



Sen. Daniel Biss

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LRB099 20649 EGJ 45891 a

1 AMENDMENT TO SENATE BILL 2803

2 AMENDMENT NO. _____. Amend Senate Bill 2803 by replacing
3 everything after the enacting clause with the following:

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

6 (220 ILCS 5/8-103)

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

9 (a) It is the policy of the State that electric utilities
10 are required to use cost-effective energy efficiency and
11 demand-response measures to reduce delivery load. Requiring
12 investment in cost-effective energy efficiency and
13 demand-response measures will reduce direct and indirect costs
14 to consumers by decreasing environmental impacts and by
15 avoiding or delaying the need for new generation, transmission,
16 and distribution infrastructure. It serves the public interest

1 to allow electric utilities to recover costs for reasonably and
2 prudently incurred expenses for energy efficiency and
3 demand-response measures. As used in this Section,
4 "cost-effective" means that the measures satisfy the total
5 resource cost test. The low-income measures described in
6 subsection (f) (4) of this Section shall not be required to meet
7 the total resource cost test. For purposes of this Section, the
8 terms "energy-efficiency", "demand-response", "electric
9 utility", and "total resource cost test" shall have the
10 meanings set forth in the Illinois Power Agency Act. For
11 purposes of this Section, the amount per kilowatthour means the
12 total amount paid for electric service expressed on a per
13 kilowatthour basis. For purposes of this Section, the total
14 amount paid for electric service includes without limitation
15 estimated amounts paid for supply, transmission, distribution,
16 surcharges, and add-on-taxes.

17 (b) Electric utilities shall implement cost-effective
18 energy efficiency measures to meet the following incremental
19 annual energy savings goals:

20 (1) 0.2% of energy delivered in the year commencing
21 June 1, 2008;

22 (2) 0.4% of energy delivered in the year commencing
23 June 1, 2009;

24 (3) 0.6% of energy delivered in the year commencing
25 June 1, 2010;

26 (4) 0.8% of energy delivered in the year commencing

1 June 1, 2011;

2 (5) 1% of energy delivered in the year commencing June
3 1, 2012;

4 (6) 1.4% of energy delivered in the year commencing
5 June 1, 2013;

6 (7) 1.8% of energy delivered in the year commencing
7 June 1, 2014; and

8 (8) 2% of energy delivered in the year commencing June
9 1, 2015 and each year thereafter.

10 Electric utilities may comply with this subsection (b) by
11 meeting the annual incremental savings goal in the applicable
12 year or by showing that the total cumulative annual savings
13 within a 3-year planning period associated with measures
14 implemented after May 31, 2014 was equal to the sum of each
15 annual incremental savings requirement from May 31, 2014
16 through the end of the applicable year.

17 (c) Electric utilities shall implement cost-effective
18 demand-response measures to reduce peak demand by 0.1% over the
19 prior year for eligible retail customers, as defined in Section
20 16-111.5 of this Act, and for customers that elect hourly
21 service from the utility pursuant to Section 16-107 of this
22 Act, provided those customers have not been declared
23 competitive. This requirement commences June 1, 2008 and
24 continues for 10 years.

25 (d) Notwithstanding the requirements of subsections (b)
26 and (c) of this Section, an electric utility shall reduce the

1 amount of energy efficiency and demand-response measures
2 implemented over a 3-year planning period by an amount
3 necessary to limit the estimated average annual increase in the
4 amounts paid by retail customers in connection with electric
5 service due to the cost of those measures to:

6 (1) in 2008, no more than 0.5% of the amount paid per
7 kilowatthour by those customers during the year ending May
8 31, 2007;

9 (2) in 2009, the greater of an additional 0.5% of the
10 amount paid per kilowatthour by those customers during the
11 year ending May 31, 2008 or 1% of the amount paid per
12 kilowatthour by those customers during the year ending May
13 31, 2007;

14 (3) in 2010, the greater of an additional 0.5% of the
15 amount paid per kilowatthour by those customers during the
16 year ending May 31, 2009 or 1.5% of the amount paid per
17 kilowatthour by those customers during the year ending May
18 31, 2007;

19 (4) in 2011, the greater of an additional 0.5% of the
20 amount paid per kilowatthour by those customers during the
21 year ending May 31, 2010 or 2% of the amount paid per
22 kilowatthour by those customers during the year ending May
23 31, 2007; and

24 (5) thereafter, the amount of energy efficiency and
25 demand-response measures implemented for any single year
26 shall be reduced by an amount necessary to limit the

1 estimated average net increase due to the cost of these
2 measures included in the amounts paid by eligible retail
3 customers in connection with electric service to no more
4 than the greater of 2.015% of the amount paid per
5 kilowatthour by those customers during the year ending May
6 31, 2007 or the incremental amount per kilowatthour paid
7 for these measures in 2011.

8 No later than June 30, 2011, the Commission shall review
9 the limitation on the amount of energy efficiency and
10 demand-response measures implemented pursuant to this Section
11 and report to the General Assembly its findings as to whether
12 that limitation unduly constrains the procurement of energy
13 efficiency and demand-response measures.

14 (e) Electric utilities shall be responsible for overseeing
15 the design, development, and filing of energy efficiency and
16 demand-response plans with the Commission. Electric utilities
17 shall implement 100% of the demand-response measures in the
18 plans. Electric utilities shall implement 75% of the energy
19 efficiency measures approved by the Commission, and may, as
20 part of that implementation, outsource various aspects of
21 program development and implementation. The remaining 25% of
22 those energy efficiency measures approved by the Commission
23 shall be implemented by the Department of Commerce and Economic
24 Opportunity, and must be designed in conjunction with the
25 utility and the filing process. The Department may outsource
26 development and implementation of energy efficiency measures.

1 A minimum of 10% of the entire portfolio of cost-effective
2 energy efficiency measures shall be procured from units of
3 local government, municipal corporations, school districts,
4 and community college districts. The Department shall
5 coordinate the implementation of these measures.

6 The apportionment of the dollars to cover the costs to
7 implement the Department's share of the portfolio of energy
8 efficiency measures shall be made to the Department once the
9 Department has executed rebate agreements, grants, or
10 contracts for energy efficiency measures and provided
11 supporting documentation for those rebate agreements, grants,
12 and contracts to the utility. The Department is authorized to
13 adopt any rules necessary and prescribe procedures in order to
14 ensure compliance by applicants in carrying out the purposes of
15 rebate agreements for energy efficiency measures implemented
16 by the Department made under this Section. The Department is
17 also authorized to adopt any rules necessary and prescribe
18 procedures in order to allow, after Department approval of an
19 executed rebate agreement, grant, or contract for energy
20 efficiency measures, that dollars to cover those costs be paid
21 directly from the utility to applicants determined in
22 compliance with Department standards.

23 The details of the measures implemented by the Department
24 shall be submitted by the Department to the Commission in
25 connection with the utility's filing regarding the energy
26 efficiency and demand-response measures that the utility

1 implements.

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

11 Each utility shall include, in its recovery of costs, the
12 costs estimated for both the utility's and the Department's
13 implementation of energy efficiency and demand-response
14 measures. Costs collected by the utility for measures
15 implemented by the Department shall be submitted to the
16 Department pursuant to Section 605-323 of the Civil
17 Administrative Code of Illinois, shall be deposited into the
18 Energy Efficiency Portfolio Standards Fund, and shall be used
19 by the Department solely for the purpose of implementing these
20 measures. A utility shall not be required to advance any moneys
21 to the Department but only to forward such funds as it has
22 collected. In accordance with Department rules, the Department
23 may also authorize direct payment from the utility to the
24 Department's approved vendors for services provided by the
25 vendors related to this Section. The Department shall report to
26 the Commission on an annual basis regarding the costs actually

1 incurred by the Department in the implementation of the
2 measures. Any changes to the costs of energy efficiency
3 measures as a result of plan modifications shall be
4 appropriately reflected in amounts recovered by the utility and
5 turned over to the Department.

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

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

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

24 If the Department is unable to meet incremental annual
25 performance goals for the portion of the portfolio implemented
26 by the Department, then the utility and the Department shall

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

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

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

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

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

25 (3) Present estimates of the total amount paid for
26 electric service expressed on a per kilowatthour basis

1 associated with the proposed portfolio of measures
2 designed to meet the requirements that are identified in
3 subsections (b) and (c) of this Section, as modified by
4 subsections (d) and (e).

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

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

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

22 (7) Provide for an annual independent evaluation of the
23 performance of the cost-effectiveness of the utility's
24 portfolio of measures and the Department's portfolio of
25 measures, as well as a full review of the 3-year results of
26 the broader net program impacts and, to the extent

1 practical, for adjustment of the measures on a
2 going-forward basis as a result of the evaluations. The
3 resources dedicated to evaluation shall not exceed 3% of
4 portfolio resources in any given year.

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

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

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

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

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

22 (j) If, after 3 years, or any subsequent 3-year period, the
23 Department fails to implement the Department's share of energy
24 efficiency measures required by the standards in subsection
25 (b), then the Illinois Power Agency may assume responsibility
26 for and control of the Department's share of the required

1 energy efficiency measures. The Agency shall implement a
2 competitive procurement program to procure resources necessary
3 to meet the standards specified in this Section, with the costs
4 of these resources to be recovered in the same manner as
5 provided for the Department in this Section.

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

9 (Source: P.A. 97-616, eff. 10-26-11; 97-841, eff. 7-20-12;
10 98-90, eff. 7-15-13.)

11 (220 ILCS 5/8-104)

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

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

20 (b) For purposes of this Section, "energy efficiency" means
21 measures that reduce the amount of energy required to achieve a
22 given end use. "Energy efficiency" also includes measures that
23 reduce the total Btus of electricity and natural gas needed to
24 meet the end use or uses. "Cost-effective" means that the
25 measures satisfy the total resource cost test which, for

1 purposes of this Section, means a standard that is met if, for
2 an 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 cumulative annual
5 savings within a 3-year planning period associated with
6 measures implemented after May 31, 2011 were equal to the sum
7 of each annual incremental savings requirement from May 31,
8 2011 through the end of the applicable year:

9 (1) 0.2% by May 31, 2012;

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

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

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

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

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

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

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

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

26 (d) Notwithstanding the requirements of subsection (c) of

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

19 (e) Natural gas utilities shall be responsible for
20 overseeing the design, development, and filing of their
21 efficiency plans with the Commission. The utility shall utilize
22 75% of the available funding associated with energy efficiency
23 programs approved by the Commission, and may outsource various
24 aspects of program development and implementation. The
25 remaining 25% of available funding shall be used by the
26 Department of Commerce and Economic Opportunity to implement

1 energy efficiency measures that achieve no less than 20% of the
2 requirements of subsection (c) of this Section. Such measures
3 shall be designed in conjunction with the utility and approved
4 by the Commission. The Department may outsource development and
5 implementation of energy efficiency measures. A minimum of 10%
6 of the entire portfolio of cost-effective energy efficiency
7 measures shall be procured from local government, municipal
8 corporations, school districts, and community college
9 districts. Five percent of the entire portfolio of
10 cost-effective energy efficiency measures may be granted to
11 local government and municipal corporations for market
12 transformation initiatives. The Department shall coordinate
13 the implementation of these measures and shall integrate
14 delivery of natural gas efficiency programs with electric
15 efficiency programs delivered pursuant to Section 8-103 of this
16 Act, unless the Department can show that integration is not
17 feasible.

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
22 contracts for energy efficiency measures and provided
23 supporting documentation for those rebate agreements, grants,
24 and contracts to the utility. The Department is authorized to
25 adopt any rules necessary and prescribe procedures in order to
26 ensure compliance by applicants in carrying out the purposes of

1 rebate agreements for energy efficiency measures implemented
2 by the Department made under this Section. The Department is
3 also authorized to adopt any rules necessary and prescribe
4 procedures in order to allow, after Department approval of an
5 executed rebate agreement, grant, or contract for energy
6 efficiency measures, that dollars to cover those costs be paid
7 directly from the utility to applicants determined in
8 compliance with Department standards.

9 The details of the measures implemented by the Department
10 shall be submitted by the Department to the Commission in
11 connection with the utility's filing regarding the energy
12 efficiency measures that the utility implements.

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

24 Each utility shall include, in its recovery of costs, the
25 costs estimated for both the utility's and the Department's
26 implementation of energy efficiency measures. Costs collected

1 by the utility for measures implemented by the Department shall
2 be submitted to the Department pursuant to Section 605-323 of
3 the Civil Administrative Code of Illinois, shall be deposited
4 into the Energy Efficiency Portfolio Standards Fund, and shall
5 be used by the Department solely for the purpose of
6 implementing these measures. A utility shall not be required to
7 advance any moneys to the Department but only to forward such
8 funds as it has collected. In accordance with Department rules,
9 the Department may also authorize direct payment from the
10 utility to the Department's approved vendors for services
11 provided by the vendors related to this Section. The Department
12 shall report to the Commission on an annual basis regarding the
13 costs actually incurred by the Department in the implementation
14 of the measures. Any changes to the costs of energy efficiency
15 measures as a result of plan modifications shall be
16 appropriately reflected in amounts recovered by the utility and
17 turned over to the Department.

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

23 The utility and the Department shall agree upon a
24 reasonable portfolio of measures and determine the measurable
25 corresponding percentage of the savings goals associated with
26 measures implemented by the Department.

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

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

22 (f) No later than October 1, 2010, each gas utility shall
23 file an energy efficiency plan with the Commission to meet the
24 energy efficiency standards through May 31, 2014. Every 3 years
25 thereafter, each utility shall file, no later than October 1,
26 an energy efficiency plan with the Commission. If a utility

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

- 25 (1) Demonstrate that its proposed energy efficiency
26 measures will achieve the requirements that are identified

1 in subsection (c) of this Section, as modified by
2 subsection (d) of this Section.

3 (2) Present specific proposals to implement new
4 building and appliance standards that have been placed into
5 effect.

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

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

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

23 (6) Demonstrate that a gas utility affiliated with an
24 electric utility that is required to comply with Section
25 8-103 of this Act has integrated gas and electric
26 efficiency measures into a single program that reduces

1 program or participant costs and appropriately allocates
2 costs to gas and electric ratepayers. The Department shall
3 integrate all gas and electric programs it delivers in any
4 such utilities' service territories, unless the Department
5 can show that integration is not feasible or appropriate.

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

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

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

25 (h) Illinois natural gas utilities that are affiliated by
26 virtue of a common parent company may, at the utilities'

1 request, be considered a single natural gas utility for
2 purposes of complying with this Section.

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

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

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

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

12 For purposes of this Section, (i) a "large gas utility" is
13 a gas utility that on December 31, 2008, served more than
14 1,500,000 gas customers in Illinois; (ii) a "medium gas
15 utility" is a gas utility that on December 31, 2008, served
16 fewer than 1,500,000, but more than 500,000 gas customers in
17 Illinois; and (iii) a "small gas utility" is a gas utility that
18 on December 31, 2008, served fewer than 500,000 and more than
19 100,000 gas customers in Illinois. The costs of this
20 contribution may not be recovered from ratepayers.

21 If a gas utility fails to meet the efficiency standard
22 specified in subsection (c) of this Section, as modified by
23 subsection (d) of this Section, in any 2 consecutive 3-year
24 planning periods, then the responsibility for implementing the
25 utility's energy efficiency measures shall be transferred to an
26 independent program administrator selected by the Commission.

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

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

17 (k) Not later than January 1, 2012, the Commission shall
18 develop and solicit public comment on a plan to foster
19 statewide coordination and consistency between statutorily
20 mandated natural gas and electric energy efficiency programs to
21 reduce program or participant costs or to improve program
22 performance. Not later than September 1, 2013, the Commission
23 shall issue a report to the General Assembly containing its
24 findings and recommendations.

25 (l) This Section does not apply to a gas utility that on
26 January 1, 2009, provided gas service to fewer than 100,000

1 customers in Illinois.

2 (m) Subsections (a) through (k) of this Section do not
3 apply to customers of a natural gas utility that have a North
4 American Industry Classification System code number that is
5 22111 or any such code number beginning with the digits 31, 32,
6 or 33 and (i) annual usage in the aggregate of 4 million therms
7 or more within the service territory of the affected gas
8 utility or with aggregate usage of 8 million therms or more in
9 this State and complying with the provisions of item (l) of
10 this subsection (m); or (ii) using natural gas as feedstock and
11 meeting the usage requirements described in item (i) of this
12 subsection (m), to the extent such annual feedstock usage is
13 greater than 60% of the customer's total annual usage of
14 natural gas.

15 (1) Customers described in this subsection (m) of this
16 Section shall apply, on a form approved on or before
17 October 1, 2009 by the Department, to the Department to be
18 designated as a self-directing customer ("SDC") or as an
19 exempt customer using natural gas as a feedstock from which
20 other products are made, including, but not limited to,
21 feedstock for a hydrogen plant, on or before the 1st day of
22 February, 2010. Thereafter, application may be made not
23 less than 6 months before the filing date of the gas
24 utility energy efficiency plan described in subsection (f)
25 of this Section; however, a new customer that commences
26 taking service from a natural gas utility after February 1,

1 2010 may apply to become a SDC or exempt customer up to 30
2 days after beginning service. Customers described in this
3 subsection (m) that have not already been approved by the
4 Department may apply to be designated a self-directing
5 customer or exempt customer, on a form approved by the
6 Department, between September 1, 2013 and September 30,
7 2013. Customer applications that are approved by the
8 Department under this amendatory Act of the 98th General
9 Assembly shall be considered to be a self-directing
10 customer or exempt customer, as applicable, for the current
11 3-year planning period effective December 1, 2013. Such
12 application shall contain the following:

13 (A) the customer's certification that, at the time
14 of its application, it qualifies to be a SDC or exempt
15 customer described in this subsection (m) of this
16 Section;

17 (B) in the case of a SDC, the customer's
18 certification that it has established or will
19 establish by the beginning of the utility's 3-year
20 planning period commencing subsequent to the
21 application, and will maintain for accounting
22 purposes, an energy efficiency reserve account and
23 that the customer will accrue funds in said account to
24 be held for the purpose of funding, in whole or in
25 part, energy efficiency measures of the customer's
26 choosing, which may include, but are not limited to,

1 projects involving combined heat and power systems
2 that use the same energy source both for the generation
3 of electrical or mechanical power and the production of
4 steam or another form of useful thermal energy or the
5 use of combustible gas produced from biomass, or both;

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

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

20 (E) in the case of a SDC, the customer's
21 certification that by October 1 of each year, beginning
22 no sooner than October 1, 2012, the customer will
23 report to the Department information, for the 12-month
24 period ending May 31 of the same year, on all deposits
25 and reductions, if any, to the reserve account during
26 the reporting year, and to the extent deposits to the

1 reserve account in any year are in an amount less than
2 \$150,000, the basis for such reduced deposits; reserve
3 account balances by month; a description of energy
4 efficiency measures undertaken by the customer and
5 paid for in whole or in part with funds from the
6 reserve account; an estimate of the energy saved, or to
7 be saved, by the measure; and that the report shall
8 include a verification by an officer or plant manager
9 of the customer or by a registered professional
10 engineer or certified energy efficiency trade
11 professional that the funds withdrawn from the reserve
12 account were used for the energy efficiency measures;

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

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

22 (H) in the case of either an exempt customer or a
23 SDC, certification of the natural gas utility or
24 utilities serving the customer in Illinois including
25 the natural gas utility accounts that are the subject
26 of the application; and

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

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

25 (3) The Department shall have the right to audit the
26 information provided in the customer's application and

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

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

18 Customers described in this subsection (m) that applied to
19 the Department on January 3, 2013, were approved by the
20 Department on February 13, 2013 to be a self-directing customer
21 or exempt customer, and receive natural gas from a utility that
22 provides gas service to at least 500,000 retail customers in
23 Illinois and electric service to at least 1,000,000 retail
24 customers in Illinois shall be considered to be a
25 self-directing customer or exempt customer, as applicable, for
26 the current 3-year planning period effective December 1, 2013.

1 (n) The applicability of this Section to customers
2 described in subsection (m) of this Section is conditioned on
3 the existence of the SDC program. In no event will any
4 provision of this Section apply to such customers after January
5 1, 2020.

6 (Source: P.A. 97-813, eff. 7-13-12; 97-841, eff. 7-20-12;
7 98-90, eff. 7-15-13; 98-225, eff. 8-9-13; 98-604, eff.
8 12-17-13.)".