Rep. George Scully Jr.

Filed: 5/23/2007

AMENDMENT TO SENATE BILL 1592

AMENDMENT NO. _____. Amend Senate Bill 1592 by inserting immediately above the enacting clause the following:

"WHEREAS, This Act shall be known as the Electricity Rate Relief Act of 2007; therefore,"; and

by replacing everything after the enacting clause with the following:

"ARTICLE 1. LEGISLATIVE INTENT

Section 1-5. Legislative intent. In the Electric Service Customer Choice and Rate Relief Law of 1997, the General Assembly authorized market-based electric rates only if retail and wholesale competition developed in Illinois and if the Illinois Commerce Commission declared electric service to be "competitive".

In 2006, however, the Illinois Commerce Commission

authorized market-based rates for electric service that had not, and still has not, been declared competitive.

As a result, the General Assembly finds it necessary to take the steps set forth in this amendatory Act to provide immediate relief to consumers, who have been harmed by the Illinois Commerce Commission's approval of market-based rates in the absence of a competitive declaration.

ARTICLE 3. AMENDATORY PROVISIONS

Section 3-5. The Public Utilities Act is amended by changing Sections 16-102, 16-103, 16-111, and 16-113 and by adding Sections 8-205.5 and 16-135 as follows:

(220 ILCS 5/8-205.5 new)

Sec. 8-205.5. Termination of utility service prior to March 31, 2008. Notwithstanding any other provision of this Act or any other law to the contrary, a public utility that, on December 31, 2005, served at least 100,000 electric customers in Illinois may not terminate electric service to a residential customer for nonpayment prior to March 31, 2008.

(220 ILCS 5/16-102)

Sec. 16-102. Definitions. For the purposes of this Article the following terms shall be defined as set forth in this Section.

"Alternative retail electric supplier" means every person, cooperative, corporation, municipal corporation, company, association, joint stock company or association, firm, partnership, individual, or other entity, their lessees, trustees, or receivers appointed by any court whatsoever, that offers electric power or energy for sale, lease or in exchange for other value received to one or more retail customers, or that engages in the delivery or furnishing of electric power or energy to such retail customers, and shall include, without limitation, resellers, aggregators and power marketers, but shall not include (i) electric utilities (or any agent of the electric utility to the extent the electric utility provides tariffed services to retail customers through that agent), (ii) any electric cooperative or municipal system as defined in Section 17-100 to the extent that the electric cooperative or municipal system is serving retail customers within any area in which it is or would be entitled to provide service under the law in effect immediately prior to the effective date of this amendatory Act of 1997, (iii) a public utility that is owned and operated by any public institution of higher education of this State, or a public utility that is owned by such public institution of higher education and operated by any of its lessees or operating agents, within any area in which it is or would be entitled to provide service under the law in effect immediately prior to the effective date of this amendatory Act of 1997, (iv) a retail customer to the extent that customer

obtains its electric power and energy from that customer's own cogeneration or self-generation facilities, (v) an entity that owns, operates, sells, or arranges for the installation of a customer's own cogeneration or self-generation facilities, but only to the extent the entity is engaged in owning, selling or arranging for the installation of such facility, or operating the facility on behalf of such customer, provided however that any such third party owner or operator of a facility built after January 1, 1999, complies with the labor provisions of Section 16-128(a) as though such third party were an alternative retail electric supplier, or (vi) an industrial or manufacturing customer that owns its own distribution facilities, to the extent that the customer provides service from that distribution system to a third-party contractor located on the customer's premises that is integrally and predominantly engaged in the customer's industrial or manufacturing process; provided, that if the industrial or manufacturing customer has elected delivery services, the customer shall pay transition charges applicable to the electric power and energy consumed by the third-party contractor unless such charges are otherwise paid by the third party contractor, which shall be calculated based on the usage of, and the base rates or the contract rates applicable to, the third-party contractor in accordance with Section 16-102.

"Base rates" means the rates for those tariffed services that the electric utility is required to offer pursuant to

subsection (a) of Section 16-103 and that were identified in a rate order for collection of the electric utility's base rate revenue requirement, excluding (i) separate automatic rate adjustment riders then in effect, (ii) special or negotiated contract rates, (iii) delivery services tariffs filed pursuant to Section 16-108, (iv) real-time pricing, or (v) tariffs that were in effect prior to October 1, 1996 and that based charges for services on an index or average of other utilities' charges, but including (vi) any subsequent redesign of such rates for tariffed services that is authorized by the Commission after notice and hearing.

"Competitive service" includes (i) any service that has been declared to be competitive pursuant to Section 16-113 of this Act, (ii) contract service, and (iii) services, other than tariffed services, that are related to, but not necessary for, the provision of electric power and energy or delivery services.

"Contract service" means (1) services, including the provision of electric power and energy or other services, that are provided by mutual agreement between an electric utility and a retail customer that is located in the electric utility's service area, provided that, delivery services shall not be a contract service until such services are declared competitive pursuant to Section 16-113; and also means (2) the provision of electric power and energy by an electric utility to retail customers outside the electric utility's service area pursuant

to Section 16-116. Provided, however, contract service does not include electric utility services provided pursuant to (i) contracts that retail customers are required to execute as a condition of receiving tariffed services, or (ii) special or negotiated rate contracts for electric utility services that were entered into between an electric utility and a retail customer prior to the effective date of this amendatory Act of 1997 and filed with the Commission.

"Delivery services" means those services provided by the electric utility that are necessary in order for the transmission and distribution systems to function so that retail customers located in the electric utility's service area can receive electric power and energy from suppliers other than the electric utility, and shall include, without limitation, standard metering and billing services.

"Electric utility" means a public utility, as defined in Section 3-105 of this Act, that has a franchise, license, permit or right to furnish or sell electricity to retail customers within a service area.

"Mandatory transition period" means the period from the effective date of Public Act 90-561 ~~this amendatory Act of 1997~~ through January 1, 2007 and from the effective date of this amendatory Act of the 95th General Assembly through the date on which the Commission has approved declarations of competitive service, pursuant to Section 16-113, for all classes of service offered in the service areas of all electric utilities that, on

December 31, 2005, served at least 100,000 residential customers.

"Municipal system" shall have the meaning set forth in Section 17-100.

"Real-time pricing" means tariffed retail charges for delivered electric power and energy that vary hour-to-hour and are determined from wholesale market prices using a methodology approved by the Illinois Commerce Commission.

"Residential customer" means those retail customers of an electric utility that receive (i) electric utility service for household purposes distributed to a dwelling of 2 or fewer units that is billed under a residential rate or (ii) electric utility service for household purposes distributed to a dwelling unit or units that is billed under a residential rate and is registered by a separate meter for each dwelling unit.

"Retail customer" means a single entity using electric power or energy at a single premises and that (A) either (i) is receiving or is eligible to receive tariffed services from an electric utility, or (ii) that is served by a municipal system or electric cooperative within any area in which the municipal system or electric cooperative is or would be entitled to provide service under the law in effect immediately prior to the effective date of this amendatory Act of 1997, or (B) an entity which on the effective date of this Act was receiving electric service from a public utility and (i) was engaged in the practice of resale and redistribution of such electricity

within a building prior to January 2, 1957, or (ii) was providing lighting services to tenants in a multi-occupancy building, but only to the extent such resale, redistribution or lighting service is authorized by the electric utility's tariffs that were on file with the Commission on the effective date of this Act.

"Service area" means (i) the geographic area within which an electric utility was lawfully entitled to provide electric power and energy to retail customers as of the effective date of this amendatory Act of 1997, and includes (ii) the location of any retail customer to which the electric utility was lawfully providing electric utility services on such effective date.

"Small commercial retail customer" means those nonresidential retail customers of an electric utility consuming 15,000 kilowatt-hours or less of electricity annually in its service area.

"Tariffed service" means services provided to retail customers by an electric utility as defined by its rates on file with the Commission pursuant to the provisions of Article IX of this Act, but shall not include competitive services.

"Transition charge" means a charge expressed in cents per kilowatt-hour that is calculated for a customer or class of customers as follows for each year in which an electric utility is entitled to recover transition charges as provided in Section 16-108:

(1) the amount of revenue that an electric utility would receive from the retail customer or customers if it were serving such customers' electric power and energy requirements as a tariffed service based on (A) all of the customers' actual usage during the 3 years ending 90 days prior to the date on which such customers were first eligible for delivery services pursuant to Section 16-104, and (B) on (i) the base rates in effect on October 1, 1996 (adjusted for the reductions required by subsection (b) of Section 16-111, for any reduction resulting from a rate decrease under Section 16-101(b), for any restatement of base rates made in conjunction with an elimination of the fuel adjustment clause pursuant to subsection (b), (d), or (f) of Section 9-220 and for any removal of decommissioning costs from base rates pursuant to Section 16-114) and any separate automatic rate adjustment riders (other than a decommissioning rate as defined in Section 16-114) under which the customers were receiving or, had they been customers, would have received electric power and energy from the electric utility during the year immediately preceding the date on which such customers were first eligible for delivery service pursuant to Section 16-104, or (ii) to the extent applicable, any contract rates, including contracts or rates for consolidated or aggregated billing, under which such customers were receiving electric power and energy from the electric

utility during such year;

(2) less the amount of revenue, other than revenue from transition charges and decommissioning rates, that the electric utility would receive from such retail customers for delivery services provided by the electric utility, assuming such customers were taking delivery services for all of their usage, based on the delivery services tariffs in effect during the year for which the transition charge is being calculated and on the usage identified in paragraph (1);

(3) less the market value for the electric power and energy that the electric utility would have used to supply all of such customers' electric power and energy requirements, as a tariffed service, based on the usage identified in paragraph (1), with such market value determined in accordance with Section 16-112 of this Act;

(4) less the following amount which represents the amount to be attributed to new revenue sources and cost reductions by the electric utility through the end of the period for which transition costs are recovered pursuant to Section 16-108, referred to in this Article XVI as a "mitigation factor":

(A) for nonresidential retail customers, an amount equal to the greater of (i) 0.5 cents per kilowatt-hour during the period October 1, 1999 through December 31, 2004, 0.6 cents per kilowatt-hour in calendar year

2005, and 0.9 cents per kilowatt-hour in calendar year 2006, multiplied in each year by the usage identified in paragraph (1), or (ii) an amount equal to the following percentages of the amount produced by applying the applicable base rates (adjusted as described in subparagraph (1)(B)) or contract rate to the usage identified in paragraph (1): 8% for the period October 1, 1999 through December 31, 2002, 10% in calendar years 2003 and 2004, 11% in calendar year 2005 and 12% in calendar year 2006; and

(B) for residential retail customers, an amount equal to the following percentages of the amount produced by applying the base rates in effect on October 1, 1996 (adjusted as described in subparagraph (1)(B)) to the usage identified in paragraph (1): (i) 6% from May 1, 2002 through December 31, 2002, (ii) 7% in calendar years 2003 and 2004, (iii) 8% in calendar year 2005, and (iv) 10% in calendar year 2006;

(5) divided by the usage of such customers identified in paragraph (1),

provided that the transition charge shall never be less than zero.

"Unbundled service" means a component or constituent part of a tariffed service which the electric utility subsequently offers separately to its customers.

(Source: P.A. 94-977, eff. 6-30-06.)

(220 ILCS 5/16-103)

Sec. 16-103. Service obligations of electric utilities.

(a) An electric utility shall continue offering to retail customers each tariffed service that it offered as a distinct and identifiable service on the effective date of this amendatory Act of 1997 until the service is (i) declared competitive pursuant to Section 16-113, or (ii) abandoned pursuant to Section 8-508. Nothing in this subsection shall be construed as limiting an electric utility's right to propose, or the Commission's power to approve, allow or order modifications in the rates, terms and conditions for such services pursuant to Article IX or Section 16-111 of this Act.

(b) An electric utility shall also offer, as tariffed services, delivery services in accordance with this Article, the power purchase options described in Section 16-110 and real-time pricing as provided in Section 16-107.

(c) Notwithstanding any other provision of this Article, each electric utility shall continue offering to all residential customers and to all small commercial retail customers in its service area, as a tariffed service, bundled electric power and energy delivered to the customer's premises consistent with the bundled utility service provided by the electric utility on the effective date of this amendatory Act of 1997. Upon declaration of the provision of electric power and energy as competitive, the electric utility shall continue

to offer to such customers, as a tariffed service, bundled service options at rates which reflect recovery of all cost components for providing the service. For those components of the service which have been declared competitive, cost shall be the market based prices. Market based prices as referred to herein shall mean, for electric power and energy, either (i) those prices for electric power and energy determined as provided in Section 16-112, or (ii) the electric utility's cost of obtaining the electric power and energy at wholesale through a competitive bidding or other arms-length acquisition process.

(c-1) Electric utilities that serve at least 1,000,000 customers must provide tariffed service to Unit Owners' Associations, as defined by Section 2 of the Condominium Property Act, for condominium properties that are not restricted to nonresidential use at rates that do not exceed the rates offered to residential customers. Within 10 days after the effective date of this amendatory Act of the 95th General Assembly, each electric utility shall provide the tariffed service to Unit Owners' Associations required by this subsection and shall reinstate any all-electric discount applicable to any Unit Owners' Association that received such a discount on December 31, 2006.

(d) Any residential or small commercial retail customer which elects delivery services is entitled to return to the electric utility's bundled utility tariffed service offering

provided in accordance with subsection (c) of this Section upon payment of a reasonable administrative fee which shall be set forth in the tariff, provided, however, that the electric utility shall be entitled to impose the condition that such customer may not elect delivery services for up to 24 months thereafter.

(e) (Blank). ~~The Commission shall not require an electric utility to offer any tariffed service other than the services required by this Section, and shall not require an electric utility to offer any competitive service.~~

(Source: P.A. 90-561, eff. 12-16-97.)

(220 ILCS 5/16-111)

Sec. 16-111. Rates and restructuring transactions during mandatory transition period.

(a) During the mandatory transition period, notwithstanding any provision of Article IX of this Act, and except as provided in subsections (b), (d), (e), and (f) of this Section, the Commission shall order each electric utility that, on December 31, 2005, served at least 100,000 customers in this State to file and implement tariffs: (A) to reinstate, within 10 days after the effective date of this amendatory Act of the 95th General Assembly, all rates charged to the electric utility's customers on December 31, 2006, except that the utility may charge any rate under any delivery services tariff of the utility that became effective on or after January 2,

2007; and (B) to refund to the utility's customers any amounts charged to those customers, from January 2, 2007 until 10 days after the effective date of this amendatory Act of the 95th General Assembly, that exceed the rates charged to the electric utility's customers on December 31, 2006, not including any rate charged under any delivery services tariff of the utility that became effective on or after January 2, 2007. This refund:

(1) must be issued no later than December 1, 2007;

(2) must be made by a negotiable check of the utility to be paid to the order of the customer;

(3) must include interest on the full amount of the refund, beginning January 2, 2007, at the same interest rate the Commission requires utilities to pay on customer deposits; and

(4) must be accompanied by a notice that states, in at least 14-point bold type, "THIS REFUND IS MADE IN ACCORDANCE WITH A MANDATE OF THE GENERAL ASSEMBLY OF THE STATE OF ILLINOIS." No other communication may be contained in the envelope with the refund check and no other communication concerning the refund may be contained on the notice, check, or envelope.

After electric rates are reinstated in accordance with this subsection (a), the Commission shall not, prior to July 1, 2008, (i) initiate, authorize or order any change by way of increase to those components of the reinstated rates that reflect the cost of electric energy (other than in connection

with a request for rate increase which was filed after September 1, 1997 but prior to October 15, 1997, by an electric utility serving less than 12,500 customers in this State) or (ii)~~, (ii) initiate or, unless requested by the electric utility, authorize or order any change by way of decrease, restructuring or unbundling (except as provided in Section 16-109A), in the rates of any electric utility that were in effect on October 1, 1996, or (iii)~~ in any order approving any application for a merger pursuant to Section 7-204 that was pending as of May 16, 1997, impose any condition requiring any filing for an increase, decrease, or change in, or other review of, an electric utility's rates or enforce any such condition of any such order. However,~~; provided, however, that~~ this subsection shall not prohibit the Commission from:

(1) (blank); ~~approving the application of an electric utility to implement an alternative to rate of return regulation or a regulatory mechanism that rewards or penalizes the electric utility through adjustment of rates based on utility performance, pursuant to Section 9-244;~~

(2) authorizing an electric utility to eliminate its fuel adjustment clause and adjust its base rate tariffs in accordance with subsection (b), (d), or (f) of Section 9-220 of this Act, to fix its fuel adjustment factor in accordance with subsection (c) of Section 9-220 of this Act, or to eliminate its fuel adjustment clause in accordance with subsection (e) of Section 9-220 of this

Act;

(3) ordering into effect tariffs for delivery services and transition charges in accordance with Sections 16-104 and 16-108, for real-time pricing in accordance with Section 16-107, or the options required by Section 16-110 and subsection (n) of 16-112, allowing a billing experiment in accordance with Section 16-106, or modifying delivery services tariffs in accordance with Section 16-109; or

(4) ordering or allowing into effect any tariff to recover charges pursuant to Sections 9-201.5, 9-220.1, 9-221, 9-222 (except as provided in Section 9-222.1), 16-108, and 16-114 of this Act, Section 5-5 of the Electricity Infrastructure Maintenance Fee Law, Section 6-5 of the Renewable Energy, Energy Efficiency, and Coal Resources Development Law of 1997, and Section 13 of the Energy Assistance Act.

After December 31, 2004, the provisions of this subsection (a) shall not apply to an electric utility whose average residential retail rate was less than or equal to 90% of the average residential retail rate for the "Midwest Utilities", as that term is defined in subsection (b) of this Section, based on data reported on Form 1 to the Federal Energy Regulatory Commission for calendar year 1995, and which served between 150,000 and 250,000 retail customers in this State on January 1, 1995 unless the electric utility or its holding company has been acquired by or merged with an affiliate of another

electric utility subsequent to January 1, 2002. This exemption shall be limited to this subsection (a) and shall not extend to any other provisions of this Act.

(a-5) During the remainder of the mandatory transition period, if any, the Commission may modify rates only in accordance with Article IX of this Act.

(b) Notwithstanding the provisions of subsection (a), each Illinois electric utility serving more than 12,500 customers in Illinois shall file tariffs (i) reducing, effective August 1, 1998, each component of its base rates to residential retail customers by 15% from the base rates in effect immediately prior to January 1, 1998 and (ii) if the public utility provides electric service to (A) more than 500,000 customers but less than 1,000,000 customers in this State on January 1, 1999, reducing, effective May 1, 2002, each component of its base rates to residential retail customers by an additional 5% from the base rates in effect immediately prior to January 1, 1998, or (B) at least 1,000,000 customers in this State on January 1, 1999, reducing, effective October 1, 2001, each component of its base rates to residential retail customers by an additional 5% from the base rates in effect immediately prior to January 1, 1998. Provided, however, that (A) if an electric utility's average residential retail rate is less than or equal to the average residential retail rate for a group of Midwest Utilities (consisting of all investor-owned electric utilities with annual system peaks in excess of 1000 megawatts

in the States of Illinois, Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio, and Wisconsin), based on data reported on Form 1 to the Federal Energy Regulatory Commission for calendar year 1995, then it shall only be required to file tariffs (i) reducing, effective August 1, 1998, each component of its base rates to residential retail customers by 5% from the base rates in effect immediately prior to January 1, 1998, (ii) reducing, effective October 1, 2000, each component of its base rates to residential retail customers by the lesser of 5% of the base rates in effect immediately prior to January 1, 1998 or the percentage by which the electric utility's average residential retail rate exceeds the average residential retail rate of the Midwest Utilities, based on data reported on Form 1 to the Federal Energy Regulatory Commission for calendar year 1999, and (iii) reducing, effective October 1, 2002, each component of its base rates to residential retail customers by an additional amount equal to the lesser of 5% of the base rates in effect immediately prior to January 1, 1998 or the percentage by which the electric utility's average residential retail rate exceeds the average residential retail rate of the Midwest Utilities, based on data reported on Form 1 to the Federal Energy Regulatory Commission for calendar year 2001; and (B) if the average residential retail rate of an electric utility serving between 150,000 and 250,000 retail customers in this State on January 1, 1995 is less than or equal to 90% of the average residential retail rate for the Midwest Utilities,

based on data reported on Form 1 to the Federal Energy Regulatory Commission for calendar year 1995, then it shall only be required to file tariffs (i) reducing, effective August 1, 1998, each component of its base rates to residential retail customers by 2% from the base rates in effect immediately prior to January 1, 1998; (ii) reducing, effective October 1, 2000, each component of its base rates to residential retail customers by 2% from the base rate in effect immediately prior to January 1, 1998; and (iii) reducing, effective October 1, 2002, each component of its base rates to residential retail customers by 1% from the base rates in effect immediately prior to January 1, 1998. Provided, further, that any electric utility for which a decrease in base rates has been or is placed into effect between October 1, 1996 and the dates specified in the preceding sentences of this subsection, other than pursuant to the requirements of this subsection, shall be entitled to reduce the amount of any reduction or reductions in its base rates required by this subsection by the amount of such other decrease. The tariffs required under this subsection shall be filed 45 days in advance of the effective date. Notwithstanding anything to the contrary in Section 9-220 of this Act, no restatement of base rates in conjunction with the elimination of a fuel adjustment clause under that Section shall result in a lesser decrease in base rates than customers would otherwise receive under this subsection had the electric utility's fuel adjustment clause not been eliminated.

(c) Any utility reducing its base rates by 15% on August 1, 1998 pursuant to subsection (b) shall include the following statement on its bills for residential customers from August 1 through December 31, 1998: "Effective August 1, 1998, your rates have been reduced by 15% by the Electric Service Customer Choice and Rate Relief Law of 1997 passed by the Illinois General Assembly.". Any utility reducing its base rates by 5% on August 1, 1998, pursuant to subsection (b) shall include the following statement on its bills for residential customers from August 1 through December 31, 1998: "Effective August 1, 1998, your rates have been reduced by 5% by the Electric Service Customer Choice and Rate Relief Law of 1997 passed by the Illinois General Assembly.".

Any utility reducing its base rates by 2% on August 1, 1998 pursuant to subsection (b) shall include the following statement on its bills for residential customers from August 1 through December 31, 1998: "Effective August 1, 1998, your rates have been reduced by 2% by the Electric Service Customer Choice and Rate Relief Law of 1997 passed by the Illinois General Assembly.".

(d) (Blank). ~~During the mandatory transition period, but not before January 1, 2000, and notwithstanding the provisions of subsection (a), an electric utility may request an increase in its base rates if the electric utility demonstrates that the 2 year average of its earned rate of return on common equity, calculated as its net income applicable to common stock divided~~

~~by the average of its beginning and ending balances of common equity using data reported in the electric utility's Form 1 report to the Federal Energy Regulatory Commission but adjusted to remove the effects of accelerated depreciation or amortization or other transition or mitigation measures implemented by the electric utility pursuant to subsection (g) of this Section and the effect of any refund paid pursuant to subsection (e) of this Section, is below the 2 year average for the same 2 years of the monthly average yields of 30-year U.S. Treasury bonds published by the Board of Governors of the Federal Reserve System in its weekly H.15 Statistical Release or successor publication. The Commission shall review the electric utility's request, and may review the justness and reasonableness of all rates for tariffed services, in accordance with the provisions of Article IX of this Act, provided that the Commission shall consider any special or negotiated adjustments to the revenue requirement agreed to between the electric utility and the other parties to the proceeding. In setting rates under this Section, the Commission shall exclude the costs and revenues that are associated with competitive services and any billing or pricing experiments conducted under Section 16-106.~~

(e) (Blank). ~~For the purposes of this subsection (e) all calculations and comparisons shall be performed for the Illinois operations of multijurisdictional utilities. During the mandatory transition period, notwithstanding the~~

~~provisions of subsection (a), if the 2-year average of an electric utility's earned rate of return on common equity, calculated as its net income applicable to common stock divided by the average of its beginning and ending balances of common equity using data reported in the electric utility's Form 1 report to the Federal Energy Regulatory Commission but adjusted to remove the effect of any refund paid under this subsection (c), and further adjusted to include the annual amortization of any difference between the consideration received by an affiliated interest of the electric utility in the sale of an asset which had been sold or transferred by the electric utility to the affiliated interest subsequent to the effective date of this amendatory Act of 1997 and the consideration for which such asset had been sold or transferred to the affiliated interest, with such difference to be amortized ratably from the date of the sale by the affiliated interest to December 31, 2006, exceeds the 2 year average of the Index for the same 2 years by 1.5 or more percentage points, the electric utility shall make refunds to customers beginning the first billing day of April in the following year in the manner described in paragraph (3) of this subsection. For purposes of this subsection (c), the "Index" shall be the sum of (A) the average for the 12 months ended September 30 of the monthly average yields of 30-year U.S. Treasury bonds published by the Board of Governors of the Federal Reserve System in its weekly H.15 Statistical Release or successor publication for each year 1998~~

~~through 2006, and (B) (i) 4.00 percentage points for each of the 12-month periods ending September 30, 1998 through September 30, 1999 or 8.00 percentage points if the electric utility's average residential retail rate is less than or equal to 90% of the average residential retail rate for the "Midwest Utilities", as that term is defined in subsection (b) of this Section, based on data reported on Form 1 to the Federal Energy Regulatory Commission for calendar year 1995, and the electric utility served between 150,000 and 250,000 retail customers on January 1, 1995, (ii) 7.00 percentage points for each of the 12-month periods ending September 30, 2000 through September 30, 2006 if the electric utility was providing service to at least 1,000,000 customers in this State on January 1, 1999, or 9.00 percentage points if the electric utility's average residential retail rate is less than or equal to 90% of the average residential retail rate for the "Midwest Utilities", as that term is defined in subsection (b) of this Section, based on data reported on Form 1 to the Federal Energy Regulatory Commission for calendar year 1995 and the electric utility served between 150,000 and 250,000 retail customers in this State on January 1, 1995, (iii) 11.00 percentage points for each of the 12-month periods ending September 30, 2000 through September 30, 2006, but only if the electric utility's average residential retail rate is less than or equal to 90% of the average residential retail rate for the "Midwest Utilities", as that term is defined in subsection (b) of this Section, based~~

~~on data reported on Form 1 to the Federal Energy Regulatory Commission for calendar year 1995, the electric utility served between 150,000 and 250,000 retail customers in this State on January 1, 1995, and the electric utility offers delivery services on or before June 1, 2000 to retail customers whose annual electric energy use comprises 33% of the kilowatt hour sales to that group of retail customers that are classified under Division D, Groups 20 through 39 of the Standard Industrial Classifications set forth in the Standard Industrial Classification Manual published by the United States Office of Management and Budget, excluding the kilowatt hour sales to those customers that are eligible for delivery services pursuant to Section 16-104(a)(1)(i), and offers delivery services to its remaining retail customers classified under Division D, Groups 20 through 39 on or before October 1, 2000, and, provided further, that the electric utility commits not to petition pursuant to Section 16-108(f) for entry of an order by the Commission authorizing the electric utility to implement transition charges for an additional period after December 31, 2006, or (iv) 5.00 percentage points for each of the 12-month periods ending September 30, 2000 through September 30, 2006 for all other electric utilities or 7.00 percentage points for such utilities for each of the 12-month periods ending September 30, 2000 through September 30, 2006 for any such utility that commits not to petition pursuant to Section 16-108(f) for entry of an order by the Commission~~

~~authorizing the electric utility to implement transition charges for an additional period after December 31, 2006 or 11.00 percentage points for each of the 12-month periods ending September 30, 2005 and September 30, 2006 for each electric utility providing service to fewer than 6,500, or between 75,000 and 150,000, electric retail customers in this State on January 1, 1995 if such utility commits not to petition pursuant to Section 16-108(f) for entry of an order by the Commission authorizing the electric utility to implement transition charges for an additional period after December 31, 2006.~~

~~(1) For purposes of this subsection (c), "excess earnings" means the difference between (A) the 2-year average of the electric utility's earned rate of return on common equity, less (B) the 2 year average of the sum of (i) the Index applicable to each of the 2 years and (ii) 1.5 percentage points; provided, that "excess earnings" shall never be less than zero.~~

~~(2) On or before March 31 of each year 2000 through 2007 each electric utility shall file a report with the Commission showing its earned rate of return on common equity, calculated in accordance with this subsection, for the preceding calendar year and the average for the preceding 2 calendar years.~~

~~(3) If an electric utility has excess earnings, determined in accordance with paragraphs (1) and (2) of~~

~~this subsection, the refunds which the electric utility shall pay to its customers beginning the first billing day of April in the following year shall be calculated and applied as follows:~~

~~(i) The electric utility's excess earnings shall be multiplied by the average of the beginning and ending balances of the electric utility's common equity for the 2 year period in which excess earnings occurred.~~

~~(ii) The result of the calculation in (i) shall be multiplied by 0.50 and then divided by a number equal to 1 minus the electric utility's composite federal and State income tax rate.~~

~~(iii) The result of the calculation in (ii) shall be divided by the sum of the electric utility's projected total kilowatt hour sales to retail customers plus projected kilowatt hours to be delivered to delivery services customers over a one year period beginning with the first billing date in April in the succeeding year to determine a cents per kilowatt-hour refund factor.~~

~~(iv) The cents per kilowatt-hour refund factor calculated in (iii) shall be credited to the electric utility's customers by applying the factor on the customer's monthly bills to each kilowatt hour sold or delivered until the total amount calculated in (ii) has~~

~~been paid to customers.~~

(f) During the mandatory transition period, an electric utility may file revised tariffs reducing the price of any tariffed service offered by the electric utility for all customers taking that tariffed service, which shall be effective 7 days after filing.

(g) During the mandatory transition period, an electric utility may, without obtaining any approval of the Commission other than that provided for in this subsection and notwithstanding any other provision of this Act or any rule or regulation of the Commission that would require such approval:

(1) implement a reorganization, other than a merger of 2 or more public utilities as defined in Section 3-105 or their holding companies;

(2) retire generating plants from service;

(3) sell, assign, lease or otherwise transfer assets to an affiliated or unaffiliated entity and as part of such transaction enter into service agreements, power purchase agreements, or other agreements with the transferee; provided, however, that the prices, terms and conditions of any power purchase agreement must be approved or allowed into effect by the Federal Energy Regulatory Commission; or

(4) use any accelerated cost recovery method including accelerated depreciation, accelerated amortization or other capital recovery methods, or record reductions to the original cost of its assets.

In order to implement a reorganization, retire generating plants from service, or sell, assign, lease or otherwise transfer assets pursuant to this Section, the electric utility shall comply with subsections (c) and (d) of Section 16-128, if applicable, and subsection (k) of this Section, if applicable, and provide the Commission with at least 30 days notice of the proposed reorganization or transaction, which notice shall include the following information:

(i) a complete statement of the entries that the electric utility will make on its books and records of account to implement the proposed reorganization or transaction together with a certification from an independent certified public accountant that such entries are in accord with generally accepted accounting principles and, if the Commission has previously approved guidelines for cost allocations between the utility and its affiliates, a certification from the chief accounting officer of the utility that such entries are in accord with those cost allocation guidelines;

(ii) a description of how the electric utility will use proceeds of any sale, assignment, lease or transfer to retire debt or otherwise reduce or recover the costs of services provided by such electric utility;

(iii) a list of all federal approvals or approvals required from departments and agencies of this State,

other than the Commission, that the electric utility has or will obtain before implementing the reorganization or transaction;

(iv) an irrevocable commitment by the electric utility that it will not, as a result of the transaction, impose any stranded cost charges that it might otherwise be allowed to charge retail customers under federal law or increase the transition charges that it is otherwise entitled to collect under this Article XVI; and

(v) if the electric utility proposes to sell, assign, lease or otherwise transfer a generating plant that brings the amount of net dependable generating capacity transferred pursuant to this subsection to an amount equal to or greater than 15% of the electric utility's net dependable capacity as of the effective date of this amendatory Act of 1997, and enters into a power purchase agreement with the entity to which such generating plant is sold, assigned, leased, or otherwise transferred, the electric utility also agrees, if its fuel adjustment clause has not already been eliminated, to eliminate its fuel adjustment clause in accordance with subsection (b) of Section 9-220 for a period of time equal to the length of any such power purchase agreement or successor agreement, or until January 1, 2005, whichever is longer; if the

capacity of the generating plant so transferred and related power purchase agreement does not result in the elimination of the fuel adjustment clause under this subsection, and the fuel adjustment clause has not already been eliminated, the electric utility shall agree that the costs associated with the transferred plant that are included in the calculation of the rate per kilowatt-hour to be applied pursuant to the electric utility's fuel adjustment clause during such period shall not exceed the per kilowatt-hour cost associated with such generating plant included in the electric utility's fuel adjustment clause during the full calendar year preceding the transfer, with such limit to be adjusted each year thereafter by the Gross Domestic Product Implicit Price Deflator.

(vi) In addition, if the electric utility proposes to sell, assign, or lease, (A) either (1) an amount of generating plant that brings the amount of net dependable generating capacity transferred pursuant to this subsection to an amount equal to or greater than 15% of its net dependable capacity on the effective date of this amendatory Act of 1997, or (2) one or more generating plants with a total net dependable capacity of 1100 megawatts, or (B) transmission and distribution facilities that either (1) bring the amount of transmission and distribution facilities

transferred pursuant to this subsection to an amount equal to or greater than 15% of the electric utility's total depreciated original cost investment in such facilities, or (2) represent an investment of $25,000,000 in terms of total depreciated original cost, the electric utility shall provide, in addition to the information listed in subparagraphs (i) through (v), the following information: (A) a description of how the electric utility will meet its service obligations under this Act in a safe and reliable manner and (B) the electric utility's projected earned rate of return on common equity, calculated in accordance with subsection (d) of this Section, for each year from the date of the notice through December 31, 2006 both with and without the proposed transaction. If the Commission has not issued an order initiating a hearing on the proposed transaction within 30 days after the date the electric utility's notice is filed, the transaction shall be deemed approved. The Commission may, after notice and hearing, prohibit the proposed transaction if it makes either or both of the following findings: (1) that the proposed transaction will render the electric utility unable to provide its tariffed services in a safe and reliable manner, or (2) that there is a strong likelihood that consummation of the proposed

transaction will result in the electric utility being entitled to request an increase in its base rates during the mandatory transition period pursuant to subsection (d) of this Section. Any hearing initiated by the Commission into the proposed transaction shall be completed, and the Commission's final order approving or prohibiting the proposed transaction shall be entered, within 90 days after the date the electric utility's notice was filed. Provided, however, that a sale, assignment, or lease of transmission facilities to an independent system operator that meets the requirements of Section 16-126 shall not be subject to Commission approval under this Section.

In any proceeding conducted by the Commission pursuant to this subparagraph (vi), intervention shall be limited to parties with a direct interest in the transaction which is the subject of the hearing and any statutory consumer protection agency as defined in subsection (d) of Section 9-102.1. Notwithstanding the provisions of Section 10-113 of this Act, any application seeking rehearing of an order issued under this subparagraph (vi), whether filed by the electric utility or by an intervening party, shall be filed within 10 days after service of the order.

The Commission shall not in any subsequent proceeding or

otherwise, review such a reorganization or other transaction authorized by this Section, but shall retain the authority to allocate costs as stated in Section 16-111(i). An entity to which an electric utility sells, assigns, leases or transfers assets pursuant to this subsection (g) shall not, as a result of the transactions specified in this subsection (g), be deemed a public utility as defined in Section 3-105. Nothing in this subsection (g) shall change any requirement under the jurisdiction of the Illinois Department of Nuclear Safety including, but not limited to, the payment of fees. Nothing in this subsection (g) shall exempt a utility from obtaining a certificate pursuant to Section 8-406 of this Act for the construction of a new electric generating facility. Nothing in this subsection (g) is intended to exempt the transactions hereunder from the operation of the federal or State antitrust laws. Nothing in this subsection (g) shall require an electric utility to use the procedures specified in this subsection for any of the transactions specified herein. Any other procedure available under this Act may, at the electric utility's election, be used for any such transaction.

(h) During the mandatory transition period, the Commission shall not establish or use any rates of depreciation, which for purposes of this subsection shall include amortization, for any electric utility other than those established pursuant to subsection (c) of Section 5-104 of this Act or utilized pursuant to subsection (g) of this Section. Provided, however,

that in any proceeding to review an electric utility's rates for tariffed services pursuant to Section 9-201, 9-202, 9-250 or 16-111(d) of this Act, the Commission may establish new rates of depreciation for the electric utility in the same manner provided in subsection (d) of Section 5-104 of this Act. An electric utility implementing an accelerated cost recovery method including accelerated depreciation, accelerated amortization or other capital recovery methods, or recording reductions to the original cost of its assets, pursuant to subsection (g) of this Section, shall file a statement with the Commission describing the accelerated cost recovery method to be implemented or the reduction in the original cost of its assets to be recorded. Upon the filing of such statement, the accelerated cost recovery method or the reduction in the original cost of assets shall be deemed to be approved by the Commission as though an order had been entered by the Commission.

(i) Subsequent to the mandatory transition period, the Commission, in any proceeding to establish rates and charges for tariffed services offered by an electric utility, may ~~shall~~ consider, among other factors, ~~only~~ (1) the then current or projected revenues, costs, investments and cost of capital directly or indirectly associated with the provision of such tariffed services; (2) collection of transition charges in accordance with Sections 16-102 and 16-108 of this Act; (3) recovery of any employee transition costs as described in

Section 16-128 which the electric utility is continuing to incur, including recovery of any unamortized portion of such costs previously incurred or committed, with such costs to be equitably allocated among bundled services, delivery services, and contracts with alternative retail electric suppliers; and (4) recovery of the costs associated with the electric utility's compliance with decommissioning funding requirements; and shall not consider any other revenues, costs, investments or cost of capital of either the electric utility or of any affiliate of the electric utility that are not associated with the provision of tariffed services. In setting rates for tariffed services, the Commission shall equitably allocate joint and common costs and investments between the electric utility's competitive and tariffed services. In determining the justness and reasonableness of the electric power and energy component of an electric utility's rates for tariffed services subsequent to the mandatory transition period and prior to the time that the provision of such electric power and energy is declared competitive, the Commission shall consider the extent to which the electric utility's tariffed rates for such component for each customer class exceed the market value determined pursuant to Section 16-112, and, if the electric power and energy component of such tariffed rate exceeds the market value by more than 10% for any customer class, may establish such electric power and energy component at a rate equal to the market value plus 10%. In any

such case, the Commission may also elect to extend the provisions of Section 16-111(e) for any period in which the electric utility is collecting transition charges, using information applicable to such period.

(j) During the mandatory transition period, an electric utility may elect to transfer to a non-operating income account under the Commission's Uniform System of Accounts either or both of (i) an amount of unamortized investment tax credit that is in addition to the ratable amount which is credited to the electric utility's operating income account for the year in accordance with Section 46(f)(2) of the federal Internal Revenue Code of 1986, as in effect prior to P.L. 101-508, or (ii) "excess tax reserves", as that term is defined in Section 203(e)(2)(A) of the federal Tax Reform Act of 1986, provided that (A) the amount transferred may not exceed the amount of the electric utility's assets that were created pursuant to Statement of Financial Accounting Standards No. 71 which the electric utility has written off during the mandatory transition period, and (B) the transfer shall not be effective until approved by the Internal Revenue Service. An electric utility electing to make such a transfer shall file a statement with the Commission stating the amount and timing of the transfer for which it intends to request approval of the Internal Revenue Service, along with a copy of its proposed request to the Internal Revenue Service for a ruling. The Commission shall issue an order within 14 days after the

electric utility's filing approving, subject to receipt of approval from the Internal Revenue Service, the proposed transfer.

(k) If an electric utility is selling or transferring to a single buyer 5 or more generating plants located in this State with a total net dependable capacity of 5000 megawatts or more pursuant to subsection (g) of this Section and has obtained a sale price or consideration that exceeds 200% of the book value of such plants, the electric utility must provide to the Governor, the President of the Illinois Senate, the Minority Leader of the Illinois Senate, the Speaker of the Illinois House of Representatives, and the Minority Leader of the Illinois House of Representatives no later than 15 days after filing its notice under subsection (g) of this Section or 5 days after the date on which this subsection (k) becomes law, whichever is later, a written commitment in which such electric utility agrees to expend $2 billion outside the corporate limits of any municipality with 1,000,000 or more inhabitants within such electric utility's service area, over a 6-year period beginning with the calendar year in which the notice is filed, on projects, programs, and improvements within its service area relating to transmission and distribution including, without limitation, infrastructure expansion, repair and replacement, capital investments, operations and maintenance, and vegetation management.

(l) The provisions of this amendatory Act of the 95th

General Assembly relating to (i) the reinstatement of rates and (ii) refunds to customers are separate issues and severable. If either of those provisions or its application to any person or circumstance is held invalid, then the invalidity of that provision or application does not affect the other provision or its application. This subsection (l) does not in any way limit the general severability clause of Section 99-97 of this amendatory Act of the 95th General Assembly.

(Source: P.A. 91-50, eff. 6-30-99; 92-537, eff. 6-6-02; 92-690, eff. 7-18-02; revised 9-10-02.)

(220 ILCS 5/16-113)

Sec. 16-113. Declaration of service as a competitive service.

(a) An electric utility may, by petition, request the Commission to declare a tariffed service provided by the electric utility to be a competitive service. The electric utility shall give notice of its petition to the public in the same manner that public notice is provided for proposed general increases in rates for tariffed services, in accordance with rules and regulations prescribed by the Commission. The Commission shall hold a hearing and ~~on the petition if a hearing is deemed necessary by the Commission. The Commission~~ shall declare the class of tariffed service to be a competitive service ~~for some identifiable customer segment or group of customers, or some clearly defined geographical area~~ within the

electric utility's service area, only after the electric utility demonstrates that at least 33% of the customers in the electric utility's service area that are eligible to take the class of tariffed service instead take service from alternative retail electric suppliers, as defined in Section 16-102, and that at least 3 alternative retail electric suppliers provide service that is comparable to the class of tariffed service to those customers in the utility's service area that do not take service from the electric utility; ~~if the service or a reasonably equivalent substitute service is reasonably available to the customer segment or group or in the defined geographical area at a comparable price from one or more providers other than the electric utility or an affiliate of the electric utility, and the electric utility has lost or there is a reasonable likelihood that the electric utility will lose business for the service to the other provider or providers;~~ provided, that the Commission may not declare the provision of electric power and energy to be competitive pursuant to this subsection with respect to (i) any retail customer or group of retail customers that is not eligible pursuant to Section 16-104 to take delivery services provided by the electric utility and (ii) any residential and small commercial retail customers prior to the last date on which such customers are required to pay transition charges. In determining whether to grant or deny a petition to declare the provision of electric power and energy competitive, the

Commission shall consider, in applying the above criteria, whether there is adequate transmission capacity into the service area of the petitioning electric utility to make electric power and energy reasonably available to the customer segment or group or in the defined geographical area from one or more providers other than the electric utility or an affiliate of the electric utility, in accordance with this subsection. The Commission shall make its determination and issue its final order declaring or refusing to declare the service to be a competitive service within 180 ~~120~~ days following the date that the petition is filed~~, or otherwise the petition shall be deemed to be granted; provided, that if the petition is deemed to be granted by operation of law, the Commission shall not thereby be precluded from finding and ordering, in a subsequent proceeding initiated by the Commission, and after notice and hearing, that the service is not competitive based on the criteria set forth in this subsection~~.

(b) Any customer except a customer identified in subsection (c) of Section 16-103 who is taking a tariffed service that is declared to be a competitive service pursuant to subsection (a) of this Section shall be entitled to continue to take the service from the electric utility on a tariffed basis for a period of 3 years following the date that the service is declared competitive, or such other period as is stated in the electric utility's tariff pursuant to Section 16-110. This

subsection shall not require the electric utility to offer or provide on a tariffed basis any service to any customer (except those customers identified in subsection (c) of Section 16-103) that was not taking such service on a tariffed basis on the date the service was declared to be competitive.

(c) If the Commission denies a petition to declare a service to be a competitive service, or determines in a separate proceeding that a service is not competitive based on the criteria set forth in subsection (a), the electric utility may file a new petition no earlier than 6 months following the date of the Commission's order, requesting, on the basis of additional or different facts and circumstances, that the service be declared to be a competitive service.

(d) The Commission shall not deny a petition to declare a service to be a competitive service, and shall not find that a service is not a competitive service, on the grounds that it has previously denied the petition of another electric utility to declare the same or a similar service to be a competitive service or has previously determined that the same or a similar service provided by another electric utility is not a competitive service.

(e) An electric utility may declare a service, other than delivery services or the provision of electric power or energy, to be competitive by filing with the Commission at least 14 days prior to the date on which the service is to become competitive a notice describing the service that is being

declared competitive and the date on which it will become competitive; provided, that any customer who is taking a tariffed service that is declared to be a competitive service pursuant to this subsection (e) shall be entitled to continue to take the service from the electric utility on a tariffed basis until the electric utility files, and the Commission grants, a petition to declare the service competitive in accordance with subsection (a) of this Section. The Commission shall be authorized to find and order, after notice and hearing in a subsequent proceeding initiated by the Commission, that any service declared to be competitive pursuant to this subsection (e) is not competitive in accordance with the criteria set forth in subsection (a) of this Section.

(Source: P.A. 90-561, eff. 12-16-97.)

(220 ILCS 5/16-135 new)

Sec. 16-135. The Consumers Overbilled and Reimbursed for Electricity Fund.

(a) The Consumers Overbilled and Reimbursed for Electricity Fund is created as a special fund in the State treasury. Subject to appropriation, moneys in the Fund shall be distributed and paid or credited as provided in this Section. Income earned on amounts in the Fund shall be deposited into the Fund.

(b) In January 2008, or as soon thereafter as practical, the Department of Revenue shall make payments from the Fund to

each utility that has made refunds under item (B) in subsection (a) of Section 16-111 in the amount of those refunds made by the utility together with interest that is reasonably incurred from the date that the refunds were made to the date of payment to the utility under this subsection.

(c) Beginning 10 days after the effective date of this amendatory Act of the 95th General Assembly and through the end of the calendar month in which that date occurs constitutes the first rate-reduction month. Thereafter, each calendar month constitutes a rate-reduction month.

(d) For each rate-reduction month, the Department of Revenue shall make a payment from the Fund to each utility that is subject to subsection (a) of Section 16-111. Payments shall be made each calendar month beginning February 2008. The payment to each such utility for a rate-reduction month shall be in an amount equal to (i) the number of total kilowatt hours used by the utility's customers during the billing periods ending in the rate-reduction month, multiplied by (ii) a rate determined by subtracting the rate charged to the utility's customers on December 31, 2006 from the rate charged to the utility's customers on January 2, 2007 for each rate-reduction month through the rate-reduction month of December 2008; 90% of that amount for each rate-reduction month in 2009; 80% of that amount for each rate-reduction month in 2010; 70% of that amount for each rate-reduction month in 2011; 60% of that amount for each rate-reduction month in 2012; and 50% of that

amount for each rate-reduction month beginning on or after January 1, 2013. For the purpose of calculating the payment under this subsection, the rate charged to the utility's customers on January 2, 2007 does not include the portion of the rate charged under any delivery services tariff of the utility that became effective on January 2, 2007.

Payments under this subsection (d) shall include interest that is reasonably incurred; interest shall be calculated on the remaining balance beginning 10 days after the end of the rate-reduction month through the date of payment. If there is not a sufficient balance in the Fund to make the payment required under this subsection (d), then the Department of Revenue shall pay each utility a pro-rata share of the balance of the Fund (less any amount necessary to make refunds under Section 5-65 of the Electricity Generator Tax Act) based on the amount of the payment owing to that utility compared to the total of payments owing to all such utilities. Payments shall be made first with respect to the earliest rate-reduction month for which payment has not been made in full.

(e) For each rate-reduction month through and including June 2008, if, during the entire rate-reduction month, the utility charged its customers the same rates charged to its customers on December 31, 2006 (plus any rate charged under any of the utility's delivery services tariffs that became effective on or after January 2, 2007), then the amount paid to the utility for that rate-reduction month shall be retained by

the utility. Otherwise, the amount paid to the utility for that rate-reduction month shall immediately be credited to the customers of the utility prorated based on the total kilowatt hours used by the customer during the rate-reduction month as compared to the total kilowatt hours used by all customers of that utility during the rate-reduction month. The utility must identify the credit on the bill as a STATE FUNDED CREDIT and must insert a separate notice with the bill to the customer showing the credit. That notice must state the following in at least 14-point bold type:

THE "STATE FUNDED CREDIT" SHOWN ON THIS BILL WAS FUNDED IN ACCORDANCE WITH A MANDATE OF THE GENERAL ASSEMBLY OF THE STATE OF ILLINOIS.

No other communication concerning the credit may be contained on the notice or the bill or any other material sent with the bill.

(f) All information necessary to implement and administer this Section must be provided by each utility to the Commission within 10 days after the end of each calendar month. The Commission shall then verify the information and make certifications to the Department of Revenue necessary for the Department to make payments under this Section.

If a utility, without good cause shown, does not provide accurate information within the 10-day period and the payment based on that information is required to be credited to its customers under subsection (e), then the utility must

additionally credit its customers with interest, at the utility's expense, for the period during which the application of the credit is delayed. The interest shall be at the same rate that the Commission requires the utility to pay on customer deposits.

The Commission must, and has all powers necessary to, (i) fully enforce this Section and (ii) examine and audit the books and records of utilities to ensure compliance with this Section.

For the public interest, safety, and welfare, in order to initially implement this Section, the Commission is authorized to adopt emergency rules under Section 5-45 of the Illinois Administrative Procedure Act.

Section 3-10. The State Finance Act is amended by changing Section 8h and by adding Section 5.675 as follows:

(30 ILCS 105/5.675 new)

Sec. 5.675. The Consumers Overbilled and Reimbursed for Electricity Fund.

(30 ILCS 105/8h)

Sec. 8h. Transfers to General Revenue Fund.

(a) Except as otherwise provided in this Section and Section 8n of this Act, and ~~(c), (d), or (e),~~ notwithstanding any other State law to the contrary, the Governor may, through

June 30, 2007, from time to time direct the State Treasurer and Comptroller to transfer a specified sum from any fund held by the State Treasurer to the General Revenue Fund in order to help defray the State's operating costs for the fiscal year. The total transfer under this Section from any fund in any fiscal year shall not exceed the lesser of (i) 8% of the revenues to be deposited into the fund during that fiscal year or (ii) an amount that leaves a remaining fund balance of 25% of the July 1 fund balance of that fiscal year. In fiscal year 2005 only, prior to calculating the July 1, 2004 final balances, the Governor may calculate and direct the State Treasurer with the Comptroller to transfer additional amounts determined by applying the formula authorized in Public Act 93-839 to the funds balances on July 1, 2003. No transfer may be made from a fund under this Section that would have the effect of reducing the available balance in the fund to an amount less than the amount remaining unexpended and unreserved from the total appropriation from that fund estimated to be expended for that fiscal year. This Section does not apply to any funds that are restricted by federal law to a specific use, to any funds in the Motor Fuel Tax Fund, the Intercity Passenger Rail Fund, the Hospital Provider Fund, the Medicaid Provider Relief Fund, the Teacher Health Insurance Security Fund, the Reviewing Court Alternative Dispute Resolution Fund, the Voters' Guide Fund, the Foreign Language Interpreter Fund, the Lawyers' Assistance Program Fund, the Supreme Court Federal

Projects Fund, the Supreme Court Special State Projects Fund, the Supplemental Low-Income Energy Assistance Fund, the Good Samaritan Energy Trust Fund, the Low-Level Radioactive Waste Facility Development and Operation Fund, the Horse Racing Equity Trust Fund, or the Hospital Basic Services Preservation Fund, or to any funds to which subsection (f) of Section 20-40 of the Nursing and Advanced Practice Nursing Act applies. No transfers may be made under this Section from the Pet Population Control Fund. Notwithstanding any other provision of this Section, for fiscal year 2004, the total transfer under this Section from the Road Fund or the State Construction Account Fund shall not exceed the lesser of (i) 5% of the revenues to be deposited into the fund during that fiscal year or (ii) 25% of the beginning balance in the fund. For fiscal year 2005 through fiscal year 2007, no amounts may be transferred under this Section from the Road Fund, the State Construction Account Fund, the Criminal Justice Information Systems Trust Fund, the Wireless Service Emergency Fund, or the Mandatory Arbitration Fund.

In determining the available balance in a fund, the Governor may include receipts, transfers into the fund, and other resources anticipated to be available in the fund in that fiscal year.

The State Treasurer and Comptroller shall transfer the amounts designated under this Section as soon as may be practicable after receiving the direction to transfer from the

Governor.

(a-5) Transfers directed to be made under this Section on or before February 28, 2006 that are still pending on May 19, 2006 (the effective date of Public Act 94-774) ~~this amendatory Act of the 94th General Assembly~~ shall be redirected as provided in Section 8n of this Act.

(b) This Section does not apply to: (i) the Ticket For The Cure Fund; (ii) any fund established under the Community Senior Services and Resources Act; or (iii) on or after January 1, 2006 (the effective date of Public Act 94-511), the Child Labor and Day and Temporary Labor Enforcement Fund.

(c) This Section does not apply to the Demutualization Trust Fund established under the Uniform Disposition of Unclaimed Property Act.

(d) This Section does not apply to moneys set aside in the Illinois State Podiatric Disciplinary Fund for podiatric scholarships and residency programs under the Podiatric Scholarship and Residency Act.

(e) Subsection (a) does not apply to, and no transfer may be made under this Section from, the Pension Stabilization Fund.

(f) This Section does not apply to the Consumers Overbilled and Reimbursed for Electricity Fund.

(Source: P.A. 93-32, eff. 6-20-03; 93-659, eff. 2-3-04; 93-674, eff. 6-10-04; 93-714, eff. 7-12-04; 93-801, eff. 7-22-04; 93-839, eff. 7-30-04; 93-1054, eff. 11-18-04; 93-1067, eff.

1-15-05; 94-91, eff. 7-1-05; 94-120, eff. 7-6-05; 94-511, eff. 1-1-06; 94-535, eff. 8-10-05; 94-639, eff. 8-22-05; 94-645, eff. 8-22-05; 94-648, eff. 1-1-06; 94-686, eff. 11-2-05; 94-691, eff. 11-2-05; 94-726, eff. 1-20-06; 94-773, eff. 5-18-06; 94-774, eff. 5-19-06; 94-804, eff. 5-26-06; 94-839, eff. 6-6-06; revised 6-19-06.)

Section 3-15. "An Act in relation to the competitive provision of utility services, amending named Acts", Public Act 90-561, approved December 16, 1997, is amended by changing Section 15 of Article I as follows:

(P.A. 90-561, Art. I, Sec. 15)

Sec. 15.

(a) If any provision added by this amendatory Act of 1997 is held invalid, this entire amendatory Act of 1997 shall be deemed invalid, and the provisions of Section 1.31, "Severability", of the Statute on Statutes are hereby expressly declared not applicable to this amendatory Act of 1997; provided, however (i) that any contracts entered into and performed, transactions completed, orders issued, services provided, billings rendered, or payments made in accordance with the provisions of this amendatory Act of 1997, other than as provided in clause (ii) below, prior to the date of the determination of such invalidity, shall not thereby be rendered invalid; (ii) that no presumption as to the validity or

invalidity of any contracts, transactions, orders, billings, or payments pursuant to Article XVIII of the Public Utilities Act shall result from a determination of invalidity of this amendatory Act of 1997; and (iii) that the provisions of proviso (i) shall not be deemed to preserve the validity of any executory contracts or transactions, of any actions to be taken pursuant to orders issued, or of any services to be performed, billings to be rendered, or payments to be made, pursuant to provisions of this amendatory Act of 1997 subsequent to the date of determination of such invalidity.

(b) This Section applies only to Public Act 90-561; this Section does not apply to any Public Act (i) with an effective date after the effective date of Public Act 90-561 and (ii) that amends, adds to, or otherwise affects the provisions added by Public Act 90-561.

(Source: P.A. 90-561.)

ARTICLE 5. ELECTRICITY GENERATOR TAX ACT

Section 5-1. Short title. This Act may be cited as the Electricity Generator Tax Act.

Section 5-3. Definitions. As used in this Act:

"Department" means the Department of Revenue.

"Generating unit" means a nuclear reactor, coal-fired boiler, coal-fired combustion turbine, or natural gas-fired

turbine that produces electricity.

"Nameplate capacity" means the maximum rated output of a generating unit under specific conditions, as designated by the manufacturer on a nameplate that is physically attached to the generating unit.

"Taxable year" means a calendar year. For 2007, however, taxable year means the effective date of this Act through and including December 31, 2007.

"Taxpayer" means a person who operates a generating unit in this State at any time during the taxable year.

"Vertically integrated utility" means a public utility that owns generating units, a transmission system, and distribution lines to provide all aspects of electric service in the utility's service territory.

Section 5-5. Tax imposed.

(a) A tax is imposed on the privilege of operating, at any time during the taxable year, a generating unit within this State.

(b) The tax imposed under this Act applies to taxable years beginning on or after the effective date of this Act.

(c) No tax under this Act is imposed on any of the following:

(1) a generating unit owned by a municipality or an electric cooperative;

(2) a generating unit that generates electricity from a

renewable energy resource, as defined in the Renewable Energy, Energy Efficiency, and Coal Resources Development Law of 1997;

(3) a generating unit designed to produce both heat and electricity from a single heat source;

(4) a generating unit that has a nameplate capacity of less than 100 megawatts;

(5) a generating unit operated fewer than 876 hours during the taxable year (or fewer than 438 hours during taxable year 2007); or

(6) any portion of the nameplate capacity of a generating unit that is owned by a vertically integrated utility.

Section 5-10. Rate. For each generating unit that is not exempt under subsection (c) of Section 5-5, the tax under this Act is imposed annually in the amount equal to $70,000 per megawatt of nameplate capacity of the generating unit.

Section 5-15. Returns and notices.

(a) Each taxpayer subject to the tax imposed under this Act shall make a return under this Act for that taxable year.

(b) Each taxpayer shall keep any record, render any statement, make any return and notice, and comply with any rule that the Department may, from time to time, adopt. If, in the judgment of the Director of Revenue it is necessary, he or she

may require any person, by notice served upon that person or by rule, to make any return and notice, render any statement, or keep any record that the Director deems sufficient to show whether or not that person is liable for tax under this Act.

Section 5-20. Time and place for filing returns.

(a) Returns required by this Act must be filed at the place that the Department may require by rule.

(b) A return due under this Act for any taxable year must be filed on or before the 15th day of the third month following the close of the taxable year.

(c) The fact that an individual's name is signed to a return or notice is prima facie evidence for all purposes that the document was actually signed by that individual. If a return is prepared by an income tax return preparer for a taxpayer, then that preparer shall sign the return as the preparer of that return. If a return is transmitted to the Department electronically, then the Department may presume that the electronic return originator has obtained and is transmitting a valid signature document pursuant to the rules adopted by the Department for the electronic filing of tax returns, or the Department may authorize electronic return originators to maintain the signature documents and associated documentation, subject to the Department's right of inspection at any time without notice, rather than transmitting those documents to the Department, and the Department may process the

return.

A return or notice required of a corporation must be signed by the president, vice-president, treasurer, or any other officer duly authorized so to act or, in the case of a limited liability company, by a manager or member. In the case of a return or notice made for a corporation by a fiduciary, the fiduciary shall sign the document. The fact that an individual's name is signed to a return or notice is prima facie evidence that the individual is authorized to sign the document on behalf of the taxpayer.

A return or notice of a partnership must be signed by any one of the partners or, in the case of a limited liability company, by a manager or member. The fact that a person's name is signed to a return or notice is prima facie evidence that the individual is authorized to sign the document on behalf of the partnership or limited liability company.

(d) If a taxpayer fails to sign a return within 30 days after proper notice and demand for signature by the Department, the return is considered valid, and any amount shown to be due on the return is deemed assessed. Any overpayment of tax shown on the face of an unsigned return is considered forfeited if, after notice and demand for signature by the Department, the taxpayer fails to provide a signature and 3 years have passed from the date the return was filed.

(e) Each return required to be filed under this Act must contain or be verified by a written declaration that it is made

under the penalties of perjury. A taxpayer's signing a fraudulent return under this Act is perjury, as defined in Section 32-2 of the Criminal Code of 1961.

(f) The Department may require electronic filing of any return due under this Act.

Section 5-25. Payment on due date of return.

(a) Each taxpayer required to file a return under this Act shall, without assessment, notice, or demand, pay any tax due thereon to the Department at the place fixed by rules adopted by the Department for filing on or before the date fixed for filing the return (determined without regard to any extension of time for filing the return). In making payment as provided in this Section, there remains payable only the balance of the tax remaining due after giving effect to payments of estimated tax made by the taxpayer under Section 5-30 of this Act for the taxable year and to tentative payments under subsection (b) of this Section for the taxable year.

(b) The taxpayer shall file a tentative tax return and pay, on or before the date required by law for the filing of the return the amount properly estimated as his or her tax for the taxable year.

(c) Interest and penalty on any amount of tax due and unpaid for the period of any extension is payable as provided by the Uniform Penalty and Interest Act.

(d) The Department may, by rule, require any taxpayer to

make payments due under this Act by electronic funds transfer.

Section 5-30. Payment of estimated tax.

(a) Beginning July 1, 2007, each taxpayer is required to pay estimated tax for the taxable year in the form and manner that the Department requires by rule. Each installment of estimated tax must be paid on or before the 10th day of each calendar month.

(b) The amount of each required installment is an amount equal to:

(1) the total amount of the tax that is estimated to be due for the taxable year under Section 5-10 less the amount of all estimated payments previously paid by the taxpayer for that taxable year; divided by

(2) the number of calendar months remaining in the taxable year, including the current calendar month.

(c) In case of any underpayment of estimated tax by a taxpayer, the taxpayer is liable to a penalty in an amount determined at the rate set forth under Section 3-3 of the Uniform Penalty and Interest Act upon the amount of the underpayment, determined under subsection (b), for each required installment. For the purposes of this subsection (c), the amount of the underpayment is the excess of:

(1) the amount of the installment that would be required to be paid under subsection (b); less

(2) the amount, if any, of the installment paid on or

before the last date prescribed for payment.

Section 5-35. Collection authority. The Department shall collect the taxes imposed by this Act and shall deposit the amounts collected under this Act into the Consumers Overbilled and Reimbursed for Electricity Fund in the State treasury.

Section 5-40. Notice and demand.

(a) Except as provided in subsection (b), the Director of Revenue shall, as soon as practical after an amount payable under this Act is deemed assessed (as provided in Section 5-45 of this Act), give notice to each person liable for any unpaid portion of that assessment, stating the amount unpaid and demanding payment thereof. In the case of tax deemed assessed with the filing of a return, the Director shall give notice no later than 3 years after the date the return was filed. Upon receipt of any notice and demand, there must be paid, at the place and time stated in the notice, the amount stated in the notice. The notice must be left at the dwelling or usual place of business of the person or shall be sent by mail to the person's last known address.

(b) In the case of a deficiency deemed assessed under Section 5-45 of this Act, after the filing of a protest, notice and demand may not be made with respect to the assessment until all proceedings in court for the review of the assessment have terminated or the time for the taking thereof has expired

without the proceedings being instituted.

(c) The Department may bring an action in any court of competent jurisdiction within or without this State in the name of the people of this State to recover the amount of any taxes, penalties, and interest due and unpaid under this Act. In that action, the certificate of the Department showing the amount of the delinquency is prima facie evidence of the correctness of the amount, its assessment, and of the compliance by the Department with all the provisions of this Act.

Section 5-45. Assessment.

(a) The amount of tax that is shown to be due on the return is deemed to be assessed on the date of filing of the return (including any amended returns showing an increase of tax). If the amount of tax is understated on the taxpayer's return due to a mathematical error, the Department shall notify the taxpayer that the amount of tax in excess of that shown on the return is due and has been assessed. The notice of additional tax due must be issued no later than 3 years after the date the return was filed. The notice of additional tax due is not considered to be a notice of deficiency nor does the taxpayer have any right of protest. In the case of a return properly filed without the computation of the tax, the tax computed by the Department is deemed to be assessed on the date when payment is due.

(b) If a notice of deficiency has been issued, the amount

of the deficiency is deemed assessed on the date provided in Section 5-50 if no protest is filed or, if a protest is filed, then upon the date when the decision of the Department becomes final.

(c) Any amount paid as tax or in respect of tax paid under this Act, other than amounts paid as estimated tax under Section 5-30, are deemed to be assessed upon the date of receipt of payment, notwithstanding any other provisions of this Act.

(d) No deficiency may be assessed with respect to a taxable year for which a return was filed unless a notice of deficiency for that year was issued not later than the date prescribed in Section 5-55.

Section 5-50. Deficiencies and overpayments.

(a) As soon as practical after a return is filed, the Department shall examine it to determine the correct amount of tax. If the Department finds that the amount of tax shown on the return is less than the correct amount, it shall issue a notice of deficiency to the taxpayer that sets forth the amount of tax and penalties proposed to be assessed. If the Department finds that the tax paid is more than the correct amount, it shall credit or refund the overpayment as provided by Section 5-65. The findings of the Department under this subsection are prima facie correct and are prima facie evidence of the correctness of the amount of tax and penalties due.

(b) If the taxpayer fails to file a tax return, the Department shall determine the amount of tax due according to its best judgment and information, and the amount so fixed by the Department is prima facie correct and is prima facie evidence of the correctness of the amount of tax due. The Department shall issue a notice of deficiency to the taxpayer that sets forth the amount of tax and penalties proposed to be assessed.

(c) A notice of deficiency issued under this Act must set forth the adjustments giving rise to the proposed assessment and the reasons therefor.

(d) Assessment when no protest. Upon the expiration of 60 days after the date on which it was issued, a notice of deficiency constitutes an assessment of the amount of tax and penalties specified therein, except only for such amounts as to which the taxpayer has filed a protest with the Department.

Section 5-55. Limitations on notices of deficiency and assessments.

(a) A notice of deficiency must be issued not later than 3 years after the date that the return was filed. No deficiency may be assessed or collected with respect to the year for which the return was filed unless the notice is issued within that period.

(b) If no return is filed or a false and fraudulent return is filed with intent to evade the tax imposed by this Act, a

notice of deficiency may be issued at any time.

(c) In any case in which there has been an erroneous refund of tax payable under this Act, a notice of deficiency may be issued at any time within 2 years from the making of the refund, or within 5 years from the making of the refund if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact, but the amount of any proposed assessment set forth in the notice is limited to the amount of the erroneous refund.

(d) If a protest has been filed with respect to a notice of deficiency issued by the Department with respect to a taxable year and the decision of the Department on the protest has become final, the Department is barred from issuing a further or additional notice of deficiency for that taxable year, except in the case of fraud, mathematical error, or a return that is not considered processable, as the term is defined in Section 3-2 of the Uniform Penalty and Interest Act.

(e) The taxpayer at any time, whether or not a notice of deficiency has been issued, has the right to waive the restrictions on assessment and collection of the whole or any part of any proposed assessment under this Act by a signed notice in writing filed with the Department in the form and manner that the Department may provide by rule.

Section 5-60. Procedure on protest.

(a) Within 60 days after the issuance of a notice of

deficiency, the taxpayer may file with the Department of Revenue a written protest against the proposed assessment, in the form and manner that the Department may provide by rule, setting forth the grounds on which the protest is based. If a protest is filed, the Department shall reconsider the proposed assessment and, if the taxpayer has so requested, shall grant the taxpayer or his or her authorized representative a hearing.

(b) As soon as practical after the reconsideration and hearing, if any, the Department shall issue a notice of decision by mailing the notice by certified or registered mail. The notice must set forth briefly the Department's findings of fact and the basis of decision in each case decided in whole or in part adversely to the taxpayer.

(c) Within 30 days after the mailing of a notice of decision, the taxpayer may file with a Department a written request for rehearing in the form and manner that the Department may provide by rule, setting forth the grounds on which the rehearing is requested. In any such case, the Department shall, in its discretion, grant either a rehearing or Departmental review unless, within 10 days after receipt of the request, it issues a denial of the request by mailing the denial to the taxpayer by certified or registered mail. If rehearing or Departmental review is granted, as soon as practical after the rehearing or Departmental review, the Department shall issue a notice of final decision as provided in subsection (b).

(d) The action of the Department on the taxpayer's protest becomes final:

(1) 30 days after the issuance of a notice of decision as provided in subsection (b); or

(2) if a timely request for rehearing was made, upon the issuance of a denial of the request or the issuance of a notice of final decision, as provided in subsection (c).

Section 5-65. Credits and refunds.

(a) In the case of any overpayment, the Department of Revenue may credit the amount of the overpayment, including any interest allowed thereon, against any liability in respect of the tax imposed by this Act or any other act administered by the Department or against any liability of the taxpayer collectible by the Department, regardless of whether other collection remedies are closed to the Department on the part of the person who made the overpayment and shall refund any balance to that person.

(b) The Department may adopt rules providing for the crediting against the estimated tax for any taxable year of the amount determined by the taxpayer or the Department to be an overpayment of the tax imposed by this Act for a preceding taxable year.

(c) Interest is allowed and paid at the rate and in the manner set forth under Section 3-2 of the Uniform Penalty and Interest Act upon any overpayment in respect of the tax imposed

by this Act. For purposes of this subsection, no amount of tax, for any taxable year, may be treated as having been paid before the date on which the tax return for that year was due under Section 5-20.

(d) Every claim for refund must be filed with the Department in writing in the form and manner that the Department may provide by rule, and must state the specific grounds upon which it is founded.

(e) As soon as practical after a claim for refund is filed, the Department shall examine it and either issue a notice of refund, abatement, or credit to the claimant or issue a notice of denial. If the Department has failed to approve or deny the claim before the expiration of 6 months after the date the claim was filed, then the claimant may nevertheless thereafter file with the Department a written protest in the form and manner that the Department may provide by rule. If a protest is filed, the Department shall consider the claim and, if the taxpayer has so requested, shall grant the taxpayer or the taxpayer's authorized representative a hearing within 6 months after the date the request is filed.

A denial of a claim for refund becomes final 60 days after the date of issuance of the notice of the denial except for those amounts denied as to which the claimant has filed a protest with the Department under Section 5-70.

(f) An overpayment of tax shown on the face of an unsigned return is considered forfeited to the State if, after notice

and demand for signature by the Department, the taxpayer fails to provide a signature and 3 years have passed after the date the return was filed. An overpayment of tax refunded to a taxpayer whose return was filed electronically is considered an erroneous refund if, after proper notice and demand by the Department, the taxpayer fails to provide a required signature document. A notice and demand for signature in the case of a return reflecting an overpayment may be made by first class mail.

(g) The Department shall pay refunds from the Consumers Overbilled and Reimbursed for Electricity Fund.

Section 5-70. Procedure on denial of claim for refund.

(a) Within 60 days after the denial of the claim, the claimant may file with the Department a written protest against the denial in the form and manner that the Department may provide by rule, setting forth the grounds on which the protest is based. If a protest is filed, the Department shall reconsider the denial and, if the taxpayer has so requested, shall grant the taxpayer or the taxpayer's authorized representative a hearing.

(b) As soon as practical after the reconsideration and hearing, if any, the Department shall issue a notice of decision by mailing the notice by certified or registered mail. The notice must set forth briefly the Department's findings of fact and the basis of decision in each case decided in whole or

in part adversely to the claimant.

(c) Within 30 days after the mailing of a notice of decision, the claimant may file with the Department a written request for rehearing in the form and manner that the Department may provide by rule, setting forth the grounds on which rehearing is requested. In any such case, the Department shall, in its discretion, grant either a rehearing or Departmental review unless, within 10 days after the receipt of the request, it issues a denial of the request by mailing the denial to the claimant by certified or registered mail. If rehearing or Departmental review is granted, as soon as practical after the rehearing or Departmental review, the Department shall issue a notice of final decision as provided in subsection (b).

(d) The action of the Department on the claimant's protest becomes final:

(1) 30 days after issuance of a notice of decision as provided in subsection (b); or

(2) if a timely request for rehearing was made, upon the issuance of a denial of the request or the issuance of a notice of final decision as provided in subsection (c).

Section 5-75. Limitations on claims for refund.

(a) A claim for refund must be filed no later than 3 years after the date that the return was filed or one year after the date that the tax was paid, whichever is the later. No credit

or refund is allowed or made with respect to the year for which the claim was filed unless the claim is filed within that period.

(b) If the claim was filed by the claimant during the 3-year period set forth in subsection (a), then the amount of the credit or refund may not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return. If the claim was not filed within that 3-year period, then the amount of the credit or refund may not exceed the portion of the tax paid during the one year immediately preceding the filing of the claim.

Section 5-80. Recovery of erroneous refund. An erroneous refund is considered to be a deficiency of tax on the date made and is deemed to be assessed and must be collected as provided in Sections 5-45 and 5-50.

Section 5-85. Lien for tax.

(a) If any taxpayer neglects or refuses to pay the tax due under this Act after demand, then the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) is a lien in favor of the State of Illinois upon all property and rights to property, whether real or personal, belonging to that person.

(b) Unless another date is specifically fixed by law, the lien imposed by subsection (a) of this Section arises at the time the assessment is made and continues until the liability for the amount so assessed (or a judgment against the taxpayer arising out of such liability) is satisfied or becomes unenforceable by reason of lapse of time.

(c) If the lien arises from an assessment pursuant to a notice of deficiency, then the lien does not attach and the notice referred to in this Section may not be filed until all proceedings in court for review of the assessment have terminated or the time for the taking thereof has expired without the proceedings being instituted.

(d) Notice of lien. The lien created by assessment terminates unless a notice of lien is filed, as provided in Section 5-95, within 3 years after the date all proceedings in court for the review of the assessment have terminated or the time for the taking thereof has expired without the proceedings being instituted. If the lien results from the filing of a return without payment of the tax or penalty shown therein to be due, then the lien terminates unless a notice of lien is filed within 3 years after the date the return was filed with the Department. For the purposes of this subsection (c), a tax return filed before the last day prescribed by law, including any extension thereof, is deemed to have been filed on that last day.

Section 5-90. Jeopardy assessment and lien.

(a) Assessment. If the Department finds that a taxpayer is about to conceal property or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect any amount of tax or penalties imposed under this Act unless court proceedings are brought without delay or if the Department finds that the collection of that amount will be jeopardized by delay, the Department shall give the taxpayer notice of those findings and shall make demand for immediate return and payment of that amount, whereupon that amount is deemed to be assessed and becomes immediately due and payable.

(b) If the taxpayer, within 5 days after the notice under subsection (a) does not comply with the notice or show to the Department that the findings in such notice are erroneous, then the Department may file a notice of jeopardy assessment lien in the office of the recorder of the county in which any property of the taxpayer may be located and shall notify the taxpayer of the filing. The jeopardy assessment lien has the same scope and effect as a statutory lien under this Act. The taxpayer is liable for the filing fee incurred by the Department for filing the lien and the filing fee incurred by the Department to file the release of that lien. The filing fees must be paid to the Department in addition to payment of the tax, penalty, and interest included in the amount of the lien.

(c) In the case of a tax for a current taxable year, the Director shall declare the taxable period of the taxpayer

immediately terminated and his or her notice and demand for a return and immediate payment of the tax relates to the period declared terminated.

(d) If the taxpayer believes that he or she does not owe some or all of the amount for which the jeopardy assessment lien against him or her has been filed or that no jeopardy to the revenue in fact exists, he or she may protest within 20 days after being notified by the Department of the filing of the jeopardy assessment lien and request a hearing, whereupon the Department shall hold a hearing in conformity with the provisions of Section 5-120 and, pursuant thereto, shall notify the taxpayer of its decision as to whether the jeopardy assessment lien will be released.

Section 5-95. Filing and priority of liens.

(a) Nothing in this Act may be construed to give the Department a preference over the rights of any bona fide purchaser, holder of a security interest, mechanics lienor, mortgagee, or judgment lien creditor arising prior to the filing of a regular notice of lien or a notice of jeopardy assessment lien in the office of the recorder in the county in which the property subject to the lien is located. For purposes of this Section, the term "bona fide" does not include any mortgage of real or personal property or any other credit transaction that results in the mortgagee or the holder of the security acting as trustee for unsecured creditors of the

taxpayer mentioned in the notice of lien who executed the chattel or real property mortgage or the document evidencing the credit transaction. The lien is inferior to the lien of general taxes, special assessments, and special taxes heretofore or hereafter levied by any political subdivision of this State.

(b) If title to land to be affected by the notice of lien or notice of jeopardy assessment lien is registered under the provisions of the Registered Titles (Torrens) Act, then the notice must be filed in the office of the registrar of titles of the county within which the property subject to the lien is situated and must be entered upon the register of titles as a memorial of charge upon each folium of the register of titles affected by such notice, and the Department does not have a preference over the rights of any bona fide purchaser, mortgagee, judgment creditor, or other lien holder arising prior to the registration of the notice.

(c) The recorder of each county shall procure a file labeled "State Tax Lien Notices" and an index book labeled "State Tax Lien Index". When notice of any lien or jeopardy assessment lien is presented to him or her for filing, he or she shall file it in numerical order in the file and shall enter it alphabetically in the index. The entry must show the name and last known address of the person named in the notice, the serial number of the notice, the date and hour of filing, whether it is a regular lien or a jeopardy assessment lien, and

the amount of tax and penalty due and unpaid, plus the amount of interest due at the time when the notice of lien or jeopardy assessment is filed.

(d) No recorder or registrar of titles of any county may require that the Department pay any costs or fees in connection with recordation of any notice or other document filed by the Department under this Act at the time the notice or other document is presented for recordation. The recorder or registrar of each county, in order to receive payment for fees or costs incurred by the Department, may present the Department with monthly statements indicating the amount of fees and costs incurred by the Department and for which no payment has been received.

(e) The taxpayer is liable for the filing fee incurred by the Department for filing the lien and the filing fee incurred by the Department to file the release of that lien. The filing fees must be paid to the Department in addition to payment of the tax, penalty, and interest included in the amount of the lien.

Section 5-100. Duration of lien. The lien provided under this Act continues for 20 years from the date of filing the notice of lien under the provisions of Section 5-95 unless sooner released or otherwise discharged.

Section 5-105. Release of liens.

(a) In general. Upon payment by the taxpayer to the Department in cash or by guaranteed remittance of an amount representing the filing fees and charges for the lien and the filing fees and charges for the release of that lien, the Department shall release all or any portion of the property subject to any lien provided for in this Act and file that complete or partial release of lien with the recorder of the county where that lien was filed if it determines that the release will not endanger or jeopardize the collection of the amount secured thereby.

(b) If, on judicial review, the final judgment of the court is that the taxpayer does not owe some or all of the amount secured by the lien against him or her, or that no jeopardy to the revenue exists, then the Department shall release its lien to the extent of that finding of nonliability or to the extent of that finding of no jeopardy to the revenue. The taxpayer is, however, liable for the filing fee paid by the Department to file the lien and the filing fee required to file a release of the lien. The filing fees must be paid to the Department.

(c) The Department shall also release its jeopardy assessment lien against the taxpayer if the tax and penalty covered by the lien, plus any interest that may be due and an amount representing the filing fee to file the lien and the filing fee required to file a release of that lien, are paid by the taxpayer to the Department in cash or by guaranteed remittance.

(d) The Department shall issue a certificate of complete or partial release of the lien upon payment by the taxpayer to the Department in cash or by guaranteed remittance of an amount representing the filing fee paid by the Department to file the lien and the filing fee required to file the release of that lien:

(1) to the extent that the fair market value of any property subject to the lien exceeds the amount of the lien plus the amount of all prior liens upon the property;

(2) to the extent that the lien becomes unenforceable;

(3) to the extent that the amount of the lien is paid by the person whose property is subject to the lien, together with any interest and penalty which may become due under this Act between the date when the notice of lien is filed and the date when the amount of the lien is paid;

(4) to the extent that there is furnished to the Department, on a form to be approved and with a surety or sureties satisfactory to the Department, a bond that is conditioned upon the payment of the amount of the lien, together with any interest which may become due under this Act after the notice of lien is filed, but before the amount thereof is fully paid; and

(5) to the extent and under the circumstances specified in this Section.

A certificate of complete or partial release of any lien is held to be conclusive that the lien upon the property covered

by the certificate is extinguished to the extent indicated by the certificate. The release of lien must be issued to the person, or his or her agent, against whom the lien was obtained and must contain in legible letters a statement as follows:

FOR THE PROTECTION OF THE OWNER, THIS RELEASE SHALL BE FILED WITH THE RECORDER OR THE REGISTRAR OF TITLES IN WHOSE OFFICE THE LIEN WAS FILED.

(e) If a certificate of complete or partial release of lien issued by the Department is presented for filing in the office of the recorder or registrar of titles where a notice of lien or notice of jeopardy assessment lien was filed, then:

(1) the recorder, in the case of nonregistered property, shall permanently attach the certificate of release to the notice of lien or notice of jeopardy assessment lien and shall enter the certificate of release and the date in the "State Tax Lien Index" on the line where the notice of lien or notice of jeopardy assessment lien is entered; and

(2) in the case of registered property, the registrar of titles shall file and enter upon each folium of the register of titles affected thereby a memorial of the certificate of release, which when so entered, acts as a release pro tanto of any memorial of the notice of lien or notice of jeopardy assessment lien previously filed and registered.

Section 5-110. Nonliability for costs of legal proceedings. The Department is not be required to furnish any bond nor to make a deposit for or pay any costs or fees of any court or officer thereof in any legal proceedings pursuant to the provisions of this Act.

Section 5-115. Claim to property. If any process issued from any court for the enforcement or collection of any liability created by this Act is levied by any sheriff or other authorized person upon any personal property and the property is claimed by any person other than the defendant as exempt from enforcement of a judgment thereon by virtue of the exemption laws of this State, then it is the duty of the person making the claim to give notice in writing of his or her claim and of his or her intention to prosecute the same to the sheriff or other person within 10 days after the making of the levy. On receiving such a notice, the sheriff or other person shall proceed in accordance with the provisions of Part 2 of Article XII of the Code of Civil Procedure. The giving of the notice within the 10-day period is a condition precedent to any judicial action against the sheriff or other authorized person for wrongfully levying, seizing, or selling the property and any such person who fails to give notice within the time is forever barred from bringing any judicial action against the sheriff or other person for injury or damages to or conversion of the property.

Section 5-120. Foreclosure on real property. In addition to any other remedy provided for by the laws of this State, and provided that no hearing or proceedings for review provided by this Act is pending and the time for the taking thereof has expired, the Department may foreclose in the circuit court any lien on real property for any tax or penalty imposed by this Act to the same extent and in the same manner as in the enforcement of other liens. The proceedings to foreclose may not be instituted more than 5 years after the filing of the notice of lien under the provisions of Section 5-95. The process, practice, and procedure for the foreclosure is the same as provided in the Civil Practice Law.

Section 5-125. Demand and seizure. In addition to any other remedy provided for by the laws of this State, if the tax imposed by this Act is not paid within the time required by this Act, the Department, or some person designated by it, may cause a demand to be made on the taxpayer for the payment thereof. If the tax remains unpaid for 10 days after such a demand has been made and no proceedings have been taken to review the same, then the Department may issue a warrant directed to any sheriff or other person authorized to serve process, commanding the sheriff or other person to levy upon the property and rights to property (whether real or personal, tangible or intangible) of the taxpayer, without exemption,

found within his or her jurisdiction, for the payment of the amount thereof with the added penalties, interest, and the cost of executing the warrant. The term "levy" includes the power of distraint and seizure by any means. In any case in which the warrant to levy has been issued, the sheriff or other person to whom the warrant was directed may seize and sell the property or rights to property. The warrant must be returned to the Department together with the money collected by virtue thereof within the time therein specified, which may not be less than 20 nor more than 90 days after the date of the warrant. The sheriff or other person to whom the warrant is directed shall proceed in the same manner as prescribed by law in respect to the enforcement against property upon judgments by a court, and is entitled to the same fees for his or her services in executing the warrant, to be collected in the same manner. The Department, or some officer, employee, or agent designated by it, is hereby authorized to bid for and purchase any property sold under the provisions of this Section. No proceedings for a levy under this Section may be commenced more than 20 years after the latest date for filing of the notice of lien under the provisions of Section 5-95, without regard to whether the notice was actually filed.

Any officer or employee of the Department designated in writing by the Director is authorized to serve process under this Section to levy upon accounts or other intangible assets of a taxpayer held by a financial organization, as defined in

Section 1501 of the Illinois Income Tax Act. In addition to any other provisions of this Section, any officer or employee of the Department designated in writing by the Director may levy upon the following property and rights to property belonging to a taxpayer: contractual payments, accounts and notes receivable and other evidences of debt, and interest on bonds by serving a notice of levy on the person making the payment. The levy may not be made until the Department has caused a demand to be made on the taxpayer in the manner provided in this Section. A lien obtained hereunder has priority over any subsequent lien obtained pursuant to Section 12-808 of the Code of Civil Procedure.

Any officer or employee of the Department designated in writing by the Director is authorized to serve process under this Section to levy upon accounts or other intangible assets of a taxpayer held by a financial organization, as defined in Section 1501 of the Illinois Income Tax Act. In addition to any other provisions of this Section, any officer or employee of the Department designated in writing by the Director may levy upon the following property and rights to property belonging to a taxpayer: contractual payments, accounts and notes receivable and other evidences of debt, and interest on bonds by serving a notice of levy on the person making the payment. The levy may not be made until the Department has caused a demand to be made on the taxpayer in the manner provided in this Section. A lien obtained hereunder has priority over any

subsequent lien obtained pursuant to Section 12-808 of the Code of Civil Procedure.

In any case where property or rights to property have been seized by an officer of the Department of State Police, or successor agency thereto, under the authority of a warrant to levy issued by the Department of Revenue, the Department of Revenue may take possession of and may sell the property or rights to property and the Department of Revenue may contract with third persons to conduct sales of the property or rights to the property. In the conduct of these sales, the Department of Revenue shall proceed in the same manner as is prescribed by law for proceeding against property to enforce judgments that are entered by a circuit court of this State. If, in the Department of Revenue's opinion, no offer to purchase at the sale is acceptable and the State's interest would be better served by retaining the property for sale at a later date, then the Department may decline to accept any bid and may retain the property for sale at a later date.

Section 5-130. Redemption by State. The provisions of Section 5g of the Retailers' Occupation Tax Act (relating to time for redemption by the State of real estate sold at judicial or execution sale) apply for purposes of this Act as if those provisions were set forth in this Act in their entirety.

Section 5-135. Access to books and records. All books and records and other papers and documents that are required by this Act to be kept must, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. If, during the course of any audit, investigation, or hearing, the Department determines that a taxpayer lacks necessary documentary evidence, the Department is authorized to notify the taxpayer, in writing, to produce the evidence. The taxpayer has 60 days, subject to the right of the Department to extend this period either on request for good cause shown or on its own motion, after the date the notice is personally delivered or sent to the taxpayer by certified or registered mail in which to obtain and produce the evidence for the Department's inspection. The failure to provide the requested evidence within the 60-day period precludes the taxpayer from providing the evidence at a later date during the audit, investigation, or hearing.

Section 5-140. Conduct of investigations and hearings. For the purpose of administering and enforcing the provisions of this Act, the Department, or any officer or employee of the Department designated, in writing, by the Director may hold investigations and hearings concerning any matters covered by this Act and may examine any books, papers, records, or memoranda bearing upon such matters, and may require the attendance of any person, or any officer or employee of that

person, having knowledge of such matters, and may take testimony and require proof for its information. In the conduct of any investigation or hearing, neither the Department nor any officer or employee thereof is bound by the technical rules of evidence, and no informality in any proceeding, or in the manner of taking testimony, invalidates any order, decision, rule, or regulation made or approved or confirmed by the Department. The Director, or any officer or employee of the Department authorized by the Director has power to administer oaths to those persons. The books, papers, records, and memoranda of the Department, or parts thereof, may be proved in any hearing, investigation, or legal proceeding by a reproduced copy thereof or by a computer print-out of Department records, under the certificate of the Director. If reproduced copies of the Department's books, papers, records, or memoranda are offered as proof, then the Director must certify that those copies are true and exact copies of the records on file with the Department. If computer print-outs of records of the Department are offered as proof, then the Director must certify that those computer print-outs are true and exact representations of records properly entered into standard electronic computing equipment, in the regular course of the Department's business, at or reasonably near the time of the occurrence of the facts recorded, from trustworthy and reliable information. The reproduced copy shall, without further proof, be admitted into evidence before the Department or in any legal

proceeding.

Section 5-145. Immunity of witnesses. No person is excused from testifying or from producing any books, papers, records, or memoranda in any investigation or upon any hearing, when ordered to do so by the Department or any officer or employee thereof, upon the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate him or her or subject him or her to a criminal penalty, but no person may be prosecuted or subjected to any criminal penalty for, or on account of, any transaction made or thing concerning which he or she may testify or produce evidence, documentary or otherwise, before the Department or an officer or employee thereof; provided, that the immunity extends only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath. No person so testifying is exempt from prosecution and punishment for perjury committed in so testifying.

Section 5-150. Production of witnesses and records.

(a) The Department or any officer or employee of the Department designated in writing by the Director, shall at its or his or her own instance, or on the written request of any other party to the proceeding, issue subpoenas requiring the attendance of and the giving of testimony by witnesses, and subpoenas duces tecum requiring the production of books,

papers, records, or memoranda. All subpoenas and subpoenas duces tecum issued under this Act may be served by any person of full age.

(b) The fees of witnesses for attendance and travel are the same as the fees of witnesses before a Circuit Court of this State, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the Department or any officer or employee thereof, the fees must be paid in the same manner as other expenses of the Department, and when the witness is subpoenaed at the instance of any other party to any such proceeding, the Department may require that the cost of service of the subpoena or subpoenas duces tecum and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the Department, in its discretion, may require a deposit to cover the cost of the service and witness fees. A subpoena or subpoena duces tecum so issued must be served in the same manner as a subpoena issued out of a court.

(c) Any Circuit Court of this State, upon the application of the Department or any officer or employee thereof, or upon the application of any other party to the proceeding may, in its discretion, compel the attendance of witnesses, the production of books, papers, records, or memoranda and the giving of testimony before the Department or any officer or employee thereof conducting an investigation or holding a hearing authorized by this Act, by an attachment for contempt,

or otherwise, in the same manner as production of evidence may be compelled before the Court.

Section 5-155. Place of hearings. All hearings provided for in this Act with respect to or concerning a taxpayer having a residence or its commercial domicile in this State must be held at the Department of Revenue's office nearest to the location of that residence or domicile, except that, if the taxpayer has its commercial domicile in Cook County, the hearing must be held in Cook County. If the taxpayer does not have its commercial domicile in this State, the hearing must be held in Cook County.

Section 5-160. Penalties and interest.

(a) Penalties and interest imposed by the Uniform Penalty and Interest Act with respect to the obligations of a taxpayer under this Act must be paid upon notice and demand and, except as provided in subsection (b), must be assessed, collected, and paid in the same manner as the tax imposed by this Act, and any reference in this Act to the tax imposed by this Act refers also to interest and penalties imposed by the Uniform Penalty and Interest Act.

(b) Interest is deemed to be assessed upon the assessment of the tax to which the interest relates. Penalties for late payment or underpayment are deemed to be assessed upon assessment of the tax to which the penalty relates.

Section 5-165. Administrative Review Law. The provisions of the Administrative Review Law, and the rules adopted pursuant thereto, apply to and govern all proceedings for the judicial review of final actions of the Department. These final actions constitute "administrative decisions", as defined in Section 3-101 of the Code of Civil Procedure.

Section 5-170. Venue. The Circuit Court of the county where the taxpayer has his or her residence or commercial domicile, or of Cook County in those cases where the taxpayer does not have his or her residence or commercial domicile in this State, has the power to review all final administrative decisions of the Department in administering the provisions of this Act.

Section 5-175. Service, certification, and dismissal.

(a) Service upon the Director or the Assistant Director of Revenue of summons issued in an action to review a final administrative decision of the Department is service upon the Department.

(b) The Department shall certify the record of its proceedings if the taxpayer pays to it the sum of $0.75 per page of testimony taken before the Department and $0.25 per page of all other matters contained in the record, except that these charges may be waived if the Department is satisfied that

the aggrieved party is a poor person who cannot afford to pay the charges.

(c) If payment for the record is not made by the taxpayer within 30 days after notice from the Department or the Attorney General of the cost thereof, the court in which the proceeding is pending, on motion of the Department, shall dismiss the complaint and shall enter judgment against the taxpayer and in favor of the Department in accordance with the final action of the Department, together with interest on any deficiency to the date of entry of the judgment, and also for costs.

Section 5-180. Crimes.

(a) Any person who is subject to the provisions of this Act and who willfully fails to file a return, who files a fraudulent return, or who willfully attempts in any other manner to evade or defeat any tax imposed by this Act or the payment thereof or any accountant or other agent who knowingly enters false information on the return of any taxpayer under this Act, is, in addition to other penalties, guilty of a Class 4 felony for the first offense and a Class 3 felony for each subsequent offense. Any person who is subject to this Act and who willfully violates any rule or regulation of the Department of Revenue for the administration and enforcement of this Act or who fails to keep books and records as required in this Act is, in addition to other penalties, guilty of a Class A misdemeanor.

(b) Any person who accepts money that is due to the Department under this Act from a taxpayer for the purpose of acting as the taxpayer's agent to make the payment to the Department, but who willfully fails to remit that payment to the Department when due, is guilty of a Class A misdemeanor. Any such person who purports to make that payment by issuing or delivering a check or other order upon a real or fictitious depository for the payment of money, knowing that it will not be paid by the depository, is guilty of a deceptive practice in violation of Section 17-1 of the Criminal Code of 1961.

(c) Any person whose commercial domicile or whose residence is in this State and who is charged with a violation under this Section must be tried in the county where his or her commercial domicile or his or her residence is located unless he or she asserts a right to be tried in another venue. A prosecution for any act or omission in violation of this Section may be commenced at any time within 5 years after the commission of that act or failure to act.

Section 5-185. Adoption of rules. The Department is authorized to make, adopt, and enforce such reasonable rules and regulations, and to prescribe such forms, relating to the administration and enforcement of the provisions of this Act, as it may deem appropriate.

Section 5-190. Notice. If notice is required by this Act,

then the notice must, if not otherwise provided, be given or issued by mailing it by registered or certified mail addressed to the person concerned at his or her last known address.

Section 5-195. Amounts less than $1.

(a) Payments, refunds, etc. The Department may by rule provide that, if a total amount of less than $1 is payable, refundable, or creditable, then the amount may be disregarded or, alternatively, is disregarded if it is less than $0.50 and is increased to $1 if it is $0.50 or more.

(b) The Department may by rule provide that any amount that is required to be shown or reported on any return or other document under this Act is, if that amount is not a whole-dollar amount, increased to the nearest whole-dollar amount in any case where the fractional part of a dollar is $0.50 or more and decreased to the nearest whole-dollar amount when the fractional part of a dollar is less than $0.50.

Section 5-200. Administrative Procedure Act; application.

(a) The Illinois Administrative Procedure Act is hereby expressly adopted and applies to all administrative rules and procedures of the Department under this Act, except that: (1) paragraph (b) of Section 5-10 of the Illinois Administrative Procedure Act does not apply to final orders, decisions, and opinions of the Department; (2) subparagraph (a)(2) of Section 5-10 of the Illinois Administrative Procedure Act does not

apply to forms established by the Department for use under this Act; and (3) the provisions of Section 10-45 of the Illinois Administrative Procedure Act regarding proposals for decision are excluded and not applicable to the Department under this Act.

(b) For the public interest, safety, and welfare, in order to initially implement this Act, the Department is authorized to adopt emergency rules under Section 5-45 of the Illinois Administrative Procedure Act.

ARTICLE 99. SEVERABILITY; EFFECTIVE DATE

Section 99-97. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

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