



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3453

Introduced 2/7/2012, by Sen. Donne E. Trotter

SYNOPSIS AS INTRODUCED:

30 ILCS 105/5.811 new
30 ILCS 105/6z-93 new
220 ILCS 5/8-103
220 ILCS 5/8-104

Amends the State Finance Act and the Public Utilities Act. Creates the Energy Efficiency Portfolio Standards Fund. Provides that all moneys received by the Department of Commerce and Economic Opportunity under specified provisions of the Public Utilities Act related to energy efficiency shall be deposited into the Energy Efficiency Portfolio Standards Fund and shall be used only for the purposes authorized by those provisions of the Public Utilities Act. Further amends the Public Utilities Act. Provides that the Department of Commerce and Economic Opportunity is authorized to adopt any rules necessary and prescribe procedures in order to ensure compliance by applicants in carrying out the purposes of rebate agreements for energy efficiency measures implemented by the Department. Makes other changes. Effective immediately.

LRB097 18954 CEL 64192 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

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

4 Section 5. The State Finance Act is amended by adding
5 Sections 5.811 and 6z-93 as follows:

6 (30 ILCS 105/5.811 new)

7 Sec. 5.811. The Energy Efficiency Portfolio Standards
8 Fund.

9 (30 ILCS 105/6z-93 new)

10 Sec. 6z-93. Energy Efficiency Portfolio Standards Fund.

11 (a) The Energy Efficiency Portfolio Standards Fund is
12 created as a special fund in the State treasury. All moneys
13 received by the Department of Commerce and Economic Opportunity
14 under Sections 8-103 and 8-104 of the Public Utilities Act
15 shall be deposited into the Energy Efficiency Portfolio
16 Standards Fund. Subject to appropriation, moneys in the Energy
17 Efficiency Portfolio Standards Fund may be used only for the
18 purposes authorized by Sections 8-103 and 8-104 of the Public
19 Utilities Act.

20 (b) As soon as possible after June 1, 2012, and in no event
21 later than July 31, 2012, the Director of Commerce and Economic
22 Opportunity shall certify the balance in the DCEO Energy

1 Projects Fund, less any federal moneys and less any amounts
2 obligated, and the State Comptroller shall transfer such amount
3 from the DCEO Energy Projects Fund to the Energy Efficiency
4 Portfolio Standards Fund.

5 Section 10. The Public Utilities Act is amended by changing
6 Sections 8-103 and 8-104 as follows:

7 (220 ILCS 5/8-103)

8 Sec. 8-103. Energy efficiency and demand-response
9 measures.

10 (a) It is the policy of the State that electric utilities
11 are required to use cost-effective energy efficiency and
12 demand-response measures to reduce delivery load. Requiring
13 investment in cost-effective energy efficiency and
14 demand-response measures will reduce direct and indirect costs
15 to consumers by decreasing environmental impacts and by
16 avoiding or delaying the need for new generation, transmission,
17 and distribution infrastructure. It serves the public interest
18 to allow electric utilities to recover costs for reasonably and
19 prudently incurred expenses for energy efficiency and
20 demand-response measures. As used in this Section,
21 "cost-effective" means that the measures satisfy the total
22 resource cost test. The low-income measures described in
23 subsection (f) (4) of this Section shall not be required to meet
24 the total resource cost test. For purposes of this Section, the

1 terms "energy-efficiency", "demand-response", "electric
2 utility", and "total resource cost test" shall have the
3 meanings set forth in the Illinois Power Agency Act. For
4 purposes of this Section, the amount per kilowatthour means the
5 total amount paid for electric service expressed on a per
6 kilowatthour basis. For purposes of this Section, the total
7 amount paid for electric service includes without limitation
8 estimated amounts paid for supply, transmission, distribution,
9 surcharges, and add-on-taxes.

10 (b) Electric utilities shall implement cost-effective
11 energy efficiency measures to meet the following incremental
12 annual energy savings goals:

13 (1) 0.2% of energy delivered in the year commencing
14 June 1, 2008;

15 (2) 0.4% of energy delivered in the year commencing
16 June 1, 2009;

17 (3) 0.6% of energy delivered in the year commencing
18 June 1, 2010;

19 (4) 0.8% of energy delivered in the year commencing
20 June 1, 2011;

21 (5) 1% of energy delivered in the year commencing June
22 1, 2012;

23 (6) 1.4% of energy delivered in the year commencing
24 June 1, 2013;

25 (7) 1.8% of energy delivered in the year commencing
26 June 1, 2014; and

1 (8) 2% of energy delivered in the year commencing June
2 1, 2015 and each year thereafter.

3 (c) Electric utilities shall implement cost-effective
4 demand-response measures to reduce peak demand by 0.1% over the
5 prior year for eligible retail customers, as defined in Section
6 16-111.5 of this Act, and for customers that elect hourly
7 service from the utility pursuant to Section 16-107 of this
8 Act, provided those customers have not been declared
9 competitive. This requirement commences June 1, 2008 and
10 continues for 10 years.

11 (d) Notwithstanding the requirements of subsections (b)
12 and (c) of this Section, an electric utility shall reduce the
13 amount of energy efficiency and demand-response measures
14 implemented in any single year by an amount necessary to limit
15 the estimated average increase in the amounts paid by retail
16 customers in connection with electric service due to the cost
17 of those measures to:

18 (1) in 2008, no more than 0.5% of the amount paid per
19 kilowatthour by those customers during the year ending May
20 31, 2007;

21 (2) in 2009, the greater of an additional 0.5% of the
22 amount paid per kilowatthour by those customers during the
23 year ending May 31, 2008 or 1% of the amount paid per
24 kilowatthour by those customers during the year ending May
25 31, 2007;

26 (3) in 2010, the greater of an additional 0.5% of the

1 amount paid per kilowatthour by those customers during the
2 year ending May 31, 2009 or 1.5% of the amount paid per
3 kilowatthour by those customers during the year ending May
4 31, 2007;

5 (4) in 2011, the greater of an additional 0.5% of the
6 amount paid per kilowatthour by those customers during the
7 year ending May 31, 2010 or 2% of the amount paid per
8 kilowatthour by those customers during the year ending May
9 31, 2007; and

10 (5) thereafter, the amount of energy efficiency and
11 demand-response measures implemented for any single year
12 shall be reduced by an amount necessary to limit the
13 estimated average net increase due to the cost of these
14 measures included in the amounts paid by eligible retail
15 customers in connection with electric service to no more
16 than the greater of 2.015% of the amount paid per
17 kilowatthour by those customers during the year ending May
18 31, 2007 or the incremental amount per kilowatthour paid
19 for these measures in 2011.

20 No later than June 30, 2011, the Commission shall review
21 the limitation on the amount of energy efficiency and
22 demand-response measures implemented pursuant to this Section
23 and report to the General Assembly its findings as to whether
24 that limitation unduly constrains the procurement of energy
25 efficiency and demand-response measures.

26 (e) Electric utilities shall be responsible for overseeing

1 the design, development, and filing of energy efficiency and
2 demand-response plans with the Commission. Electric utilities
3 shall implement 100% of the demand-response measures in the
4 plans. Electric utilities shall implement 75% of the energy
5 efficiency measures approved by the Commission, and may, as
6 part of that implementation, outsource various aspects of
7 program development and implementation. The remaining 25% of
8 those energy efficiency measures approved by the Commission
9 shall be implemented by the Department of Commerce and Economic
10 Opportunity, and must be designed in conjunction with the
11 utility and the filing process. The Department may outsource
12 development and implementation of energy efficiency measures.
13 A minimum of 10% of the entire portfolio of cost-effective
14 energy efficiency measures shall be procured from units of
15 local government, municipal corporations, school districts,
16 and community college districts. The Department shall
17 coordinate the implementation of these measures.

18 The apportionment of the dollars to cover the costs to
19 implement the Department's share of the portfolio of energy
20 efficiency measures shall be made to the Department once the
21 Department has executed rebate agreements ~~grants or contracts~~
22 for energy efficiency measures and provided supporting
23 documentation for those rebate agreements ~~grants and the~~
24 ~~contracts~~ to the utility. The Department is authorized to adopt
25 any rules necessary and prescribe procedures in order to ensure
26 compliance by applicants in carrying out the purposes of rebate

1 agreements for energy efficiency measures implemented by the
2 Department made under this Section.

3 The details of the measures implemented by the Department
4 shall be submitted by the Department to the Commission in
5 connection with the utility's filing regarding the energy
6 efficiency and demand-response measures that the utility
7 implements.

8 A utility providing approved energy efficiency and
9 demand-response measures in the State shall be permitted to
10 recover costs of those measures through an automatic adjustment
11 clause tariff filed with and approved by the Commission. The
12 tariff shall be established outside the context of a general
13 rate case. Each year the Commission shall initiate a review to
14 reconcile any amounts collected with the actual costs and to
15 determine the required adjustment to the annual tariff factor
16 to match annual expenditures.

17 Each utility shall include, in its recovery of costs, the
18 costs estimated for both the utility's and the Department's
19 implementation of energy efficiency and demand-response
20 measures. Costs collected by the utility for measures
21 implemented by the Department shall be submitted to the
22 Department pursuant to Section 605-323 of the Civil
23 Administrative Code of Illinois, shall be deposited into the
24 Energy Efficiency Portfolio Standards Fund, and shall be used
25 by the Department solely for the purpose of implementing these
26 measures. A utility shall not be required to advance any moneys

1 to the Department but only to forward such funds as it has
2 collected. The Department shall report to the Commission on an
3 annual basis regarding the costs actually incurred by the
4 Department in the implementation of the measures. Any changes
5 to the costs of energy efficiency measures as a result of plan
6 modifications shall be appropriately reflected in amounts
7 recovered by the utility and turned over to the Department.

8 The portfolio of measures, administered by both the
9 utilities and the Department, shall, in combination, be
10 designed to achieve the annual savings targets described in
11 subsections (b) and (c) of this Section, as modified by
12 subsection (d) of this Section.

13 The utility and the Department shall agree upon a
14 reasonable portfolio of measures and determine the measurable
15 corresponding percentage of the savings goals associated with
16 measures implemented by the utility or Department.

17 No utility shall be assessed a penalty under subsection (f)
18 of this Section for failure to make a timely filing if that
19 failure is the result of a lack of agreement with the
20 Department with respect to the allocation of responsibilities
21 or related costs or target assignments. In that case, the
22 Department and the utility shall file their respective plans
23 with the Commission and the Commission shall determine an
24 appropriate division of measures and programs that meets the
25 requirements of this Section.

26 If the Department is unable to meet incremental annual

1 performance goals for the portion of the portfolio implemented
2 by the Department, then the utility and the Department shall
3 jointly submit a modified filing to the Commission explaining
4 the performance shortfall and recommending an appropriate
5 course going forward, including any program modifications that
6 may be appropriate in light of the evaluations conducted under
7 item (7) of subsection (f) of this Section. In this case, the
8 utility obligation to collect the Department's costs and turn
9 over those funds to the Department under this subsection (e)
10 shall continue only if the Commission approves the
11 modifications to the plan proposed by the Department.

12 (f) No later than November 15, 2007, each electric utility
13 shall file an energy efficiency and demand-response plan with
14 the Commission to meet the energy efficiency and
15 demand-response standards for 2008 through 2010. No later than
16 October 1, 2010, each electric utility shall file an energy
17 efficiency and demand-response plan with the Commission to meet
18 the energy efficiency and demand-response standards for 2011
19 through 2013. Every 3 years thereafter, each electric utility
20 shall file, no later than September 1, an energy efficiency and
21 demand-response plan with the Commission. If a utility does not
22 file such a plan by September 1 of an applicable year, it shall
23 face a penalty of \$100,000 per day until the plan is filed.
24 Each utility's plan shall set forth the utility's proposals to
25 meet the utility's portion of the energy efficiency standards
26 identified in subsection (b) and the demand-response standards

1 identified in subsection (c) of this Section as modified by
2 subsections (d) and (e), taking into account the unique
3 circumstances of the utility's service territory. The
4 Commission shall seek public comment on the utility's plan and
5 shall issue an order approving or disapproving each plan within
6 5 months after its submission. If the Commission disapproves a
7 plan, the Commission shall, within 30 days, describe in detail
8 the reasons for the disapproval and describe a path by which
9 the utility may file a revised draft of the plan to address the
10 Commission's concerns satisfactorily. If the utility does not
11 refile with the Commission within 60 days, the utility shall be
12 subject to penalties at a rate of \$100,000 per day until the
13 plan is filed. This process shall continue, and penalties shall
14 accrue, until the utility has successfully filed a portfolio of
15 energy efficiency and demand-response measures. Penalties
16 shall be deposited into the Energy Efficiency Trust Fund. In
17 submitting proposed energy efficiency and demand-response
18 plans and funding levels to meet the savings goals adopted by
19 this Act the utility shall:

20 (1) Demonstrate that its proposed energy efficiency
21 and demand-response measures will achieve the requirements
22 that are identified in subsections (b) and (c) of this
23 Section, as modified by subsections (d) and (e).

24 (2) Present specific proposals to implement new
25 building and appliance standards that have been placed into
26 effect.

1 (3) Present estimates of the total amount paid for
2 electric service expressed on a per kilowatthour basis
3 associated with the proposed portfolio of measures
4 designed to meet the requirements that are identified in
5 subsections (b) and (c) of this Section, as modified by
6 subsections (d) and (e).

7 (4) Coordinate with the Department to present a
8 portfolio of energy efficiency measures proportionate to
9 the share of total annual utility revenues in Illinois from
10 households at or below 150% of the poverty level. The
11 energy efficiency programs shall be targeted to households
12 with incomes at or below 80% of area median income.

13 (5) Demonstrate that its overall portfolio of energy
14 efficiency and demand-response measures, not including
15 programs covered by item (4) of this subsection (f), are
16 cost-effective using the total resource cost test and
17 represent a diverse cross-section of opportunities for
18 customers of all rate classes to participate in the
19 programs.

20 (6) Include a proposed cost-recovery tariff mechanism
21 to fund the proposed energy efficiency and demand-response
22 measures and to ensure the recovery of the prudently and
23 reasonably incurred costs of Commission-approved programs.

24 (7) Provide for an annual independent evaluation of the
25 performance of the cost-effectiveness of the utility's
26 portfolio of measures and the Department's portfolio of

1 measures, as well as a full review of the 3-year results of
2 the broader net program impacts and, to the extent
3 practical, for adjustment of the measures on a
4 going-forward basis as a result of the evaluations. The
5 resources dedicated to evaluation shall not exceed 3% of
6 portfolio resources in any given year.

7 (g) No more than 3% of energy efficiency and
8 demand-response program revenue may be allocated for
9 demonstration of breakthrough equipment and devices.

10 (h) This Section does not apply to an electric utility that
11 on December 31, 2005 provided electric service to fewer than
12 100,000 customers in Illinois.

13 (i) If, after 2 years, an electric utility fails to meet
14 the efficiency standard specified in subsection (b) of this
15 Section, as modified by subsections (d) and (e), it shall make
16 a contribution to the Low-Income Home Energy Assistance
17 Program. The combined total liability for failure to meet the
18 goal shall be \$1,000,000, which shall be assessed as follows: a
19 large electric utility shall pay \$665,000, and a medium
20 electric utility shall pay \$335,000. If, after 3 years, an
21 electric utility fails to meet the efficiency standard
22 specified in subsection (b) of this Section, as modified by
23 subsections (d) and (e), it shall make a contribution to the
24 Low-Income Home Energy Assistance Program. The combined total
25 liability for failure to meet the goal shall be \$1,000,000,
26 which shall be assessed as follows: a large electric utility

1 shall pay \$665,000, and a medium electric utility shall pay
2 \$335,000. In addition, the responsibility for implementing the
3 energy efficiency measures of the utility making the payment
4 shall be transferred to the Illinois Power Agency if, after 3
5 years, or in any subsequent 3-year period, the utility fails to
6 meet the efficiency standard specified in subsection (b) of
7 this Section, as modified by subsections (d) and (e). The
8 Agency shall implement a competitive procurement program to
9 procure resources necessary to meet the standards specified in
10 this Section as modified by subsections (d) and (e), with costs
11 for those resources to be recovered in the same manner as
12 products purchased through the procurement plan as provided in
13 Section 16-111.5. The Director shall implement this
14 requirement in connection with the procurement plan as provided
15 in Section 16-111.5.

16 For purposes of this Section, (i) a "large electric
17 utility" is an electric utility that, on December 31, 2005,
18 served more than 2,000,000 electric customers in Illinois; (ii)
19 a "medium electric utility" is an electric utility that, on
20 December 31, 2005, served 2,000,000 or fewer but more than
21 100,000 electric customers in Illinois; and (iii) Illinois
22 electric utilities that are affiliated by virtue of a common
23 parent company are considered a single electric utility.

24 (j) If, after 3 years, or any subsequent 3-year period, the
25 Department fails to implement the Department's share of energy
26 efficiency measures required by the standards in subsection

1 (b), then the Illinois Power Agency may assume responsibility
2 for and control of the Department's share of the required
3 energy efficiency measures. The Agency shall implement a
4 competitive procurement program to procure resources necessary
5 to meet the standards specified in this Section, with the costs
6 of these resources to be recovered in the same manner as
7 provided for the Department in this Section.

8 (k) No electric utility shall be deemed to have failed to
9 meet the energy efficiency standards to the extent any such
10 failure is due to a failure of the Department or the Agency.

11 (Source: P.A. 96-33, eff. 7-10-09; 96-159, eff. 8-10-09;
12 96-1000, eff. 7-2-10; 97-616, eff. 10-26-11.)

13 (220 ILCS 5/8-104)

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

15 (a) It is the policy of the State that natural gas
16 utilities and the Department of Commerce and Economic
17 Opportunity are required to use cost-effective energy
18 efficiency to reduce direct and indirect costs to consumers. It
19 serves the public interest to allow natural gas utilities to
20 recover costs for reasonably and prudently incurred expenses
21 for cost-effective energy efficiency measures.

22 (b) For purposes of this Section, "energy efficiency" means
23 measures that reduce the amount of energy required to achieve a
24 given end use and "cost-effective" means that the measures
25 satisfy the total resource cost test which, for purposes of

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

22 (c) Natural gas utilities shall implement cost-effective
23 energy efficiency measures to meet at least the following
24 natural gas savings requirements, which shall be based upon the
25 total amount of gas delivered to retail customers, other than
26 the customers described in subsection (m) of this Section,

1 during calendar year 2009 multiplied by the applicable
2 percentage. Natural gas utilities may comply with this Section
3 by meeting the annual incremental savings goal in the
4 applicable year or by showing that total savings associated
5 with measures implemented after May 31, 2011 were equal to the
6 sum of each annual incremental savings requirement from May 31,
7 2011 through the end of the applicable year:

8 (1) 0.2% by May 31, 2012;

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

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

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

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

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

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

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

23 (9) an additional 1.5% in each 12-month period
24 thereafter.

25 (d) Notwithstanding the requirements of subsection (c) of
26 this Section, a natural gas utility shall limit the amount of

1 energy efficiency implemented in any 3-year reporting period
2 established by subsection (f) of Section 8-104 of this Act, by
3 an amount necessary to limit the estimated average increase in
4 the amounts paid by retail customers in connection with natural
5 gas service to no more than 2% in the applicable 3-year
6 reporting period. The energy savings requirements in
7 subsection (c) of this Section may be reduced by the Commission
8 for the subject plan, if the utility demonstrates by
9 substantial evidence that it is highly unlikely that the
10 requirements could be achieved without exceeding the
11 applicable spending limits in any 3-year reporting period. No
12 later than September 1, 2013, the Commission shall review the
13 limitation on the amount of energy efficiency measures
14 implemented pursuant to this Section and report to the General
15 Assembly, in the report required by subsection (k) of this
16 Section, its findings as to whether that limitation unduly
17 constrains the procurement of energy efficiency measures.

18 (e) Natural gas utilities shall be responsible for
19 overseeing the design, development, and filing of their
20 efficiency plans with the Commission. The utility shall utilize
21 75% of the available funding associated with energy efficiency
22 programs approved by the Commission, and may outsource various
23 aspects of program development and implementation. The
24 remaining 25% of available funding shall be used by the
25 Department of Commerce and Economic Opportunity to implement
26 energy efficiency measures that achieve no less than 20% of the

1 requirements of subsection (c) of this Section. Such measures
2 shall be designed in conjunction with the utility and approved
3 by the Commission. The Department may outsource development and
4 implementation of energy efficiency measures. A minimum of 10%
5 of the entire portfolio of cost-effective energy efficiency
6 measures shall be procured from local government, municipal
7 corporations, school districts, and community college
8 districts. Five percent of the entire portfolio of
9 cost-effective energy efficiency measures may be granted to
10 local government and municipal corporations for market
11 transformation initiatives. The Department shall coordinate
12 the implementation of these measures and shall integrate
13 delivery of natural gas efficiency programs with electric
14 efficiency programs delivered pursuant to Section 8-103 of this
15 Act, unless the Department can show that integration is not
16 feasible.

17 The apportionment of the dollars to cover the costs to
18 implement the Department's share of the portfolio of energy
19 efficiency measures shall be made to the Department once the
20 Department has executed rebate agreements ~~grants or contracts~~
21 for energy efficiency measures and provided supporting
22 documentation for those rebate agreements ~~grants and the~~
23 ~~contracts~~ to the utility. The Department is authorized to adopt
24 any rules necessary and prescribe procedures in order to ensure
25 compliance by applicants in carrying out the purposes of rebate
26 agreements for energy efficiency measures implemented by the

1 Department made under this Section.

2 The details of the measures implemented by the Department
3 shall be submitted by the Department to the Commission in
4 connection with the utility's filing regarding the energy
5 efficiency measures that the utility implements.

6 A utility providing approved energy efficiency measures in
7 this State shall be permitted to recover costs of those
8 measures through an automatic adjustment clause tariff filed
9 with and approved by the Commission. The tariff shall be
10 established outside the context of a general rate case and
11 shall be applicable to the utility's customers other than the
12 customers described in subsection (m) of this Section. Each
13 year the Commission shall initiate a review to reconcile any
14 amounts collected with the actual costs and to determine the
15 required adjustment to the annual tariff factor to match annual
16 expenditures.

17 Each utility shall include, in its recovery of costs, the
18 costs estimated for both the utility's and the Department's
19 implementation of energy efficiency measures. Costs collected
20 by the utility for measures implemented by the Department shall
21 be submitted to the Department pursuant to Section 605-323 of
22 the Civil Administrative Code of Illinois, shall be deposited
23 into the Energy Efficiency Portfolio Standards Fund, and shall
24 be used by the Department solely for the purpose of
25 implementing these measures. A utility shall not be required to
26 advance any moneys to the Department but only to forward such

1 funds as it has collected. The Department shall report to the
2 Commission on an annual basis regarding the costs actually
3 incurred by the Department in the implementation of the
4 measures. Any changes to the costs of energy efficiency
5 measures as a result of plan modifications shall be
6 appropriately reflected in amounts recovered by the utility and
7 turned over to the Department.

8 The portfolio of measures, administered by both the
9 utilities and the Department, shall, in combination, be
10 designed to achieve the annual energy savings requirements set
11 forth in subsection (c) of this Section, as modified by
12 subsection (d) of this Section.

13 The utility and the Department shall agree upon a
14 reasonable portfolio of measures and determine the measurable
15 corresponding percentage of the savings goals associated with
16 measures implemented by the Department.

17 No utility shall be assessed a penalty under subsection (f)
18 of this Section for failure to make a timely filing if that
19 failure is the result of a lack of agreement with the
20 Department with respect to the allocation of responsibilities
21 or related costs or target assignments. In that case, the
22 Department and the utility shall file their respective plans
23 with the Commission and the Commission shall determine an
24 appropriate division of measures and programs that meets the
25 requirements of this Section.

26 If the Department is unable to meet performance

1 requirements for the portion of the portfolio implemented by
2 the Department, then the utility and the Department shall
3 jointly submit a modified filing to the Commission explaining
4 the performance shortfall and recommending an appropriate
5 course going forward, including any program modifications that
6 may be appropriate in light of the evaluations conducted under
7 item (8) of subsection (f) of this Section. In this case, the
8 utility obligation to collect the Department's costs and turn
9 over those funds to the Department under this subsection (e)
10 shall continue only if the Commission approves the
11 modifications to the plan proposed by the Department.

12 (f) No later than October 1, 2010, each gas utility shall
13 file an energy efficiency plan with the Commission to meet the
14 energy efficiency standards through May 31, 2014. Every 3 years
15 thereafter, each utility shall file, no later than October 1,
16 an energy efficiency plan with the Commission. If a utility
17 does not file such a plan by October 1 of the applicable year,
18 then it shall face a penalty of \$100,000 per day until the plan
19 is filed. Each utility's plan shall set forth the utility's
20 proposals to meet the utility's portion of the energy
21 efficiency standards identified in subsection (c) of this
22 Section, as modified by subsection (d) of this Section, taking
23 into account the unique circumstances of the utility's service
24 territory. The Commission shall seek public comment on the
25 utility's plan and shall issue an order approving or
26 disapproving each plan. If the Commission disapproves a plan,

1 the Commission shall, within 30 days, describe in detail the
2 reasons for the disapproval and describe a path by which the
3 utility may file a revised draft of the plan to address the
4 Commission's concerns satisfactorily. If the utility does not
5 refile with the Commission within 60 days after the
6 disapproval, the utility shall be subject to penalties at a
7 rate of \$100,000 per day until the plan is filed. This process
8 shall continue, and penalties shall accrue, until the utility
9 has successfully filed a portfolio of energy efficiency
10 measures. Penalties shall be deposited into the Energy
11 Efficiency Trust Fund and the cost of any such penalties may
12 not be recovered from ratepayers. In submitting proposed energy
13 efficiency plans and funding levels to meet the savings goals
14 adopted by this Act the utility shall:

15 (1) Demonstrate that its proposed energy efficiency
16 measures will achieve the requirements that are identified
17 in subsection (c) of this Section, as modified by
18 subsection (d) of this Section.

19 (2) Present specific proposals to implement new
20 building and appliance standards that have been placed into
21 effect.

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

1 (4) Coordinate with the Department to present a
2 portfolio of energy efficiency measures proportionate to
3 the share of total annual utility revenues in Illinois from
4 households at or below 150% of the poverty level. Such
5 programs shall be targeted to households with incomes at or
6 below 80% of area median income.

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

13 (6) Demonstrate that a gas utility affiliated with an
14 electric utility that is required to comply with Section
15 8-103 of this Act has integrated gas and electric
16 efficiency measures into a single program that reduces
17 program or participant costs and appropriately allocates
18 costs to gas and electric ratepayers. The Department shall
19 integrate all gas and electric programs it delivers in any
20 such utilities' service territories, unless the Department
21 can show that integration is not feasible or appropriate.

22 (7) Include a proposed cost recovery tariff mechanism
23 to fund the proposed energy efficiency measures and to
24 ensure the recovery of the prudently and reasonably
25 incurred costs of Commission-approved programs.

26 (8) Provide for quarterly status reports tracking

1 implementation of and expenditures for the utility's
2 portfolio of measures and the Department's portfolio of
3 measures, an annual independent review, and a full
4 independent evaluation of the 3-year results of the
5 performance and the cost-effectiveness of the utility's
6 and Department's portfolios of measures and broader net
7 program impacts and, to the extent practical, for
8 adjustment of the measures on a going forward basis as a
9 result of the evaluations. The resources dedicated to
10 evaluation shall not exceed 3% of portfolio resources in
11 any given 3-year period.

12 (g) No more than 3% of expenditures on energy efficiency
13 measures may be allocated for demonstration of breakthrough
14 equipment and devices.

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

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

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

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

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

2 For purposes of this Section, (i) a "large gas utility" is
3 a gas utility that on December 31, 2008, served more than
4 1,500,000 gas customers in Illinois; (ii) a "medium gas
5 utility" is a gas utility that on December 31, 2008, served
6 fewer than 1,500,000, but more than 500,000 gas customers in
7 Illinois; and (iii) a "small gas utility" is a gas utility that
8 on December 31, 2008, served fewer than 500,000 and more than
9 100,000 gas customers in Illinois. The costs of this
10 contribution may not be recovered from ratepayers.

11 If a gas utility fails to meet the efficiency standard
12 specified in subsection (c) of this Section, as modified by
13 subsection (d) of this Section, in any 2 consecutive 3-year
14 planning periods, then the responsibility for implementing the
15 utility's energy efficiency measures shall be transferred to an
16 independent program administrator selected by the Commission.
17 Reasonable and prudent costs incurred by the independent
18 program administrator to meet the efficiency standard
19 specified in subsection (c) of this Section, as modified by
20 subsection (d) of this Section, may be recovered from the
21 customers of the affected gas utilities, other than customers
22 described in subsection (m) of this Section. The utility shall
23 provide the independent program administrator with all
24 information and assistance necessary to perform the program
25 administrator's duties including but not limited to customer,
26 account, and energy usage data, and shall allow the program

1 administrator to include inserts in customer bills. The utility
2 may recover reasonable costs associated with any such
3 assistance.

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

7 (k) Not later than January 1, 2012, the Commission shall
8 develop and solicit public comment on a plan to foster
9 statewide coordination and consistency between statutorily
10 mandated natural gas and electric energy efficiency programs to
11 reduce program or participant costs or to improve program
12 performance. Not later than September 1, 2013, the Commission
13 shall issue a report to the General Assembly containing its
14 findings and recommendations.

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

18 (m) Subsections (a) through (k) of this Section do not
19 apply to customers of a natural gas utility that have a North
20 American Industry Classification System code number that is
21 22111 or any such code number beginning with the digits 31, 32,
22 or 33 and (i) annual usage in the aggregate of 4 million therms
23 or more within the service territory of the affected gas
24 utility or with aggregate usage of 8 million therms or more in
25 this State and complying with the provisions of item (1) of
26 this subsection (m); or (ii) using natural gas as feedstock and

1 meeting the usage requirements described in item (i) of this
2 subsection (m), to the extent such annual feedstock usage is
3 greater than ~~that~~ 60% of the customer's total annual usage of
4 natural gas.

5 (1) Customers described in this subsection (m) of this
6 Section shall apply, on a form approved on or before
7 October 1, 2009 by the Department, to the Department to be
8 designated as a self-directing customer ("SDC") or as an
9 exempt customer using natural gas as a feedstock from which
10 other products are made, including, but not limited to,
11 feedstock for a hydrogen plant, on or before the 1st day of
12 February, 2010. Thereafter, application may be made not
13 less than 6 months before the filing date of the gas
14 utility energy efficiency plan described in subsection (f)
15 of this Section; however, a new customer that commences
16 taking service from a natural gas utility after February 1,
17 2010 may apply to become a SDC or exempt customer up to 30
18 days after beginning service. Such application shall
19 contain the following:

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

24 (B) in the case of a SDC, the customer's
25 certification that it has established or will
26 establish by the beginning of the utility's 3-year

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

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

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

1 (E) in the case of a SDC, the customer's
2 certification that by October 1 of each year, beginning
3 no sooner than October 1, 2012, the customer will
4 report to the Department information, for the 12-month
5 period ending May 31 of the same year, on all deposits
6 and reductions, if any, to the reserve account during
7 the reporting year, and to the extent deposits to the
8 reserve account in any year are in an amount less than
9 \$150,000, the basis for such reduced deposits; reserve
10 account balances by month; a description of energy
11 efficiency measures undertaken by the customer and
12 paid for in whole or in part with funds from the
13 reserve account; an estimate of the energy saved, or to
14 be saved, by the measure; and that the report shall
15 include a verification by an officer or plant manager
16 of the customer or by a registered professional
17 engineer or certified energy efficiency trade
18 professional that the funds withdrawn from the reserve
19 account were used for the energy efficiency measures;

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

25 (G) in the case of either an exempt customer or a
26 SDC, the customer's certification that it has provided

1 the gas utility or utilities serving the customer with
2 a copy of the application as filed with the Department;

3 (H) in the case of either an exempt customer or a
4 SDC, certification of the natural gas utility or
5 utilities serving the customer in Illinois including
6 the natural gas utility accounts that are the subject
7 of the application; and

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

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

1 that the application does not contain the required
2 information and identify the information that is missing,
3 and the customer shall provide the missing information
4 within 15 working days after the date of receipt of the
5 Department's notification.

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

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

25 (n) The applicability of this Section to customers
26 described in subsection (m) of this Section is conditioned on

1 the existence of the SDC program. In no event will any
2 provision of this Section apply to such customers after January
3 1, 2020.

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

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.