



Sen. James F. Clayborne Jr.

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09600HB4251sam001

LRB096 11828 MJR 27020 a

1 AMENDMENT TO HOUSE BILL 4251

2 AMENDMENT NO. _____. Amend House Bill 4251 on page 1,
3 below line 14, by inserting the following:

4 "Section 10. If and only if Senate Bill 1918 of the 96th
5 General Assembly becomes law, then the Public Utilities Act is
6 amended by adding Section 8-104 as follows:

7 (220 ILCS 5/8-104)

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

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

16 (b) For purposes of this Section, "energy efficiency" means

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

25 (c) Natural gas utilities shall implement cost-effective
26 energy efficiency measures to meet at least the following

1 natural gas savings requirements, which shall be based upon the
2 total amount of gas delivered to retail customers, other than
3 the customers described in subsection (m) of this Section,
4 during calendar year 2009 multiplied by the applicable
5 percentage. Natural gas utilities may comply with this Section
6 by meeting the annual incremental savings goal in the
7 applicable year or by showing that total savings associated
8 with measures implemented after May 31, 2011 were equal to the
9 sum of each annual incremental savings requirement from May 31,
10 2011 through the end of the applicable year:

11 (1) 0.2% by May 31, 2012;

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

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

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

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

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

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

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

26 (9) an additional 1.5% in each 12 month period

1 thereafter.

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

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

1 remaining 25% of available funding shall be used by the
2 Department of Commerce and Economic Opportunity to implement
3 energy efficiency measures that achieve no less than 20% of the
4 requirements of subsection (c) of this section. Such measures
5 shall be designed in conjunction with the utility and approved
6 by the Commission. The Department may outsource development and
7 implementation of energy efficiency measures. A minimum of 10%
8 of the entire portfolio of cost-effective energy efficiency
9 measures shall be procured from local government, municipal
10 corporations, school districts, and community college
11 districts. Five percent of the entire portfolio of
12 cost-effective energy efficiency measures may be granted to
13 local government and municipal corporations for market
14 transformation initiatives. The Department shall coordinate
15 the implementation of these measures and shall integrate
16 delivery of natural gas efficiency programs with electric
17 efficiency programs delivered pursuant to Section 8-103 of this
18 Act, unless the Department can show that integration is not
19 feasible.

20 The apportionment of the dollars to cover the costs to
21 implement the Department's share of the portfolio of energy
22 efficiency measures shall be made to the Department once the
23 Department has executed grants or contracts for energy
24 efficiency measures and provided supporting documentation for
25 those grants and the contracts to the utility.

26 The details of the measures implemented by the Department

1 shall be submitted by the Department to the Commission in
2 connection with the utility's filing regarding the energy
3 efficiency measures that the utility implements.

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

15 Each utility shall include, in its recovery of costs, the
16 costs estimated for both the utility's and the Department's
17 implementation of energy efficiency measures. Costs collected
18 by the utility for measures implemented by the Department shall
19 be submitted to the Department pursuant to Section 605-323 of
20 the Civil Administrative Code of Illinois and shall be used by
21 the Department solely for the purpose of implementing these
22 measures. A utility shall not be required to advance any moneys
23 to the Department but only to forward such funds as it has
24 collected. The Department shall report to the Commission on an
25 annual basis regarding the costs actually incurred by the
26 Department in the implementation of the measures. Any changes

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

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

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

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

22 If the Department is unable to meet performance
23 requirements for the portion of the portfolio implemented by
24 the Department, then the utility and the Department shall
25 jointly submit a modified filing to the Commission explaining
26 the performance shortfall and recommending an appropriate

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

8 (f) No later than October 1, 2010, each gas utility shall
9 file an energy efficiency plan with the Commission to meet the
10 energy efficiency standards through May 31, 2014. Every 3 years
11 thereafter, each utility shall file, no later than October 1,
12 an energy efficiency plan with the Commission. If a utility
13 does not file such a plan by October 1 of the applicable year,
14 then it shall face a penalty of \$100,000 per day until the plan
15 is filed. Each utility's plan shall set forth the utility's
16 proposals to meet the utility's portion of the energy
17 efficiency standards identified in subsection (c) of this
18 Section, as modified by subsection (d) of this Section, taking
19 into account the unique circumstances of the utility's service
20 territory. The Commission shall seek public comment on the
21 utility's plan and shall issue an order approving or
22 disapproving each plan. If the Commission disapproves a plan,
23 the Commission shall, within 30 days, describe in detail the
24 reasons for the disapproval and describe a path by which the
25 utility may file a revised draft of the plan to address the
26 Commission's concerns satisfactorily. If the utility does not

1 refile with the Commission within 60 days after the
2 disapproval, the utility shall be subject to penalties at a
3 rate of \$100,000 per day until the plan is filed. This process
4 shall continue, and penalties shall accrue, until the utility
5 has successfully filed a portfolio of energy efficiency
6 measures. Penalties shall be deposited into the Energy
7 Efficiency Trust Fund and the cost of any such penalties may
8 not be recovered from ratepayers. In submitting proposed energy
9 efficiency plans and funding levels to meet the savings goals
10 adopted by this Act the utility shall:

11 (1) Demonstrate that its proposed energy efficiency
12 measures will achieve the requirements that are identified
13 in subsection (c) of this Section, as modified by
14 subsection (d) of this Section.

15 (2) Present specific proposals to implement new
16 building and appliance standards that have been placed into
17 effect.

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

23 (4) Coordinate with the Department to present a
24 portfolio of energy efficiency measures proportionate to
25 the share of total annual utility revenues in Illinois from
26 households at or below 150% of the poverty level. Such

1 programs shall be targeted to households with incomes at or
2 below 80% of area median income.

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

9 (6) Demonstrate that a gas utility affiliated with an
10 electric utility that is required to comply with Section
11 8-103 of this Act has integrated gas and electric
12 efficiency measures into a single program that reduces
13 program or participant costs and appropriately allocates
14 costs to gas and electric ratepayers. The Department shall
15 integrate all gas and electric programs it delivers in any
16 such utilities' service territories, unless the Department
17 can show that integration is not feasible or appropriate.

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

22 (8) Provide for quarterly status reports tracking
23 implementation of and expenditures for the utility's
24 portfolio of measures and the Department's portfolio of
25 measures, an annual independent review, and a full
26 independent evaluation of the 3-year results of the

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

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

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

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

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

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

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

24 For purposes of this Section, (i) a "large gas utility" is
25 a gas utility that on December 31, 2008, served more than
26 1,500,000 gas customers in Illinois; (ii) a "medium gas

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

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

26 (j) No utility shall be deemed to have failed to meet the

1 energy efficiency standards to the extent any such failure is
2 due to a failure of the Department.

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

11 (l) This Section does not apply to a gas utility that on
12 January 1, 2009, provided gas service to fewer than 100,000
13 customers in Illinois; nor does it apply to gas delivered to or
14 used by electric generating units located in Illinois,
15 including those units owned by a common parent company.

16 (m) Subsections (a) through (k) of this Section do not
17 apply to customers of a natural gas utility that have a North
18 American Industry Classification System Classification code
19 number beginning with the digits 31, 32, or 33 and (i) annual
20 usage in the aggregate of 4 million therms or more within the
21 service territory of the affected gas utility or with aggregate
22 usage of 8 million therms or more in this State and complying
23 with the provisions of item (l) of this subsection (m); or (ii)
24 using natural gas as feedstock and meeting the usage
25 requirements described in item (i) of this subsection (m), to
26 the extent such annual feedstock usage is greater than 60% of

1 the customer's total annual usage of natural gas.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (Source: 96SB1981eng with ham02.)"; and

2 on page 1, in line 16, by replacing "law." with "law; except
3 that Section 10 of this Act takes effect upon becoming law or
4 on the effective date of Senate Bill 1918 of the 96th General
5 Assembly, whichever occurs later.".