



## 97TH GENERAL ASSEMBLY

### State of Illinois

### 2011 and 2012

### HB1370

Introduced 2/9/2011, by Rep. Thomas Holbrook

#### SYNOPSIS AS INTRODUCED:

20 ILCS 3855/1-92

Amends the Illinois Power Agency Act. In provisions concerning the aggregation of retail electrical load of residential and small commercial retail customers by municipalities and counties, provides that any aggregation program that operates as an opt-out program shall apply solely to residential and small commercial retail customers that are taking service from the electric utility through fixed-price bundled service tariffs. Provides that the corporate authorities or the county board shall allow new residents outside of an opt-out period and non-applicable residential and small commercial retail customers who were not eligible to receive the opt-out notice to affirmatively commit to the terms and conditions of an opt-out program at any time during the length of the program under a process disclosed in the plan of operation and governance. Sets forth provisions concerning the plan of operation and governance for an opt-out program. Sets forth provisions concerning requests made by the corporate authorities or the county board in the aggregate area for certain information from the electric utility related to applicable residential and small commercial retail customers in the aggregate area. Provides that the Illinois Commerce Commission shall adopt rules to implement the provisions of the amendatory Act, including, but not limited to, protection of customers already under contract with an alternative retail electric supplier, utility processes for enrollment of opt-out customers, minimum disclosure requirements for opt-out aggregation programs and licensing of municipalities. Makes other changes. Effective immediately.

LRB097 09315 ASK 49450 b

FISCAL NOTE ACT  
MAY APPLY

HOME RULE NOTE  
ACT MAY APPLY

1 AN ACT concerning State government.

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

4 Section 5. The Illinois Power Agency Act is amended by  
5 changing Section 1-92 as follows:

6 (20 ILCS 3855/1-92)

7 Sec. 1-92. Aggregation of retail electrical load of  
8 residential and small commercial retail customers by  
9 municipalities and counties.

10 (a) The corporate authorities of a municipality or county  
11 board of a county may adopt an ordinance under which it may  
12 aggregate, in accordance with this Section, ~~residential and~~  
13 ~~small commercial~~ retail electrical loads of applicable  
14 residential and small commercial retail customers located,  
15 respectively, within the municipality or the unincorporated  
16 areas of the county and, for that purpose, may solicit bids and  
17 enter into service agreements to facilitate for those loads the  
18 sale and purchase of electricity and related services and  
19 equipment.

20 If the corporate authorities or the county board seek to  
21 operate the aggregation program as an opt-out program, then the  
22 program applies solely to residential and small commercial  
23 retail customers that are taking service from the electric

1 utility through fixed-price bundled service tariffs. The  
2 corporate authorities or the county board shall allow new  
3 residents outside of an opt-out period, and non-applicable  
4 residential and small commercial retail customers who were not  
5 eligible to receive the opt-out notice, to affirmatively commit  
6 to the terms and conditions of an opt-out program at any time  
7 during the length of the program under a process disclosed in  
8 the plan of operation and governance.

9 The corporate authorities or county board may also exercise  
10 such authority jointly with any other municipality or county.  
11 Two or more municipalities or counties, or a combination of  
12 both, may initiate a process jointly to authorize aggregation  
13 by a majority vote of each particular municipality or county as  
14 required by this Section.

15 If the corporate authorities or the county board seek to  
16 operate the aggregation program as an opt-out program for  
17 residential and small commercial retail customers, then prior  
18 to the adoption of an ordinance with respect to aggregation of  
19 residential and small commercial retail electric loads, the  
20 corporate authorities of a municipality or the county board of  
21 a county shall submit a referendum to its residents to  
22 determine whether or not the aggregation program shall operate  
23 as an opt-out program for residential and small commercial  
24 retail customers.

25 In addition to the notice and conduct requirements of the  
26 general election law, notice of the referendum shall state

1 briefly the purpose of the referendum. The question of whether  
2 the corporate authorities or the county board shall adopt an  
3 opt-out aggregation program for residential and small  
4 commercial retail customers shall be submitted to the electors  
5 of the municipality or county board at a regular election and  
6 approved by a majority of the electors voting on the question.  
7 The corporate authorities or county board must certify to the  
8 proper election authority, which must submit the question at an  
9 election in accordance with the Election Code.

10 The election authority must submit the question in  
11 substantially the following form:

12 Shall the (municipality or county in which the question  
13 is being voted upon) have the authority to arrange for the  
14 supply of electricity for its residential and small  
15 commercial retail customers who have not opted out of such  
16 program?

17 The election authority must record the votes as "Yes" or "No".

18 If a majority of the electors voting on the question vote  
19 in the affirmative, then the corporate authorities or county  
20 board may implement an opt-out aggregation program for  
21 residential and small commercial retail customers.

22 A referendum must pass in each particular municipality or  
23 county that is engaged in the aggregation program. If the  
24 referendum fails, then the corporate authorities or county  
25 board shall operate the aggregation program as an opt-in  
26 program for residential and small commercial retail customers.

1 An ordinance under this Section shall specify whether the  
2 aggregation will occur only with the prior consent of each  
3 person owning, occupying, controlling, or using an electric  
4 load center proposed to be aggregated. Nothing in this Section,  
5 however, authorizes the aggregation of electric loads that are  
6 served or authorized to be served by an electric cooperative as  
7 defined by and pursuant to the Electric Supplier Act or loads  
8 served by a municipality that owns and operates its own  
9 electric distribution system. No aggregation shall take effect  
10 unless approved by a majority of the members of the corporate  
11 authority or county board voting upon the ordinance.

12 A governmental aggregator under this Section is not a  
13 public utility, agent, broker, consultant, or an alternative  
14 retail electric supplier.

15 (b) Upon the applicable requisite authority under this  
16 Section, the corporate authorities or the county board, with  
17 assistance from the Illinois Power Agency, shall develop a plan  
18 of operation and governance for the aggregation program so  
19 authorized.

20 For an opt-out program, the plan shall specify the process  
21 and associated timelines for applicable residential and small  
22 commercial retail customers choosing to opt out of the program  
23 as well as for non-applicable customers affirmatively choosing  
24 to join the aggregation program. The plan for an opt-out  
25 program must ensure that applicable residential and small  
26 commercial retail customers are able to leave the aggregation

1 program at any time without penalties or fees, but at a minimum  
2 must be offered the opportunity to opt out every 3 years. The  
3 plan for the aggregation program must not interfere, conflict,  
4 or otherwise abrogate any existing contracts between an  
5 alternative retail electric supplier and residential and small  
6 commercial retail customers and contracts that are in effect  
7 pursuant to Section 16-111.5 of the Public Utilities Act and  
8 the applicable provisions of this Act as any such procurement  
9 plans have been approved by the Commission. In addition, the  
10 plan for the aggregation program should be properly integrated  
11 with any Commission-approved Illinois Power Agency procurement  
12 plan.

13 Before adopting a plan under this Section, the corporate  
14 authorities or county board shall hold at least 2 public  
15 hearings on the plan. Before the first hearing, the corporate  
16 authorities or county board shall publish notice of the  
17 hearings once a week for 2 consecutive weeks in a newspaper of  
18 general circulation in the jurisdiction. The notice shall  
19 summarize the plan and state the date, time, and location of  
20 each hearing. Any load aggregation plan established pursuant to  
21 this Section shall:

22 (1) provide for universal access to all applicable  
23 residential customers and equitable treatment of  
24 applicable residential customers;

25 (2) describe demand management and energy efficiency  
26 services to be provided ~~to each class of customers~~; and

1           (3) meet any requirements established by law  
2 concerning aggregated service offered pursuant to this  
3 Section.

4           (c) The process for soliciting bids for electricity and  
5 other related services and awarding proposed agreements for the  
6 purchase of electricity and other related services shall be  
7 conducted in the following order:

8           (1) The corporate authorities or county board may  
9 solicit bids for electricity and other related services.

10           (2) Notwithstanding Section 16-122 of the Public  
11 Utilities Act and Section 2HH of the Consumer Fraud and  
12 Deceptive Business Practices Act, an electric utility that  
13 provides residential and small commercial retail electric  
14 service in the aggregate area must, upon request of the  
15 corporate authorities or the county board in the aggregate  
16 area, submit to the requesting party, in an electronic  
17 format, those account numbers, names, and addresses of  
18 applicable residential and small commercial retail  
19 customers in the aggregate area of the municipality or  
20 unincorporated areas of the county that are reflected in  
21 the electric utility's records at the time of the request.  
22 An electric utility must exclude any customer already  
23 switched to an alternative retail electric supplier from  
24 the information provided to the corporate authority or  
25 county board in the aggregate area. Upon receiving  
26 enrollments from an opt-out aggregation, an electric

1       utility must design system processes to reject any opt-out  
2       aggregation enrollment that would result in the switch of a  
3       customer already under service with an alternative retail  
4       electric supplier. An electric utility may recover costs  
5       for system changes from all residential and small  
6       commercial customers. Any corporate authority or county  
7       board receiving customer information from an electric  
8       utility shall only disclose the information for the purpose  
9       of the opt-out aggregation and shall be subject to the  
10      limitations on the disclosure of the information described  
11      in Section 16-122 of the Public Utilities Act and Section  
12      2HH of the Consumer Fraud and Deceptive Business Practices  
13      Act, and an electric utility shall not be held liable for  
14      any claims arising out of the provision of information  
15      pursuant to this item (2).

16      (d) If the corporate authorities or county board operate  
17      under an opt-in program for residential and small commercial  
18      retail customers, then the corporate authorities or county  
19      board shall comply with all of the following:

20           (1) Within 60 days after receiving the bids, the  
21      corporate authorities or county board shall allow  
22      residential and small commercial retail customers to  
23      commit to the terms and conditions of a bid that has been  
24      selected by the corporate authorities or county board.

25           (2) If (A) the corporate authorities or county board  
26      award proposed agreements for the purchase of electricity



1 and other related services and (B) an agreement is reached  
2 between the corporate authorities or county board for those  
3 services, then customers committed to the terms and  
4 conditions according to item (1) of this subsection (d)  
5 shall be committed to the agreement.

6 (e) If the corporate authorities or county board operate as  
7 an opt-out program for residential and small commercial retail  
8 customers, then it shall be the duty of the aggregated entity  
9 to fully inform applicable residential and small commercial  
10 retail customers in advance that they have the right to opt out  
11 of the aggregation program. The disclosure shall prominently  
12 state all charges to be made and shall include full disclosure  
13 of the cost to obtain service pursuant to Section 16-103 of the  
14 Public Utilities Act, how to access it, and the fact that it is  
15 available to them without penalty, if they are currently  
16 receiving service under that Section.

17 The Illinois Commerce Commission shall adopt rules to  
18 implement the provisions of this amendatory Act of the 97th  
19 General Assembly, including, but not limited to, protection of  
20 customers already under contract with an alternative retail  
21 electric supplier, utility processes for enrollment of opt-out  
22 customers, minimum disclosure requirements for opt-out  
23 aggregation programs and licensing of municipalities.

24 The Illinois Power Agency shall furnish, without charge, to  
25 any residential and small commercial retail customer ~~citizen~~ a  
26 list of all supply options available to them in a format that

1 allows comparison of prices and products.

2 The Illinois Power Agency shall provide assistance to  
3 municipalities, counties, or associations working with  
4 municipalities to help complete the plan and bidding process.

5 This Section does not prohibit municipalities or counties  
6 from entering into an intergovernmental agreement to aggregate  
7 residential and small commercial retail electric loads.

8 (Source: P.A. 96-176, eff. 1-1-10.)

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