



Rep. Thomas Holbrook

Filed: 4/12/2011

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LRB097 09315 ASK 54260 a

1 AMENDMENT TO HOUSE BILL 1370

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1370 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.".