



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1802

Introduced 2/9/2011, by Sen. David Koehler

SYNOPSIS AS INTRODUCED:

20 ILCS 3855/1-92

Amends the Illinois Power Agency Act. In provisions concerning the aggregation of retail electrical load of residential and small commercial retail customers by municipalities and counties, provides that any aggregation program that operates as an opt-out program shall apply solely to residential and small commercial retail customers that are taking service from the electric utility through fixed-price bundled service tariffs. Provides that the corporate authorities or the county board shall allow new residents outside of an opt-out period and non-applicable residential and small commercial retail customers who were not eligible to receive the opt-out notice to affirmatively commit to the terms and conditions of an opt-out program at any time during the length of the program under a process disclosed in the plan of operation and governance. Sets forth provisions concerning the plan of operation and governance for an opt-out program. Sets forth provisions concerning requests made by the corporate authorities or the county board in the aggregate area for certain information from the electric utility related to applicable residential and small commercial retail customers in the aggregate area. Provides that the Illinois Commerce Commission shall adopt rules to implement the provisions of the amendatory Act, including, but not limited to, protection of customers already under contract with an alternative retail electric supplier, utility processes for enrollment of opt-out customers, minimum disclosure requirements for opt-out aggregation programs and licensing of municipalities. Makes other changes. Effective immediately.

LRB097 09314 ASK 49449 b

FISCAL NOTE ACT
MAY APPLY

HOME RULE NOTE
ACT MAY APPLY

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

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, may solicit bids and
17 enter into service agreements to facilitate for those loads the
18 sale and purchase of electricity and related services and
19 equipment.

20 If the corporate authorities or the county board seek to
21 operate the aggregation program as an opt-out program, then the
22 program applies solely to residential and small commercial
23 retail customers that are taking service from the electric

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

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

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

25 In addition to the notice and conduct requirements of the
26 general election law, notice of the referendum shall state

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

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

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

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

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

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

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

12 A governmental aggregator under this Section is not a
13 public utility, agent, broker, consultant, or an alternative
14 retail electric supplier.

15 (b) Upon the applicable requisite authority under this
16 Section, the corporate authorities or the county board, with
17 assistance from the Illinois Power Agency, shall develop a plan
18 of operation and governance for the aggregation program so
19 authorized.

20 For an opt-out program, the plan shall specify the process
21 and associated timelines for applicable residential and small
22 commercial retail customers choosing to opt out of the program
23 as well as for non-applicable customers affirmatively choosing
24 to join the aggregation program. The plan for an opt-out
25 program must ensure that applicable residential and small
26 commercial retail customers are able to leave the aggregation

1 program at any time without penalties or fees, but at a minimum
2 must be offered the opportunity to opt out every 3 years. The
3 plan for the aggregation program must not interfere, conflict,
4 or otherwise abrogate any existing contracts between an
5 alternative retail electric supplier and residential and small
6 commercial retail customers and contracts that are in effect
7 pursuant to Section 16-111.5 of the Public Utilities Act and
8 the applicable provisions of this Act as any such procurement
9 plans have been approved by the Commission. In addition, the
10 plan for the aggregation program should be properly integrated
11 with any Commission-approved Illinois Power Agency procurement
12 plan.

13 Before adopting a plan under this Section, the corporate
14 authorities or county board shall hold at least 2 public
15 hearings on the plan. Before the first hearing, the corporate
16 authorities or county board shall publish notice of the
17 hearings once a week for 2 consecutive weeks in a newspaper of
18 general circulation in the jurisdiction. The notice shall
19 summarize the plan and state the date, time, and location of
20 each hearing. Any load aggregation plan established pursuant to
21 this Section shall:

22 (1) provide for universal access to all applicable
23 residential customers and equitable treatment of
24 applicable residential customers;

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

1 (3) meet any requirements established by law
2 concerning aggregated service offered pursuant to this
3 Section.

4 (c) The process for soliciting bids for electricity and
5 other related services and awarding proposed agreements for the
6 purchase of electricity and other related services shall be
7 conducted in the following order:

8 (1) The corporate authorities or county board may
9 solicit bids for electricity and other related services.

10 (2) Notwithstanding Section 16-122 of the Public
11 Utilities Act and Section 2HH of the Consumer Fraud and
12 Deceptive Business Practices Act, an electric utility that
13 provides residential and small commercial retail electric
14 service in the aggregate area must, upon request of the
15 corporate authorities or the county board in the aggregate
16 area, submit to the requesting party, in an electronic
17 format, those account numbers, names, and addresses of
18 applicable residential and small commercial retail
19 customers in the aggregate area of the municipality or
20 unincorporated areas of the county that are reflected in
21 the electric utility's records at the time of the request.
22 An electric utility must exclude any customer already
23 switched to an alternative retail electric supplier from
24 the information provided to the corporate authority or
25 county board in the aggregate area. Upon receiving
26 enrollments from an opt-out aggregation, an electric

1 utility must design system processes to reject any opt-out
2 aggregation enrollment that would result in the switch of a
3 customer already under service with an alternative retail
4 electric supplier. An electric utility may recover costs
5 for system changes from all residential and small
6 commercial customers. Any corporate authority or county
7 board receiving customer information from an electric
8 utility shall only disclose the information for the purpose
9 of the opt-out aggregation and shall be subject to the
10 limitations on the disclosure of the information described
11 in Section 16-122 of the Public Utilities Act and Section
12 2HH of the Consumer Fraud and Deceptive Business Practices
13 Act, and an electric utility shall not be held liable for
14 any claims arising out of the provision of information
15 pursuant to this item (2).

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

20 (1) Within 60 days after receiving the bids, the
21 corporate authorities or county board shall allow
22 residential and small commercial retail customers to
23 commit to the terms and conditions of a bid that has been
24 selected by the corporate authorities or county board.

25 (2) If (A) the corporate authorities or county board
26 award proposed agreements for the purchase of electricity

1 and other related services and (B) an agreement is reached
2 between the corporate authorities or county board for those
3 services, then customers committed to the terms and
4 conditions according to item (1) of this subsection (d)
5 shall be committed to the agreement.

6 (e) If the corporate authorities or county board operate as
7 an opt-out program for residential and small commercial retail
8 customers, then it shall be the duty of the aggregated entity
9 to fully inform applicable residential and small commercial
10 retail customers in advance that they have the right to opt out
11 of the aggregation program. The disclosure shall prominently
12 state all charges to be made and shall include full disclosure
13 of the cost to obtain service pursuant to Section 16-103 of the
14 Public Utilities Act, how to access it, and the fact that it is
15 available to them without penalty, if they are currently
16 receiving service under that Section.

17 The Illinois Commerce Commission shall adopt rules to
18 implement the provisions of this amendatory Act of the 97th
19 General Assembly, including, but not limited to, protection of
20 customers already under contract with an alternative retail
21 electric supplier, utility processes for enrollment of opt-out
22 customers, minimum disclosure requirements for opt-out
23 aggregation programs and licensing of municipalities.

24 The Illinois Power Agency shall furnish, without charge, to
25 any residential and small commercial retail customer ~~citizen~~ a
26 list of all supply options available to them in a format that

1 allows comparison of prices and products.

2 The Illinois Power Agency shall provide assistance to
3 municipalities, counties, or associations working with
4 municipalities to help complete the plan and bidding process.

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

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

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.