

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, shall ~~may~~ solicit
17 bids and enter into service agreements to facilitate for those
18 loads the sale and purchase of electricity and related services
19 and equipment through a competitive procurement process. For
20 purposes of this Section, small commercial retail customers of
21 an electric utility that on December 31, 2010 provided electric
22 service to at least 2,000,000 customers in Illinois shall be
23 those customers of the watt-hour only delivery service class.

1 For purposes of this Section, small commercial retail customers
2 of an electric utility that on December 31, 2010 provided
3 electric service to 2,000,000 or fewer customers but more than
4 100,000 customers in Illinois shall be those customers of an
5 electric utility consuming 15,000 kilowatt-hours or less of
6 electricity annually in its service area. Applicable
7 residential and small commercial retail customers in an
8 aggregation program shall not include customers of an
9 alternative retail electric supplier that is not the chosen
10 supplier of the aggregation program or customers participating
11 in a residential real-time pricing program or Percentage of
12 Income Payment Plan (PIPP) unless those customers
13 affirmatively choose to join the aggregation program.

14 If the corporate authorities or the county board seek to
15 operate the aggregation program as an opt-out program, then the
16 program applies solely to residential and small commercial
17 retail customers that are taking service from the electric
18 utility through fixed-price bundled service tariffs or taking
19 electric supply service offered by an alternative retail
20 electric supplier from an expiring or current aggregation
21 program. The corporate authorities or the county board shall
22 allow new residents outside of an opt-out period, and
23 non-applicable residential and small commercial retail
24 customers who were not eligible to receive the opt-out notice,
25 to affirmatively commit to the terms and conditions of an
26 opt-out program at any time during the length of the program

1 under a process disclosed in the plan of operation and
2 governance.

3 The corporate authorities or county board may also exercise
4 such authority jointly with any other municipality or county.
5 Two or more municipalities or counties, or a combination of
6 both, may initiate a process jointly to authorize aggregation
7 by a majority vote of each particular municipality or county as
8 required by this Section.

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

19 In addition to the notice and conduct requirements of the
20 general election law, notice of the referendum shall state
21 briefly the purpose of the referendum. The question of whether
22 the corporate authorities or the county board shall adopt an
23 opt-out aggregation program for residential and small
24 commercial retail customers shall be submitted to the electors
25 of the municipality or county board at a regular election and
26 approved by a majority of the electors voting on the question.

1 The corporate authorities or county board must certify to the
2 proper election authority, which must submit the question at an
3 election in accordance with the Election Code.

4 The election authority must submit the question in
5 substantially the following form:

6 Shall the (municipality or county in which the question
7 is being voted upon) have the authority to arrange for the
8 supply of electricity for its residential and small
9 commercial retail customers who have not opted out of such
10 program?

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

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

16 A referendum must pass in each particular municipality or
17 county that is engaged in the aggregation program. If the
18 referendum fails, then the corporate authorities or county
19 board shall operate the aggregation program as an opt-in
20 program for residential and small commercial retail customers.

21 An ordinance under this Section shall specify whether the
22 aggregation will occur only with the prior consent of each
23 person owning, occupying, controlling, or using an electric
24 load center proposed to be aggregated. Nothing in this Section,
25 however, authorizes the aggregation of electric loads that are
26 served or authorized to be served by an electric cooperative as

1 defined by and pursuant to the Electric Supplier Act or loads
2 served by a municipality that owns and operates its own
3 electric distribution system. No aggregation shall take effect
4 unless approved by a majority of the members of the corporate
5 authority or county board voting upon the ordinance.

6 A governmental aggregator under this Section is not a
7 public utility, agent, broker, consultant, or an alternative
8 retail electric supplier. Nothing in this Section prohibits a
9 governmental aggregator from retaining the services of an
10 agent, broker, or consultant.

11 (a-5) A governmental aggregator must utilize the services
12 of a qualified expert for the execution of a competitive
13 procurement process to meet the supply needs of its
14 aggregation. The qualified expert must be separate from, and
15 maintain no business relationship with, any other consultant
16 providing services to the governmental aggregator. A qualified
17 expert, as evidenced by a certified affidavit, must have:

18 (1) direct previous experience administering
19 large-scale competitive procurement processes;

20 (2) an advanced degree in economics, mathematics,
21 engineering, or a related area of study;

22 (3) ten years of experience in the electricity sector,
23 including risk management experience;

24 (4) expertise in credit and contract protocols;

25 (5) adequate resources to perform and fulfill the
26 required functions and responsibilities, including a

1 bidding and posting process that provides complete
2 auditable communication and bidding recording functions;
3 and

4 (6) the absence of a conflict of interest and
5 inappropriate bias for or against potential bidders as
6 evidenced by an affidavit certifying that the expert does
7 not maintain compensation or agency agreements with any of
8 the bidders participating in the procurement event.

9 (a-10) The Director of the Illinois Power Agency shall
10 provide governmental aggregators and other interested parties
11 with the names of experts deemed as qualified by the Agency to
12 serve as the procurement administrators for the most recent
13 Agency-administered procurement events.

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

19 For an opt-out program, the plan shall specify the process
20 and associated timelines for applicable residential and small
21 commercial retail customers choosing to opt out of the program
22 as well as for non-applicable customers affirmatively choosing
23 to join the aggregation program. The plan for an opt-out
24 program shall ensure that applicable residential and small
25 commercial retail customers are explicitly allowed through
26 written or electronic notice the opportunity to opt out of the

1 aggregation program at a minimum of once every 3 years with no
2 penalty, with the right to opt out to either (i) the electric
3 utility if bundled retail electric service is still offered to
4 that customer class pursuant to Section 16-103 of the Public
5 Utilities Act, (ii) an electric utility's residential
6 real-time pricing rate, if available, or (iii) an electric
7 supply service offered by an alternative retail electric
8 supplier certified by the Commission. The plan for the
9 aggregation program shall not conflict with or otherwise
10 abrogate any existing contracts between an alternative retail
11 electric supplier and residential and small commercial retail
12 customers.

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 shall ~~may~~
9 solicit bids for electricity and other related services
10 through a competitive procurement process.

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

1 Income Payment Plan from the information provided to the
2 corporate authority or county board in the aggregate area.
3 Upon receiving enrollments from an opt-out aggregation, an
4 electric utility shall design system processes to reject
5 any opt-out aggregation enrollment that would result in the
6 switch of a customer already under service with an
7 alternative retail electric supplier, participating in a
8 residential real-time pricing program, or participating in
9 a Percentage of Income Payment Plan. Any corporate
10 authority or county board receiving customer information
11 from an electric utility shall only disclose the
12 information for the purpose of the opt-out aggregation of
13 electric power supply and shall be subject to the
14 limitations on the disclosure of the information described
15 in Section 16-122 of the Public Utilities Act and Section
16 2HH of the Consumer Fraud and Deceptive Business Practices
17 Act, and an electric utility shall not be held liable for
18 any claims arising out of the provision of information
19 pursuant to this item (2).

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

24 (1) Within 60 days after receiving the bids, the
25 corporate authorities or county board shall allow
26 residential and small commercial retail customers to

1 commit to the terms and conditions of a bid that has been
2 selected by the corporate authorities or county board.

3 (2) If (A) the corporate authorities or county board
4 award proposed agreements for the purchase of electricity
5 and other related services and (B) an agreement is reached
6 between the corporate authorities or county board for those
7 services, then customers committed to the terms and
8 conditions according to item (1) of this subsection (d)
9 shall be committed to the agreement.

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

21 The Illinois Commerce Commission shall adopt emergency
22 rules to implement the provisions of this amendatory Act of the
23 97th General Assembly, including, but not limited to,
24 protection of customers (i) already under contract with an
25 alternative retail electric supplier, (ii) participating in a
26 residential real-time pricing program, or (iii) participating

1 in a Percentage of Income Payment Plan, utility processes for
2 enrollment of opt-out customers, and minimum disclosure
3 requirements for opt-out aggregation programs within 45 days
4 after the effective date of this amendatory Act of the 97th
5 General Assembly.

6 The Illinois Power Agency shall furnish, without charge, to
7 any residential and small commercial retail customer ~~citizen~~ a
8 list of all supply options available to them in a format that
9 allows comparison of prices and products.

10 The Illinois Power Agency shall provide assistance to
11 municipalities, counties, or associations working with
12 municipalities to help complete the plan and bidding process.

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

16 Any aggregation program plan adopted prior to the effective
17 date of this amendatory Act of the 97th General Assembly shall
18 not be exempt from the provisions of this amendatory Act of the
19 97th General Assembly.

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

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.