



Sen. David Koehler

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1 AMENDMENT TO SENATE BILL 1802

2 AMENDMENT NO. _____. Amend Senate Bill 1802 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Power Agency Act is amended by
5 changing Section 1-92 as follows:

6 (20 ILCS 3855/1-92)

7 Sec. 1-92. Aggregation of retail electrical load of
8 residential and small commercial retail customers by
9 municipalities and counties.

10 (a) The corporate authorities of a municipality or county
11 board of a county may adopt an ordinance under which it may
12 aggregate, in accordance with this Section, ~~residential and~~
13 ~~small commercial~~ retail electrical loads of applicable
14 residential and small commercial retail customers located,
15 respectively, within the municipality or the unincorporated
16 areas of the county and, for that purpose, shall ~~may~~ solicit

1 bids and enter into service agreements to facilitate for those
2 loads the sale and purchase of electricity and related services
3 and equipment through a competitive procurement process. For
4 purposes of this Section, small commercial retail customers of
5 an electric utility that on December 31, 2010 provided electric
6 service to at least 2,000,000 customers in Illinois shall be
7 those customers of the watt-hour only delivery service class.
8 For purposes of this Section, small commercial retail customers
9 of an electric utility that on December 31, 2010 provided
10 electric service to 2,000,000 or fewer customers but more than
11 100,000 customers in Illinois shall be those customers of an
12 electric utility consuming 15,000 kilowatt-hours or less of
13 electricity annually in its service area. Applicable
14 residential and small commercial retail customers in an
15 aggregation program shall not include customers of an
16 alternative retail electric supplier that is not the chosen
17 supplier of the aggregation program or customers participating
18 in a residential real-time pricing program or Percentage of
19 Income Payment Plan (PIPP) unless those customers
20 affirmatively choose to join the aggregation program.

21 If the corporate authorities or the county board seek to
22 operate the aggregation program as an opt-out program, then the
23 program applies solely to residential and small commercial
24 retail customers that are taking service from the electric
25 utility through fixed-price bundled service tariffs or taking
26 electric supply service offered by an alternative retail

1 electric supplier from an expiring or current aggregation
2 program. The corporate authorities or the county board shall
3 allow new residents outside of an opt-out period, and
4 non-applicable residential and small commercial retail
5 customers who were not eligible to receive the opt-out notice,
6 to affirmatively commit to the terms and conditions of an
7 opt-out program at any time during the length of the program
8 under a process disclosed in the plan of operation and
9 governance.

10 The corporate authorities or county board may also exercise
11 such authority jointly with any other municipality or county.
12 Two or more municipalities or counties, or a combination of
13 both, may initiate a process jointly to authorize aggregation
14 by a majority vote of each particular municipality or county as
15 required by this Section.

16 If the corporate authorities or the county board seek to
17 operate the aggregation program as an opt-out program for
18 residential and small commercial retail customers, then prior
19 to the adoption of an ordinance with respect to aggregation of
20 residential and small commercial retail electric loads, the
21 corporate authorities of a municipality or the county board of
22 a county shall submit a referendum to its residents to
23 determine whether or not the aggregation program shall operate
24 as an opt-out program for residential and small commercial
25 retail customers.

26 In addition to the notice and conduct requirements of the

1 general election law, notice of the referendum shall state
2 briefly the purpose of the referendum. The question of whether
3 the corporate authorities or the county board shall adopt an
4 opt-out aggregation program for residential and small
5 commercial retail customers shall be submitted to the electors
6 of the municipality or county board at a regular election and
7 approved by a majority of the electors voting on the question.
8 The corporate authorities or county board must certify to the
9 proper election authority, which must submit the question at an
10 election in accordance with the Election Code.

11 The election authority must submit the question in
12 substantially the following form:

13 Shall the (municipality or county in which the question
14 is being voted upon) have the authority to arrange for the
15 supply of electricity for its residential and small
16 commercial retail customers who have not opted out of such
17 program?

18 The election authority must record the votes as "Yes" or "No".

19 If a majority of the electors voting on the question vote
20 in the affirmative, then the corporate authorities or county
21 board may implement an opt-out aggregation program for
22 residential and small commercial retail customers.

23 A referendum must pass in each particular municipality or
24 county that is engaged in the aggregation program. If the
25 referendum fails, then the corporate authorities or county
26 board shall operate the aggregation program as an opt-in

1 program for residential and small commercial retail customers.

2 An ordinance under this Section shall specify whether the
3 aggregation will occur only with the prior consent of each
4 person owning, occupying, controlling, or using an electric
5 load center proposed to be aggregated. Nothing in this Section,
6 however, authorizes the aggregation of electric loads that are
7 served or authorized to be served by an electric cooperative as
8 defined by and pursuant to the Electric Supplier Act or loads
9 served by a municipality that owns and operates its own
10 electric distribution system. No aggregation shall take effect
11 unless approved by a majority of the members of the corporate
12 authority or county board voting upon the ordinance.

13 A governmental aggregator under this Section is not a
14 public utility, agent, broker, consultant, or an alternative
15 retail electric supplier. Nothing in this Section prohibits a
16 governmental aggregator from retaining the services of an
17 agent, broker, or consultant.

18 (a-5) A governmental aggregator must utilize the services
19 of a qualified expert for the execution of a competitive
20 procurement process to meet the supply needs of its
21 aggregation. The qualified expert must be separate from, and
22 maintain no business relationship with, any other consultant
23 providing services to the governmental aggregator. A qualified
24 expert, as evidenced by a certified affidavit, must have:

25 (1) direct previous experience administering
26 large-scale competitive procurement processes;

1 (2) an advanced degree in economics, mathematics,
2 engineering, or a related area of study;

3 (3) ten years of experience in the electricity sector,
4 including risk management experience;

5 (4) expertise in credit and contract protocols;

6 (5) adequate resources to perform and fulfill the
7 required functions and responsibilities, including a
8 bidding and posting process that provides complete
9 auditable communication and bidding recording functions;
10 and

11 (6) the absence of a conflict of interest and
12 inappropriate bias for or against potential bidders as
13 evidenced by an affidavit certifying that the expert does
14 not maintain compensation or agency agreements with any of
15 the bidders participating in the procurement event.

16 (a-10) The Director of the Illinois Power Agency shall
17 provide governmental aggregators and other interested parties
18 with the names of experts deemed as qualified by the Agency to
19 serve as the procurement administrators for the most recent
20 Agency-administered procurement events.

21 (b) Upon the applicable requisite authority under this
22 Section, the corporate authorities or the county board, with
23 assistance from the Illinois Power Agency, shall develop a plan
24 of operation and governance for the aggregation program so
25 authorized.

26 For an opt-out program, the plan shall specify the process

1 and associated timelines for applicable residential and small
2 commercial retail customers choosing to opt out of the program
3 as well as for non-applicable customers affirmatively choosing
4 to join the aggregation program. The plan for an opt-out
5 program shall ensure that applicable residential and small
6 commercial retail customers are explicitly allowed through
7 written or electronic notice the opportunity to opt out of the
8 aggregation program at a minimum of once every 3 years with no
9 penalty, with the right to opt out to either (i) the electric
10 utility if bundled retail electric service is still offered to
11 that customer class pursuant to Section 16-103 of the Public
12 Utilities Act, (ii) an electric utility's residential
13 real-time pricing rate, if available, or (iii) an electric
14 supply service offered by an alternative retail electric
15 supplier certified by the Commission. The plan for the
16 aggregation program shall not conflict with or otherwise
17 abrogate any existing contracts between an alternative retail
18 electric supplier and residential and small commercial retail
19 customers.

20 Before adopting a plan under this Section, the corporate
21 authorities or county board shall hold at least 2 public
22 hearings on the plan. Before the first hearing, the corporate
23 authorities or county board shall publish notice of the
24 hearings once a week for 2 consecutive weeks in a newspaper of
25 general circulation in the jurisdiction. The notice shall
26 summarize the plan and state the date, time, and location of

1 each hearing. Any load aggregation plan established pursuant to
2 this Section shall:

3 (1) provide for universal access to all applicable
4 residential customers and equitable treatment of
5 applicable residential customers;

6 (2) describe demand management and energy efficiency
7 services to be provided ~~to each class of customers~~; and

8 (3) meet any requirements established by law
9 concerning aggregated service offered pursuant to this
10 Section.

11 (c) The process for soliciting bids for electricity and
12 other related services and awarding proposed agreements for the
13 purchase of electricity and other related services shall be
14 conducted in the following order:

15 (1) The corporate authorities or county board shall ~~may~~
16 solicit bids for electricity and other related services
17 through a competitive procurement process.

18 (2) Notwithstanding Section 16-122 of the Public
19 Utilities Act and Section 2HH of the Consumer Fraud and
20 Deceptive Business Practices Act, an electric utility that
21 provides residential and small commercial retail electric
22 service in the aggregate area must, upon request of the
23 corporate authorities or the county board in the aggregate
24 area, submit to the requesting party, in an electronic
25 format, those account numbers, names, and addresses of
26 applicable residential and small commercial retail

1 customers in the aggregate area of the municipality or
2 unincorporated areas of the county that are reflected in
3 the electric utility's records at the time of the request.
4 An electric utility shall exclude any customer already
5 switched to an alternative retail electric supplier, any
6 customer participating in a residential real-time pricing
7 program, and any customer participating in a Percentage of
8 Income Payment Plan from the information provided to the
9 corporate authority or county board in the aggregate area.
10 Upon receiving enrollments from an opt-out aggregation, an
11 electric utility shall design system processes to reject
12 any opt-out aggregation enrollment that would result in the
13 switch of a customer already under service with an
14 alternative retail electric supplier, participating in a
15 residential real-time pricing program, or participating in
16 a Percentage of Income Payment Plan. Any corporate
17 authority or county board receiving customer information
18 from an electric utility shall only disclose the
19 information for the purpose of the opt-out aggregation of
20 electric power supply and shall be subject to the
21 limitations on the disclosure of the information described
22 in Section 16-122 of the Public Utilities Act and Section
23 2HH of the Consumer Fraud and Deceptive Business Practices
24 Act, and an electric utility shall not be held liable for
25 any claims arising out of the provision of information
26 pursuant to this item (2).

1 (d) If the corporate authorities or county board operate
2 under an opt-in program for residential and small commercial
3 retail customers, then the corporate authorities or county
4 board shall comply with all of the following:

5 (1) Within 60 days after receiving the bids, the
6 corporate authorities or county board shall allow
7 residential and small commercial retail customers to
8 commit to the terms and conditions of a bid that has been
9 selected by the corporate authorities or county board.

10 (2) If (A) the corporate authorities or county board
11 award proposed agreements for the purchase of electricity
12 and other related services and (B) an agreement is reached
13 between the corporate authorities or county board for those
14 services, then customers committed to the terms and
15 conditions according to item (1) of this subsection (d)
16 shall be committed to the agreement.

17 (e) If the corporate authorities or county board operate as
18 an opt-out program for residential and small commercial retail
19 customers, then it shall be the duty of the aggregated entity
20 to fully inform applicable residential and small commercial
21 retail customers in advance that they have the right to opt out
22 of the aggregation program. The disclosure shall prominently
23 state all charges to be made and shall include full disclosure
24 of the cost to obtain service pursuant to Section 16-103 of the
25 Public Utilities Act, how to access it, and the fact that it is
26 available to them without penalty, if they are currently

1 receiving service under that Section.

2 The Illinois Commerce Commission shall adopt emergency
3 rules to implement the provisions of this amendatory Act of the
4 97th General Assembly, including, but not limited to,
5 protection of customers (i) already under contract with an
6 alternative retail electric supplier, (ii) participating in a
7 residential real-time pricing program, or (iii) participating
8 in a Percentage of Income Payment Plan, utility processes for
9 enrollment of opt-out customers, and minimum disclosure
10 requirements for opt-out aggregation programs within 45 days
11 after the effective date of this amendatory Act of the 97th
12 General Assembly.

13 The Illinois Power Agency shall furnish, without charge, to
14 any residential and small commercial retail customer ~~citizen~~ a
15 list of all supply options available to them in a format that
16 allows comparison of prices and products.

17 The Illinois Power Agency shall provide assistance to
18 municipalities, counties, or associations working with
19 municipalities to help complete the plan and bidding process.

20 This Section does not prohibit municipalities or counties
21 from entering into an intergovernmental agreement to aggregate
22 residential and small commercial retail electric loads.

23 Any aggregation program plan adopted prior to the effective
24 date of this amendatory Act of the 97th General Assembly shall
25 not be exempt from the provisions of this amendatory Act of the
26 97th General Assembly.

1 (Source: P.A. 96-176, eff. 1-1-10.)

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