (g) shall change any requirement under the
17 jurisdiction of the Illinois Department of Nuclear Safety
18 including, but not limited to, the payment of fees. Nothing in
19 this subsection (g) shall exempt a utility from obtaining a
20 certificate pursuant to Section 8-406 of this Act for the
21 construction of a new electric generating facility. Nothing in
22 this subsection (g) is intended to exempt the transactions
23 hereunder from the operation of the federal or State antitrust
24 laws. Nothing in this subsection (g) shall require an electric
25 utility to use the procedures specified in this subsection for
26 any of the transactions specified herein. Any other procedure

1 available under this Act may, at the electric utility's
2 election, be used for any such transaction.

3 (h) During the mandatory transition period, the Commission
4 shall not establish or use any rates of depreciation, which for
5 purposes of this subsection shall include amortization, for any
6 electric utility other than those established pursuant to
7 subsection (c) of Section 5-104 of this Act or utilized
8 pursuant to subsection (g) of this Section. Provided, however,
9 that in any proceeding to review an electric utility's rates
10 for tariffed services pursuant to Section 9-201, 9-202, 9-250
11 or 16-111(d) of this Act, the Commission may establish new
12 rates of depreciation for the electric utility in the same
13 manner provided in subsection (d) of Section 5-104 of this Act.
14 An electric utility implementing an accelerated cost recovery
15 method including accelerated depreciation, accelerated
16 amortization or other capital recovery methods, or recording
17 reductions to the original cost of its assets, pursuant to
18 subsection (g) of this Section, shall file a statement with the
19 Commission describing the accelerated cost recovery method to
20 be implemented or the reduction in the original cost of its
21 assets to be recorded. Upon the filing of such statement, the
22 accelerated cost recovery method or the reduction in the
23 original cost of assets shall be deemed to be approved by the
24 Commission as though an order had been entered by the
25 Commission.

26 (i) Subsequent to the mandatory transition period, the

1 Commission, in any proceeding to establish rates and charges
2 for tariffed services offered by an electric utility, shall
3 consider only (1) the then current or projected revenues,
4 costs, investments and cost of capital directly or indirectly
5 associated with the provision of such tariffed services; (2)
6 collection of transition charges in accordance with Sections
7 16-102 and 16-108 of this Act; (3) recovery of any employee
8 transition costs as described in Section 16-128 which the
9 electric utility is continuing to incur, including recovery of
10 any unamortized portion of such costs previously incurred or
11 committed, with such costs to be equitably allocated among
12 bundled services, delivery services, and contracts with
13 alternative retail electric suppliers; and (4) recovery of the
14 costs associated with the electric utility's compliance with
15 decommissioning funding requirements; and shall not consider
16 any other revenues, costs, investments or cost of capital of
17 either the electric utility or of any affiliate of the electric
18 utility that are not associated with the provision of tariffed
19 services. In setting rates for tariffed services, the
20 Commission shall equitably allocate joint and common costs and
21 investments between the electric utility's competitive and
22 tariffed services. In determining the justness and
23 reasonableness of the electric power and energy component of an
24 electric utility's rates for tariffed services subsequent to
25 the mandatory transition period and prior to the time that the
26 provision of such electric power and energy is declared

1 competitive, the Commission shall consider the extent to which
2 the electric utility's tariffed rates for such component for
3 each customer class exceed the market value determined pursuant
4 to Section 16-112, and, if the electric power and energy
5 component of such tariffed rate exceeds the market value by
6 more than 10% for any customer class, may establish such
7 electric power and energy component at a rate equal to the
8 market value plus 10%. ~~In any such case, the Commission may
9 also elect to extend the provisions of Section 16-111(e) for
10 any period in which the electric utility is collecting
11 transition charges, using information applicable to such
12 period.~~

13 (j) During the mandatory transition period, an electric
14 utility may elect to transfer to a non-operating income account
15 under the Commission's Uniform System of Accounts either or
16 both of (i) an amount of unamortized investment tax credit that
17 is in addition to the ratable amount which is credited to the
18 electric utility's operating income account for the year in
19 accordance with Section 46(f)(2) of the federal Internal
20 Revenue Code of 1986, as in effect prior to P.L. 101-508, or
21 (ii) "excess tax reserves", as that term is defined in Section
22 203(e)(2)(A) of the federal Tax Reform Act of 1986, provided
23 that (A) the amount transferred may not exceed the amount of
24 the electric utility's assets that were created pursuant to
25 Statement of Financial Accounting Standards No. 71 which the
26 electric utility has written off during the mandatory

1 transition period, and (B) the transfer shall not be effective
2 until approved by the Internal Revenue Service. An electric
3 utility electing to make such a transfer shall file a statement
4 with the Commission stating the amount and timing of the
5 transfer for which it intends to request approval of the
6 Internal Revenue Service, along with a copy of its proposed
7 request to the Internal Revenue Service for a ruling. The
8 Commission shall issue an order within 14 days after the
9 electric utility's filing approving, subject to receipt of
10 approval from the Internal Revenue Service, the proposed
11 transfer.

12 (k) If an electric utility is selling or transferring to a
13 single buyer 5 or more generating plants located in this State
14 with a total net dependable capacity of 5000 megawatts or more
15 pursuant to subsection (g) of this Section and has obtained a
16 sale price or consideration that exceeds 200% of the book value
17 of such plants, the electric utility must provide to the
18 Governor, the President of the Illinois Senate, the Minority
19 Leader of the Illinois Senate, the Speaker of the Illinois
20 House of Representatives, and the Minority Leader of the
21 Illinois House of Representatives no later than 15 days after
22 filing its notice under subsection (g) of this Section or 5
23 days after the date on which this subsection (k) becomes law,
24 whichever is later, a written commitment in which such electric
25 utility agrees to expend \$2 billion outside the corporate
26 limits of any municipality with 1,000,000 or more inhabitants

1 within such electric utility's service area, over a 6-year
2 period beginning with the calendar year in which the notice is
3 filed, on projects, programs, and improvements within its
4 service area relating to transmission and distribution
5 including, without limitation, infrastructure expansion,
6 repair and replacement, capital investments, operations and
7 maintenance, and vegetation management.

8 (l) Notwithstanding any other provision of this Act or any
9 rule, regulation, or prior order of the Commission, a public
10 utility providing electric and gas service may do any one or
11 more of the following: transfer assets to, reorganize with, or
12 merge with one or more public utilities under common holding
13 company ownership or control in the manner prescribed in
14 subsection (g) of this Section. No merger transaction costs,
15 such as fees paid to attorneys, investment bankers, and other
16 consultants, incurred in connection with a merger pursuant to
17 this subsection (l) shall be recoverable in any subsequent rate
18 proceeding. Approval of a merger pursuant to this subsection
19 (l) shall not constitute approval of, or otherwise require,
20 rate recovery of other costs incurred in connection with, or to
21 implement the merger, such as the cost of restructuring,
22 combining, or integrating debt, assets, or systems. Such other
23 costs may be recovered only to the extent that the surviving
24 utility can demonstrate that the cost savings produced by such
25 restructuring, combination, or integration exceed the
26 associated costs. Nothing in this subsection (l) shall impair

1 the terms or conditions of employment or the collective
2 bargaining rights of any employees of the utilities that are
3 transferring assets, reorganizing, or merging.

4 (m) If an electric utility that on December 31, 2005
5 provided electric service to at least 100,000 customers in
6 Illinois transfers assets, reorganizes, or merges under this
7 Section, then the same provisions apply that applied during the
8 mandatory transition period under Section 16-128.

9 (Source: P.A. 91-50, eff. 6-30-99; 92-537, eff. 6-6-02; 92-690,
10 eff. 7-18-02; revised 9-10-02.)

11 (220 ILCS 5/16-111.5 new)

12 Sec. 16-111.5. Provisions relating to procurement.

13 (a) An electric utility that on December 31, 2005 served at
14 least 100,000 customers in Illinois shall procure power and
15 energy for its eligible retail customers in accordance with the
16 applicable provisions set forth in Section 1-75 of the Illinois
17 Power Agency Act and this Section. "Eligible retail customers"
18 for the purposes of this Section means those retail customers
19 that purchase power and energy from the electric utility under
20 fixed-price bundled service tariffs, other than those retail
21 customers whose service is declared or deemed competitive under
22 Section 16-113 and those other customer groups specified in
23 this Section, including self-generating customers, customers
24 electing hourly pricing, or those customers who are otherwise
25 ineligible for fixed-price bundled tariff service. Those

1 customers that are excluded from the definition of "eligible
2 retail customers" shall not be included in the procurement plan
3 load requirements, and the utility shall procure any supply
4 requirements, including capacity, ancillary services, and
5 hourly priced energy, in the applicable markets as needed to
6 serve those customers, provided that the utility may include in
7 its procurement plan load requirements for the load that is
8 associated with those retail customers whose service has been
9 declared or deemed competitive pursuant to Section 16-113 of
10 this Act to the extent that those customers are purchasing
11 power and energy during one of the transition periods
12 identified in subsection (b) of Section 16-113 of this Act.

13 (b) A procurement plan shall be prepared for each electric
14 utility consistent with the applicable requirements of the
15 Illinois Power Agency Act and this Section. For purposes of
16 this Section, Illinois electric utilities that are affiliated
17 by virtue of a common parent company are considered to be a
18 single electric utility. Each procurement plan shall analyze
19 the projected balance of supply and demand for eligible retail
20 customers over a 5-year period with the first planning year
21 beginning on June 1 of the year following the year in which the
22 plan is filed. The plan shall specifically identify the
23 wholesale products to be procured following plan approval, and
24 shall follow all the requirements set forth in the Public
25 Utilities Act and all applicable State and federal laws,
26 statutes, rules, or regulations, as well as Commission orders.

1 Nothing in this Section precludes consideration of contracts
2 longer than 5 years and related forecast data. Unless specified
3 otherwise in this Section, in the procurement plan or in the
4 implementing tariff, any procurement occurring in accordance
5 with this plan shall be competitively bid through a request for
6 proposals process. Approval and implementation of the
7 procurement plan shall be subject to review and approval by the
8 Commission according to the provisions set forth in this
9 Section. A procurement plan shall include each of the following
10 components:

11 (1) Hourly load analysis. This analysis shall include:

12 (i) multi-year historical analysis of hourly
13 loads;

14 (ii) switching trends and competitive retail
15 market analysis;

16 (iii) known or projected changes to future loads;

17 and

18 (iv) growth forecasts by customer class.

19 (2) Analysis of the impact of any demand side and
20 renewable energy initiatives. This analysis shall include:

21 (i) the impact of demand response programs, both
22 current and projected;

23 (ii) supply side needs that are projected to be
24 offset by purchases of renewable energy resources, if
25 any; and

26 (iii) the impact of energy efficiency programs,

1 both current and projected.

2 (3) A plan for meeting the expected load requirements
3 that will not be met through preexisting contracts. This
4 plan shall include:

5 (i) definitions of the different retail customer
6 classes for which supply is being purchased;

7 (ii) monthly forecasted system supply
8 requirements, including expected minimum, maximum, and
9 average values for the planning period;

10 (iii) the proposed mix and selection of standard
11 wholesale products for which contracts will be
12 executed during the next year, separately or in
13 combination, to meet that portion of its load
14 requirements not met through pre-existing contracts,
15 including but not limited to monthly 5 x 16 peak period
16 block energy, monthly off-peak wrap energy, monthly 7 x
17 24 energy, annual 5 x 16 energy, annual off-peak wrap
18 energy, annual 7 x 24 energy, monthly capacity, annual
19 capacity, peak load capacity obligations, capacity
20 purchase plan, and ancillary services;

21 (iv) proposed term structures for each wholesale
22 product type included in the proposed procurement plan
23 portfolio of products; and

24 (v) an assessment of the price risk, load
25 uncertainty, and other factors that are associated
26 with the proposed procurement plan; this assessment,

1 to the extent possible, shall include an analysis of
2 the following factors: contract terms, time frames for
3 securing products or services, fuel costs, weather
4 patterns, transmission costs, market conditions, and
5 the governmental regulatory environment; the proposed
6 procurement plan shall also identify alternatives for
7 those portfolio measures that are identified as having
8 significant price risk.

9 (4) Proposed procedures for balancing loads. The
10 procurement plan shall include, for load requirements
11 included in the procurement plan, the process for (i)
12 hourly balancing of supply and demand and (ii) the criteria
13 for portfolio re-balancing in the event of significant
14 shifts in load.

15 (c) The procurement process set forth in Section 1-75 of
16 the Illinois Power Agency Act and subsection (e) of this
17 Section shall be administered by a procurement administrator
18 and monitored by a procurement monitor.

19 (1) The procurement administrator shall:

20 (i) design the final procurement process in
21 accordance with Section 1-75 of the Illinois Power
22 Agency Act and subsection (e) of this Section following
23 Commission approval of the procurement plan;

24 (ii) develop benchmarks in accordance with
25 subsection (e)(3) to be used to evaluate bids; these
26 benchmarks shall be submitted to the Commission for

1 review and approval on a confidential basis prior to
2 the procurement event;

3 (iii) serve as the interface between the electric
4 utility and suppliers;

5 (iv) manage the bidder pre-qualification and
6 registration process;

7 (v) obtain the electric utilities' agreement to
8 the final form of all supply contracts and credit
9 collateral agreements;

10 (vi) administer the request for proposals process;

11 (vii) have the discretion to negotiate to
12 determine whether bidders are willing to lower the
13 price of bids that meet the benchmarks approved by the
14 Commission; any post-bid negotiations with bidders
15 shall be limited to price only and shall be completed
16 within 24 hours after opening the sealed bids and shall
17 be conducted in a fair and unbiased manner; in
18 conducting the negotiations, there shall be no
19 disclosure of any information derived from proposals
20 submitted by competing bidders; if information is
21 disclosed to any bidder, it shall be provided to all
22 competing bidders;

23 (viii) maintain confidentiality of supplier and
24 bidding information in a manner consistent with all
25 applicable laws, rules, regulations, and tariffs;

26 (ix) submit a confidential report to the

1 Commission recommending acceptance or rejection of
2 bids;

3 (x) notify the utility of contract counterparties
4 and contract specifics; and

5 (xi) administer related contingency procurement
6 events.

7 (2) The procurement monitor, who shall be retained by
8 the Commission, shall:

9 (i) monitor interactions among the procurement
10 administrator, suppliers, and utility;

11 (ii) monitor and report to the Commission on the
12 progress of the procurement process;

13 (iii) provide an independent confidential report
14 to the Commission regarding the results of the
15 procurement event;

16 (iv) assess compliance with the procurement plans
17 approved by the Commission for each utility that on
18 December 31, 2005 provided electric service to a least
19 100,000 customers in Illinois;

20 (v) preserve the confidentiality of supplier and
21 bidding information in a manner consistent with all
22 applicable laws, rules, regulations, and tariffs;

23 (vi) provide expert advice to the Commission and
24 consult with the procurement administrator regarding
25 issues related to procurement process design, rules,
26 protocols, and policy-related matters; and

1 (vii) consult with the procurement administrator
2 regarding the development and use of benchmark
3 criteria, standard form contracts, credit policies,
4 and bid documents.

5 (d) Except as provided in subsection (j), the planning
6 process shall be conducted as follows:

7 (1) Beginning in 2008, each Illinois utility procuring
8 power pursuant to this Section shall annually provide a
9 range of load forecasts to the Illinois Power Agency by
10 July 15 of each year, or such other date as may be required
11 by the Commission or Agency. The load forecasts shall cover
12 the 5-year procurement planning period for the next
13 procurement plan and shall include hourly data
14 representing a high-load, low-load and expected-load
15 scenario for the load of the eligible retail customers. The
16 utility shall provide supporting data and assumptions for
17 each of the scenarios.

18 (2) Beginning in 2008, the Illinois Power Agency shall
19 prepare a procurement plan by August 15th of each year, or
20 such other date as may be required by the Commission. The
21 procurement plan shall identify the portfolio of power and
22 energy products to be procured. Copies of the procurement
23 plan shall be posted and made publicly available on the
24 Agency's and Commission's websites, and copies shall also
25 be provided to each affected electric utility. An affected
26 utility shall have 30 days following the date of posting to

1 provide comment to the Agency on the procurement plan.
2 Other interested entities also may comment on the
3 procurement plan. All comments submitted to the Agency
4 shall be specific, supported by data or other detailed
5 analyses, and, if objecting to all or a portion of the
6 procurement plan, accompanied by specific alternative
7 wording or proposals. All comments shall be posted on the
8 Agency's and Commission's websites. During this 30-day
9 comment period, the Agency shall hold at least one public
10 hearing within each utility's service area for the purpose
11 of receiving public comment on the procurement plan. Within
12 14 days following the end of the 30-day review period, the
13 Agency shall revise the procurement plan as necessary based
14 on the comments received and file the procurement plan with
15 the Commission and post the procurement plan on the
16 websites.

17 (3) Within 5 days after the filing of the procurement
18 plan, any person objecting to the procurement plan shall
19 file an objection with the Commission. Within 10 days after
20 the filing, the Commission shall determine whether a
21 hearing is necessary. The Commission shall enter its order
22 confirming or modifying the procurement plan within 90 days
23 after the filing of the procurement plan by the Illinois
24 Power Agency.

25 (4) The Commission shall approve the procurement plan,
26 including expressly the forecast used in the procurement

1 plan, if the Commission determines that it will ensure
2 adequate, reliable, affordable, efficient, and
3 environmentally sustainable electric service at the lowest
4 total cost over time, taking into account any benefits of
5 price stability.

6 (e) The procurement process shall include each of the
7 following components:

8 (1) Solicitation, pre-qualification, and registration
9 of bidders. The procurement administrator shall
10 disseminate information to potential bidders to promote a
11 procurement event, notify potential bidders that the
12 procurement administrator may enter into a post-bid price
13 negotiation with bidders that meet the applicable
14 benchmarks, provide supply requirements, and otherwise
15 explain the competitive procurement process. In addition
16 to such other publication as the procurement administrator
17 determines is appropriate, this information shall be
18 posted on the Illinois Power Agency's and the Commission's
19 websites. The procurement administrator shall also
20 administer the prequalification process, including
21 evaluation of credit worthiness, compliance with
22 procurement rules, and agreement to the standard form
23 contract developed pursuant to paragraph (2) of this
24 subsection (e). The procurement administrator shall then
25 identify and register bidders to participate in the
26 procurement event.

1 (2) Standard contract forms and credit terms and
2 instruments. The procurement administrator, in
3 consultation with the utilities, the Commission, and other
4 interested parties and subject to Commission oversight,
5 shall develop and provide standard contract forms for the
6 supplier contracts that meet generally accepted industry
7 practices. Standard credit terms and instruments that meet
8 generally accepted industry practices shall be similarly
9 developed. The procurement administrator shall make
10 available to the Commission all written comments it
11 receives on the contract forms, credit terms, or
12 instruments. If the procurement administrator cannot reach
13 agreement with the applicable electric utility as to the
14 contract terms and conditions, the procurement
15 administrator must notify the Commission of any disputed
16 terms and the Commission shall resolve the dispute. The
17 terms of the contracts shall not be subject to negotiation
18 by winning bidders, and the bidders must agree to the terms
19 of the contract in advance so that winning bids are
20 selected solely on the basis of price.

21 (3) Establishment of a market-based price benchmark.
22 As part of the development of the procurement process, the
23 procurement administrator, in consultation with the
24 Commission staff, Agency staff, and the procurement
25 monitor, shall establish benchmarks for evaluating the
26 final prices in the contracts for each of the products that

1 will be procured through the procurement process. The
2 benchmarks shall be based on price data for similar
3 products for the same delivery period and same delivery
4 hub, or other delivery hubs after adjusting for that
5 difference. The price benchmarks may also be adjusted to
6 take into account differences between the information
7 reflected in the underlying data sources and the specific
8 products and procurement process being used to procure
9 power for the Illinois utilities. The benchmarks shall be
10 confidential but shall be provided to, and will be subject
11 to Commission review and approval, prior to a procurement
12 event.

13 (4) Request for proposals competitive procurement
14 process. The procurement administrator shall design and
15 issue a request for proposals to supply electricity in
16 accordance with each utility's procurement plan, as
17 approved by the Commission. The request for proposals shall
18 set forth a procedure for sealed, binding commitment
19 bidding with pay-as-bid settlement, and provision for
20 selection of bids on the basis of price.

21 (5) A plan for implementing contingencies in the event
22 of supplier default or failure of the procurement process
23 to fully meet the expected load requirement due to
24 insufficient supplier participation, Commission rejection
25 of results, or any other cause.

26 (i) Event of supplier default: In the event of

1 supplier default, the utility shall review the
2 contract of the defaulting supplier to determine if the
3 amount of supply is 200 megawatts or greater, and if
4 there are more than 60 days remaining of the contract
5 term. If both of these conditions are met, and the
6 default results in termination of the contract, the
7 utility shall immediately notify the Illinois Power
8 Agency that a request for proposals must be issued to
9 procure replacement power, and the procurement
10 administrator shall run an additional procurement
11 event. If the contracted supply of the defaulting
12 supplier is less than 200 megawatts or there are less
13 than 60 days remaining of the contract term, the
14 utility shall procure power and energy from the
15 applicable regional transmission organization market,
16 including ancillary services, capacity, and day-ahead
17 or real time energy, or both, for the duration of the
18 contract term to replace the contracted supply;
19 provided, however, that if a needed product is not
20 available through the regional transmission
21 organization market it shall be purchased from the
22 wholesale market.

23 (ii) Failure of the procurement process to fully
24 meet the expected load requirement: If the procurement
25 process fails to fully meet the expected load
26 requirement due to insufficient supplier participation

1 or due to a Commission rejection of the procurement
2 results, the procurement administrator, the
3 procurement monitor, and the Commission staff shall
4 meet within 10 days to analyze potential causes of low
5 supplier interest or causes for the Commission
6 decision. If changes are identified that would likely
7 result in increased supplier participation, or that
8 would address concerns causing the Commission to
9 reject the results of the prior procurement event, the
10 procurement administrator may implement those changes
11 and rerun the request for proposals process according
12 to a schedule determined by those parties and
13 consistent with Section 1-75 of the Illinois Power
14 Agency Act and this subsection. In any event, a new
15 request for proposals process shall be implemented by
16 the procurement administrator within 90 days after the
17 determination that the procurement process has failed
18 to fully meet the expected load requirement.

19 (iii) In all cases where there is insufficient
20 supply provided under contracts awarded through the
21 procurement process to fully meet the electric
22 utility's load requirement, the utility shall meet the
23 load requirement by procuring power and energy from the
24 applicable regional transmission organization market,
25 including ancillary services, capacity, and day-ahead
26 or real time energy or both; provided, however, that if

1 a needed product is not available through the regional
2 transmission organization market it shall be purchased
3 from the wholesale market.

4 (6) The procurement process described in this
5 subsection is exempt from the requirements of the Illinois
6 Procurement Code, pursuant to Section 20-10 of that Code.

7 (f) Within 2 business days after opening the sealed bids,
8 the procurement administrator shall submit a confidential
9 report to the Commission. The report shall contain the results
10 of the bidding for each of the products along with the
11 procurement administrator's recommendation for the acceptance
12 and rejection of bids based on the price benchmark criteria and
13 other factors observed in the process. The procurement monitor
14 also shall submit a confidential report to the Commission
15 within 2 business days after opening the sealed bids. The
16 report shall contain the procurement monitor's assessment of
17 bidder behavior in the process as well as an assessment of the
18 procurement administrator's compliance with the procurement
19 process and rules. The Commission shall review the confidential
20 reports submitted by the procurement administrator and
21 procurement monitor, and shall accept or reject the
22 recommendations of the procurement administrator within 2
23 business days after receipt of the reports.

24 (g) Within 3 business days after the Commission decision
25 approving the results of a procurement event, the utility shall
26 enter into binding contractual arrangements with the winning

1 suppliers using the standard form contracts; except that the
2 utility shall not be required either directly or indirectly to
3 execute the contracts if a tariff that is consistent with
4 subsection (l) of this Section has not been approved and placed
5 into effect for that utility.

6 (h) The names of the successful bidders and the load
7 weighted average of the winning bid prices for each contract
8 type and for each contract term shall be made available to the
9 public at the time of Commission approval of a procurement
10 event. The Commission, the procurement monitor, the
11 procurement administrator, the Illinois Power Agency, and all
12 participants in the procurement process shall maintain the
13 confidentiality of all other supplier and bidding information
14 in a manner consistent with all applicable laws, rules,
15 regulations, and tariffs. Confidential information, including
16 the confidential reports submitted by the procurement
17 administrator and procurement monitor pursuant to subsection
18 (f) of this Section, shall not be made publicly available and
19 shall not be discoverable by any party in any proceeding,
20 absent a compelling demonstration of need, nor shall those
21 reports be admissible in any proceeding other than one for law
22 enforcement purposes.

23 (i) Within 2 business days after a Commission decision
24 approving the results of a procurement event or such other date
25 as may be required by the Commission from time to time, the
26 utility shall file for informational purposes with the

1 Commission its actual or estimated retail supply charges, as
2 applicable, by customer supply group reflecting the costs
3 associated with the procurement and computed in accordance with
4 the tariffs filed pursuant to subsection (l) of this Section
5 and approved by the Commission.

6 (j) Within 60 days following the effective date of this
7 amendatory Act, each electric utility that on December 31, 2005
8 provided electric service to at least 100,000 customers in
9 Illinois shall prepare and file with the Commission an initial
10 procurement plan, which shall conform in all material respects
11 to the requirements of the procurement plan set forth in
12 subsection (b); provided, however, that the Illinois Power
13 Agency Act shall not apply to the initial procurement plan
14 prepared pursuant to this subsection. The initial procurement
15 plan shall identify the portfolio of power and energy products
16 to be procured and delivered for the period June 2008 through
17 May 2009, and shall identify the proposed procurement
18 administrator, who shall have the same experience and expertise
19 as is required of a procurement administrator hired pursuant to
20 Section 1-75 of the Illinois Power Agency Act. Copies of the
21 procurement plan shall be posted and made publicly available on
22 the Commission's website. The initial procurement plan may
23 include contracts for renewable resources that extend beyond
24 May 2009.

25 (i) Within 14 days following filing of the initial
26 procurement plan, any person may file a detailed objection

1 with the Commission contesting the procurement plan
2 submitted by the electric utility. All objections to the
3 electric utility's plan shall be specific, supported by
4 data or other detailed analyses. The electric utility may
5 file a response to any objections to its procurement plan
6 within 7 days after the date objections are due to be
7 filed. Within 7 days after the date the utility's response
8 is due, the Commission shall determine whether a hearing is
9 necessary. If it determines that a hearing is necessary, it
10 shall require the hearing to be completed and issue an
11 order on the procurement plan within 60 days after the
12 filing of the procurement plan by the electric utility.

13 (ii) The order shall approve or modify the procurement
14 plan, approve an independent procurement administrator,
15 and approve or modify the electric utility's tariffs that
16 are proposed with the initial procurement plan. The
17 Commission shall approve the procurement plan if the
18 Commission determines that it will ensure adequate,
19 reliable, affordable, efficient, and environmentally
20 sustainable electric service at the lowest total cost over
21 time, taking into account any benefits of price stability.

22 (k) In order to promote price stability for residential and
23 small commercial customers during the transition to
24 competition in Illinois, and notwithstanding any other
25 provision of this Act, each electric utility subject to this
26 Section shall enter into one or more multi-year financial swap

1 contracts that become effective on the effective date of this
2 amendatory Act. These contracts may be executed with generators
3 and power marketers, including affiliated interests of the
4 electric utility. These contracts shall be for a term of no
5 more than 5 years and shall, for each respective utility or for
6 any Illinois electric utilities that are affiliated by virtue
7 of a common parent company and that are thereby considered a
8 single electric utility for purposes of this subsection (k),
9 not exceed in the aggregate 3,000 megawatts for any hour of the
10 year. The contracts shall be financial contracts and not energy
11 sales contracts. The contracts shall be executed as
12 transactions under a negotiated master agreement based on the
13 form of master agreement for financial swap contracts sponsored
14 by the International Swaps and Derivatives Association, Inc.
15 and shall be considered pre-existing contracts in the
16 utilities' procurement plans for residential and small
17 commercial customers. Costs incurred pursuant to a contract
18 authorized by this subsection (k) shall be deemed prudently
19 incurred and reasonable in amount and the electric utility
20 shall be entitled to full cost recovery pursuant to the tariffs
21 filed with the Commission.

22 (1) An electric utility shall recover its costs of
23 procuring power and energy under this Section. The utility
24 shall file with the initial procurement plan its proposed
25 tariffs through which its costs of procuring power that are
26 incurred pursuant to a Commission-approved procurement plan

1 and those other costs identified in this subsection (1), will
2 be recovered. The tariffs shall include a formula rate or
3 charge designed to pass through both the costs incurred by the
4 utility in procuring a supply of electric power and energy for
5 the applicable customer classes with no mark-up or return on
6 the price paid by the utility for that supply, plus any just
7 and reasonable costs that the utility incurs in arranging and
8 providing for the supply of electric power and energy. The
9 formula rate or charge shall also contain provisions that
10 ensure that its application does not result in over or under
11 recovery due to changes in customer usage and demand patterns,
12 and that provide for the correction, on at least an annual
13 basis, of any accounting errors that may occur. A utility shall
14 recover through the tariff all reasonable costs incurred to
15 implement or comply with any procurement plan that is developed
16 and put into effect pursuant to Section 1-75 of the Illinois
17 Power Agency Act and this Section, including any fees assessed
18 by the Illinois Power Agency, costs associated with load
19 balancing, and contingency plan costs. The electric utility
20 shall also recover its full costs of procuring electric supply
21 for which it contracted before the effective date of this
22 Section in conjunction with the provision of full requirements
23 service under fixed-price bundled service tariffs subsequent
24 to December 31, 2006. All such costs shall be deemed to have
25 been prudently incurred. The pass-through tariffs that are
26 filed and approved pursuant to this Section shall not be

1 subject to review under, or in any way limited by, Section
2 16-111(i) of this Act.

3 (m) The Commission has the authority to adopt rules to
4 carry out the provisions of this Section. For the public
5 interest, safety, and welfare, the Commission also has
6 authority to adopt rules to carry out the provisions of this
7 Section on an emergency basis immediately following the
8 effective date of this amendatory Act.

9 (n) Notwithstanding any other provision of this Act, any
10 affiliated electric utilities that submit a single procurement
11 plan covering their combined needs may procure for those
12 combined needs in conjunction with that plan, and may enter
13 jointly into power supply contracts, purchases, and other
14 procurement arrangements, and allocate capacity and energy and
15 cost responsibility therefor among themselves in proportion to
16 their requirements.

17 (o) On or before June 1 of each year, the Commission shall
18 hold an informal hearing for the purpose of receiving comments
19 on the prior year's procurement process and any recommendations
20 for change.

21 (p) An electric utility subject to this Section may propose
22 to invest, lease, own, or operate an electric generation
23 facility as part of its procurement plan, provided the utility
24 demonstrates that such facility is the least-cost option to
25 provide electric service to eligible retail customers. If the
26 facility is shown to be the least-cost option and is included

1 in a procurement plan prepared in accordance with Section 1-75
2 of the Illinois Power Agency Act and this Section, then the
3 electric utility shall make a filing pursuant to Section 8-406
4 of the Act, and may request of the Commission any statutory
5 relief required thereunder. If the Commission grants all of the
6 necessary approvals for the proposed facility, such supply
7 shall thereafter be considered as a pre-existing contract under
8 subsection (b) of this Section. The Commission shall in any
9 order approving a proposal under this subsection specify how
10 the utility will recover the prudently incurred costs of
11 investing in, leasing, owning, or operating such generation
12 facility through just and reasonable rates charged to eligible
13 retail customers. Cost recovery for facilities included in the
14 utility's procurement plan pursuant to this subsection shall
15 not be subject to review under or in any way limited by the
16 provisions of Section 16-111(i) of this Act. Nothing in this
17 Section is intended to prohibit a utility from filing for a
18 fuel adjustment clause as is otherwise permitted under Section
19 9-220 of this Act.

20 (220 ILCS 5/16-111.5A new)

21 Sec. 16-111.5A. Provisions relating to electric rate
22 relief.

23 (a) The General Assembly finds that action must be taken in
24 order to mitigate the 2007 electric rate increases approved for
25 residential and certain nonresidential customers served by the

1 State's largest electric utilities in 2007. The General
2 Assembly further finds that although various means of providing
3 rate relief have been proposed, including imposition of a rate
4 freeze on the electric utilities or a tax on generation within
5 the State, the establishment of voluntary rate relief programs
6 provides the most immediate and certain means of providing that
7 rate relief. Accordingly, if the residential customer electric
8 service rates that were charged to residential customers
9 beginning January 2, 2007 by an electric utility that on
10 December 31, 2005 provided electric service to at least 100,000
11 customers in Illinois resulted in an annual increase of more
12 than 20% in an electric utility's average rate charged to
13 residential customers for bundled electric service, those
14 electric utilities and their holding companies or other
15 affiliates, and any other company owning generation in this
16 State or its affiliates, may, notwithstanding any other
17 provisions of this Act, and without obtaining any approvals
18 from the Commission or any other agency, regardless of whether
19 any such approval would otherwise be required, establish and
20 make payments to provide funds that can be used to provide rate
21 relief beginning on the effective date of this amendatory Act
22 of the 95th General Assembly through July 31, 2011.

23 (b) For purposes of this Section, the "Ameren Utilities"
24 means Illinois Power Company, Central Illinois Public Service
25 Company, and Central Illinois Light Company.

26 (c) For purposes of this Section, the "Generators" means

1 Exelon Generation Company, LLC; Ameren Energy Resources
2 Generating Company; Ameren Energy Marketing Company; Ameren
3 Energy Generating Company; MidAmerican Energy Company; Midwest
4 Generation, LLC; and Dynegy Holdings Inc.; and may include
5 non-utility affiliates of the entities named in this
6 subsection.

7 (d) For purposes of this Section, "Rate Relief Agreements"
8 means the 2 Rate Relief Funding Agreements, the Escrow Funding
9 Agreement, and the Illinois Power Agency Funding Agreement that
10 Commonwealth Edison Company, the Ameren Utilities, and
11 Generators have entered into with the Illinois Attorney General
12 on behalf of the People of the State of Illinois for the
13 purpose of providing \$1,001,000,000 to be used to fund rate
14 relief programs for customers of Commonwealth Edison Company
15 and the Ameren Utilities and for the Illinois Power Agency
16 Trust Fund and that become effective on the effective date of
17 this amendatory Act of the 95th General Assembly. The Rate
18 Relief Agreements have been filed with the Illinois Secretary
19 of State Index Department and designated as "95-GA-C01" through
20 "95-GA-C04" inclusive. The Illinois Attorney General has the
21 right to enforce the provisions of all of the Rate Relief
22 Agreements on behalf of the People of the State of Illinois or
23 the Illinois Power Agency, or both, as appropriate.

24 (e) Subject to the terms, conditions, and contingencies of
25 the Rate Relief Agreements, Commonwealth Edison Company will
26 apply a total of \$488,000,000 in rate relief to residential and

1 certain nonresidential customers from 2007 through 2010.
2 Commonwealth Edison Company will apply bill credits for all of
3 its residential customers in its service territory in the
4 following amounts: \$250,000,000 in 2007, \$125,500,000 in 2008,
5 and \$36,000,000 in 2009. Any undisbursed rate relief funds
6 shall be applied to the targeted programs. Commonwealth Edison
7 Company will provide rate relief for residential and certain
8 nonresidential customers through targeted programs in the
9 following amounts: \$33,000,000 in 2007, \$18,000,000 in 2008,
10 \$15,500,000 in 2009, and \$10,000,000 in 2010. Subject to the
11 terms, conditions, and contingencies of the Rate Relief
12 Agreements, the targeted programs for 2007 consist of the
13 following, some of which are already underway and, in the
14 aggregate, therefore total more than \$33,000,000:

15 (1) an electric space heating customer relief program
16 costing approximately \$8,000,000 designed to lower the
17 average percentage increase of residential electric space
18 heating customers to rate increases similar to other
19 residential customers;

20 (2) a summer assistance program costing approximately
21 \$10,300,000 for working families and low-income customers,
22 including low-income seniors;

23 (3) a residential rate relief program costing
24 approximately \$5,500,000 for working families and
25 low-income customers, including low-income seniors, with
26 higher than average rate increases (over 30%);

1 (4) a residential special hardship program costing
2 approximately \$5,000,000 to address special circumstances
3 and hardships;

4 (5) a nonresidential special hardship program costing
5 approximately \$1,500,000 to address special circumstances
6 and hardships;

7 (6) a relief program for the common area accounts of
8 apartment building owners and condominium associations
9 costing approximately \$4,500,000 designed to reduce rate
10 increases for these customers to rate increases similar to
11 those for residential customers and to mitigate the impact
12 of their rate increase;

13 (7) a weatherization assistance program for electric
14 space heating low-income customers costing approximately
15 \$3,900,000 designed to provide energy efficiency
16 assistance; and

17 (8) energy efficiency, environmental, education, and
18 assistance programs costing approximately \$5,000,000
19 designed to promote the use of energy efficiency programs
20 and services by residential customers, maintenance and
21 upgrades of a website that allows those customers to
22 analyze their energy usage and provides incentives for the
23 purchase of energy efficient products, the provision of
24 energy efficient light bulbs to residential customers at a
25 discount, and free efficient light bulbs and other
26 assistance to low-income customers.

1 Based on the outcome of these targeted programs,
2 Commonwealth Edison Company will design and implement, subject
3 to the terms, conditions, and contingencies of the Rate Relief
4 Agreements, targeted programs for working families, seniors,
5 and other customers in need in 2008, 2009, and 2010.

6 (f) Subject to the terms, conditions, and contingencies of
7 the Rate Relief Agreements, the Ameren Utilities will apply a
8 total of \$488,000,000 in rate relief to residential and certain
9 nonresidential customers from 2007 through 2010. The Ameren
10 Utilities will apply bill credits for all of their residential
11 customers in their service territories in the following
12 aggregate amounts: \$213,000,000 in 2007, \$109,000,000 in 2008,
13 and \$78,000,000 in 2009. The Ameren Utilities will apply bill
14 credits to certain nonresidential customers in the following
15 aggregate amounts: \$26,000,000 in 2007, \$11,000,000 in 2008,
16 and \$11,000,000 in 2009. Any undisbursed rate relief funds
17 shall be applied to the targeted programs. The Ameren Utilities
18 will provide rate relief for residential and certain
19 nonresidential customers through targeted programs in the
20 following amounts: \$13,500,000 in 2007, \$13,500,000 in 2008,
21 \$7,500,000 in 2009, and \$5,500,000 in 2010. Subject to the
22 terms, conditions and contingencies of the Rate Relief
23 Agreements, the targeted programs consist of the following for
24 2007:

25 (1) a cooling assistance program costing approximately
26 \$2,000,000 to provide donations to the Low Income Home

1 Energy Assistance Program;

2 (2) a bill payment assistance program costing
3 approximately \$2,000,000 for working families and
4 low-income customers, including low-income seniors;

5 (3) a residential special hardship program costing
6 approximately \$2,000,000 to address special circumstances
7 and hardships;

8 (4) a nonresidential special hardship program costing
9 approximately \$2,000,000 to address special circumstances
10 and hardships;

11 (5) a percent-of-income payment program pilot costing
12 approximately \$2,500,000 that will be designed to
13 determine for low-income electric space heating customers
14 if paying a percentage of income for their electricity will
15 make electricity more affordable and promote regular
16 paying habits;

17 (6) a weatherization assistance program for all
18 electric space heating low-income customers costing
19 approximately \$1,000,000 designed to provide energy
20 efficiency assistance;

21 (7) a compact fluorescent light bulb distribution
22 program costing approximately \$1,000,000 designed to
23 provide energy efficient light bulbs to residential
24 customers at a discount; and

25 (8) a municipal street lighting conversion program
26 costing approximately \$1,000,000 to convert existing

1 street lights to more efficient lights at a discount.

2 Based on the outcome of these targeted programs, the Ameren
3 Utilities will design and implement, subject to the terms,
4 conditions, and contingencies of the Rate Relief Agreements,
5 targeted programs for working families, seniors, and other
6 customers in need in 2008, 2009, and 2010.

7 In addition, the Ameren Utilities voluntarily agree to
8 waive outstanding late payment charges associated with unpaid
9 electric bills for usage on and after January 2, 2007, through
10 the September 2007 billing period.

11 (g) Programs that use funds that are provided by electric
12 utilities and their holding companies or other affiliates, and
13 any other company owning generation in this State or its
14 affiliates, to reduce utility bills, or to otherwise offset
15 costs incurred by the utilities in mitigating rate increases
16 for certain customer groups, may be implemented through tariffs
17 that are filed with and reviewed by the Commission. If a
18 utility elects to file tariffs with the Commission to implement
19 all or a portion of the programs, those tariffs shall,
20 regardless of the date actually filed, be deemed accepted and
21 approved, and shall become effective, on the effective date of
22 this amendatory Act of the 95th General Assembly. The electric
23 utilities whose customers benefit from the funds that are
24 disbursed as contemplated in this Section shall file annual
25 reports documenting the disbursement of those funds with the
26 Commission and the Illinois Attorney General. The Commission

1 has the authority to audit disbursement of the funds to ensure
2 they were disbursed consistently with this Section.

3 (h) Nothing in this Section shall be interpreted to limit
4 the Commission's general authority over ratemaking.

5 (i) Subject to the terms, conditions, and contingencies of
6 the Rate Relief Agreements, the Generators are providing a
7 total of \$25,000,000 to the Illinois Power Agency Trust Fund.

8 (j) None of the contributions by Commonwealth Edison
9 Company or the Ameren Utilities pursuant to this Section may be
10 recovered in rates.

11 (k) Nothing in this Section shall be interpreted to limit
12 the authority or right of the Illinois Attorney General, under
13 the terms of the Rate Relief Agreements, to review or audit
14 documents, make demands, or file suit or to take other action
15 to enforce the provisions of the Rate Relief Agreements.

16 (220 ILCS 5/16-111.6 new)

17 Sec. 16-111.6. Termination of utility service to electric
18 space-heating customers. Notwithstanding any other provision
19 of this Act or any other law to the contrary, a public utility
20 that, on December 31, 2005, served more than 100,000 electric
21 customers in Illinois may not, prior to September 1, 2007,
22 terminate electric service to a residential electric
23 space-heating customer for non-payment. For 2007 and every year
24 thereafter, such an electric utility shall not terminate
25 electric service to a residential space-heating customer for

1 non-payment from December 1 through March 31.

2 (220 ILCS 5/16-113)

3 Sec. 16-113. Declaration of service as a competitive
4 service.

5 (a) An electric utility may, by petition, request the
6 Commission to declare a tariffed service that is provided by
7 the electric utility, and that has not otherwise been declared
8 to be competitive, to be a competitive service. The electric
9 utility shall give notice of its petition to the public in the
10 same manner that public notice is provided for proposed general
11 increases in rates for tariffed services, in accordance with
12 rules and regulations prescribed by the Commission. The
13 Commission shall hold a hearing and ~~on the petition if a~~
14 ~~hearing is deemed necessary by the Commission. The Commission~~
15 shall declare the class of tariffed service to be a competitive
16 service ~~for some identifiable customer segment or group of~~
17 ~~customers, or some clearly defined geographical area~~ within the
18 electric utility's service area, only after the electric
19 utility demonstrates that at least 33% of the customers in the
20 electric utility's service area that are eligible to take the
21 class of tariffed service instead take service from alternative
22 retail electric suppliers, as defined in Section 16-102, and
23 that at least 3 alternative retail electric suppliers provide
24 service that is comparable to the class of tariffed service to
25 those customers in the electric utility's service area that do

1 not take service from the electric utility. ~~if the service or a~~
2 ~~reasonably equivalent substitute service is reasonably~~
3 ~~available to the customer segment or group or in the defined~~
4 ~~geographical area at a comparable price from one or more~~
5 ~~providers other than the electric utility or an affiliate of~~
6 ~~the electric utility, and the electric utility has lost or~~
7 ~~there is a reasonable likelihood that the electric utility will~~
8 ~~lose business for the service to the other provider or~~
9 ~~providers; provided, that the Commission may not declare the~~
10 ~~provision of electric power and energy to be competitive~~
11 ~~pursuant to this subsection with respect to (i) any retail~~
12 ~~customer or group of retail customers that is not eligible~~
13 ~~pursuant to Section 16-104 to take delivery services provided~~
14 ~~by the electric utility and (ii) any residential and small~~
15 ~~commercial retail customers prior to the last date on which~~
16 ~~such customers are required to pay transition charges. In~~
17 ~~determining whether to grant or deny a petition to declare the~~
18 ~~provision of electric power and energy competitive, the~~
19 ~~Commission shall consider, in applying the above criteria,~~
20 ~~whether there is adequate transmission capacity into the~~
21 ~~service area of the petitioning electric utility to make~~
22 ~~electric power and energy reasonably available to the customer~~
23 ~~segment or group or in the defined geographical area from one~~
24 ~~or more providers other than the electric utility or an~~
25 ~~affiliate of the electric utility, in accordance with this~~
26 ~~subsection.~~ The Commission shall make its determination and

1 issue its final order declaring or refusing to declare the
2 service to be a competitive service within 180 ~~120~~ days
3 following the date that the petition is filed, ~~or otherwise the~~
4 ~~petition shall be deemed to be granted; provided, that if the~~
5 ~~petition is deemed to be granted by operation of law, the~~
6 ~~Commission shall not thereby be precluded from finding and~~
7 ~~ordering, in a subsequent proceeding initiated by the~~
8 ~~Commission, and after notice and hearing, that the service is~~
9 ~~not competitive based on the criteria set forth in this~~
10 ~~subsection.~~

11 (b) Except as otherwise set forth in this Section, any Any
12 customer except a customer identified in subsection (c) of
13 Section 16-103 who is taking a tariffed service that is
14 declared to be a competitive service pursuant to subsection (a)
15 of this Section shall be entitled to continue to take the
16 service from the electric utility on a tariffed basis for a
17 period of 3 years following the date that the service is
18 declared competitive, or such other period as is stated in the
19 electric utility's tariff pursuant to Section 16-110. This
20 subsection shall not require the electric utility to offer or
21 provide on a tariffed basis any service to any customer (except
22 those customers identified in subsection (c) of Section 16-103)
23 that was not taking such service on a tariffed basis on the
24 date the service was declared to be competitive.

25 Customers of an electric utility that on December 31, 2005
26 provided electric service to at least 2,000,000 customers in

1 Illinois and (i) whose service is declared to be a competitive
2 service pursuant to subsection (f) of this Section, (ii) that
3 have peak demand of 400 kilowatts and above, and (iii) that
4 were taking that service from the utility on the effective date
5 of this amendatory Act through fixed-price bundled service
6 tariffs, shall be entitled to continue to take the service from
7 the electric utility on a tariffed basis through the end of the
8 May 2008 billing period. Customers of an electric utility that
9 on December 31, 2005 provided electric service to at least
10 2,000,000 customers in Illinois and (i) whose service is
11 declared to be a competitive service pursuant to subsection (g)
12 of this Section, (ii) that have peak demand of 100 kilowatts
13 and above but less than 400 kilowatts, and (iii) that were
14 taking that service from the utility on the effective date of
15 this amendatory Act through fixed-price bundled service
16 tariffs, shall be entitled to continue to take the service from
17 the electric utility on a tariffed basis through the end of the
18 May 2010 billing period.

19 Customers of an electric utility that on December 31, 2005
20 provided electric service to 2,000,000 or fewer customers but
21 more than 100,000 customers in Illinois and (i) whose service
22 is declared to be a competitive service pursuant to subsection
23 (f) of this Section, (ii) that have peak demand of one megawatt
24 and above, and (iii) that were taking that service from the
25 utility on the effective date of this amendatory Act through
26 fixed-price bundled service tariffs, shall be entitled to

1 continue to take the service from the electric utility on a
2 tariffed basis through the end of May 2008. Customers of an
3 electric utility that on December 31, 2005 provided electric
4 service to 2,000,000 or fewer customers but more than 100,000
5 customers in the State of Illinois and (i) whose service is
6 declared to be a competitive service pursuant to subsection (f)
7 of this Section, (ii) that have peak demand of 400 kilowatts
8 and above but less than one megawatt, and (iii) that were
9 taking that service from the utility on the effective date of
10 this amendatory Act through fixed-price bundled service
11 tariffs, shall be entitled to continue to take the service from
12 the electric utility on a tariffed basis through the end of May
13 2010.

14 (c) If the Commission denies a petition to declare a
15 service to be a competitive service, or determines in a
16 separate proceeding that a service is not competitive based on
17 the criteria set forth in subsection (a), the electric utility
18 may file a new petition no earlier than 6 months following the
19 date of the Commission's order, requesting, on the basis of
20 additional or different facts and circumstances, that the
21 service be declared to be a competitive service.

22 (d) The Commission shall not deny a petition to declare a
23 service to be a competitive service, and shall not find that a
24 service is not a competitive service, on the grounds that it
25 has previously denied the petition of another electric utility
26 to declare the same or a similar service to be a competitive

1 service or has previously determined that the same or a similar
2 service provided by another electric utility is not a
3 competitive service.

4 (e) An electric utility may declare a service, other than
5 delivery services or the provision of electric power or energy,
6 to be competitive by filing with the Commission at least 14
7 days prior to the date on which the service is to become
8 competitive a notice describing the service that is being
9 declared competitive and the date on which it will become
10 competitive; provided, that any customer who is taking a
11 tariffed service that is declared to be a competitive service
12 pursuant to this subsection (e) shall be entitled to continue
13 to take the service from the electric utility on a tariffed
14 basis until the electric utility files, and the Commission
15 grants, a petition to declare the service competitive in
16 accordance with subsection (a) of this Section. The Commission
17 shall be authorized to find and order, after notice and hearing
18 in a subsequent proceeding initiated by the Commission, that
19 any service declared to be competitive pursuant to this
20 subsection (e) is not competitive in accordance with the
21 criteria set forth in subsection (a) of this Section.

22 (f) As of the effective date of this amendatory Act, the
23 provision of electric power and energy, whether through
24 fixed-price bundled service tariffs or otherwise, to those
25 retail customers with peak demands of 400 kilowatts and above
26 that are served by an electric utility that on December 31,

1 2005 served more than 100,000 customers in its service
2 territory in Illinois shall be deemed to be, and is declared to
3 be, a competitive service.

4 (g) An electric utility that provided electric service to
5 at least 100,000 customers in its service territory in Illinois
6 as of December 31, 2005 may seek to declare the provision of
7 electric power and energy, whether through fixed-price bundled
8 service tariffs or otherwise, to those retail customers with
9 peak demand of 100 kilowatts and above but less than 400
10 kilowatts to be competitive by filing with the Commission at
11 least 60 days prior to the date on which the service is to
12 become competitive a petition with attached analyses
13 demonstrating that at least 33% of those customers in the
14 electric utility's service area that are eligible to take the
15 class of tariffed service instead take service from alternative
16 retail electric suppliers, as defined in Section 16-102, and
17 that at least 3 alternative retail electric suppliers provide
18 service that is comparable to that tariffed service to those
19 customers in the electric utility's service area that do not
20 take service from the electric utility. The electric utility
21 shall give notice of its petition to the public in the same
22 manner that public notice is provided for proposed general
23 increases in rates for tariffed services, in accordance with
24 rules and regulations prescribed by the Commission. Within 14
25 days following filing of the petition, any person may file a
26 detailed objection with the Commission contesting the analyses

1 submitted by the electric utility with its petition. All
2 objections to the electric utility's petition shall be
3 specific, supported by data or other detailed analyses, and
4 limited to whether the electric utility has met the standard
5 set forth in this subsection (g). The electric utility may file
6 a response to any objections to its petition within 7 days
7 after the deadline for objections. The Commission shall declare
8 the provision of electric power and energy by the electric
9 utility to those retail customers with peak demand of 100
10 kilowatts and above but less than 400 kilowatts to be a
11 competitive service within 30 days after the filing of the
12 petition if it finds that the electric utility has met the
13 standard set forth in this subsection (g). If, however, the
14 Commission finds that there are material issues of disputed
15 fact, it may require the parties to submit additional
16 information, including through additional filings or as part of
17 an evidentiary hearing. If the Commission has required the
18 parties to submit additional information, it shall issue an
19 order within 60 days after the filing of the petition stating
20 whether the provision of electric power and energy by the
21 utility to those retail customers with peak demand of 100
22 kilowatts and above but less than 400 kilowatts has been
23 declared to be a competitive service.

24 (h) Until July 1, 2012, no electric utility that on
25 December 31, 2005 provided electric service to at least 100,000
26 customers in its service territory in Illinois may seek to

1 declare the class of tariffed service for residential customers
2 and those non-residential customers with peak demand of less
3 than 100 kilowatts to be a competitive service.

4 (Source: P.A. 90-561, eff. 12-16-97.)

5 (220 ILCS 5/16-126.1 new)

6 Sec. 16-126.1. Regional transmission organization
7 memberships. The State shall not directly or indirectly
8 prohibit an electric utility that on December 31, 2005 provided
9 electric service to at least 100,000 customers in Illinois from
10 membership in a Federal Energy Regulatory Commission approved
11 regional transmission organization of its choosing. Nothing in
12 this Section limits any authority the Commission otherwise has
13 to regulate that electric utility. This Section ceases to be
14 effective on July 1, 2022 unless extended by the General
15 Assembly by law.

16 (220 ILCS 5/16-127)

17 Sec. 16-127. Environmental disclosure.

18 (a) Effective January 1, 1999, every electric utility and
19 alternative retail electric supplier shall provide the
20 following information, to the maximum extent practicable, with
21 its bills to its customers on a quarterly basis:

22 (i) the known sources of electricity supplied,
23 broken-out by percentages, of biomass power, coal-fired
24 power, hydro power, natural gas-fired power, nuclear

1 power, oil-fired power, solar power, wind power and other
2 resources, respectively; ~~and~~

3 (ii) a pie-chart that ~~which~~ graphically depicts the
4 percentages of the sources of the electricity supplied as
5 set forth in subparagraph (i) of this subsection; ~~and.~~

6 (iii) a pie-chart that graphically depicts the
7 quantity of renewable energy resources procured pursuant
8 to Section 1-75 of the Illinois Power Agency Act as a
9 percentage of electricity supplied to serve eligible
10 retail customers as defined in Section 16-111.5(a) of this
11 Act.

12 (b) In addition, every electric utility and alternative
13 retail electric supplier shall provide, to the maximum extent
14 practicable, with its bills to its customers on a quarterly
15 basis, a standardized chart in a format to be determined by the
16 Commission in a rule following notice and hearings which
17 provides the amounts of carbon dioxide, nitrogen oxides and
18 sulfur dioxide emissions and nuclear waste attributable to the
19 known sources of electricity supplied as set forth in
20 subparagraph (i) of subsection (a) of this Section.

21 (c) The electric utilities and alternative retail electric
22 suppliers may provide their customers with such other
23 information as they believe relevant to the information
24 required in subsections (a) and (b) of this Section.

25 (d) For the purposes of subsection (a) of this Section,
26 "biomass" means dedicated crops grown for energy production and

1 organic wastes.

2 (e) All of the information provided in subsections (a) and
3 (b) of this Section shall be presented to the Commission for
4 inclusion in its World Wide Web Site.

5 (Source: P.A. 90-561, eff. 12-16-97; 90-624, eff. 7-10-98.)

6 ARTICLE 99

7 Section 99-97. Severability. The provisions of this Act are
8 severable under Section 1.31 of the Statute on Statutes.

9 Section 99-99. Effective date. This Act takes effect upon
10 becoming law.".