



Sen. David Koehler

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LRB097 09314 ASK 53035 a

1 AMENDMENT TO SENATE BILL 1802

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1802 by replacing  
3 everything after the enacting clause with the following:

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

1 enter into service agreements to facilitate for those loads the  
2 sale and purchase of electricity and related services and  
3 equipment. For purposes of this Section, small commercial  
4 retail customers shall not be eligible to participate in an  
5 aggregation program until January 1, 2013. Applicable  
6 residential and small commercial retail customers in an  
7 aggregation program shall not include customers of an  
8 alternative retail electric supplier or customers  
9 participating in a utility-offered residential real-time  
10 pricing program or Percentage of Income Payment Plan (PIPP)  
11 unless those customers affirmatively choose to join the  
12 aggregation program.

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

25 The corporate authorities or county board may also exercise  
26 such authority jointly with any other municipality or county.

1 Two or more municipalities or counties, or a combination of  
2 both, may initiate a process jointly to authorize aggregation  
3 by a majority vote of each particular municipality or county as  
4 required by this Section.

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

15 In addition to the notice and conduct requirements of the  
16 general election law, notice of the referendum shall state  
17 briefly the purpose of the referendum. The question of whether  
18 the corporate authorities or the county board shall adopt an  
19 opt-out aggregation program for residential and small  
20 commercial retail customers shall be submitted to the electors  
21 of the municipality or county board at a regular election and  
22 approved by a majority of the electors voting on the question.  
23 The corporate authorities or county board must certify to the  
24 proper election authority, which must submit the question at an  
25 election in accordance with the Election Code.

26 The election authority must submit the question in

1 substantially the following form:

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

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

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

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

17          An ordinance under this Section shall specify whether the  
18          aggregation will occur only with the prior consent of each  
19          person owning, occupying, controlling, or using an electric  
20          load center proposed to be aggregated. Nothing in this Section,  
21          however, authorizes the aggregation of electric loads that are  
22          served or authorized to be served by an electric cooperative as  
23          defined by and pursuant to the Electric Supplier Act or loads  
24          served by a municipality that owns and operates its own  
25          electric distribution system. No aggregation shall take effect  
26          unless approved by a majority of the members of the corporate

1 authority or county board voting upon the ordinance.

2 A governmental aggregator under this Section is not a  
3 public utility, agent, broker, consultant, or an alternative  
4 retail electric supplier. Nothing in this Section prohibits a  
5 governmental aggregator from retaining the services of an  
6 agent, broker, or consultant.

7 (b) Upon the applicable requisite authority under this  
8 Section, the corporate authorities or the county board, with  
9 assistance from the Illinois Power Agency, shall develop a plan  
10 of operation and governance for the aggregation program so  
11 authorized.

12 For an opt-out program, the plan shall specify the process  
13 and associated timelines for applicable residential and small  
14 commercial retail customers choosing to opt out of the program  
15 as well as for non-applicable customers affirmatively choosing  
16 to join the aggregation program. The plan for an opt-out  
17 program must ensure that applicable residential and small  
18 commercial retail customers are able to leave the aggregation  
19 program at any time without penalties or fees, with the right  
20 to opt out to either (i) the electric utility if bundled retail  
21 electric service is still offered to that customer class  
22 pursuant to Section 16-103 of the Public Utilities Act, (ii) an  
23 electric utility's residential real-time pricing rate, if  
24 available, or (iii) an electric supply service offered by an  
25 alternative retail electric supplier certified by the  
26 Commission. The plan must provide for, and the corporate

1 authorities must provide, a reminder of this opt-out right to  
2 participants in the aggregation program at least once every 3  
3 years. The plan for the aggregation program must not interfere,  
4 conflict, or otherwise abrogate any existing contracts between  
5 an alternative retail electric supplier and residential and  
6 small commercial retail customers and contracts that are in  
7 effect pursuant to Section 16-111.5 of the Public Utilities Act  
8 and the applicable provisions of this Act as any such  
9 procurement plans have been approved by the Commission. In  
10 addition, the plan for the aggregation program should be  
11 properly integrated with any Commission-approved Illinois  
12 Power Agency procurement 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. Any corporate authority or county board  
5       receiving customer information from an electric utility  
6       shall only disclose the information for the purpose of the  
7       opt-out aggregation and shall be subject to the limitations  
8       on the disclosure of the information described in Section  
9       16-122 of the Public Utilities Act and Section 2HH of the  
10      Consumer Fraud and Deceptive Business Practices Act, and an  
11      electric utility shall not be held liable for any claims  
12      arising out of the provision of information pursuant to  
13      this item (2).

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

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

23           (2) If (A) the corporate authorities or county board  
24           award proposed agreements for the purchase of electricity  
25           and other related services and (B) an agreement is reached  
26           between the corporate authorities or county board for those



1 services, then customers committed to the terms and  
2 conditions according to item (1) of this subsection (d)  
3 shall be committed to the agreement.

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

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

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

26 The Illinois Power Agency shall provide assistance to

1 municipalities, counties, or associations working with  
2 municipalities to help complete the plan and bidding process.

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

6 Any aggregation program plan adopted prior to the effective  
7 date of this amendatory Act of the 97th General Assembly shall  
8 not be exempt from the provisions of this amendatory Act of the  
9 97th General Assembly.

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

11 Section 99. Effective date. This Act takes effect upon  
12 becoming law."