

1 AN ACT concerning utilities.

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

4 Section 5. The Public Utilities Act is amended by changing  
5 Section 8-104 as follows:

6 (220 ILCS 5/8-104)

7 Sec. 8-104. Natural gas energy efficiency programs.

8 (a) It is the policy of the State that natural gas  
9 utilities and the Department of Commerce and Economic  
10 Opportunity are required to use cost-effective energy  
11 efficiency to reduce direct and indirect costs to consumers. It  
12 serves the public interest to allow natural gas utilities to  
13 recover costs for reasonably and prudently incurred expenses  
14 for cost-effective energy efficiency measures.

15 (b) For purposes of this Section, "energy efficiency" means  
16 measures that reduce the amount of energy required to achieve a  
17 given end use and "cost-effective" means that the measures  
18 satisfy the total resource cost test which, for purposes of  
19 this Section, means a standard that is met if, for an  
20 investment in energy efficiency, the benefit-cost ratio is  
21 greater than one. The benefit-cost ratio is the ratio of the  
22 net present value of the total benefits of the measures to the  
23 net present value of the total costs as calculated over the

1 lifetime of the measures. The total resource cost test compares  
2 the sum of avoided natural gas utility costs, representing the  
3 benefits that accrue to the system and the participant in the  
4 delivery of those efficiency measures, as well as other  
5 quantifiable societal benefits, including avoided electric  
6 utility costs, to the sum of all incremental costs of end use  
7 measures (including both utility and participant  
8 contributions), plus costs to administer, deliver, and  
9 evaluate each demand-side measure, to quantify the net savings  
10 obtained by substituting demand-side measures for supply  
11 resources. In calculating avoided costs, reasonable estimates  
12 shall be included for financial costs likely to be imposed by  
13 future regulation of emissions of greenhouse gases. The  
14 low-income programs described in item (4) of subsection (f) of  
15 this Section shall not be required to meet the total resource  
16 cost test.

17 (c) Natural gas utilities shall implement cost-effective  
18 energy efficiency measures to meet at least the following  
19 natural gas savings requirements, which shall be based upon the  
20 total amount of gas delivered to retail customers, other than  
21 the customers described in subsection (m) of this Section,  
22 during calendar year 2009 multiplied by the applicable  
23 percentage. Natural gas utilities may comply with this Section  
24 by meeting the annual incremental savings goal in the  
25 applicable year or by showing that total savings associated  
26 with measures implemented after May 31, 2011 were equal to the

1 sum of each annual incremental savings requirement from May 31,  
2 2011 through the end of the applicable year:

3 (1) 0.2% by May 31, 2012;

4 (2) an additional 0.4% by May 31, 2013, increasing  
5 total savings to .6%;

6 (3) an additional 0.6% by May 31, 2014, increasing  
7 total savings to 1.2%;

8 (4) an additional 0.8% by May 31, 2015, increasing  
9 total savings to 2.0%;

10 (5) an additional 1% by May 31, 2016, increasing total  
11 savings to 3.0%;

12 (6) an additional 1.2% by May 31, 2017, increasing  
13 total savings to 4.2%;

14 (7) an additional 1.4% by May 31, 2018, increasing  
15 total savings to 5.6%;

16 (8) an additional 1.5% by May 31, 2019, increasing  
17 total savings to 7.1%; and

18 (9) an additional 1.5% in each 12-month period  
19 thereafter.

20 (d) Notwithstanding the requirements of subsection (c) of  
21 this Section, a natural gas utility shall limit the amount of  
22 energy efficiency implemented in any 3-year reporting period  
23 established by subsection (f) of Section 8-104 of this Act, by  
24 an amount necessary to limit the estimated average increase in  
25 the amounts paid by retail customers in connection with natural  
26 gas service to no more than 2% in the applicable 3-year

1 reporting period. The energy savings requirements in  
2 subsection (c) of this Section may be reduced by the Commission  
3 for the subject plan, if the utility demonstrates by  
4 substantial evidence that it is highly unlikely that the  
5 requirements could be achieved without exceeding the  
6 applicable spending limits in any 3-year reporting period. No  
7 later than September 1, 2013, the Commission shall review the  
8 limitation on the amount of energy efficiency measures  
9 implemented pursuant to this Section and report to the General  
10 Assembly, in the report required by subsection (k) of this  
11 Section, its findings as to whether that limitation unduly  
12 constrains the procurement of energy efficiency measures.

13 (e) Natural gas utilities shall be responsible for  
14 overseeing the design, development, and filing of their  
15 efficiency plans with the Commission. The utility shall utilize  
16 75% of the available funding associated with energy efficiency  
17 programs approved by the Commission, and may outsource various  
18 aspects of program development and implementation. The  
19 remaining 25% of available funding shall be used by the  
20 Department of Commerce and Economic Opportunity to implement  
21 energy efficiency measures that achieve no less than 20% of the  
22 requirements of subsection (c) of this Section. Such measures  
23 shall be designed in conjunction with the utility and approved  
24 by the Commission. The Department may outsource development and  
25 implementation of energy efficiency measures. A minimum of 10%  
26 of the entire portfolio of cost-effective energy efficiency

1 measures shall be procured from local government, municipal  
2 corporations, school districts, and community college  
3 districts. Five percent of the entire portfolio of  
4 cost-effective energy efficiency measures may be granted to  
5 local government and municipal corporations for market  
6 transformation initiatives. The Department shall coordinate  
7 the implementation of these measures and shall integrate  
8 delivery of natural gas efficiency programs with electric  
9 efficiency programs delivered pursuant to Section 8-103 of this  
10 Act, unless the Department can show that integration is not  
11 feasible.

12 The apportionment of the dollars to cover the costs to  
13 implement the Department's share of the portfolio of energy  
14 efficiency measures shall be made to the Department once the  
15 Department has executed grants or contracts for energy  
16 efficiency measures and provided supporting documentation for  
17 those grants and the contracts to the utility.

18 The details of the measures implemented by the Department  
19 shall be submitted by the Department to the Commission in  
20 connection with the utility's filing regarding the energy  
21 efficiency measures that the utility implements.

22 A utility providing approved energy efficiency measures in  
23 this State shall be permitted to recover costs of those  
24 measures through an automatic adjustment clause tariff filed  
25 with and approved by the Commission. The tariff shall be  
26 established outside the context of a general rate case and

1 shall be applicable to the utility's customers other than the  
2 customers described in subsection (m) of this Section. Each  
3 year the Commission shall initiate a review to reconcile any  
4 amounts collected with the actual costs and to determine the  
5 required adjustment to the annual tariff factor to match annual  
6 expenditures.

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

22 The portfolio of measures, administered by both the  
23 utilities and the Department, shall, in combination, be  
24 designed to achieve the annual energy savings requirements set  
25 forth in subsection (c) of this Section, as modified by  
26 subsection (d) of this Section.

1           The utility and the Department shall agree upon a  
2 reasonable portfolio of measures and determine the measurable  
3 corresponding percentage of the savings goals associated with  
4 measures implemented by the Department.

5           No utility shall be assessed a penalty under subsection (f)  
6 of this Section for failure to make a timely filing if that  
7 failure is the result of a lack of agreement with the  
8 Department with respect to the allocation of responsibilities  
9 or related costs or target assignments. In that case, the  
10 Department and the utility shall file their respective plans  
11 with the Commission and the Commission shall determine an  
12 appropriate division of measures and programs that meets the  
13 requirements of this Section.

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

26           (f) No later than October 1, 2010, each gas utility shall

1 file an energy efficiency plan with the Commission to meet the  
2 energy efficiency standards through May 31, 2014. Every 3 years  
3 thereafter, each utility shall file, no later than October 1,  
4 an energy efficiency plan with the Commission. If a utility  
5 does not file such a plan by October 1 of the applicable year,  
6 then it shall face a penalty of \$100,000 per day until the plan  
7 is filed. Each utility's plan shall set forth the utility's  
8 proposals to meet the utility's portion of the energy  
9 efficiency standards identified in subsection (c) of this  
10 Section, as modified by subsection (d) of this Section, taking  
11 into account the unique circumstances of the utility's service  
12 territory. The Commission shall seek public comment on the  
13 utility's plan and shall issue an order approving or  
14 disapproving each plan. If the Commission disapproves a plan,  
15 the Commission shall, within 30 days, describe in detail the  
16 reasons for the disapproval and describe a path by which the  
17 utility may file a revised draft of the plan to address the  
18 Commission's concerns satisfactorily. If the utility does not  
19 refile with the Commission within 60 days after the  
20 disapproval, the utility shall be subject to penalties at a  
21 rate of \$100,000 per day until the plan is filed. This process  
22 shall continue, and penalties shall accrue, until the utility  
23 has successfully filed a portfolio of energy efficiency  
24 measures. Penalties shall be deposited into the Energy  
25 Efficiency Trust Fund and the cost of any such penalties may  
26 not be recovered from ratepayers. In submitting proposed energy



1 efficiency plans and funding levels to meet the savings goals  
2 adopted by this Act the utility shall:

3 (1) Demonstrate that its proposed energy efficiency  
4 measures will achieve the requirements that are identified  
5 in subsection (c) of this Section, as modified by  
6 subsection (d) of this Section.

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

10 (3) Present estimates of the total amount paid for gas  
11 service expressed on a per therm basis associated with the  
12 proposed portfolio of measures designed to meet the  
13 requirements that are identified in subsection (c) of this  
14 Section, as modified by subsection (d) of this Section.

15 (4) Coordinate with the Department to present a  
16 portfolio of energy efficiency measures proportionate to  
17 the share of total annual utility revenues in Illinois from  
18 households at or below 150% of the poverty level. Such  
19 programs shall be targeted to households with incomes at or  
20 below 80% of area median income.

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

1           (6) Demonstrate that a gas utility affiliated with an  
2 electric utility that is required to comply with Section  
3 8-103 of this Act has integrated gas and electric  
4 efficiency measures into a single program that reduces  
5 program or participant costs and appropriately allocates  
6 costs to gas and electric ratepayers. The Department shall  
7 integrate all gas and electric programs it delivers in any  
8 such utilities' service territories, unless the Department  
9 can show that integration is not feasible or appropriate.

10           (7) Include a proposed cost recovery tariff mechanism  
11 to fund the proposed energy efficiency measures and to  
12 ensure the recovery of the prudently and reasonably  
13 incurred costs of Commission-approved programs.

14           (8) Provide for quarterly status reports tracking  
15 implementation of and expenditures for the utility's  
16 portfolio of measures and the Department's portfolio of  
17 measures, an annual independent review, and a full  
18 independent evaluation of the 3-year results of the  
19 performance and the cost-effectiveness of the utility's  
20 and Department's portfolios of measures and broader net  
21 program impacts and, to the extent practical, for  
22 adjustment of the measures on a going forward basis as a  
23 result of the evaluations. The resources dedicated to  
24 evaluation shall not exceed 3% of portfolio resources in  
25 any given 3-year period.

26           (g) No more than 3% of expenditures on energy efficiency

1 measures may be allocated for demonstration of breakthrough  
2 equipment and devices.

3 (h) Illinois natural gas utilities that are affiliated by  
4 virtue of a common parent company may, at the utilities'  
5 request, be considered a single natural gas utility for  
6 purposes of complying with this Section.

7 (i) If, after 3 years, a gas utility fails to meet the  
8 efficiency standard specified in subsection (c) of this Section  
9 as modified by subsection (d), then it shall make a  
10 contribution to the Low-Income Home Energy Assistance Program.  
11 The total liability for failure to meet the goal shall be  
12 assessed as follows:

13 (1) a large gas utility shall pay \$600,000;

14 (2) a medium gas utility shall pay \$400,000; and

15 (3) a small gas utility shall pay \$200,000.

16 For purposes of this Section, (i) a "large gas utility" is  
17 a gas utility that on December 31, 2008, served more than  
18 1,500,000 gas customers in Illinois; (ii) a "medium gas  
19 utility" is a gas utility that on December 31, 2008, served  
20 fewer than 1,500,000, but more than 500,000 gas customers in  
21 Illinois; and (iii) a "small gas utility" is a gas utility that  
22 on December 31, 2008, served fewer than 500,000 and more than  
23 100,000 gas customers in Illinois. The costs of this  
24 contribution may not be recovered from ratepayers.

25 If a gas utility fails to meet the efficiency standard  
26 specified in subsection (c) of this Section, as modified by

1 subsection (d) of this Section, in any 2 consecutive 3-year  
2 planning periods, then the responsibility for implementing the  
3 utility's energy efficiency measures shall be transferred to an  
4 independent program administrator selected by the Commission.  
5 Reasonable and prudent costs incurred by the independent  
6 program administrator to meet the efficiency standard  
7 specified in subsection (c) of this Section, as modified by  
8 subsection (d) of this Section, may be recovered from the  
9 customers of the affected gas utilities, other than customers  
10 described in subsection (m) of this Section. The utility shall  
11 provide the independent program administrator with all  
12 information and assistance necessary to perform the program  
13 administrator's duties including but not limited to customer,  
14 account, and energy usage data, and shall allow the program  
15 administrator to include inserts in customer bills. The utility  
16 may recover reasonable costs associated with any such  
17 assistance.

18 (j) No utility shall be deemed to have failed to meet the  
19 energy efficiency standards to the extent any such failure is  
20 due to a failure of the Department.

21 (k) Not later than January 1, 2012, the Commission shall  
22 develop and solicit public comment on a plan to foster  
23 statewide coordination and consistency between statutorily  
24 mandated natural gas and electric energy efficiency programs to  
25 reduce program or participant costs or to improve program  
26 performance. Not later than September 1, 2013, the Commission

1 shall issue a report to the General Assembly containing its  
2 findings and recommendations.

3 (l) This Section does not apply to a gas utility that on  
4 January 1, 2009, provided gas service to fewer than 100,000  
5 customers in Illinois.

6 (m) Subsections (a) through (k) of this Section do not  
7 apply to customers of a natural gas utility that have a North  
8 American Industry Classification System code number that is  
9 22111 or any such code number beginning with the digits 31, 32,  
10 or 33 and (i) annual usage in the aggregate of 4 million therms  
11 or more within the service territory of the affected gas  
12 utility or with aggregate usage of 8 million therms or more in  
13 this State and complying with the provisions of item (l) of  
14 this subsection (m); or (ii) using natural gas as feedstock and  
15 meeting the usage requirements described in item (i) of this  
16 subsection (m), to the extent such annual feedstock usage is  
17 greater than ~~that~~ 60% of the customer's total annual usage of  
18 natural gas.

19 (1) Customers described in this subsection (m) of this  
20 Section shall apply, on a form approved on or before  
21 October 1, 2009 by the Department, to the Department to be  
22 designated as a self-directing customer ("SDC") or as an  
23 exempt customer using natural gas as a feedstock from which  
24 other products are made, including, but not limited to,  
25 feedstock for a hydrogen plant, on or before the 1st day of  
26 February, 2010. Thereafter, application may be made not

1 less than 6 months before the filing date of the gas  
2 utility energy efficiency plan described in subsection (f)  
3 of this Section; however, a new customer that commences  
4 taking service from a natural gas utility after February 1,  
5 2010 may apply to become a SDC or exempt customer up to 30  
6 days after beginning service. Customers described in this  
7 subsection (m) that have not already been approved by the  
8 Department may apply to be designated a self-directing  
9 customer or exempt customer, on a form approved by the  
10 Department, between September 1, 2012 and September 30,  
11 2012. Customer applications that are approved by the  
12 Department under this amendatory Act of the 97th General  
13 Assembly shall be considered to be a self-directing  
14 customer or exempt customer, as applicable, for the current  
15 3-year planning period effective December 1, 2012. Such  
16 application shall contain the following:

17 (A) the customer's certification that, at the time  
18 of its application, it qualifies to be a SDC or exempt  
19 customer described in this subsection (m) of this  
20 Section;

21 (B) in the case of a SDC, the customer's  
22 certification that it has established or will  
23 establish by the beginning of the utility's 3-year  
24 planning period commencing subsequent to the  
25 application, and will maintain for accounting  
26 purposes, an energy efficiency reserve account and

1           that the customer will accrue funds in said account to  
2           be held for the purpose of funding, in whole or in  
3           part, energy efficiency measures of the customer's  
4           choosing, which may include, but are not limited to,  
5           projects involving combined heat and power systems  
6           that use the same energy source both for the generation  
7           of electrical or mechanical power and the production of  
8           steam or another form of useful thermal energy or the  
9           use of combustible gas produced from biomass, or both;

10           (C) in the case of a SDC, the customer's  
11           certification that annual funding levels for the  
12           energy efficiency reserve account will be equal to 2%  
13           of the customer's cost of natural gas, composed of the  
14           customer's commodity cost and the delivery service  
15           charges paid to the gas utility, or \$150,000, whichever  
16           is less;

17           (D) in the case of a SDC, the customer's  
18           certification that the required reserve account  
19           balance will be capped at 3 years' worth of accruals  
20           and that the customer may, at its option, make further  
21           deposits to the account to the extent such deposit  
22           would increase the reserve account balance above the  
23           designated cap level;

24           (E) in the case of a SDC, the customer's  
25           certification that by October 1 of each year, beginning  
26           no sooner than October 1, 2012, the customer will

1 report to the Department information, for the 12-month  
2 period ending May 31 of the same year, on all deposits  
3 and reductions, if any, to the reserve account during  
4 the reporting year, and to the extent deposits to the  
5 reserve account in any year are in an amount less than  
6 \$150,000, the basis for such reduced deposits; reserve  
7 account balances by month; a description of energy  
8 efficiency measures undertaken by the customer and  
9 paid for in whole or in part with funds from the  
10 reserve account; an estimate of the energy saved, or to  
11 be saved, by the measure; and that the report shall  
12 include a verification by an officer or plant manager  
13 of the customer or by a registered professional  
14 engineer or certified energy efficiency trade  
15 professional that the funds withdrawn from the reserve  
16 account were used for the energy efficiency measures;

17 (F) in the case of an exempt customer, the  
18 customer's certification of the level of gas usage as  
19 feedstock in the customer's operation in a typical year  
20 and that it will provide information establishing this  
21 level, upon request of the Department;

22 (G) in the case of either an exempt customer or a  
23 SDC, the customer's certification that it has provided  
24 the gas utility or utilities serving the customer with  
25 a copy of the application as filed with the Department;

26 (H) in the case of either an exempt customer or a



1 SDC, certification of the natural gas utility or  
2 utilities serving the customer in Illinois including  
3 the natural gas utility accounts that are the subject  
4 of the application; and

5 (I) in the case of either an exempt customer or a  
6 SDC, a verification signed by a plant manager or an  
7 authorized corporate officer attesting to the  
8 truthfulness and accuracy of the information contained  
9 in the application.

10 (2) The Department shall review the application to  
11 determine that it contains the information described in  
12 provisions (A) through (I) of item (1) of this subsection  
13 (m), as applicable. The review shall be completed within 30  
14 days after the date the application is filed with the  
15 Department. Absent a determination by the Department  
16 within the 30-day period, the applicant shall be considered  
17 to be a SDC or exempt customer, as applicable, for all  
18 subsequent 3-year planning periods, as of the date of  
19 filing the application described in this subsection (m). If  
20 the Department determines that the application does not  
21 contain the applicable information described in provisions  
22 (A) through (I) of item (1) of this subsection (m), it  
23 shall notify the customer, in writing, of its determination  
24 that the application does not contain the required  
25 information and identify the information that is missing,  
26 and the customer shall provide the missing information

1           within 15 working days after the date of receipt of the  
2           Department's notification.

3           (3) The Department shall have the right to audit the  
4           information provided in the customer's application and  
5           annual reports to ensure continued compliance with the  
6           requirements of this subsection. Based on the audit, if the  
7           Department determines the customer is no longer in  
8           compliance with the requirements of items (A) through (I)  
9           of item (1) of this subsection (m), as applicable, the  
10          Department shall notify the customer in writing of the  
11          noncompliance. The customer shall have 30 days to establish  
12          its compliance, and failing to do so, may have its status  
13          as a SDC or exempt customer revoked by the Department. The  
14          Department shall treat all information provided by any  
15          customer seeking SDC status or exemption from the  
16          provisions of this Section as strictly confidential.

17          (4) Upon request, or on its own motion, the Commission  
18          may open an investigation, no more than once every 3 years  
19          and not before October 1, 2014, to evaluate the  
20          effectiveness of the self-directing program described in  
21          this subsection (m).

22          (n) The applicability of this Section to customers  
23          described in subsection (m) of this Section is conditioned on  
24          the existence of the SDC program. In no event will any  
25          provision of this Section apply to such customers after January  
26          1, 2020.

1 (Source: P.A. 96-33, eff. 7-10-09; revised 11-18-11.)

2 Section 99. Effective date. This Act takes effect upon  
3 becoming law.