



Sen. James F. Clayborne, Jr.

Filed: 2/22/2012

09700SB3173sam001

LRB097 19727 CEL 65893 a

1 AMENDMENT TO SENATE BILL 3173

2 AMENDMENT NO. _____. Amend Senate Bill 3173 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Power Agency Act is amended by
5 changing Sections 1-10 and 1-20 and by adding Section 1-76 as
6 follows:

7 (20 ILCS 3855/1-10)

8 Sec. 1-10. Definitions.

9 "Agency" means the Illinois Power Agency.

10 "Agency loan agreement" means any agreement pursuant to
11 which the Illinois Finance Authority agrees to loan the
12 proceeds of revenue bonds issued with respect to a project to
13 the Agency upon terms providing for loan repayment installments
14 at least sufficient to pay when due all principal of, interest
15 and premium, if any, on those revenue bonds, and providing for
16 maintenance, insurance, and other matters in respect of the

1 project.

2 "Authority" means the Illinois Finance Authority.

3 "Clean coal facility" means an electric generating
4 facility that uses primarily coal as a feedstock and that
5 captures and sequesters carbon dioxide emissions at the
6 following levels: at least 50% of the total carbon dioxide
7 emissions that the facility would otherwise emit if, at the
8 time construction commences, the facility is scheduled to
9 commence operation before 2016, at least 70% of the total
10 carbon dioxide emissions that the facility would otherwise emit
11 if, at the time construction commences, the facility is
12 scheduled to commence operation during 2016 or 2017, and at
13 least 90% of the total carbon dioxide emissions that the
14 facility would otherwise emit if, at the time construction
15 commences, the facility is scheduled to commence operation
16 after 2017. The power block of the clean coal facility shall
17 not exceed allowable emission rates for sulfur dioxide,
18 nitrogen oxides, carbon monoxide, particulates and mercury for
19 a natural gas-fired combined-cycle facility the same size as
20 and in the same location as the clean coal facility at the time
21 the clean coal facility obtains an approved air permit. All
22 coal used by a clean coal facility shall have high volatile
23 bituminous rank and greater than 1.7 pounds of sulfur per
24 million btu content, unless the clean coal facility does not
25 use gasification technology and was operating as a conventional
26 coal-fired electric generating facility on June 1, 2009 (the

1 effective date of Public Act 95-1027).

2 "Clean coal SNG brownfield facility" means a facility that
3 (1) has commenced construction by July 1, 2015 on an urban
4 brownfield site in a municipality with at least 1,000,000
5 residents; (2) uses a gasification process to produce
6 substitute natural gas; (3) uses coal as at least 50% of the
7 total feedstock over the term of any sourcing agreement with a
8 utility and the remainder of the feedstock may be either
9 petroleum coke or coal, with all such coal having a high
10 bituminous rank and greater than 1.7 pounds of sulfur per
11 million Btu content unless the facility reasonably determines
12 that it is necessary to use additional petroleum coke to
13 deliver additional consumer savings, in which case the facility
14 shall use coal for at least 35% of the total feedstock over the
15 term of any sourcing agreement; and (4) captures and sequesters
16 at least 85% of the total carbon dioxide emissions that the
17 facility would otherwise emit.

18 "Clean coal SNG facility" means a facility that uses a
19 gasification process to produce substitute natural gas, that
20 sequesters at least 90% of the total carbon dioxide emissions
21 that the facility would otherwise emit, that uses at least 90%
22 coal as a feedstock, with all such coal having a high
23 bituminous rank and greater than 1.7 pounds of sulfur per
24 million btu content, and that has a valid and effective permit
25 to construct emission sources and air pollution control
26 equipment and approval with respect to the federal regulations

1 for Prevention of Significant Deterioration of Air Quality
2 (PSD) for the plant pursuant to the federal Clean Air Act;
3 provided, however, a clean coal SNG brownfield facility shall
4 not be a clean coal SNG facility.

5 "Commission" means the Illinois Commerce Commission.

6 "Costs incurred in connection with the development and
7 construction of a facility" means:

8 (1) the cost of acquisition of all real property,
9 fixtures, and improvements in connection therewith and
10 equipment, personal property, and other property, rights,
11 and easements acquired that are deemed necessary for the
12 operation and maintenance of the facility;

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

15 (3) all origination, commitment, utilization,
16 facility, placement, underwriting, syndication, credit
17 enhancement, and rating agency fees;

18 (4) engineering, design, procurement, consulting,
19 legal, accounting, title insurance, survey, appraisal,
20 escrow, trustee, collateral agency, interest rate hedging,
21 interest rate swap, capitalized interest, contingency, as
22 required by lenders, and other financing costs, and other
23 expenses for professional services; and

24 (5) the costs of plans, specifications, site study and
25 investigation, installation, surveys, other Agency costs
26 and estimates of costs, and other expenses necessary or

1 incidental to determining the feasibility of any project,
2 together with such other expenses as may be necessary or
3 incidental to the financing, insuring, acquisition, and
4 construction of a specific project and starting up,
5 commissioning, and placing that project in operation.

6 "Department" means the Department of Commerce and Economic
7 Opportunity.

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

9 "Demand-response" means measures that decrease peak
10 electricity demand or shift demand from peak to off-peak
11 periods.

12 "Distributed renewable energy generation device" means a
13 device that is:

14 (1) powered by wind, solar thermal energy,
15 photovoltaic cells and panels, biodiesel, crops and
16 untreated and unadulterated organic waste biomass, tree
17 waste, and hydropower that does not involve new
18 construction or significant expansion of hydropower dams;

19 (2) interconnected at the distribution system level of
20 either an electric utility as defined in this Section, an
21 alternative retail electric supplier as defined in Section
22 16-102 of the Public Utilities Act, a municipal utility as
23 defined in Section 3-105 of the Public Utilities Act, or a
24 rural electric cooperative as defined in Section 3-119 of
25 the Public Utilities Act;

26 (3) located on the customer side of the customer's

1 electric meter and is primarily used to offset that
2 customer's electricity load; and

3 (4) limited in nameplate capacity to no more than 2,000
4 kilowatts.

5 "Energy efficiency" means measures that reduce the amount
6 of electricity or natural gas required to achieve a given end
7 use.

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

10 "Facility" means an electric generating unit or a
11 co-generating unit that produces electricity along with
12 related equipment necessary to connect the facility to an
13 electric transmission or distribution system.

14 "Governmental aggregator" means one or more units of local
15 government that individually or collectively procure
16 electricity to serve residential retail electrical loads
17 located within its or their jurisdiction.

18 "Local government" means a unit of local government as
19 defined in ~~Article VII~~ of Section 1 of Article VII of the
20 Illinois Constitution.

21 "Municipal brownfield site" means a site (1) that is owned
22 by a municipality and conveyed or leased to a person proposing
23 to operate a qualified solar remediation facility on such site
24 and (2) that is the subject of a Superfund alternative approach
25 agreement between the United States Environmental Protection
26 Agency and potentially responsible parties in accordance with

1 the federal Comprehensive Environmental Response,
2 Compensation, and Liability Act of 1980, as amended, requiring
3 remedial clean up of such site.

4 "Municipality" means a city, village, or incorporated
5 town.

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

11 "Project" means the planning, bidding, and construction of
12 a facility.

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

15 "Qualified solar power purchase agreement" means an
16 agreement between the operator of a qualified solar remediation
17 facility and an electric utility that has terms and conditions
18 meeting the requirements of subsection (c) of Section 1-76 of
19 this Act.

20 "Qualified solar remediation facility" means an electric
21 generating facility:

22 (1) that uses primarily photovoltaic cells and panels
23 to produce energy;

24 (2) that is located at a municipal brownfield site;

25 (3) that has a nameplate capacity of no more than 20
26 megawatts; and

1 (4) where construction of the electric generating
2 facility structure has not commenced on or before the date
3 the application to approve a qualified solar power purchase
4 agreement for such facility is submitted to the Agency in
5 accordance with Section 1-76 of this Act.

6 "Real property" means any interest in land together with
7 all structures, fixtures, and improvements thereon, including
8 lands under water and riparian rights, any easements,
9 covenants, licenses, leases, rights-of-way, uses, and other
10 interests, together with any liens, judgments, mortgages, or
11 other claims or security interests related to real property.

12 "Renewable energy credit" means a tradable credit that
13 represents the environmental attributes of a certain amount of
14 energy produced from a renewable energy resource.

15 "Renewable energy resources" includes energy and its
16 associated renewable energy credit or renewable energy credits
17 from wind, solar thermal energy, photovoltaic cells and panels,
18 biodiesel, anaerobic digestion, crops and untreated and
19 unadulterated organic waste biomass, tree waste, hydropower
20 that does not involve new construction or significant expansion
21 of hydropower dams, and other alternative sources of
22 environmentally preferable energy. For purposes of this Act,
23 landfill gas produced in the State is considered a renewable
24 energy resource. "Renewable energy resources" does not include
25 the incineration or burning of tires, garbage, general
26 household, institutional, and commercial waste, industrial

1 lunchroom or office waste, landscape waste other than tree
2 waste, railroad crossties, utility poles, or construction or
3 demolition debris, other than untreated and unadulterated
4 waste wood.

5 "Revenue bond" means any bond, note, or other evidence of
6 indebtedness issued by the Authority, the principal and
7 interest of which is payable solely from revenues or income
8 derived from any project or activity of the Agency.

9 "Sequester" means permanent storage of carbon dioxide by
10 injecting it into a saline aquifer, a depleted gas reservoir,
11 or an oil reservoir, directly or through an enhanced oil
12 recovery process that may involve intermediate storage,
13 regardless of whether these activities are conducted by a clean
14 coal facility, a clean coal SNG facility, a clean coal SNG
15 brownfield facility, or a party with which a clean coal
16 facility, ~~or~~ clean coal SNG facility, or clean coal SNG
17 brownfield facility has contracted for such purposes.

18 "Sourcing agreement" means (i) in the case of an electric
19 utility, an agreement between the owner of a clean coal
20 facility and such electric utility, which agreement shall have
21 terms and conditions meeting the requirements of paragraph (3)
22 of subsection (d) of Section 1-75, (ii) in the case of an
23 alternative retail electric supplier, an agreement between the
24 owner of a clean coal facility and such alternative retail
25 electric supplier, which agreement shall have terms and
26 conditions meeting the requirements of Section 16-115(d) (5) of

1 the Public Utilities Act, and (iii) in case of a gas utility,
2 an agreement between the owner of a clean coal SNG brownfield
3 facility and the gas utility, which agreement shall have the
4 terms and conditions meeting the requirements of subsection
5 (h-1) of Section 9-220 of the Public Utilities Act.

6 "Substitute natural gas" or "SNG" means a gas manufactured
7 by gasification of hydrocarbon feedstock, which is
8 substantially interchangeable in use and distribution with
9 conventional natural gas.

10 "Total resource cost test" or "TRC test" means a standard
11 that is met if, for an investment in energy efficiency or
12 demand-response measures, the benefit-cost ratio is greater
13 than one. The benefit-cost ratio is the ratio of the net
14 present value of the total benefits of the program to the net
15 present value of the total costs as calculated over the
16 lifetime of the measures. A total resource cost test compares
17 the sum of avoided electric utility costs, representing the
18 benefits that accrue to the system and the participant in the
19 delivery of those efficiency measures, as well as other
20 quantifiable societal benefits, including avoided natural gas
21 utility costs, to the sum of all incremental costs of end-use
22 measures that are implemented due to the program (including
23 both utility and participant contributions), plus costs to
24 administer, deliver, and evaluate each demand-side program, to
25 quantify the net savings obtained by substituting the
26 demand-side program for supply resources. In calculating

1 avoided costs of power and energy that an electric utility
2 would otherwise have had to acquire, reasonable estimates shall
3 be included of financial costs likely to be imposed by future
4 regulations and legislation on emissions of greenhouse gases.

5 (Source: P.A. 96-33, eff. 7-10-09; 96-159, eff. 8-10-09;
6 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10; 97-96, eff.
7 7-13-11; 97-239, eff. 8-2-11; 97-491, eff. 8-22-11; 97-616,
8 eff. 10-26-11; revised 11-10-11.)

9 (20 ILCS 3855/1-20)

10 Sec. 1-20. General powers of the Agency.

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

12 (1) Develop electricity procurement plans to ensure
13 adequate, reliable, affordable, efficient, and
14 environmentally sustainable electric service at the lowest
15 total cost over time, taking into account any benefits of
16 price stability, for electric utilities that on December
17 31, 2005 provided electric service to at least 100,000
18 customers in Illinois and for small multi-jurisdictional
19 electric utilities that (A) on December 31, 2005 served
20 less than 100,000 customers in Illinois and (B) request a
21 procurement plan for their Illinois jurisdictional load.
22 The procurement plans shall be updated on an annual basis
23 and shall include electricity generated from renewable
24 resources sufficient to achieve the standards specified in
25 this Act.

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

5 (3) Develop electric generation and co-generation
6 facilities that use indigenous coal or renewable
7 resources, or both, financed with bonds issued by the
8 Illinois Finance Authority.

9 (4) Supply electricity from the Agency's facilities at
10 cost to one or more of the following: municipal electric
11 systems, governmental aggregators, or rural electric
12 cooperatives in Illinois.

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

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

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

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

24 (4) To obtain and employ personnel and hire consultants
25 that are necessary to fulfill the Agency's purposes, and to
26 make expenditures for that purpose within the

1 appropriations for that purpose.

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

7 (6) To acquire real or personal property, whether
8 tangible or intangible, including without limitation
9 property rights, interests in property, franchises,
10 obligations, contracts, and debt and equity securities,
11 and to do so by the exercise of the power of eminent domain
12 in accordance with Section 1-21; except that any real
13 property acquired by the exercise of the power of eminent
14 domain must be located within the State.

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

19 (8) To purchase, take, receive, subscribe for, or
20 otherwise acquire, hold, make a tender offer for, vote,
21 employ, sell, lend, lease, exchange, transfer, or
22 otherwise dispose of, mortgage, pledge, or grant a security
23 interest in, use, and otherwise deal in and with, bonds and
24 other obligations, shares, or other securities (or
25 interests therein) issued by others, whether engaged in a
26 similar or different business or activity.

1 (9) To make and execute agreements, contracts, and
2 other instruments necessary or convenient in the exercise
3 of the powers and functions of the Agency under this Act,
4 including contracts with any person, including personal
5 service contracts, or with any local government, State
6 agency, or other entity; and all State agencies and all
7 local governments are authorized to enter into and do all
8 things necessary to perform any such agreement, contract,
9 or other instrument with the Agency. No such agreement,
10 contract, or other instrument shall exceed 40 years.

11 (10) To lend money, invest and reinvest its funds in
12 accordance with the Public Funds Investment Act, and take
13 and hold real and personal property as security for the
14 payment of funds loaned or invested.

15 (11) To borrow money at such rate or rates of interest
16 as the Agency may determine, issue its notes, bonds, or
17 other obligations to evidence that indebtedness, and
18 secure any of its obligations by mortgage or pledge of its
19 real or personal property, machinery, equipment,
20 structures, fixtures, inventories, revenues, grants, and
21 other funds as provided or any interest therein, wherever
22 situated.

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

26 (13) To procure insurance against any loss in

1 connection with its properties or operations in such amount
2 or amounts and from such insurers, including the federal
3 government, as it may deem necessary or desirable, and to
4 pay any premiums therefor.

5 (14) To negotiate and enter into agreements with
6 trustees or receivers appointed by United States
7 bankruptcy courts or federal district courts or in other
8 proceedings involving adjustment of debts and authorize
9 proceedings involving adjustment of debts and authorize
10 legal counsel for the Agency to appear in any such
11 proceedings.

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

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

18 (17) To enter into an agreement to transfer and to
19 transfer any land, facilities, fixtures, or equipment of
20 the Agency to one or more municipal electric systems,
21 governmental aggregators, or rural electric agencies or
22 cooperatives, for such consideration and upon such terms as
23 the Agency may determine to be in the best interest of the
24 citizens of Illinois.

25 (18) To enter upon any lands and within any building
26 whenever in its judgment it may be necessary for the

1 purpose of making surveys and examinations to accomplish
2 any purpose authorized by this Act.

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

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

9 (21) To accept and expend appropriations.

10 (22) To engage in any activity or operation that is
11 incidental to and in furtherance of efficient operation to
12 accomplish the Agency's purposes, including hiring
13 employees that the Director deems essential for the
14 operations of the Agency.

15 (23) To adopt, revise, amend, and repeal rules with
16 respect to its operations, properties, and facilities as
17 may be necessary or convenient to carry out the purposes of
18 this Act, subject to the provisions of the Illinois
19 Administrative Procedure Act and Sections 1-22 and 1-35 of
20 this Act.

21 (24) To establish and collect charges and fees as
22 described in this Act.

23 (25) To conduct competitive gasification feedstock
24 procurement processes to procure the feedstocks for the
25 clean coal SNG brownfield facility in accordance with the
26 requirements of Section 1-78 of this Act.

1 (26) To review, revise, and approve sourcing
2 agreements and mediate and resolve disputes between gas
3 utilities and the clean coal SNG brownfield facility
4 pursuant to subsection (h-1) of Section 9-220 of the Public
5 Utilities Act.

6 (27) To review and approve qualified solar power
7 purchase agreements pursuant to Section 1-76 of this Act.

8 (Source: P.A. 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10;
9 97-96, eff. 7-13-11; 97-325, eff. 8-12-11; 97-618, eff.
10 10-26-11; revised 11-10-11.)

11 (20 ILCS 3855/1-76 new)

12 Sec. 1-76. Qualified solar power purchase agreements.

13 (a) The General Assembly finds that encouraging the
14 development and use of solar energy is in the public interest
15 and consistent with the renewable energy goals of the State.
16 The General Assembly further finds that repurposing and
17 redeveloping brownfield sites owned by municipalities,
18 including in particular those sites that are in need of
19 remedial clean up due to prior contamination, to host solar
20 energy producing facilities is in the economic and
21 environmental interests of the State, those municipalities,
22 and the public.

23 (b) The Agency shall accept applications from proposed
24 operators of proposed qualified solar remediation facilities
25 to approve qualified solar power purchase agreements for a

1 period of one year after the effective date of this amendatory
2 Act of the 97th General Assembly. Each application shall
3 include a proposed qualified solar power purchase agreement
4 between the applicant and an electric utility.

5 (c) Each qualified solar power purchase agreement shall:

6 (1) include provisions governing the prices paid for
7 electricity generated by the qualified solar remediation
8 facility and for renewable energy credits purchased in
9 connection with the electricity, which prices in aggregate
10 (for both electricity and renewable energy credits) shall
11 not:

12 (A) exceed 23 cents per kilowatt hour in the first
13 year of the sale thereof pursuant to such qualified
14 solar power purchase agreement; and

15 (B) increase during the term of the qualified solar
16 power purchase agreement by more than 1.5% per year;

17 (2) specify a term of no more than 25 years, commencing
18 on the commercial operation date of the facility;

19 (3) require the facility to be constructed on the
20 specified municipal brownfield site and to achieve the
21 commercial operation date within 5 years after the approval
22 of the qualified solar power purchase agreement by the
23 Agency; and

24 (4) have been executed by the applicant and the
25 electric utility, but provide that the effectiveness of
26 such agreement is contingent upon approval by the Agency

1 pursuant to this Section.

2 (d) The Agency shall promptly review an application
3 submitted pursuant to this Section. The Agency shall approve a
4 qualified solar power purchase agreement within 90 days after
5 the Agency has received an application to approve the
6 agreement, unless the Agency finds that the agreement does not
7 conform to the requirements of subsection (c) of this Section.

8 (e) The Agency may assess a fee to the applicant to recover
9 the costs incurred in reviewing the application pursuant to
10 this Section.

11 (f) Costs incurred by an electric utility pursuant to a
12 qualified solar power purchase agreement approved by the Agency
13 pursuant to this Section, including costs for renewable energy
14 credits purchased in connection with electricity generated by
15 that qualified solar remediation facility, shall be deemed
16 prudently incurred and reasonable in amount, and the electric
17 utility shall be entitled to full cost recovery pursuant to the
18 tariffs filed with the Commission.

19 (g) Any renewable energy credits purchased by an electric
20 utility pursuant to a qualified solar power purchase agreement
21 approved by the Agency pursuant to this Section shall count
22 towards the required percentages for solar photovoltaic energy
23 for the purposes of subsection (c) of Section 1-75 of this Act.

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.".