SENATE JOURNAL

STATE OF ILLINOIS

NINETY-SEVENTH GENERAL ASSEMBLY

64TH LEGISLATIVE DAY

WEDNESDAY, OCTOBER 26, 2011

9:21 O'CLOCK A.M.

NO. 64
[October 26, 2011]

SENATE
Daily Journal Index
64th Legislative Day

The Senate met pursuant to adjournment.
Senator John M. Sullivan, Rushville, Illinois, presiding.
Prayer by Pat McManus, House of Praise Family Church, Aurora, Illinois.
Senator Jacobs led the Senate in the Pledge of Allegiance.

Senator Hunter moved that reading and approval of the Journal of Tuesday, October 25, 2011, be postponed, pending arrival of the printed Journal.
The motion prevailed.

The Journal of Wednesday, April 6, 2011, was being read when on motion of Senator Hunter, further reading of same was dispensed with, and unless some Senator had corrections to offer, the Journal would stand approved. No corrections being offered, the Journal was ordered to stand approved.

The Journal of Thursday, April 7, 2011, was being read when on motion of Senator Hunter, further reading of same was dispensed with, and unless some Senator had corrections to offer, the Journal would stand approved. No corrections being offered, the Journal was ordered to stand approved.

The Journal of Friday, April 8, 2011, was being read when on motion of Senator Hunter, further reading of same was dispensed with, and unless some Senator had corrections to offer, the Journal would stand approved. No corrections being offered, the Journal was ordered to stand approved.

The Journal of Monday, April 11, 2011, was being read when on motion of Senator Hunter, further reading of same was dispensed with, and unless some Senator had corrections to offer, the Journal would stand approved. No corrections being offered, the Journal was ordered to stand approved.

The Journal of Tuesday, April 12, 2011, was being read when on motion of Senator Hunter, further reading of same was dispensed with, and unless some Senator had corrections to offer, the Journal would stand approved. No corrections being offered, the Journal was ordered to stand approved.

The Journal of Wednesday, April 13, 2011, was being read when on motion of Senator Hunter, further reading of same was dispensed with, and unless some Senator had corrections to offer, the Journal would stand approved. No corrections being offered, the Journal was ordered to stand approved.

The Journal of Thursday, April 14, 2011, was being read when on motion of Senator Hunter, further reading of same was dispensed with, and unless some Senator had corrections to offer, the Journal would stand approved. No corrections being offered, the Journal was ordered to stand approved.

The Journal of Friday, April 15, 2011, was being read when on motion of Senator Hunter, further reading of same was dispensed with, and unless some Senator had corrections to offer, the Journal would stand approved. No corrections being offered, the Journal was ordered to stand approved.

The Journal of Friday, April 22, 2011, was being read when on motion of Senator Hunter, further reading of same was dispensed with, and unless some Senator had corrections to offer, the Journal would stand approved. No corrections being offered, the Journal was ordered to stand approved.

The Journal of Wednesday, April 27, 2011, was being read when on motion of Senator Hunter, further reading of same was dispensed with, and unless some Senator had corrections to offer, the Journal would stand approved. No corrections being offered, the Journal was ordered to stand approved.

MESSAGES FROM THE PRESIDENT

OFFICE OF THE SENATE PRESIDENT
STATE OF ILLINOIS

JOHN J. CULLERTON
SENATE PRESIDENT

327 STATE CAPITOL
SPRINGFIELD, ILLINOIS 62706
217-782-2728

October 26, 2011

Ms. Jillayne Rock
Secretary of the Senate
Room 401 State House
Springfield, IL 62706

Dear Madam Secretary:

Pursuant to Rule 3-5(c), I hereby appoint Senator John Sullivan to temporarily replace Senator James Clayborne as a member and chairman of the Senate Committee on Assignments. In addition, I hereby appoint Senator Jeff Schoenberg to temporarily replace Senator Don Harmon as a member of the Senate Committee on Assignments. These appointments will automatically expire upon adjournment of the Senate Committee on Assignments.

Sincerely,
s/John J. Cullerton
John J. Cullerton
Senate President

cc: Senate Minority Leader Christine Radogno

OFFICE OF THE SENATE PRESIDENT
STATE OF ILLINOIS

JOHN J. CULLERTON
SENATE PRESIDENT

327 STATE CAPITOL
SPRINGFIELD, ILLINOIS 62706
217-782-2728

October 26, 2011

Ms. Jillayne Rock
Secretary of the Senate
Room 401 State House
Springfield, IL 62706

Dear Madam Secretary:

Pursuant to Rule 3-5(c), I hereby appoint Senator Terry Link to temporarily replace Senator Kimberly Lightford as a member of the Senate Committee on Assignments. This appointment will automatically expire upon adjournment of the Senate Committee on Assignments.

Sincerely,
s/John J. Cullerton
John J. Cullerton
Senate President

cc: Senate Minority Leader Christine Radogno

OFFICE OF THE SENATE PRESIDENT
STATE OF ILLINOIS

JOHN J. CULLERTON
SENATE PRESIDENT

327 STATE CAPITOL
SPRINGFIELD, ILLINOIS 62706
217-782-2728

October 26, 2011

Ms. Jillayne Rock
Secretary of the Senate
Room 403 State House
Springfield, IL 62706

Dear Madam Secretary:

Pursuant to the provisions of Senate Rule 2-10, I hereby establish November 10, 2011 as the 3rd Reading deadline for SB 274, SB 1047, SB 2022 and HB 1224.

Sincerely,
s/John J. Cullerton
John J. Cullerton
Senate President

cc: Senate Republican Leader Christine Radogno

LEGISLATIVE MEASURES FILED

The following Floor amendments to the Senate Bills listed below have been filed with the Secretary and referred to the Committee on Assignments:

Senate Floor Amendment No. 2 to Senate Bill 405
Senate Floor Amendment No. 3 to Senate Bill 405
Senate Floor Amendment No. 1 to Senate Bill 747
Senate Floor Amendment No. 2 to Senate Bill 747
Senate Floor Amendment No. 2 to Senate Bill 965

PRESENTATION OF RESOLUTION

SENATE RESOLUTION NO. 399

Offered by Senator Holmes and all Senators:
Mourns the death of William J. Larson of Batavia, formerly of Joliet.

By unanimous consent, the foregoing resolution was referred to the Resolutions Consent Calendar.

INTRODUCTION OF BILL

SENATE BILL NO. 2513. Introduced by Senator McCann, a bill for AN ACT concerning civil law.

The bill was taken up, read by title a first time, ordered printed and referred to the Committee on Assignments.

MESSAGE FROM THE HOUSE

A message from the House by
Mr. Mapes, Clerk:

Mr. President -- I am directed to inform the Senate that the House of Representatives has adopted the following joint resolution, in the adoption of which I am instructed to ask the concurrence of the Senate, to-wit:

HOUSE JOINT RESOLUTION NO. 43

WHEREAS, The members of the Illinois General Assembly are saddened to learn of the death of Mary Jo Arndt of Lombard, who passed away on September 24, 2011; and

WHEREAS, She was a 1951 graduate of Glenbard West High School and a graduate of Northern Illinois University with a B.S. in Education; she was a former teacher in Villa Park and Urbana; she had been a newspaper columnist; and she was the managing partner and hospital administrator of the Lombard Veterinary Hospital with her husband; together, they established the Lombard Veterinary Hospital in 1959; and

WHEREAS, She was an integral part of the York Township Republican Women's Organization for 45 years and served as a former Republican national committeewoman for Illinois; she served as past president of the National Federation of Republican Women; she was a pioneer in efforts to increase opportunities for women in politics, government, and education; in addition, she founded the Illinois Republican Women's Roundtable in 1989, established the Illinois Lincoln Excellence in Public Service Series, conducted many seminars on various facets of political organization and party structure, and lent her skills to campaign efforts in almost every county in Illinois; and

WHEREAS, She served as publicity chairperson for the Lombard Minutemen, was a Girl Scout leader, executive secretary for the Lombard Lilac Parade Committee, a Rotary Ann,and was actively involved with the Maple Street Chapel Preservation Society, the YWCA, and the Lombard Chamber of Commerce; and

WHEREAS, President Ronald Reagan appointed her to be a member of the President's Commission on White House Fellowships and she was reappointed by President Bush; she served as a member of the Republican National Committee for Illinois from 1988 to 2008 and was elected to the RNC Executive Committee representing the Midwestern Region from 2005 to 2008; she was the chairman of the Illinois Women for McCain campaign and was a member of the McCain National Hispanic Outreach Team; and

WHEREAS, She recently completed 6 years on the board of directors of American Women for International Understanding and was a member and adviser of the Republican National Hispanic Assembly of Illinois; she was a member of the Xilin Asian Association Board of Directors; she was twice elected by the primary voters of the 6th Congressional District as their State central committeeman, in 1982 and 1986; and

WHEREAS, In 2008, she was elected vice chair emeritus of the Illinois Republican State Committee, she was a member of the Illinois Governor's Commission on the Status of Women; she served on the Working Group on Balancing Work and Family; she represented President Bush as an observer of the Romanian elections in May of 1990; and

WHEREAS, She had a U.S. Senate confirmed appointment to the National Advisory Council on Women's Education Programs during the Reagan Administration, where she served as chairman of the Women's Educational Equity Act Committee; she was a member of the Advisory Committee to the Illinois State Superintendent of Schools; she also served on the Illinois Commission for the Celebration of the 75th Anniversary of the 19th Amendment; and

WHEREAS, Today's Chicago Woman twice named Mrs. Arndt a "Power Personality", a woman making a difference in Chicagoland's business and social environment; she served as a member of the U.S. Small Business Administration National Advisory Council from 2001 to 2007 and was selected by the Foundation for Women's Resources as one of 100 women to participate in Leadership America; she was a member of the National Board of Directors of Leadership America from 2001 to 2006, and was a member of the Advisory Board of Leadership Illinois and of Save the Patient; the Gallup Organization selected her as a "Visionary Leader for the 21st Century" and awarded her a full scholarship to the Gallup Leadership Institute; and

WHEREAS, Mary Jo Arndt is survived by her husband, Dr. Paul W., DVM; her daughters, Dr. Kristi L. Arndt, Ph.D., DVM, Kerri A. (Russell) Roselli, and Dr. Georgianne, DVM (Gregory) Ludwig; her grandchildren, Gregory R. Ludwig, Phillip P. Roselli, Graceanne N. Ludwig, and Kaleigh A. Roselli; her cousin, Betty Bussema; and many other relatives, friends, and pets; therefore, be it

RESOLVED, BY THE HOUSE OF REPRESENTATIVES OF THE NINETY-SEVENTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE SENATE CONCURRING HEREIN, that we mourn, along with her family and friends, the passing of Mary Jo Arndt; and be it further

RESOLVED, That a suitable copy of this resolution be presented to the family of Mary Jo Arndt as a symbol of our sincere sympathy.

Adopted by the House, October 25, 2011.

TIMOTHY D. MAPES, Clerk of the House

By unanimous consent, the foregoing resolution was referred to the Resolutions Consent Calendar.

MOTIONS IN WRITING

Senator Frerichs submitted the following Motion in Writing:

I move that Senate Bill 178 do pass, notwithstanding the veto of the Governor.

10/10/11 — DATE
s/Michael Frerichs — SENATOR

Senator Jacobs submitted the following Motion in Writing:

I move that Senate Bill 1652 do pass, notwithstanding the veto of the Governor.

Oct 25, 11 — DATE
s/Mike Jacobs — SENATOR

Senator Trotter submitted the following Motion in Writing:

I move that Senate Bill 1918 do pass, notwithstanding the veto of the Governor.

Oct 25, 11 — DATE
s/Donne Trotter — SENATOR

Senator Sullivan submitted the following Motion in Writing:

I move that Senate Bill 2062 do pass, notwithstanding the specific recommendations of the Governor.

10/21/11 — DATE
s/John Sullivan — SENATOR

The foregoing Motions in Writing were filed with the Secretary and ordered placed on the Senate Calendar.

Senator Sullivan submitted the following Motion in Writing:

SB0170AVM001

MOTION

I move to accept the specific recommendations of the Governor as to Senate Bill 170 in manner and form as follows:

AMENDMENT TO SENATE BILL 170

IN ACCEPTANCE OF GOVERNOR'S RECOMMENDATIONS

Amend Senate Bill 170 on pages 11 and 12, by replacing line 20 on page 11 through line 3 on page 12 with the following:

"(l-5) Establish a locally held account (referred to as the Account) to hold, maintain and administer the Therkelsen/Hansen College Loan Fund (referred to as the Fund). All cash represented by the Fund shall be transferred from the State Treasury to the Account. The Department shall promulgate rules regarding the maintenance and use of the Fund and all interest earned thereon; the eligibility of potential borrowers from the Fund; and the awarding and repayment of loans from the Fund; and other rules as applicable regarding the Fund. The administration of the Fund and the promulgation of rules regarding the Fund shall be consistent with the will of Petrea Therkelsen, which establishes the Fund.".

Date: 10/26/11, 2011 s/John Sullivan

The foregoing Motion in Writing was filed with the Secretary and referred to the Committee on Assignments.

At the hour of 9:27 o'clock a.m., the Chair announced that the Senate stand at ease.

AT EASE

At the hour of 10:17 o'clock a.m. the Senate resumed consideration of business.
Senator Crotty, presiding.

At the hour of 10:27 o'clock a.m., the Chair announced that the Senate stand at ease.

AT EASE

At the hour of 10:38 o'clock a.m. the Senate resumed consideration of business.
Senator Crotty, presiding.

REPORT FROM COMMITTEE ON ASSIGNMENTS

Senator Sullivan, Chairperson of the Committee on Assignments, during its October 26, 2011 meeting, reported the following Legislative Measures have been assigned to the indicated Standing Committee of the Senate:

Executive: **Senate Floor Amendment No. 2 to Senate Bill 405; Senate Floor Amendment No. 3 to Senate Bill 405; Senate Floor Amendment No. 2 to Senate Bill 965**; **Motion to Accept Specific Recommendations for Change to SENATE BILL 170**.

Senator Sullivan, Chairperson of the Committee on Assignments, during its October 26, 2011 meeting, reported that the following Legislative Measures have been approved for consideration:

Senate Floor Amendment No. 1 to Senate Bill 747
Senate Floor Amendment No. 2 to Senate Bill 747

The foregoing floor amendments were placed on the Secretary’s Desk.

COMMITTEE MEETING ANNOUNCEMENT

The Chair announced the following committee to meet at 11:45 o'clock a.m. and 11:46 o’clock a.m.:

Executive in Room 212

Senator Trotter asked and obtained unanimous consent for the purpose of a Democrat caucus to begin upon the conclusion of the Committee on Executive.

CONSIDERATION OF GOVERNOR'S VETO MESSAGES

Pursuant to the Motion in Writing filed on Monday, October 25, 2011 and journalized Wednesday, October 26, 2011, Senator Trotter moved that **Senate Bill No. 1918** do pass, the veto of the Governor to the contrary notwithstanding.

And on that motion, a call of the roll was had resulting as follows:

YEAS 52; NAYS 2; Present 3.

The following voted in the affirmative:

Althoff	Harmon	Luechtefeld	Righter
Bivins	Holmes	Martinez	Sandack
Bomke	Hunter	McCann	Sandoval
Brady	Hutchinson	McCarter	Schmidt
Clayborne	Jacobs	Meeks	Silverstein
Collins, A.	Johnson, C.	Millner	Sullivan
Crotty	Johnson, T.	Mulroe	Syverson
Cultra	Jones, J.	Muñoz	Trotter
Dillard	Koehler	Murphy	Wilhelmi
Duffy	LaHood	Noland	Mr. President
Forby	Landek	Pankau	
Frerichs	Lauzen	Radogno	
Garrett	Lightford	Raoul	
Haine	Link	Rezin	

The following voted in the negative:

Kotowski
Steans

The following voted present:

Collins, J.
Delgado
Maloney

This bill, having received the vote of three-fifths of the members elected, was declared passed, the veto of the Governor to the contrary notwithstanding.

Ordered that the Secretary inform the House of Representatives thereof and ask their concurrence therein.

Senator Schoenberg asked and obtained unanimous consent for the Journal to reflect his intention to have voted in the affirmative on **Senate Bill No. 1918.**

Pursuant to the Motion in Writing filed on Friday, October 21, 2011 and journalized Wednesday, October 26, 2011, Senator Sullivan moved that **Senate Bill No. 2062** do pass, the specific recommendations of the Governor to the contrary notwithstanding.

And on that motion, a call of the roll was had resulting as follows:

YEAS 56; NAYS None; Present 1.

The following voted in the affirmative:

Althoff	Haine	Luechtefeld	Sandack
Bivins	Harmon	Maloney	Sandoval
Bomke	Holmes	Martinez	Schmidt
Brady	Hunter	McCann	Schoenberg
Clayborne	Hutchinson	McCarter	Silverstein
Collins, A.	Jacobs	Meeks	Steans
Collins, J.	Johnson, C.	Millner	Sullivan
Crotty	Jones, J.	Mulroe	Syverson
Cultra	Koehler	Muñoz	Trotter
Delgado	Kotowski	Murphy	Wilhelmi
Dillard	LaHood	Noland	Mr. President
Duffy	Landek	Pankau	
Forby	Lauzen	Radogno	
Frerichs	Lightford	Rezin	
Garrett	Link	Righter	

The following voted present:

Raoul

This bill, having received the vote of three-fifths of the members elected, was declared passed, the specific recommendations of the Governor to the contrary notwithstanding.

Ordered that the Secretary inform the House of Representatives thereof and ask their concurrence therein.

At the hour of 11:31 o'clock a.m., Senator Muñoz, presiding.

SENATE BILL RECALLED

On motion of Senator Crotty, **Senate Bill No. 634** was recalled from the order of third reading to the order of second reading.

Senate Floor Amendment No. 1 was postponed in the Committee on Executive.

Senator Crotty offered the following amendment and moved its adoption:

AMENDMENT NO. 2 TO SENATE BILL 634

AMENDMENT NO. 2. Amend Senate Bill 634 by replacing everything after the enacting clause with the following:

"Section 5. The School Code is amended by adding Section 5-2.2 as follows:

(105 ILCS 5/5-2.2 new)

Sec. 5-2.2. Designation of trustees; Township 36 North, Range 13 East. After the April 5, 2011 consolidated election, the trustees of schools in Township 36 North, Range 13 East shall no longer be elected pursuant to the provisions of Sections 5-2, 5-2.1, 5-3, 5-4, 5-12, and 5-13 of this Code. Any such trustees elected before such date may complete the term to which that trustee was elected, but shall not be succeeded by election. Instead, the board of education or board of school directors of each of the elementary and high school districts that are subject to the jurisdiction of Township 36 North, Range 13 East shall appoint one of the members to serve as trustee of schools. The trustees of schools shall be appointed by each board of education or board of school directors within 60 days after the effective date of this amendatory Act of the 97th General Assembly and shall reorganize within 30 days after all the trustees of schools have been appointed or within 30 days after all the trustees of schools were due to have been appointed, whichever is sooner. Trustees of schools so appointed shall serve at the pleasure of the board of education or board of school directors appointing them, but in no event longer than 2 years unless reappointed.

A majority of members of the trustees of schools shall constitute a quorum for the transaction of business. The trustees shall organize by appointing one of their number president, who shall hold the office for 2 years. If the president is absent from any meeting, or refuses to perform any of the duties of

the office, a president pro-tempore may be appointed. Trustees who serve on the board as a result of appointment or election at the time of the reorganization shall continue to serve as a member of the trustees of schools, with no greater or lessor authority than any other trustee, until such time as their elected term expires.

Each trustee of schools appointed by a board of education or board of school directors shall be entitled to indemnification and protection against claims and suits by the board that appointed that trustee of schools for acts or omissions as a trustee of schools in the same manner and to the same extent as the trustee of schools is entitled to indemnification and protection for acts or omissions as a member of the board of education or board of school directors under Section 10-20.20 of this Code.

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

The motion prevailed.

And the amendment was adopted and ordered printed.

There being no further amendments, the foregoing Amendment No. 2 was ordered engrossed, and the bill, as amended, was ordered to a third reading.

READING BILL OF THE SENATE A THIRD TIME

On motion of Senator Crotty, **Senate Bill No. 634** having been transcribed and typed and all amendments adopted thereto having been printed, was taken up and read by title a third time.

And the question being, "Shall this bill pass?" it was decided in the affirmative by the following vote:

YEAS 54; NAY 1.

The following voted in the affirmative:

Althoff	Haine	Link	Rezin
Bivins	Harmon	Luechtefeld	Righter
Bomke	Holmes	Maloney	Sandack
Brady	Hunter	Martinez	Sandoval
Clayborne	Jacobs	McCann	Schmidt
Collins, A.	Johnson, C.	McCarter	Schoenberg
Collins, J.	Johnson, T.	Meeks	Silverstein
Crotty	Jones, E.	Millner	Steans
Cultra	Jones, J.	Mulroe	Sullivan
Delgado	Koehler	Muñoz	Trotter
Dillard	Kotowski	Noland	Wilhelmi
Duffy	LaHood	Pankau	Mr. President
Forby	Lauzen	Radogno	
Frerichs	Lightford	Raoul	

The following voted in the negative:

Landek

This bill, having received the vote of three-fifths of the members elected, was declared passed, and all amendments not adopted were tabled pursuant to Senate Rule No. 5-4(a).

Ordered that the Secretary inform the House of Representatives thereof and ask their concurrence therein.

Senator Lauzen asked and obtained unanimous consent for the Journal to reflect his intention to have voted in the negative on **Senate Bill No. 634**.

Senator Murphy asked and obtained unanimous consent for the purpose of a Republican caucus to begin upon the conclusion of the Committee on Executive.

READING BILL FROM THE HOUSE OF REPRESENTATIVES A SECOND TIME

On motion of Senator Hutchinson, **House Bill No. 1224** having been printed, was taken up and read by title a second time.

The following amendments were offered in the Committee on State Government and Veterans Affairs, adopted and ordered printed:

AMENDMENT NO. 1 TO HOUSE BILL 1224

AMENDMENT NO. 1. Amend House Bill 1224 by replacing everything after the enacting clause with the following:

"Section 5. The State Comptroller Act is amended by changing Sections 10.05 and 10.05d as follows: (15 ILCS 405/10.05) (from Ch. 15, par. 210.05)

Sec. 10.05. Deductions from warrants; statement of reason for deduction. Whenever any person shall be entitled to a warrant or other payment from the treasury or other funds held by the State Treasurer, on any account, against whom there shall be any then due and payable account or claim in favor of the State, ~~or to~~ the United States upon certification by the Secretary of the Treasury of the United States, or his or her delegate, pursuant to a reciprocal offset agreement under subsection (i-1) of Section 10 of the Illinois State Collection Act of 1986, or a unit of local government, a school district, or a public institution of higher education, as defined in Section 1 of the Board of Higher Education Act, upon certification by that entity ~~then due and payable~~, the Comptroller, upon notification thereof, shall ascertain the amount due and payable to the State, ~~or to~~ the United States, the unit of local government, the school district, or the public institution of higher education, as aforesaid, and draw a warrant on the treasury or on other funds held by the State Treasurer, stating the amount for which the party was entitled to a warrant or other payment, the amount deducted therefrom, and on what account, and directing the payment of the balance; which warrant or payment as so drawn shall be entered on the books of the Treasurer, and such balance only shall be paid. The Comptroller may deduct any one or more of the following: (i) the entire amount due and payable to the State or ~~may deduct~~ a portion of the amount due and payable to the State in accordance with the request of the notifying agency ; (ii) ~~, and may deduct~~ the entire amount due and payable to the United States~~,~~ or ~~may deduct~~ a portion of the amount due and payable to the United States~~,~~ in accordance with a reciprocal offset agreement under subsection (i-1) of Section 10 of the Illinois State Collection Act of 1986 ; or (iii) the entire amount due and payable to the unit of local government, school district, or public institution of higher education or a portion of the amount due and payable to that entity in accordance with an intergovernmental agreement authorized under this Section and Section 10.05d. No request from a notifying agency, ~~or from~~ the Secretary of the Treasury of the United States , a unit of local government, a school district, or a public institution of higher education for an amount to be deducted under this Section from a wage or salary payment, or from a contractual payment to an individual for personal services, shall exceed 25% of the net amount of such payment. "Net amount" means that part of the earnings of an individual remaining after deduction of any amounts required by law to be withheld. For purposes of this provision, wage, salary or other payments for personal services shall not include final compensation payments for the value of accrued vacation, overtime or sick leave. Whenever the Comptroller draws a warrant or makes a payment involving a deduction ordered under this Section, the Comptroller shall notify the payee and the State agency that submitted the voucher of the reason for the deduction and he or she shall retain a record of such statement in his or her records. As used in this Section, an "account or claim in favor of the State" includes all amounts owing to "State agencies" as defined in Section 7 of this Act. However, the Comptroller shall not be required to accept accounts or claims owing to funds not held by the State Treasurer, where such accounts or claims do not exceed $50, nor shall the Comptroller deduct from funds held by the State Treasurer under the Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act or for payments to institutions from the Illinois Prepaid Tuition Trust Fund (unless the Trust Fund moneys are used for child support). The Comptroller and the Department of Revenue shall enter into an interagency agreement to establish responsibilities ~~responsibility~~, duties, and procedures relating to deductions from lottery prizes awarded under Section 20.1 of the Illinois Lottery Law. The Comptroller may enter into an intergovernmental agreement with the Department of Revenue and the Secretary of the Treasury of the United States, or his or her delegate, to establish responsibilities, duties, and procedures relating to reciprocal offset of delinquent State and federal obligations pursuant to subsection (i-1) of Section 10 of the Illinois State Collection Act of 1986. The Comptroller may enter into intergovernmental agreements with any unit of local government, school district, or public

institution of higher education to establish responsibilities, duties, and procedures to provide for the offset, by the Comptroller, of obligations owed to those entities.

(Source: P.A. 97-269, eff. 1-1-12.)

(15 ILCS 405/10.05d new)

Sec. 10.05d. Deductions for delinquent obligations owed to units of local government, school districts, and public institutions of higher education. Pursuant to Section 10.05 and this Section, the Comptroller may enter into intergovernmental agreements with a unit of local government, a school district, or a public institution of higher education in order to provide for (i) the use of the Comptroller's offset system to collect delinquent obligations owed to that entity and (ii) the payment to the Comptroller of a processing charge of up to $15 per transaction for such offsets. The Comptroller shall deduct, from a warrant or other payment described in Section 10.05, in accordance with the procedures provided therein, its processing charge and the amount certified as necessary to satisfy, in whole or in part, the delinquent obligation owed to the unit of local government, school district, or public institution of higher education, as applicable. The Comptroller shall provide the unit of local government, school district, or public institution of higher education, as applicable, with the address to which the warrant or other payment was to be mailed and any other information pertaining to each person from whom a deduction is made pursuant to this Section. All deductions ordered under this Section and processing charges imposed under this Section shall be deposited into the Comptroller Debt Recovery Trust Fund, a special fund that the Comptroller shall use for the collection of deductions and processing charges, as provided by law, and the payment of deductions and administrative expenses, as provided by law.

Upon processing a deduction, the Comptroller shall give written notice to the person subject to the offset. The notice shall inform the person that he or she may make a written protest to the Comptroller within 60 days after the Comptroller has given notice. The protest shall include the reason for contesting the deduction and any other information that will enable the Comptroller to determine the amount due and payable. The intergovernmental agreement entered into under Section 10.05 and this Section shall establish procedures through which the Comptroller shall determine the validity of the protest and shall make a final disposition concerning the deduction. If the person subject to the offset has not made a written protest within 60 days after the Comptroller has given notice or if a final disposition is made concerning the deduction, the Comptroller shall pay the deduction to the unit of local government, school district, or public institution of higher education, as applicable, from the Comptroller Debt Recovery Trust Fund.

Section 10. The Illinois Income Tax Act is amended by changing Section 911.3 as follows:

(35 ILCS 5/911.3)

Sec. 911.3. Refunds withheld; order of honoring requests. The Department shall honor refund withholding requests in the following order:

(1) a refund withholding request to collect an unpaid State tax;

(2) a refund withholding request to collect certified past due child support amounts under Section 2505-650 of the Department of Revenue Law of the Civil Administrative Code of Illinois;

(3) a refund withholding request to collect any debt owed to the State;

(4) a refund withholding request made by the Secretary of the Treasury of the United States, or his or her delegate, to collect any tax liability arising from Title 26 of the United States Code;

(4.5) a refund withholding request made by the Secretary of the Treasury of the United States, or his or her delegate, to collect any nontax debt owed to the United States as authorized under subsection (i-1) of Section 10 of the Illinois State Collection Act of 1986;

(4.6) a refund withholding request to collect any debt owed to a unit of local government, school district, or public institution of higher education collected under an intergovernmental agreement entered into under Sections 10.05 and 10.05d of the State Comptroller Act;

(5) a refund withholding request pursuant to Section 911.2 of this Act; and

(6) a refund withholding request to collect certified past due fees owed to the Clerk of the Circuit Court as authorized under Section 2505-655 of the Department of Revenue Law of the Civil Administrative Code of Illinois.

(Source: P.A. 97-269, eff. 1-1-12.)

Section 15. "An Act concerning State government", approved August 8, 2011, Public Act 97-269, is amended by adding Section 99 as follows:

(P.A. 97-269, Sec. 99 new)

Sec. 99. Effective date. This Act (Public Act 97-269) takes effect on the effective date of this amendatory Act of the 97th General Assembly or January 1, 2012, whichever is earlier.

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

There being no further amendments, the bill, as amended, was ordered to a third reading.

LEGISLATIVE MEASURE FILED

The following Floor amendment to the Senate Bill listed below has been filed with the Secretary and referred to the Committee on Assignments:

Senate Floor Amendment No. 4 to Senate Bill 405

At the hour of 11:52 o'clock a.m., the Chair announced that the Senate stand at recess subject to the call of the Chair.

AFTER RECESS

At the hour of 3:22 o'clock p.m., the Senate resumed consideration of business.
Senator Muñoz, presiding.

REPORT FROM STANDING COMMITTEE

Senator Harmon, Chairperson of the Committee on Executive, to which was referred the following Senate floor amendment, reported that the Committee recommends do adopt:

Senate Amendment No. 2 to Senate Bill 965

Under the rules, the foregoing floor amendment is eligible for consideration on second reading.

Senator Harmon, Chairperson of the Committee on Executive, to which was referred the following Motion in Writing, reported that the Committee recommends do adopt:

Motion to Accept Specific Recommendations for Change to **Senate Bill 170**

Under the rules, the foregoing motion is eligible for consideration by the Senate.

At the hour of 3:31 o'clock p.m., Senator Crotty, presiding.

REPORT FROM STANDING COMMITTEE

Senator Muñoz, Chairperson of the Committee on Executive Appointments, moved that the Senate resolve itself into Executive Session to consider the report of that Committee relative to the appointment messages.
The motion prevailed.

EXECUTIVE SESSION

Senator Muñoz, Chairperson of the Committee on Executive Appointments, to which was referred Appointment Message 147, reported the same back with the recommendation that the Senate advise and consent to the following appointment:

Appointment Message No. 147

Title of Office: Chairperson and Member

Agency or Other Body: Illinois Labor Relations Board: Local Panel

Start Date: July 25, 2011

End Date: January 28, 2013

Name: Robert M. Gierut

Residence: 1618 Old Oak Place, Darien, IL 60561

Annual Compensation: $93,926

Per diem: Not Applicable

Nominee's Senator: Senator Christine Radogno

Most Recent Holder of Office: Michael J. Joyce

Superseded Appointment Message: Not Applicable

Senator Muñoz moved that the Senate advise and consent to the foregoing appointment.
And on that motion, a call of the roll was had resulting as follows:

YEAS 53; NAYS None; Present 1.

The following voted in the affirmative:

Althoff	Holmes	Luechtefeld	Sandack
Bivins	Hunter	Maloney	Sandoval
Brady	Hutchinson	Martinez	Schmidt
Clayborne	Jacobs	McCarter	Schoenberg
Collins, J.	Johnson, C.	Meeks	Silverstein
Crotty	Johnson, T.	Millner	Steans
Cultra	Jones, E.	Mulroe	Sullivan
Delgado	Koehler	Muñoz	Syverson
Dillard	Kotowski	Murphy	Trotter
Forby	LaHood	Noland	Wilhelmi
Frerichs	Landek	Pankau	Mr. President
Garrett	Lauzen	Radogno	
Haine	Lightford	Raoul	
Harmon	Link	Righter	

The following voted present:

Duffy

The motion prevailed.
Whereupon the President of the Senate announced confirmation of the foregoing appointment.

Senator Muñoz, Chairperson of the Committee on Executive Appointments, to which was referred Appointment Message 168, reported the same back with the recommendation that the Senate advise and consent to the following appointment:

Appointment Message No. 168

Title of Office: Member

Agency or Other Body: Prisoner Review Board

Start Date: August 1, 2011

End Date: January 19, 2015

Name: Jennifer Parrack

Residence: 2705 W. Hirsch St., St. 4, Chicago, IL 60622

Annual Compensation: $85,886

Per diem: Not Applicable

Nominee's Senator: Senator William Delgado

Most Recent Holder of Office: Careen Gordon

Superseded Appointment Message: Not Applicable

Senator Muñoz moved that the Senate advise and consent to the foregoing appointment.
And on that motion, a call of the roll was had resulting as follows:

YEAS 54; NAYS None; Present 2.

The following voted in the affirmative:

Althoff	Holmes	Luechtefeld	Righter
Bivins	Hunter	Maloney	Sandack
Brady	Hutchinson	Martinez	Sandoval
Clayborne	Jacobs	McCann	Schmidt
Collins, J.	Johnson, C.	Meeks	Schoenberg
Crotty	Johnson, T.	Millner	Silverstein
Cultra	Jones, E.	Mulroe	Steans
Delgado	Koehler	Muñoz	Sullivan
Dillard	Kotowski	Murphy	Syverson
Forby	LaHood	Noland	Trotter
Frerichs	Landek	Pankau	Wilhelmi
Garrett	Lauzen	Radogno	Mr. President
Haine	Lightford	Raoul	
Harmon	Link	Rezin	

The following voted present:

Duffy
McCarter

The motion prevailed.
Whereupon the President of the Senate announced confirmation of the foregoing appointment.

Senator Muñoz, Chairperson of the Committee on Executive Appointments, to which was referred Appointment Message 169, reported the same back with the recommendation that the Senate advise and consent to the following appointment:

Appointment Message No. 169

Title of Office: Director

Agency or Other Body: Illinois Department of Veterans' Affairs

Start Date: August 6, 2011

End Date: January 21, 2013

Name: Erica J. Borggren

Residence: 5301 N. Sawyer Ave. #1, Chicago, IL 60625

Annual Compensation: $115,613

Per diem: Not Applicable

Nominee's Senator: Senator Ira I. Silverstein

Most Recent Holder of Office: Daniel W. Grant

Superseded Appointment Message: Not Applicable

Senator Muñoz moved that the Senate advise and consent to the foregoing appointment.
And on that motion, a call of the roll was had resulting as follows:

YEAS 54; NAYS None; Present 2.

The following voted in the affirmative:

Althoff	Harmon	Link	Righter
Bivins	Holmes	Luechtefeld	Sandack
Brady	Hunter	Maloney	Sandoval
Clayborne	Hutchinson	McCann	Schmidt
Collins, A.	Jacobs	Meeks	Schoenberg
Collins, J.	Johnson, C.	Millner	Silverstein
Crotty	Johnson, T.	Mulroe	Steans
Cultra	Jones, E.	Muñoz	Sullivan
Delgado	Koehler	Murphy	Syverson
Dillard	Kotowski	Noland	Trotter
Forby	LaHood	Pankau	Wilhelmi
Frerichs	Landek	Radogno	Mr. President
Garrett	Lauzen	Raoul	
Haine	Lightford	Rezin	

The following voted present:

Duffy
McCarter

The motion prevailed.
Whereupon the President of the Senate announced confirmation of the foregoing appointment.

CONSIDERATION OF MOTION IN WRITING

Pursuant to Motion in Writing filed on October 26, 2011, Senator Muñoz moved to compile the following Appointment Messages to be acted on together by a single vote of the Senate:

AM's 139, 140, 141, 142, 143, 144, 145, 146

(Illinois Student Assistance Commission)
AM's 148, 149, 150
(Health Facilities and Services Review Board)
AM's 173, 174, 175, 176
(Illinois Finance Authority)
AM's 178, 179, 180, 181, 182, 183, 184, 185
(Workers' Compensation Medical Fee Advisory Board)

The motion prevailed.

Senator Muñoz, Chairperson of the Committee on Executive Appointments, to which was referred Appointment Messages 139, 140, 141, 142, 143, 144, 145, 146, 148, 149, 150, 173, 174, 175, 176, 178, 179, 180, 181, 182, 183, 184 and 185, reported the same back with the recommendation that the Senate advise and consent to the following appointments:

Appointment Message No. 139

Title of Office: Member

Agency or Other Body: Illinois Student Assistance Commission

Start Date: June 3, 2011

End Date: June 30, 2013

Name: Miguel Del Valle

Residence: 218 N. Lamon, Chicago, IL 60639

Annual Compensation: Expenses

Per diem: Not Applicable

Nominee's Senator: Senator William Delgado

Most Recent Holder of Office: Robert F. Casey

Superseded Appointment Message: Not Applicable

Appointment Message No. 140

Title of Office: Member

Agency or Other Body: Illinois Student Assistance Commission

Start Date: July 7, 2011

End Date: June 30, 2013

Name: Mark Donovan

Residence: 6227 N. Nordica Ave., Chicago, IL 60631

Annual Compensation: Expenses

Per diem: Not Applicable

Nominee's Senator: Senator John G. Mulroe

Most Recent Holder of Office: Mary Ann Louderback

Superseded Appointment Message: Not Applicable

Appointment Message No. 141

Title of Office: Member

Agency or Other Body: Illinois Student Assistance Commission

Start Date: July 7, 2011

End Date: June 30, 2017

Name: Marina Y. Faz-Huppert

Residence: 5057 N. Northwest Highway Apt. 2S, Chicago, IL 60630

Annual Compensation: Expenses

Per diem: Not Applicable

Nominee's Senator: Senator John G. Mulroe

Most Recent Holder of Office: Warren Daniels, Jr.

Superseded Appointment Message: Not Applicable

Appointment Message No. 142

Title of Office: Member

Agency or Other Body: Illinois Student Assistance Commission

Start Date: July 7, 2011

End Date: June 30, 2015

Name: Kendall A. Griffin

Residence: 216 Brown Ave. Apt. 1F, Forest Park, IL 60130

Annual Compensation: Expenses

Per diem: Not Applicable

Nominee's Senator: Senator Kimberly A. Lightford

Most Recent Holder of Office: Lynda Andre

Superseded Appointment Message: Not Applicable

Appointment Message No. 143

Title of Office: Member and Chair

Agency or Other Body: Illinois Student Assistance Commission

Start Date: June 3, 2011

End Date: June 30, 2015

Name: Kym M. Hubbard

Residence: 630 N. State Parkway, Chicago, IL 60654

Annual Compensation: Expenses

Per diem: Not Applicable

Nominee's Senator: Senator Mattie Hunter

Most Recent Holder of Office: Don McNeil

Superseded Appointment Message: Not Applicable

Appointment Message No. 144

Title of Office: Member

Agency or Other Body: Illinois Student Assistance Commission

Start Date: July 7, 2011

End Date: June 30, 2017

Name: Verett Mims

Residence: 2337 West George St., Chicago, IL 60618

Annual Compensation: Expenses

Per diem: Not Applicable

Nominee's Senator: Senator Iris Y. Martinez

Most Recent Holder of Office: David Vaught

Superseded Appointment Message: Not Applicable

Appointment Message No. 145

Title of Office: Member

Agency or Other Body: Illinois Student Assistance Commission

Start Date: September 9, 2011

End Date: June 30, 2017

Name: Paul Roberts

Residence: 1919 N. 77th Ave., Elmwood Park, IL 60707

Annual Compensation: Expenses

Per diem: Not Applicable

Nominee's Senator: Senator Don Harmon

Most Recent Holder of Office: Sharon Alpi

Superseded Appointment Message: Not Applicable

Appointment Message No. 146

Title of Office: Member

Agency or Other Body: Illinois Student Assistance Commission

Start Date: July 7, 2011

End Date: June 30, 2013

Name: Kim Savage

Residence: 7706 Brookhaven Ave., Darien, IL 60561

Annual Compensation: Expenses

Per diem: Not Applicable

Nominee's Senator: Senator Christine Radogno

Most Recent Holder of Office: Hugh Van Voorst

Superseded Appointment Message: Not Applicable

Appointment Message No. 148

Title of Office: Member

Agency or Other Body: Health Facilities and Services Review Board

Start Date: June 2, 2011

End Date: July 1, 2011

Name: Robert J. Hilgenbrink

Residence: 108 Eden Park Blvd., Shiloh, IL 62269

Annual Compensation: Expenses

Per diem: Not Applicable

Nominee's Senator: Senator James F. Clayborne, Jr.

Most Recent Holder of Office: Original Appointment

Superseded Appointment Message: Appointment Message 129 of the 97th General Assembly

Appointment Message No. 149

Title of Office: Member

Agency or Other Body: Health Facilities and Services Review Board

Start Date: July 14, 2011

End Date: July 1, 2014

Name: Robert J. Hilgenbrink

Residence: 108 Eden Park Blvd., Shiloh, IL 62269

Annual Compensation: Expenses

Per diem: Not Applicable

Nominee's Senator: Senator James F. Clayborne, Jr.

Most Recent Holder of Office: Reappointment

Superseded Appointment Message: Not Applicable

Appointment Message No. 150

Title of Office: Member

Agency or Other Body: Health Facilities and Services Review Board

Start Date: July 14, 2011

End Date: July 1, 2014

Name: Richard H. Sewell

Residence: 1410 East 48th St., Chicago, IL 60615

Annual Compensation: Expenses

Per diem: Not Applicable

Nominee's Senator: Senator Kwame Raoul

Most Recent Holder of Office: Reappointment

Superseded Appointment Message: Not Applicable

Appointment Message No. 173

Title of Office: Member

Agency or Other Body: Illinois Finance Authority

Start Date: September 9, 2011

End Date: July 21, 2014

Name: Gila J. Bronner

Residence: 284 Prospect Ave., Highland Park, IL 60035

Annual Compensation: Expenses

Per diem: Not Applicable

Nominee's Senator: Senator Susan Garrett

Most Recent Holder of Office: Reappointment

Superseded Appointment Message: Not Applicable

Appointment Message No. 174

Title of Office: Member

Agency or Other Body: Illinois Finance Authority

Start Date: September 9, 2011

End Date: July 21, 2014

Name: John Durburg

Residence: 934 Waveland Rd., Lake Forest, IL 60045

Annual Compensation: Expenses

Per diem: Not Applicable

Nominee's Senator: Senator Susan Garrett

Most Recent Holder of Office: Reappointment

Superseded Appointment Message: Not Applicable

Appointment Message No. 175

Title of Office: Member

Agency or Other Body: Illinois Finance Authority

Start Date: September 9, 2011

End Date: July 21, 2014

Name: Michael W. Goetz

Residence: 4656 Svenson Dr., Springfield, IL 62711

Annual Compensation: Expenses

Per diem: Not Applicable

Nominee's Senator: Senator Larry K. Bomke

Most Recent Holder of Office: Reappointment

Superseded Appointment Message: Not Applicable

Appointment Message No. 176

Title of Office: Member

Agency or Other Body: Illinois Finance Authority

Start Date: September 9, 2011

End Date: July 21, 2014

Name: Terrence O'Brien

Residence: 2574 Fairford Lane, Northbrook, IL 60062

Annual Compensation: Expenses

Per diem: Not Applicable

Nominee's Senator: Senator Susan Garrett

Most Recent Holder of Office: Reappointment

Superseded Appointment Message: Not Applicable

Appointment Message No. 178

Title of Office: Member

Agency or Other Body: Workers' Compensation Medical Fee Advisory Board

Start Date: September 12, 2011

End Date: December 5, 2013

Name: Avi J. Bernstein, M.D.

Residence: 1055 Pawnee Rd., Wilmette, IL 60091

Annual Compensation: Expenses

Per diem: Not Applicable

Nominee's Senator: Senator Jeffrey M. Schoenberg

Most Recent Holder of Office: Jesse Butler

Superseded Appointment Message: Not Applicable

Appointment Message No. 179

Title of Office: Member

Agency or Other Body: Workers' Compensation Medical Fee Advisory Board

Start Date: September 12, 2011

End Date: December 5, 2013

Name: Jason Keller

Residence: 1909 Old Ivy Dr., Springfield, IL 62711

Annual Compensation: Expenses

Per diem: Not Applicable

Nominee's Senator: Senator Larry K. Bomke

Most Recent Holder of Office: Ron Powell

Superseded Appointment Message: Not Applicable

Appointment Message No. 180

Title of Office: Member

Agency or Other Body: Workers' Compensation Medical Fee Advisory Board

Start Date: September 12, 2011

End Date: December 5, 2013

Name: William R. McAndrew

Residence: 3061 Cascade Dr., Springfield, IL 62704

Annual Compensation: Expenses

Per diem: Not Applicable

Nominee's Senator: Senator Larry K. Bomke

Most Recent Holder of Office: Edward Sclamberg

Superseded Appointment Message: Not Applicable

Appointment Message No. 181

Title of Office: Member

Agency or Other Body: Workers' Compensation Medical Fee Advisory Board

Start Date: September 12, 2011

End Date: December 5, 2013

Name: Dianne A. McGuire

Residence: 1235 Tennyson Lane, Naperville, IL 60540

Annual Compensation: Expenses

Per diem: Not Applicable

Nominee's Senator: Senator Thomas Johnson

Most Recent Holder of Office: Roger Poole

Superseded Appointment Message: Not Applicable

Appointment Message No. 182

Title of Office: Member

Agency or Other Body: Workers' Compensation Medical Fee Advisory Board

Start Date: September 12, 2011

End Date: December 5, 2013

Name: Barbara Molloy

Residence: 1836 N. Larrabee St., Chicago, IL 60614

Annual Compensation: Expenses

Per diem: Not Applicable

Nominee's Senator: Senator Annazette R. Collins

Most Recent Holder of Office: Maddy Bowling

Superseded Appointment Message: Not Applicable

Appointment Message No. 183

Title of Office: Member

Agency or Other Body: Workers' Compensation Medical Fee Advisory Board

Start Date: September 12, 2011

End Date: December 5, 2013

Name: Kimberly R. Moreland

Residence: 443 W. Armitage Ave., Chicago, IL 60614

Annual Compensation: Expenses

Per diem: Not Applicable

Nominee's Senator: Senator John J. Cullerton

Most Recent Holder of Office: Reappointment

Superseded Appointment Message: Not Applicable

Appointment Message No. 184

Title of Office: Member

Agency or Other Body: Workers' Compensation Medical Fee Advisory Board

Start Date: September 12, 2011

End Date: December 5, 2013

Name: John Smolk

Residence: 52 Citation Circle, Wheaton, IL 60189

Annual Compensation: Expenses

Per diem: Not Applicable

Nominee's Senator: Senator Thomas Johnson

Most Recent Holder of Office: Reappointment

Superseded Appointment Message: Not Applicable

Appointment Message No. 185

Title of Office: Member

Agency or Other Body: Workers' Compensation Medical Fee Advisory Board

Start Date: September 12, 2011

End Date: December 5, 2013

Name: Michael I. Vender, M.D.

Residence: 420 Sunset Lane, Glencoe, IL 60022

Annual Compensation: Expenses

Per diem: Not Applicable

Nominee's Senator: Senator Susan Garrett

Most Recent Holder of Office: Elena Butkus

Superseded Appointment Message: Not Applicable

Senator Muñoz moved that the Senate advise and consent to the foregoing appointment.

And on that motion, a call of the roll was had resulting as follows:

YEAS 54; NAYS None.

The following voted in the affirmative:

Althoff	Holmes	Luechtefeld	Righter
Bivins	Hunter	Maloney	Sandack
Clayborne	Hutchinson	Martinez	Sandoval
Collins, A.	Jacobs	McCarter	Schmidt
Collins, J.	Johnson, C.	Meeks	Schoenberg
Crotty	Johnson, T.	Millner	Silverstein
Cultra	Jones, E.	Mulroe	Steans
Delgado	Koehler	Muñoz	Sullivan
Dillard	Kotowski	Murphy	Syverson
Duffy	LaHood	Noland	Trotter
Forby	Landek	Pankau	Wilhelmi
Frerichs	Lauzen	Radogno	Mr. President
Garrett	Lightford	Raoul	
Haine	Link	Rezin	

The motion prevailed.

Whereupon the President of the Senate announced confirmation of the foregoing appointments.

On motion of Senator Muñoz, the Executive Session arose and the Senate resumed consideration of business.

Senator Crotty, presiding.

CONSIDERATION OF GOVERNOR'S VETO MESSAGE

Pursuant to the Motion in Writing filed on Tuesday, October 25, 2011 and journalized Wednesday, October 26, 2011, Senator Jacobs moved that **Senate Bill No. 1652** do pass, the veto of the Governor to the contrary notwithstanding.

At the hour of 3:53 o'clock p.m., Senator Sullivan, presiding.

And on that motion, a call of the roll was had resulting as follows:

YEAS 36; NAYS 19; Present 2.

The following voted in the affirmative:

Althoff	Hutchinson	Martinez	Righter
Brady	Jacobs	Meeks	Sandack
Collins, A.	Johnson, T.	Millner	Sandoval
Crotty	Jones, E.	Muñoz	Trotter
Delgado	Jones, J.	Murphy	Wilhelmi
Dillard	Koehler	Noland	Mr. President
Haine	Landek	Pankau	
Harmon	Lightford	Radogno	
Holmes	Link	Raoul	
Hunter	Luechtefeld	Rezin	

The following voted in the negative:

Bivins	Frerichs	Lauzen	Silverstein
Clayborne	Garrett	Maloney	Steans
Cultra	Johnson, C.	McCann	Sullivan

Duffy	Kotowski	Schmidt	Syverson
Forby	LaHood	Schoenberg	

The following voted present:

Collins, J.
Mulroe

This bill, having received the vote of three-fifths of the members elected, was declared passed, the veto of the Governor to the contrary notwithstanding.

Ordered that the Secretary inform the House of Representatives thereof and ask their concurrence therein.

Senator McCarter asked and obtained unanimous consent for the Journal to reflect his intention to have voted in the negative on **Senate Bill No. 1652.**

Pursuant to the Motion in Writing filed on Monday, October 10, 2011 and journalized Wednesday, October 26, 2011, Senator Frerichs moved that **Senate Bill No. 178** do pass, the veto of the Governor to the contrary notwithstanding.

And on that motion, a call of the roll was had resulting as follows:

YEAS 28; NAYS 28; Present 1.

The following voted in the affirmative:

Bivins	Jones, J.	McCann	Schmidt
Brady	Koehler	Millner	Sullivan
Cultra	LaHood	Murphy	Syverson
Dillard	Lauzen	Noland	Wilhelmi
Forby	Lightford	Pankau	
Frerichs	Link	Radogno	
Haine	Luechtefeld	Rezin	
Johnson, C.	Maloney	Righter	

The following voted in the negative:

Althoff	Harmon	Martinez	Schoenberg
Clayborne	Holmes	McCarter	Silverstein
Collins, A.	Hunter	Meeks	Steans
Collins, J.	Hutchinson	Mulroe	Trotter
Crotty	Johnson, T.	Muñoz	
Delgado	Jones, E.	Raoul	
Duffy	Kotowski	Sandack	
Garrett	Landek	Sandoval	

The following voted present:

Mr. President

The motion, having failed to receive the vote of three-fifths of the members elected, was lost.

SENATE BILLS RECALLED

On motion of Senator Cullerton, **Senate Bill No. 678** was recalled from the order of third reading to the order of second reading.

Senator Cullerton offered the following amendment and moved its adoption:

AMENDMENT NO. 1 TO SENATE BILL 678

AMENDMENT NO. 1. Amend Senate Bill 678 by replacing everything after the enacting clause with the following:

"Section 1. Short title. This amendatory Act may be referred to as the Illinois Renewable Electricity Resources Act.

Section 5. The Illinois Power Agency Act is amended by changing Sections 1-10, 1-20, 1-56, and 1-75 by adding Sections 1-76, 1-76.5, 1-77.5, 1-79, and 1-81 as follows:

(20 ILCS 3855/1-10)

Sec. 1-10. Definitions.

"Agency" means the Illinois Power Agency.

"Agency loan agreement" means any agreement pursuant to which the Illinois Finance Authority agrees to loan the proceeds of revenue bonds issued with respect to a project to the Agency upon terms providing for loan repayment installments at least sufficient to pay when due all principal of, interest and premium, if any, on those revenue bonds, and providing for maintenance, insurance, and other matters in respect of the project.

"Authority" means the Illinois Finance Authority.

"Bundled renewable energy resources" means electricity generated by a renewable energy resource and its associated renewable energy credit.

"Clean coal electricity buyer" means (1) each electric utility and (2) each alternative electric retail supplier that is subject to the requirements of subsection (d) of Section 1-75 of this Act and paragraph (5) of subsection (d) of Section 16-115 of the Public Utilities Act.

"Clean coal energy" means all energy produced by the initial clean coal facility.

"Clean coal facility" means an electric generating facility that uses primarily coal as a feedstock and that captures and sequesters carbon dioxide emissions at the following levels: at least 50% of the total carbon dioxide emissions that the facility would otherwise emit if, at the time construction commences, the facility is scheduled to commence operation before 2016, at least 70% of the total carbon dioxide emissions that the facility would otherwise emit if, at the time construction commences, the facility is scheduled to commence operation during 2016 or 2017, and at least 90% of the total carbon dioxide emissions that the facility would otherwise emit if, at the time construction commences, the facility is scheduled to commence operation after 2017. The power block of the clean coal facility shall not exceed allowable emission rates for sulfur dioxide, nitrogen oxides, carbon monoxide, particulates and mercury for a natural gas-fired combined-cycle facility the same size as and in the same location as the clean coal facility at the time the clean coal facility obtains an approved air permit. All coal used by a clean coal facility shall have high volatile bituminous rank and greater than 1.7 pounds of sulfur per million btu content, unless the clean coal facility does not use gasification technology and was operating as a conventional coal-fired electric generating facility on June 1, 2009 (the effective date of Public Act 95-1027).

"Clean coal fraction" means, with respect to a clean coal electricity buyer for a month, a fraction, the numerator of which is such clean coal electricity buyer's retail market sales of electricity (expressed in kilowatthours sold) in the State during the third month preceding the applicable month and the denominator of which is the total retail market sales of electricity (expressed in kilowatthours sold) in the State by all clean coal electricity buyers during such third month preceding the applicable month, as such fraction may be adjusted pursuant to subparagraph (E) of paragraph (2) of subsection (d) of Section 1-75 of this Act.

"Clean coal SNG brownfield facility" means a facility that (1) has commenced construction by July 1, 2015 on an urban brownfield site in a municipality with at least 1,000,000 residents; (2) uses a gasification process to produce substitute natural gas; (3) uses coal as at least 50% of the total feedstock over the term of any sourcing agreement with a utility and the remainder of the feedstock may be either petroleum coke or coal, with all such coal having a high bituminous rank and greater than 1.7 pounds of sulfur per million Btu content unless the facility reasonably determines that it is necessary to use additional petroleum coke to deliver additional consumer savings, in which case the facility shall use coal for at least 35% of the total feedstock over the term of any sourcing agreement; and (4) captures and sequesters at least 85% of the total carbon dioxide emissions that the facility would otherwise emit.

"Clean coal SNG facility" means a facility that uses a gasification process to produce substitute natural gas, that sequesters at least 90% of the total carbon dioxide emissions that the facility would otherwise emit, that uses at least 90% coal as a feedstock, with all such coal having a high bituminous rank and greater than 1.7 pounds of sulfur per million btu content, and that has a valid and effective permit to construct emission sources and air pollution control equipment and approval with respect to the

federal regulations for Prevention of Significant Deterioration of Air Quality (PSD) for the plant pursuant to the federal Clean Air Act; provided, however, a clean coal SNG brownfield facility shall not be a clean coal SNG facility.

"Commission" means the Illinois Commerce Commission.

"Costs incurred in connection with the development and construction of a facility" means:

(1) the cost of acquisition of all real property, fixtures, and improvements in connection therewith and equipment, personal property, and other property, rights, and easements acquired that are deemed necessary for the operation and maintenance of the facility;

(2) financing costs with respect to bonds, notes, and other evidences of indebtedness of the Agency;

(3) all origination, commitment, utilization, facility, placement, underwriting, syndication, credit enhancement, and rating agency fees;

(4) engineering, design, procurement, consulting, legal, accounting, title insurance, survey, appraisal, escrow, trustee, collateral agency, interest rate hedging, interest rate swap, capitalized interest, contingency, as required by lenders, and other financing costs, and other expenses for professional services; and

(5) the costs of plans, specifications, site study and investigation, installation, surveys, other Agency costs and estimates of costs, and other expenses necessary or incidental to determining the feasibility of any project, together with such other expenses as may be necessary or incidental to the financing, insuring, acquisition, and construction of a specific project and starting up, commissioning, and placing that project in operation.

"Delivery services" has the same definition as found in Section 16-102 of the Public Utilities Act.

"Delivery services non-eligible retail customers" means the retail customers in an electric utility's service area for which the electric utility provides delivery services, but which are not eligible retail customers as defined in subsection (a) of Section 1-75 of this Act.

"Department" means the Department of Commerce and Economic Opportunity.

"Director" means the Director of the Illinois Power Agency.

"Demand-response" means measures that decrease peak electricity demand or shift demand from peak to off-peak periods.

"Distributed renewable energy generation device" means a device that is:

(1) powered by wind, solar thermal energy, photovoltaic cells and panels, biodiesel, crops and untreated and unadulterated organic waste biomass, tree waste, and hydropower that does not involve new construction or significant expansion of hydropower dams;

(2) interconnected at the distribution system level of either an electric utility as defined in this Section, an alternative retail electric supplier as defined in Section 16-102 of the Public Utilities Act, a municipal utility as defined in Section 3-105 of the Public Utilities Act, or a rural electric cooperative as defined in Section 3-119 of the Public Utilities Act;

(3) located on the customer side of the customer's electric meter and is generally used to offset that customer's electricity load; and

(4) limited in nameplate capacity to no more than 2,000 kilowatts.

"Energy efficiency" means measures that reduce the amount of electricity or natural gas required to achieve a given end use.

"Electric utility" has the same definition as found in Section 16-102 of the Public Utilities Act.

"Excluded renewable energy resources contract costs" means the amount by which the costs of renewable energy resources, purchased for a particular year to meet the renewable energy resources standards of paragraph (1) of subsection (c) of Section 1-75 of this Act applicable to the load of an electric utility's eligible retail customers pursuant to a contract with a term greater than one year that the electric utility entered into in a previous year in accordance with a procurement approved by the Commission pursuant to Section 16-111.5 of the Public Utilities Act, exceed the limitations imposed by paragraph (2) of subsection (c) of Section 1-75 of this Act for the particular year.

"Facility" means an electric generating unit or a co-generating unit that produces electricity along with related equipment necessary to connect the facility to an electric transmission or distribution system.

"Governmental aggregator" means one or more units of local government that individually or collectively procure electricity to serve residential retail electrical loads located within its or their jurisdiction.

"Initial clean coal facility" means an electric generating facility using gasification technology that: (1) has a nameplate capacity of at least 500 MW; (2) irrevocably commits in its proposed sourcing agreement to use coal for at least 50% of the total feedstock over the term of a sourcing agreement, with all coal having high volatile bituminous rank and greater than 1.7 pounds of sulfur per million btu

content; (3) is designed to capture and sequester at least 90% of the carbon dioxide emissions that the portion of the facility, if any, that produces SNG would otherwise emit and at least 50% of the total carbon dioxide emissions that the facility as a whole would otherwise emit; (4) absent an appeal of a permit or regulatory order, is reasonably capable of achieving commercial operation by no later than 5 years after the execution of the sourcing agreements; (5) has a feasible financing plan; (6) has a reliable and cost-effective transmission plan to deliver energy to Commonwealth Edison Company and Ameren Illinois; and (7) has a power block designed not to exceed allowable emission rates for sulfur dioxide, nitrogen oxides, carbon monoxide, particulates, and mercury for a natural gas-fired combined-cycle facility the same size as and in the same location as the electric generating facility at the time the electric generating facility obtains an approved air permit.

"Large electric customer" means a customer that (1) obtains retail electric service in the State from an electric utility or an alternative retail electric supplier and (2) is not a small electric customer.

"Local government" means a unit of local government as defined in Article VII of Section 1 of the Illinois Constitution.

"Municipality" means a city, village, or incorporated town.

"Person" means any natural person, firm, partnership, corporation, either domestic or foreign, company, association, limited liability company, joint stock company, or association and includes any trustee, receiver, assignee, or personal representative thereof.

"Project" means the planning, bidding, and construction of a facility.

"Public utility" has the same definition as found in Section 3-105 of the Public Utilities Act.

"Real property" means any interest in land together with all structures, fixtures, and improvements thereon, including lands under water and riparian rights, any easements, covenants, licenses, leases, rights-of-way, uses, and other interests, together with any liens, judgments, mortgages, or other claims or security interests related to real property.

"Renewable energy credit" means a tradable credit that represents the environmental attributes of a certain amount of energy produced from a renewable energy resource.

"Renewable energy resources" includes energy and its associated renewable energy credit or renewable energy credits from wind, solar thermal energy, photovoltaic cells and panels, biodiesel, anaerobic digestion, crops and untreated and unadulterated organic waste biomass, tree waste, hydropower that does not involve new construction or significant expansion of hydropower dams, and other alternative sources of environmentally preferable energy. For purposes of this Act, landfill gas produced in the State is considered a renewable energy resource. "Renewable energy resources" does not include the incineration or burning of tires, garbage, general household, institutional, and commercial waste, industrial lunchroom or office waste, landscape waste other than tree waste, railroad crossties, utility poles, or construction or demolition debris, other than untreated and unadulterated waste wood.

"Revenue bond" means any bond, note, or other evidence of indebtedness issued by the Authority, the principal and interest of which is payable solely from revenues or income derived from any project or activity of the Agency.

"Sequester" means permanent storage of carbon dioxide by injecting it into a saline aquifer, a depleted gas reservoir, or an oil reservoir, directly or through an enhanced oil recovery process that may involve intermediate storage, regardless of whether these activities are conducted by a clean coal facility, the initial clean coal facility, a clean coal SNG facility, a clean coal SNG brownfield facility, or a party with which a clean coal facility, initial clean coal facility, ~~or~~ clean coal SNG facility, or clean coal SNG brownfield facility has contracted for such purposes.

"Service area" has the same definition as found in Section 16-102 of the Public Utilities Act.

"Sourcing agreement" means (i) in the case of an electric utility, an agreement between the owner of a clean coal facility or initial clean coal facility and such electric utility, which agreement shall have terms and conditions meeting the requirements of paragraph (3) of subsection (d) of Section 1-75, (ii) in the case of an alternative retail electric supplier, an agreement between the owner of a clean coal facility or initial clean coal facility and such alternative retail electric supplier, which agreement shall have terms and conditions meeting the requirements of Section 16-115(d)(5) of the Public Utilities Act, and (iii) in case of a gas utility, an agreement between the owner of a clean coal SNG brownfield facility and the gas utility, which agreement shall have the terms and conditions meeting the requirements of subsection (h-1) of Section 9-220 of the Public Utilities Act.

"Small electric customer" means a residential retail electric customer that obtains electric service in the State from an electric utility or an alternative retail electric supplier.

"Substitute natural gas" or "SNG" means a gas manufactured by gasification of hydrocarbon feedstock, which is substantially interchangeable in use and distribution with conventional natural gas.

"Total resource cost test" or "TRC test" means a standard that is met if, for an investment in energy

efficiency or demand-response measures, the benefit-cost ratio is greater than one. The benefit-cost ratio is the ratio of the net present value of the total benefits of the program to the net present value of the total costs as calculated over the lifetime of the measures. A total resource cost test compares the sum of avoided electric utility costs, representing the benefits that accrue to the system and the participant in the delivery of those efficiency measures, as well as other quantifiable societal benefits, including avoided natural gas utility costs, to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side program, to quantify the net savings obtained by substituting the demand-side program for supply resources. In calculating avoided costs of power and energy that an electric utility would otherwise have had to acquire, reasonable estimates shall be included of financial costs likely to be imposed by future regulations and legislation on emissions of greenhouse gases.
(Source: P.A. 96-33, eff. 7-10-09; 96-159, eff. 8-10-09; 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10; 97-96, eff. 7-13-11; 97-239, eff. 8-2-11; 97-491, eff. 8-22-11; revised 9-7-11.)

(20 ILCS 3855/1-20)

Sec. 1-20. General powers of the Agency.

(a) The Agency is authorized to do each of the following:

(1) Develop electricity procurement plans to ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability, for electric utilities that on December 31, 2005 provided electric service to at least 100,000 customers in Illinois and for small multi-jurisdictional electric utilities that (A) on December 31, 2005 served less than 100,000 customers in Illinois and (B) request a procurement plan for their Illinois jurisdictional load. The procurement plans shall be updated on an annual basis and shall include electricity generated from renewable resources sufficient to achieve the standards specified in this Act. <u>For periods beginning on and after June 1, 2012, the procurement plans shall also include procurement of renewable energy credits, in accordance with subsection (c) of Section 1-75 of this Act, in amounts projected to be sufficient to meet the renewable energy resources standard specified in subsection (c) of Section 1-75 of this Act with respect to the kilowatthour usage of delivery services non-eligible retail customers in such electric utilities' service areas.</u>

(2) Conduct competitive procurement processes to procure the supply resources identified in the procurement plan, pursuant to Section 16-111.5 of the Public Utilities Act.

(3) Develop electric generation and co-generation facilities that use indigenous coal or renewable resources, or both, financed with bonds issued by the Illinois Finance Authority.

(4) Supply electricity from the Agency's facilities at cost to one or more of the following: municipal electric systems, governmental aggregators, or rural electric cooperatives in Illinois.

(b) Except as otherwise limited by this Act, the Agency has all of the powers necessary or convenient to carry out the purposes and provisions of this Act, including without limitation, each of the following:

(1) To have a corporate seal, and to alter that seal at pleasure, and to use it by causing it or a facsimile to be affixed or impressed or reproduced in any other manner.

(2) To use the services of the Illinois Finance Authority necessary to carry out the Agency's purposes.

(3) To negotiate and enter into loan agreements and other agreements with the Illinois Finance Authority.

(4) To obtain and employ personnel and hire consultants that are necessary to fulfill the Agency's purposes, and to make expenditures for that purpose within the appropriations for that purpose.

(5) To purchase, receive, take by grant, gift, devise, bequest, or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use, and otherwise deal in and with, real or personal property whether tangible or intangible, or any interest therein, within the State.

(6) To acquire real or personal property, whether tangible or intangible, including without limitation property rights, interests in property, franchises, obligations, contracts, and debt and equity securities, and to do so by the exercise of the power of eminent domain in accordance with Section 1-21; except that any real property acquired by the exercise of the power of eminent domain must be located within the State.

(7) To sell, convey, lease, exchange, transfer, abandon, or otherwise dispose of, or mortgage, pledge, or create a security interest in, any of its assets, properties, or any interest therein, wherever situated.

(8) To purchase, take, receive, subscribe for, or otherwise acquire, hold, make a tender offer for, vote, employ, sell, lend, lease, exchange, transfer, or otherwise dispose of, mortgage, pledge,

or grant a security interest in, use, and otherwise deal in and with, bonds and other obligations, shares, or other securities (or interests therein) issued by others, whether engaged in a similar or different business or activity.

(9) To make and execute agreements, contracts, and other instruments necessary or convenient in the exercise of the powers and functions of the Agency under this Act, including contracts with any person, local government, State agency, or other entity; and all State agencies and all local governments are authorized to enter into and do all things necessary to perform any such agreement, contract, or other instrument with the Agency. No such agreement, contract, or other instrument shall exceed 40 years.

(10) To lend money, invest and reinvest its funds in accordance with the Public Funds Investment Act, and take and hold real and personal property as security for the payment of funds loaned or invested.

(11) To borrow money at such rate or rates of interest as the Agency may determine, issue its notes, bonds, or other obligations to evidence that indebtedness, and secure any of its obligations by mortgage or pledge of its real or personal property, machinery, equipment, structures, fixtures, inventories, revenues, grants, and other funds as provided or any interest therein, wherever situated.

(12) To enter into agreements with the Illinois Finance Authority to issue bonds whether or not the income therefrom is exempt from federal taxation.

(13) To procure insurance against any loss in connection with its properties or operations in such amount or amounts and from such insurers, including the federal government, as it may deem necessary or desirable, and to pay any premiums therefor.

(14) To negotiate and enter into agreements with trustees or receivers appointed by United States bankruptcy courts or federal district courts or in other proceedings involving adjustment of debts and authorize proceedings involving adjustment of debts and authorize legal counsel for the Agency to appear in any such proceedings.

(15) To file a petition under Chapter 9 of Title 11 of the United States Bankruptcy Code or take other similar action for the adjustment of its debts.

(16) To enter into management agreements for the operation of any of the property or facilities owned by the Agency.

(17) To enter into an agreement to transfer and to transfer any land, facilities, fixtures, or equipment of the Agency to one or more municipal electric systems, governmental aggregators, or rural electric agencies or cooperatives, for such consideration and upon such terms as the Agency may determine to be in the best interest of the citizens of Illinois.

(18) To enter upon any lands and within any building whenever in its judgment it may be necessary for the purpose of making surveys and examinations to accomplish any purpose authorized by this Act.

(19) To maintain an office or offices at such place or places in the State as it may determine.

(20) To request information, and to make any inquiry, investigation, survey, or study that the Agency may deem necessary to enable it effectively to carry out the provisions of this Act.

(21) To accept and expend appropriations.

(22) To engage in any activity or operation that is incidental to and in furtherance of efficient operation to accomplish the Agency's purposes.

(23) To adopt, revise, amend, and repeal rules with respect to its operations, properties, and facilities as may be necessary or convenient to carry out the purposes of this Act, subject to the provisions of the Illinois Administrative Procedure Act and Sections 1-22 and 1-35 of this Act.

(24) To establish and collect charges and fees as described in this Act.

(25) To conduct competitive gasification feedstock procurement processes to procure the feedstocks for the clean coal SNG brownfield facility in accordance with the requirements of Section 1-78 of this Act.

(26) To review, revise, and approve sourcing agreements and mediate and resolve disputes between gas utilities and the clean coal SNG brownfield facility pursuant to subsection (h-1) of Section 9-220 of the Public Utilities Act.

(27) To review, revise, and approve sourcing agreements and mediate and resolve disputes between electric utilities or alternative retail electric suppliers and the initial clean coal facility pursuant to paragraph (4) of subsection (d) of Section 1-75 of this Act.

(28) To conduct competitive gasification feedstock procurement processes to procure the feedstocks

for the initial clean coal facility in accordance with the requirements of Section 1-79 of this Act.
(Source: P.A. 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10; 97-96, eff. 7-13-11; 97-325, eff. 8-12-11; revised 9-7-11.)

(20 ILCS 3855/1-56)

Sec. 1-56. Illinois Power Agency Renewable Energy Resources Fund.

(a) The Illinois Power Agency Renewable Energy Resources Fund is created as a special fund in the State treasury.

(b) The Illinois Power Agency Renewable Energy Resources Fund shall be administered by the Agency to procure renewable energy resources. Prior to June 1, 2011, resources procured pursuant to this Section shall be procured from facilities located in Illinois, provided the resources are available from those facilities. If resources are not available in Illinois, then they shall be procured in states that adjoin Illinois. If resources are not available in Illinois or in states that adjoin Illinois, then they may be purchased elsewhere. Beginning June 1, 2011, resources procured pursuant to this Section shall be procured from facilities located in Illinois or states that adjoin Illinois. If resources are not available in Illinois or in states that adjoin Illinois, then they may be procured elsewhere. To the extent available, at least 75% of these renewable energy resources shall come from wind generation. Of the renewable energy resources procured pursuant to this Section at least the following specified percentages shall come from photovoltaics on the following schedule: 0.5% by June 1, 2012; 1.5% by June 1, 2013; 3% by June 1, 2014; and 6% by June 1, 2015 and thereafter. Of the renewable energy resources procured pursuant to this Section at least the following percentages shall come from distributed renewable energy generation devices: 0.5% by June 1, 2013, 0.75% by June 1, 2014, and 1% by June 1, 2015 and thereafter. To the extent available, half of the renewable energy resources procured from distributed renewable energy generation shall come from devices of less than 25 kilowatts in nameplate capacity. Renewable energy resources procured from distributed generation devices may also count towards the required percentages for wind and solar photovoltaics. Procurement of renewable energy resources from distributed renewable energy generation devices shall be done on an annual basis through multi-year contracts of no less than 5 years, and shall consist solely of renewable energy credits.

The Agency shall create credit requirements for suppliers of distributed renewable energy. In order to minimize the administrative burden on contracting entities, the Agency shall solicit the use of third-party organizations to aggregate distributed renewable energy into groups of no less than one megawatt in installed capacity. These third-party organizations shall administer contracts with individual distributed renewable energy generation device owners. An individual distributed renewable energy generation device owner shall have the ability to measure the output of his or her distributed renewable energy generation device.

(c) The Agency shall procure renewable energy resources at least once each year in conjunction with a procurement event for electric utilities required to comply with Section 1-75 of the Act and shall, whenever possible, enter into long-term contracts on an annual basis for a portion of the incremental requirement for the given procurement year.

(d) The price paid to procure renewable energy credits using monies from the Illinois Power Agency Renewable Energy Resources Fund shall not exceed the winning bid prices paid for like resources procured for electric utilities required to comply with Section 1-75 of this Act.

(e) All renewable energy credits procured using monies from the Illinois Power Agency Renewable Energy Resources Fund shall be permanently retired.

(f) The procurement process described in this Section is exempt from the requirements of the Illinois Procurement Code, pursuant to Section 20-10 of that Code.

(g) All disbursements from the Illinois Power Agency Renewable Energy Resources Fund shall be made only upon warrants of the Comptroller drawn upon the Treasurer as custodian of the Fund upon vouchers signed by the Director or by the person or persons designated by the Director for that purpose. The Comptroller is authorized to draw the warrant upon vouchers so signed. The Treasurer shall accept all warrants so signed and shall be released from liability for all payments made on those warrants.

(h) The Illinois Power Agency Renewable Energy Resources Fund shall not be subject to sweeps, administrative charges, or chargebacks, including, but not limited to, those authorized under Section 8h of the State Finance Act, that would in any way result in the transfer of any funds from this Fund to any other fund of this State or in having any such funds utilized for any purpose other than the express purposes set forth in this Section.

(i) The Illinois Power Agency Renewable Energy Resources Fund shall be terminated upon depletion of all funds therein through the purchase of renewable energy credits.
(Source: P.A. 96-159, eff. 8-10-09; 96-1000, eff. 7-2-10; 96-1437, eff. 8-17-10.)

(20 ILCS 3855/1-75)

Sec. 1-75. Planning and Procurement Bureau. The Planning and Procurement Bureau has the following duties and responsibilities:

(a) The Planning and Procurement Bureau shall each year, beginning in 2008, develop procurement plans and conduct competitive procurement processes in accordance with the requirements of Section 16-111.5 of the Public Utilities Act for the eligible retail customers of electric utilities that on December 31, 2005 provided electric service to at least 100,000 customers in Illinois, and for years beginning on and after June 1, 2012, for the procurement of renewable energy credits in respect of the kilowatthour usage of delivery services non-eligible retail customers in such electric utilities' service areas. The Planning and Procurement Bureau shall also develop procurement plans and conduct competitive procurement processes in accordance with the requirements of Section 16-111.5 of the Public Utilities Act for the eligible retail customers of small multi-jurisdictional electric utilities that (i) on December 31, 2005 served less than 100,000 customers in Illinois and (ii) request a procurement plan for their Illinois jurisdictional load. This Section shall not apply to a small multi-jurisdictional utility until such time as a small multi-jurisdictional utility requests the Agency to prepare a procurement plan for their Illinois jurisdictional load. For the purposes of this Section, the term "eligible retail customers" has the same definition as found in Section 16-111.5(a) of the Public Utilities Act.

(1) The Agency shall each year, beginning in 2008, as needed, issue a request for qualifications for experts or expert consulting firms to develop the procurement plans in accordance with Section 16-111.5 of the Public Utilities Act. In order to qualify an expert or expert consulting firm must have:

(A) direct previous experience assembling large-scale power supply plans or portfolios for end-use customers;

(B) an advanced degree in economics, mathematics, engineering, risk management, or a related area of study;

(C) 10 years of experience in the electricity sector, including managing supply risk;

(D) expertise in wholesale electricity market rules, including those established by the Federal Energy Regulatory Commission and regional transmission organizations;

(E) expertise in credit protocols and familiarity with contract protocols;

(F) adequate resources to perform and fulfill the required functions and responsibilities; and

(G) the absence of a conflict of interest and inappropriate bias for or against potential bidders or the affected electric utilities.

(2) The Agency shall each year, as needed, issue a request for qualifications for a procurement administrator to conduct the competitive procurement processes in accordance with Section 16-111.5 of the Public Utilities Act. In order to qualify an expert or expert consulting firm must have:

(A) direct previous experience administering a large-scale competitive procurement process;

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

(C) 10 years of experience in the electricity sector, including risk management experience;

(D) expertise in wholesale electricity market rules, including those established by the Federal Energy Regulatory Commission and regional transmission organizations;

(E) expertise in credit and contract protocols;

(F) adequate resources to perform and fulfill the required functions and responsibilities; and

(G) the absence of a conflict of interest and inappropriate bias for or against potential bidders or the affected electric utilities.

(3) The Agency shall provide affected utilities and other interested parties with the lists of qualified experts or expert consulting firms identified through the request for qualifications processes that are under consideration to develop the procurement plans and to serve as the procurement administrator. The Agency shall also provide each qualified expert's or expert consulting firm's response to the request for qualifications. All information provided under this subparagraph shall also be provided to the Commission. The Agency may provide by rule for fees associated with supplying the information to utilities and other interested parties. These parties shall, within 5 business days, notify the Agency in writing if they object to any experts or expert

consulting firms on the lists. Objections shall be based on:

(A) failure to satisfy qualification criteria;

(B) identification of a conflict of interest; or

(C) evidence of inappropriate bias for or against potential bidders or the affected utilities.

The Agency shall remove experts or expert consulting firms from the lists within 10 days if there is a reasonable basis for an objection and provide the updated lists to the affected utilities and other interested parties. If the Agency fails to remove an expert or expert consulting firm from a list, an objecting party may seek review by the Commission within 5 days thereafter by filing a petition, and the Commission shall render a ruling on the petition within 10 days. There is no right of appeal of the Commission's ruling.

(4) The Agency shall issue requests for proposals to the qualified experts or expert consulting firms to develop a procurement plan for the affected utilities and to serve as procurement administrator.

(5) The Agency shall select an expert or expert consulting firm to develop procurement plans based on the proposals submitted and shall award one-year contracts to those selected with an option for the Agency for a one-year renewal.

(6) The Agency shall select an expert or expert consulting firm, with approval of the Commission, to serve as procurement administrator based on the proposals submitted. If the Commission rejects, within 5 days, the Agency's selection, the Agency shall submit another recommendation within 3 days based on the proposals submitted. The Agency shall award a one-year contract to the expert or expert consulting firm so selected with Commission approval with an option for the Agency for a one-year renewal.

(a-5) The Planning and Procurement Bureau shall at least every 5 years beginning in 2012 develop feedstock procurement plans and conduct competitive feedstock procurement processes in accordance with the requirements of Section 1-79 of this Act.

(1) The Agency shall, at least once every 5 years beginning in 2012, issue a request for qualifications for experts or expert consulting firms to develop the feedstock procurement plans in accordance with Section 1-79 of this Act. In order to qualify, an expert or, in the case of an expert consulting firm, the individual who shall be directly responsible for the work, must have:

(A) direct previous experience assembling large scale feedstock supply plans or portfolios involving coal and natural gas for industrial customers;

(B) an advanced degree in economics, mathematics, engineering, risk management, or a related area of study;

(C) ten years of experience in the energy sector, including coal and gas procurement and managing fuel supply risk;

(D) expertise in the feedstock markets, which may be particularized to the specific type of feedstock to be purchased in that procurement event;

(E) expertise in credit protocols and familiarity with contract protocols;

(F) adequate resources to perform and fulfill the required functions and responsibilities; and

(G) the absence of a conflict of interest and inappropriate bias for or against potential bidders or the initial clean coal facility.

(2) The Agency shall at least every 5 years beginning in 2012, as needed, issue a request for qualifications for a feedstock procurement administrator to conduct the competitive feedstock procurement processes in accordance with Section 1-79 of this Act. In order to qualify, an expert or, in the case of an expert consulting firm, the individual who shall be directly responsible for the work, must have:

(A) direct previous experience administering a large scale competitive feedstock procurement process involving coal and natural gas;

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

(C) ten years of experience in the energy sector, including coal and gas procurement and managing fuel supply risk;

(D) expertise in feedstock market rules and practices, which may be particularized to the specific type of feedstock to be purchased in that procurement event;

(E) expertise in credit and contract protocols;

(F) adequate resources to perform and fulfill the required functions and responsibilities; and

(G) the absence of a conflict of interest and inappropriate bias for or against potential bidders or the initial clean coal facility.

(3) The Agency shall provide the initial clean coal facility and other interested parties with the lists

of qualified experts or expert consulting firms identified through the request for qualifications processes that are under consideration to develop the feedstock procurement plans and to serve as the feedstock procurement administrator. The Agency shall also provide the initial clean coal facility and other interested parties with each qualified expert's or expert consulting firm's response to the request for qualifications. All information provided under this subparagraph (3) shall also be provided to the Commission. The Agency may provide by rule for fees associated with supplying the information to the initial clean coal facility and other interested parties. The initial clean coal facility and other interested parties shall, within 5 business days after receiving the lists and information, notify the Agency in writing if they object to any experts or expert consulting firms on the lists. Objections shall be based on:

(A) failure to satisfy qualification criteria;

(B) identification of a conflict of interest; or

(C) evidence of inappropriate bias for or against potential bidders or the initial clean coal facility.

The Agency shall remove experts or expert consulting firms from the lists within 10 days after receiving the objections if there is a reasonable basis for an objection and provide the updated lists to the initial clean coal facility and other interested parties. If the Agency fails to remove an expert or expert consulting firm from a list, then an objecting party may seek review by the Commission within 5 days thereafter by filing a petition, and the Commission shall render a ruling on the petition within 10 days. There is no right of appeal of the Commission's ruling.

(4) The Agency shall issue requests for proposals to the qualified experts or expert consulting firms to develop a feedstock procurement plan for the initial clean coal facility and to serve as feedstock procurement administrator.

(5) The Agency shall select an expert or expert consulting firm to develop feedstock procurement plans based on the proposals submitted and shall award at least one-year contracts to those selected with an option for the Agency for renewal for an additional length of time equal to the term of the contract.

(6) The Agency shall select, with approval of the Commission, an expert or expert consulting firm to serve as feedstock procurement administrator based on the proposals submitted. If the Commission rejects the Agency's selection within 5 days after being notified of the Agency's selection, then the Agency shall submit another recommendation within 3 days after the Commission's rejection based on the proposals submitted. The Agency shall award a 5-year contract to the expert or expert consulting firm so selected with Commission approval with an option for the Agency for a 5-year renewal.

(b) The experts or expert consulting firms retained by the Agency under subsection (a) of this Section shall, as

appropriate, prepare procurement plans, and conduct a competitive procurement process as prescribed in Section 16-111.5 of the Public Utilities Act, to ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability, for eligible retail customers of electric utilities that on December 31, 2005 provided electric service to at least 100,000 customers in the State of Illinois, and for eligible Illinois retail customers of small multi-jurisdictional electric utilities that (i) on December 31, 2005 served less than 100,000 customers in Illinois and (ii) request a procurement plan for their Illinois jurisdictional load.

(b-5) The experts or expert consulting firms retained by the Agency pursuant to subsection (a-5) of this Section shall, as appropriate, prepare feedstock procurement plans and conduct a competitive feedstock procurement process as prescribed in Section 1-79 of this Act to ensure adequate, reliable, affordable feedstocks, taking into account any benefits of price stability, for the initial clean coal facility.

(c) Renewable portfolio standard.

(1) The procurement plans under subsection (a) of this Section shall include cost-effective renewable energy resources.

A minimum percentage of each utility's total supply to serve the load of eligible retail customers, as defined in Section 16-111.5(a) of the Public Utilities Act, procured for each of the following years shall be generated from cost-effective renewable energy resources: at least 2% by June 1, 2008; at least 4% by June 1, 2009; at least 5% by June 1, 2010; at least 6% by June 1, 2011; at least 7% by June 1, 2012; at least 8% by June 1, 2013; at least 9% by June 1, 2014; at least 10% by June 1, 2015; and increasing by at least 1.5% each year thereafter to at least 25% by June 1, 2025. For periods beginning on and after June 1, 2012, the procurement plans shall include the procurement of cost-effective renewable energy credits equal to the projected kilowatthour usage of the delivery services non-eligible retail customers within the service area of the electric utility times the applicable renewable energy resource percentage for that year as set forth under this paragraph (1). To the extent that it is available, at least 75% of the renewable energy resources used to meet these standards shall come from wind generation and, beginning on June 1, 2011, at least the following

percentages of the renewable energy resources used to meet these standards shall come from photovoltaics on the following schedule: 0.5% by June 1, 2012, 1.5% by June 1, 2013; 3% by June 1, 2014; and 6% by June 1, 2015 and thereafter. Of the renewable energy resources procured pursuant to this Section at least the following percentages shall come from distributed renewable energy generation devices: 0.5% by June 1, 2013, 0.75% by June 1, 2014, and 1% by June 1, 2015 and thereafter. To the extent available, half of the renewable energy resources procured from distributed renewable energy generation shall come from devices of less than 25 kilowatts in nameplate capacity. Renewable energy resources procured from distributed generation devices may also count towards the required percentages for wind and solar photovoltaics. Procurement of renewable energy resources from distributed renewable energy generation devices shall be done on an annual basis through multi-year contracts of no less than 5 years, and shall consist solely of renewable energy credits.

The Agency shall create credit requirements for suppliers of distributed renewable energy. In order to minimize the administrative burden on contracting entities, the Agency shall solicit the use of third-party organizations to aggregate distributed renewable energy into groups of no less than one megawatt in installed capacity. These third-party organizations shall administer contracts with individual distributed renewable energy generation device owners. An individual distributed renewable energy generation device owner shall have the ability to measure the output of his or her distributed renewable energy generation device. For purposes of this subsection (c), "cost-effective" means that the costs of procuring renewable energy resources to serve the load of the electric utility's eligible retail customers and the costs of procuring renewable energy credits with respect to the kilowatthour usage of the delivery services non-eligible retail customers within the electric utility's service area do not cause the applicable limits ~~limit~~ stated in paragraph (2) of this subsection (c) to be exceeded and do not exceed benchmarks based on market prices for renewable energy resources in the region, which shall be developed by the procurement administrator, in consultation with the Commission staff, Agency staff, and the procurement monitor and shall be subject to Commission review and approval.

(2) For purposes of this subsection (c), the required procurement of cost-effective renewable energy resources to serve the load of the electric utility's eligible retail customers for a particular year shall be measured as a percentage of the actual amount of electricity (megawatt-hours) supplied by the electric utility to eligible retail customers in the planning year ending immediately prior to the procurement and, for periods beginning on and after June 1, 2012, the required procurement of cost effective renewable energy credits with respect to the delivery services non-eligible retail customers of the electric utility shall be based on the actual amount of electricity (megawatt-hours) delivered by the electric utility to delivery services non-eligible retail customers in its service area in the planning year ending immediately prior to the procurement. For purposes of this subsection (c), the amount paid per kilowatthour means the total amount paid for electric service expressed on a per kilowatthour basis. For purposes of this subsection (c), the total amount paid for electric service includes without limitation amounts paid for supply, transmission, distribution, surcharges, and add-on taxes.

Notwithstanding the requirements of this subsection (c), the total of renewable energy resources procured pursuant to the procurement plan with respect to the load of the electric utility's eligible retail customers for any single year shall be reduced by an amount necessary to limit the annual estimated average net increase due to the costs of these resources included in the amounts paid by eligible retail customers in connection with electric service to:

(A) in 2008, no more than 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007;

(B) in 2009, the greater of an additional 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2008 or 1% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007;

(C) in 2010, the greater of an additional 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2009 or 1.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007;

(D) in 2011, the greater of an additional 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2010 or 2% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007; and

(E) thereafter, the amount of renewable energy resources procured pursuant to the procurement plan for any single year shall be reduced by an amount necessary to limit the estimated average net increase due to the cost of these resources included in the amounts paid by eligible retail customers in connection with electric service to no more than the greater of 2.015%

of the amount paid per kilowatthour by those customers during the year ending May 31, 2007 or the incremental amount per kilowatthour paid for these resources in 2011.

For periods beginning on and after June 1, 2012, any excluded renewable energy resources contract costs shall be recoverable by the electric utility through its tariffed charges for delivery services pursuant to Section 16-108 of the Public Utilities Act to its residential class delivery services non-eligible retail customers.

Notwithstanding the requirements of this subsection (c), for years beginning on and after June 1, 2012, the total amount of renewable energy credits procured pursuant to the procurement plan with respect to the kilowatthour usage of the delivery services non-eligible retail customers in the electric utility's service area shall be reduced by an amount necessary to limit the cost of renewable energy credits and excluded renewable energy resources costs included in the electric utility's charges per kilowatthour for delivery services to its delivery services non-eligible retail customers to an amount equal to no more than 2.015% of the amount paid by the electric utility's eligible retail customers per kilowatthour for electric service during the year ended May 31, 2007.

No later than June 30, 2011, the Commission shall review the limitation on the amount of renewable energy resources procured pursuant to this subsection (c) and report to the General Assembly its findings as to whether that limitation unduly constrains the procurement of cost-effective renewable energy resources.

(3) (Blank). ~~Through June 1, 2011, renewable energy resources shall be counted for the purpose of meeting the renewable energy standards set forth in paragraph (1) of this subsection (c) only if they are generated from facilities located in the State, provided that cost-effective renewable energy resources are available from those facilities. If those cost-effective resources are not available in Illinois, they shall be procured in states that adjoin Illinois and may be counted towards compliance. If those cost-effective resources are not available in Illinois or in states that adjoin Illinois, they shall be purchased elsewhere and shall be counted towards compliance. After June 1, 2011, cost-effective renewable energy resources located in Illinois and in states that adjoin Illinois may be counted towards compliance with the standards set forth in paragraph (1) of this subsection (c). If those cost-effective resources are not available in Illinois or in states that adjoin Illinois, they shall be purchased elsewhere and shall be counted towards compliance.~~

(4) The electric utility shall retire all renewable energy credits used to comply with the standard.

(5) Beginning with the year commencing June 1, 2010, and ending with the year commencing June 1, 2011, an electric utility subject to this subsection (c) shall apply the lesser of the maximum alternative compliance payment rate or the most recent estimated alternative compliance payment rate for its service territory for the corresponding compliance period, established pursuant to subsection (d) of Section 16-115D of the Public Utilities Act to its retail customers that take service pursuant to the electric utility's hourly pricing tariff or tariffs. The electric utility shall retain all amounts collected as a result of the application of the alternative compliance payment rate or rates to such customers, and, beginning in 2011, the utility shall include in the information provided under item (1) of subsection (d) of Section 16-111.5 of the Public Utilities Act the amounts collected under the alternative compliance payment rate or rates for the prior year ending May 31. Notwithstanding any limitation on the procurement of renewable energy resources imposed by item (2) of this subsection (c), the Agency shall increase its spending on the purchase of renewable energy resources to be procured by the electric utility for the next plan year by an amount equal to the amounts collected by the utility under the alternative compliance payment rate or rates in the prior year ending May 31. For years commencing on and after June 1, 2012, the kilowatthours supplied by the electric utility to its retail customers that take service pursuant to the electric utility's hourly pricing tariff or tariffs shall be considered usage of delivery services non-eligible retail customers.

(6) Each annual procurement plan for periods beginning on and after June 1, 2012 shall include (i) the procurement of electricity from cost-effective renewable energy resources to meet the renewable energy resource requirements specified in paragraph (2) of this subsection (c) with respect to the load of the electric utility's eligible retail customers and (ii) the procurement of renewable energy credits to meet the renewable energy resource requirements specified in paragraph (2) of this subsection (c) with respect to the kilowatthour usage of the electric utility's delivery services non-eligible retail customers; provided that the electric utility's obligation to purchase renewable energy credits with respect to the kilowatthour usage of delivery services non-eligible retail customers shall be reduced by the amount of any purchases of renewable energy credits by the Agency for the year in respect of the electric utility's service area pursuant to Section 1-56 of this Act using the Illinois Power Agency Renewable Energy Resources

Fund. All procurements of bundled renewable energy resources and renewable energy credits in the procurement plans of the electric utilities shall be pursuant to competitive bidding processes and shall be approved by the Commission pursuant to Section 16-111.5 of the Public Utilities Act. Procurements of bundled renewable energy resources shall used to secure supply from renewable energy assets that can provide monthly energy quantity guarantees for peak and off-peak wrap periods. Projects shall be chosen based on the value of the energy procured. The value of the energy shall be determined by the Agency by utilizing a "time of day" methodology to evaluate the energy profile of each project.

(d) Clean coal portfolio standard.

(1) The General Assembly finds that there are abundant and cost-effective supplies of high volatile rank bituminous coal with a sulfur content of at least 1.7 pounds per million btu energy content, and that it is technologically feasible to produce electric energy using such coal supplies reliably. The General Assembly further finds that state-of-the-art gasification systems are available to convert coal supplies with the foregoing characteristics into gas and that it is feasible to use such gas to generate electric energy without exceeding allowable emission rates for sulfur dioxide, nitrogen oxides, carbon monoxide, particulates, and mercury for a natural gas-fired combined-cycle facility of the same size as and in the same location as a clean coal facility incorporating a gasification system and a combined cycle power block. The General Assembly also finds that it is feasible to engineer and construct systems designed to capture and sequester the percentages of the carbon dioxide emissions from clean coal facilities as specified in this Act. Accordingly, the General Assembly finds it necessary for the health, safety, welfare, and prosperity of Illinois citizens to require Illinois electric utilities and alternative retail electric suppliers to contract with the initial clean coal facility to meet a portion of the needs of each such electric utility's and alternative retail electric supplier's retail load on the terms and conditions described under this Act.

The procurement plans under subsection (a) of this Section shall include electricity generated using clean coal. Each electric utility shall enter into one or more sourcing agreements with the initial clean coal facility, as provided in paragraph (3) of this subsection (d), covering electricity generated by the initial clean coal facility representing (A) at least 5% of that ~~each~~ utility's ~~total supply to serve the~~ load of eligible retail customers in the immediately preceding year ~~2015 and each year thereafter~~, as described in paragraph (3) of this subsection (d), or (B) such lesser amount as may be available from the initial clean coal facility, reduced by ~~subject to~~ the limits on the amount of power to be purchased specified in paragraph (2) of this subsection (d). It is the goal of the State that by January 1, 2025, 25% of the electricity used in the State shall be generated by cost-effective clean coal facilities. For purposes of this subsection (d), "cost-effective" means that the expenditures pursuant to such sourcing agreements do not cause the limit stated in paragraph (2) of this subsection (d) to be exceeded and do not exceed cost-based benchmarks, which shall be developed to assess all expenditures pursuant to such sourcing agreements covering electricity generated by clean coal facilities, other than the initial clean coal facility, by the procurement administrator, in consultation with the Commission staff, Agency staff, and the procurement monitor and shall be subject to Commission review and approval.

(A) A utility party to a sourcing agreement shall immediately retire any emission credits that it receives in connection with the electricity covered by such agreement.

(B) Utilities shall maintain adequate records documenting the purchases under the sourcing agreement to comply with this subsection (d) and shall file an accounting with the load forecast that must be filed with the Agency by July 15 of each year, in accordance with subsection (d) of Section 16-111.5 of the Public Utilities Act.

(C) A utility shall be deemed to have complied with the clean coal portfolio standard specified in this subsection (d) if the utility enters into a sourcing agreement as required by this subsection (d).

(2) For purposes of this subsection (d), the ~~required execution of~~ sourcing agreements with the initial clean coal facility for a particular year shall be measured as a percentage of the actual amount of electricity (megawatt-hours) supplied by the electric utility to eligible retail customers in the immediately preceding year ~~planning year ending immediately prior to the agreement's execution~~. For purposes of this subsection (d), the amount paid per kilowatthour means the total amount paid for electric service expressed on a per kilowatthour basis. For purposes of this subsection (d), the total amount paid for electric service includes without limitation amounts paid for supply, transmission, distribution, surcharges and add-on taxes.

Notwithstanding the requirements of this subsection (d), the total amount purchased ~~paid~~ under sourcing agreements with the initial clean coal facility ~~clean coal facilities~~ pursuant to the

procurement plan for any given year shall be reduced by an amount necessary to limit the annual estimated average net increase due to the costs of these resources included in the amounts paid by eligible retail customers in connection with electric service to:

(A) in 2010, no more than 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2009;

(B) in 2011, the greater of an additional 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2010 or 1% of the amount paid per kilowatthour by those customers during the year ending May 31, 2009;

(C) in 2012, the greater of an additional 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2011 or 1.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2009;

(D) in 2013, the greater of an additional 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2012 or 2% of the amount paid per kilowatthour by those customers during the year ending May 31, 2009; and

(E) thereafter:

(i) A calculation shall be made for each year to determine whether ~~, the total amount paid under sourcing agreements with clean coal facilities pursuant to the procurement plan for any single year shall be reduced by an amount necessary to limit~~ the estimated average net per kilowatthour increase due to the cost of electric power purchased under sourcing agreements and ~~these resources~~ included in the amounts paid by small electric ~~eligible retail~~ customers in connection with electric service exceeds ~~to no more than~~ the greater of (i) 2.015% of the amount paid per kilowatthour by eligible retail ~~those~~ customers during the year ending May 31, 2009 or (ii) the incremental amount per kilowatthour paid for these resources in 2013. These requirements may be altered only as provided by statute . For purposes of such calculation, such average net per kilowatthour increase in rates of small electric customers that are not eligible retail customers shall be deemed to be equal to such average net per kilowatthour increase in rates of eligible retail customers.

(ii) If for any year the small customer rate impact would exceed the limitation described in item (i) of this subparagraph (E), the clean coal fraction for each clean coal electricity buyer shall be adjusted for such year in a manner that will result in (a) the quantity of electric power projected to be purchased by each clean coal electricity buyer being reduced by an amount sufficient to result in such deemed rate impact on all small electric customers (whether served by electric utilities or alternative retail electric suppliers) being equal to such limitation for such year and (b) any such reductions in amounts allocated to the clean coal electricity buyers in order to achieve the objective described in clause (a) of this item (ii) being allocated to, and purchased and paid for by, the clean coal electricity buyers in proportion to their retail sales to large electric customers.

(iii) Each year, after taking account of the adjustment, if any, provided for in item (ii) of this subparagraph (E), a calculation shall be made to determine whether the large customer deemed rate impact for such year exceeds $0.005 per kilowatthour. The "large customer deemed rate impact" for any year is the projected increase in electric rates of large electric customers (whether served by electric utilities or alternative retail electric suppliers) due to the cost of electric power purchased under sourcing agreements to the extent it is based on each clean coal electricity buyer's retail sales to large electric customers, which shall be calculated in substantially the same manner as the calculation of rate impact on small electric customers, and shall assume that such cost of purchases under sourcing agreements is passed through proportionally by the clean coal electricity buyers to their large electric customers. The calculation of the large customer deemed rate impact shall (a) assume that the total retail sales (expressed in kilowatthours sold) to large electric customers by all clean coal electricity buyers for any year is the greater of the actual amount of such sales in such year and the amount of such sales in 2009 and (b) exclude from the calculation any actual costs for such year incurred by the initial clean coal facility to the extent such costs exceed the corresponding amount assumed in the "reference case" of the facility cost report for the initial clean coal facility for such year and are not principally within the reasonable control of the initial clean coal facility.

Any operating costs or revenues deviating from the corresponding costs assumed in the "reference case" of the facility cost report for the initial clean coal facility as a result of changes in market prices, including, but not limited to, prices of coal, natural gas, electricity, by-products, and emissions allowances, shall be deemed to be outside of the reasonable control of the initial clean coal facility and excluded from the calculation.

Any costs exceeding the corresponding costs assumed in the "reference case" of the facility cost report for the initial clean coal facility as a result of changes in capital costs, fixed operating costs,

variable operating costs, operating efficiency, and availability, except in each case to the extent resulting from a change in market prices, as described in the immediately preceding paragraph, or from a change in law, as defined in subsection (b) of Section 1-76 of this Act, shall be deemed to be within the reasonable control of the initial clean coal facility and included in the calculation.

(iv) If for any year the large customer deemed rate impact would exceed the limitation described in item (iii) of this subparagraph (E), the quantity of electric power required to be purchased by each clean coal electricity buyer that serves large electric customers under its sourcing agreement for such year shall be reduced by such amount as will result in the large customer deemed rate impact being equal to such limitation for such year, and the clean coal fractions of each clean coal electricity buyer that serves large electric customers shall be adjusted for such year to reflect this reduction; provided, however, that the reduction under this item (iv) shall not exceed in any year an amount that would result in revenues under the sourcing agreements being reduced by more than $50,000,000 in the aggregate for such year. Any quantities of electric power not required to be purchased pursuant to the operation of the immediately preceding sentence may be disposed of by the initial clean coal facility for its own account, and the proceeds of any sales of such electric power shall not be included in the formula rate.

(v) The details of the calculations contemplated by this subparagraph (E) shall be set forth in the sourcing agreements.

(vi) No later than June 30, 2016 ~~2015~~, the Commission shall review the limitation on the total amount purchased ~~paid~~ under sourcing agreements, if any, with the initial clean coal facility ~~facilities~~ pursuant to this subsection (d) and report to the General Assembly its findings as to the effect of the ~~whether that~~ limitation on the initial clean coal facility, electric utilities, alternative retail electric suppliers, and customers of the electric utilities and the alternative retail electric suppliers ~~unduly constrains the amount of electricity generated by cost-effective clean coal facilities that is covered by sourcing agreements~~.

(3) Initial clean coal facility. In order to promote the use ~~development~~ of clean coal electric power ~~facilities~~ in Illinois, each electric utility subject to this Section shall execute a sourcing agreement to source electricity from the initial clean coal facility. The Agency shall accept applications to be designated the initial clean coal facility for a period of 30 days after the effective date of this amendatory Act of the 97th General Assembly. Each application shall include a proposed sourcing agreement in accordance with the requirements of this paragraph (3) and information showing that the applicant meets the other criteria set out in the definition of initial clean coal facility provided in Section 1-10 of this Act. In the event that only one proposed initial clean coal facility that meets each of the requirements submits a proposed sourcing agreement to the Agency within that time period, the Agency shall select such proposed initial clean coal facility as the initial clean coal facility. In the event that more than one proposed initial clean coal facility that meets each of the requirements submit a proposed sourcing agreement to the Agency within that time period, the Agency shall select as the initial clean coal facility the electric generating facility that the Agency determines best promotes the needs and interests of the citizens of the State of Illinois. In making such determination, the Agency shall take into account for each proposed initial clean coal facility the technical and economic feasibility of such facility, including access to capital and the financeability of the facility based upon the proposed sourcing agreement, the projected environmental performance of such facility, the ability of such facility to be dispatched to support the transmission grid's capability to integrate with wind, solar, and other intermittent resources, and the reliability and cost of electric transmission service from the facility to the electric utilities. The Agency shall announce the designation of the initial clean coal facility within 45 days after the effective date of this amendatory Act of the 97th General Assembly. ~~a proposed clean coal facility in Illinois (the "initial clean coal facility") that will have a nameplate capacity of at least 500 MW when commercial operation commences, that has a final Clean Air Act permit on the effective date of this amendatory Act of the 95th General Assembly, and that will meet the definition of clean coal facility in Section 1-10 of this Act when commercial operation commences. The sourcing agreements with this initial clean coal facility shall be subject to both approval of the initial clean coal facility by the General Assembly and satisfaction of the requirements of paragraph (4) of this subsection (d) and shall be executed within 90 days after any such approval by the General Assembly.~~ The Agency and the Commission shall have authority to inspect all books and records associated with the initial clean coal facility during the term of such a sourcing agreement. A utility's sourcing agreement for electricity produced by the initial clean coal facility shall include:

(A) provisions governing the price paid for electricity generated by the initial clean coal facility, which shall be determined according to clause (iv) of subparagraph (B) of this paragraph (3); ~~a formula contractual price (the "contract price") approved pursuant to paragraph (4) of this subsection (d), which~~

~~shall:~~

~~(i) be determined using a cost of service methodology employing either a level or deferred capital recovery component, based on a capital structure consisting of 45% equity and 55% debt, and a return on equity as may be approved by the Federal Energy Regulatory Commission, which in any case may not exceed the lower of 11.5% or the rate of return approved by the General Assembly pursuant to paragraph (4) of this subsection (d); and~~

~~(ii) provide that all miscellaneous net revenue, including but not limited to net revenue from the sale of emission allowances, if any, substitute natural gas, if any, grants or other support provided by the State of Illinois or the United States Government, firm transmission rights, if any, by products produced by the facility, energy or capacity derived from the facility and not covered by a sourcing agreement pursuant to paragraph (3) of this subsection (d) or item (5) of subsection (d) of Section 16-115 of the Public Utilities Act, whether generated from the synthesis gas derived from coal, from SNG, or from natural gas, shall be credited against the revenue requirement for this initial clean coal facility;~~

(B) power purchase provisions, which shall:

(i) provide that the utility party to the sourcing agreement shall pay the contract price under such sourcing agreement determined pursuant to subparagraph (A);

(ii) require delivery of electricity by the initial clean coal facility to the regional transmission organization market of the utility party to the sourcing agreement;

(iii) require the utility party to the sourcing agreement to buy from the initial clean coal facility in each hour an amount of energy equal to all clean coal energy made available from the initial clean coal facility during such hour times the clean coal fraction for such utility for the applicable month, provided that the amount purchased by the utility in any year will be limited by paragraph (2) of this subsection (d);

(iv) require the utility party to the sourcing agreement to pay to the initial clean coal facility for each month the following: the electric generation variable charge multiplied by the quantity of energy required to be purchased by such utility in such month plus the product of the sum of the fuel charge plus the fixed monthly charge, based on the MW of nameplate capacity of the initial clean coal facility's power block, for such month, multiplied by the fraction determined for the utility for such month according to clause (iii) of this subparagraph (B); for purposes of this clause (iv), "electric generation variable charge", "fuel charge", and "fixed monthly charge" shall each have the meaning ascribed to the term in subsection (a) of Section 1-76 of this Act; and

(v) be considered pre-existing contracts in the utility's procurement plans for eligible retail customers; The provisions of this subparagraph (B) are severable under Section 1.31 of the Statute on Statutes.

~~(B) power purchase provisions, which shall:~~

~~(i) provide that the utility party to such sourcing agreement shall pay the contract price for electricity delivered under such sourcing agreement;~~

~~(ii) require delivery of electricity to the regional transmission organization market of the utility that is party to such sourcing agreement;~~

~~(iii) require the utility party to such sourcing agreement to buy from the initial clean coal facility in each hour an amount of energy equal to all clean coal energy made available from the initial clean coal facility during such hour times a fraction, the numerator of which is such utility's retail market sales of electricity (expressed in kilowatthours sold) in the State during the prior calendar month and the denominator of which is the total retail market sales of electricity (expressed in kilowatthours sold) in the State by utilities during such prior month and the sales of electricity (expressed in kilowatthours sold) in the State by alternative retail electric suppliers during such prior month that are subject to the requirements of this subsection (d) and paragraph (5) of subsection (d) of Section 16-115 of the Public Utilities Act, provided that the amount purchased by the utility in any year will be limited by paragraph (2) of this subsection (d); and~~

~~(iv) be considered pre-existing contracts in such utility's procurement plans for eligible retail customers;~~

(C) contract for differences provisions, which shall:

(i) require the utility party to such sourcing agreement to contract with the initial clean coal facility in each hour with respect to an amount of energy equal to all clean coal energy made available from the initial clean coal facility during such hour times the clean coal ~~a~~ fraction for such utility for applicable month, ~~the numerator of which is such utility's retail market sales of electricity (expressed in kilowatthours sold) in the utility's service territory in the State during the prior calendar month and the denominator of which is the total retail market~~

~~sales of electricity (expressed in kilowatthours sold) in the State by utilities during such prior month and the sales of electricity (expressed in kilowatthours sold) in the State by alternative retail electric suppliers during such prior month that are subject to the requirements of this subsection (d) and paragraph (5) of subsection (d) of Section 16-115 of the Public Utilities Act~~, provided that the amount purchased ~~paid~~ by the utility in any year will be limited by paragraph (2) of this subsection (d);

(ii) provide that the utility's payment obligation in respect of the quantity of electricity determined pursuant to the preceding clause (i) for any month shall be ~~limited to an amount~~ equal to ~~(1)~~ the difference of the electric generation variable charge, the fuel charge, and the fixed monthly charge, that would be payable by the utility for such month based on such quantity of electricity ~~between the contract price determined~~ pursuant to clause (iv) of subparagraph (B) ~~(A)~~ of this paragraph (3), minus the product of (1) ~~of this subsection (d) and~~ the day-ahead price for electricity delivered to the regional transmission organization market of the electric utility that is party to such sourcing agreement (or any successor delivery point at which such utility's supply obligations are financially settled on an hourly basis) (the "reference price") on the day preceding the day on which the electricity is delivered to the initial clean coal facility busbar, multiplied by (2) the quantity of electricity determined pursuant to the preceding clause (i), calculated for each hour in such month; and

(iii) not require the utility to take physical delivery of the electricity produced by the facility;

(D) general provisions, which shall:

(i) specify a term of no more than 30 years, commencing on the commercial operation date of the facility;

(ii) provide that electric utilities shall maintain adequate records documenting purchases under the sourcing agreements entered into to comply with this subsection (d) and shall file an accounting with the load forecast that must be filed with the Agency by July 15 of each year, in accordance with subsection (d) of Section 16-111.5 of the Public Utilities Act.

(iii) provide that all costs associated with the initial clean coal facility will be periodically reported to the Federal Energy Regulatory Commission and to purchasers in accordance with applicable laws governing cost-based wholesale power contracts;

(iv) permit the Illinois Power Agency, if it is so authorized by law, to assume ownership of the initial clean coal facility, without monetary consideration and otherwise on reasonable terms acceptable to the Agency, if the Agency so requests no less than 3 years prior to the end of the stated contract term;

(v) require the owner of the initial clean coal facility to comply with provisions reflecting those set forth in Section 1-76.5 of this Act; ~~provide documentation to the Commission each year, starting in the facility's first year of commercial operation, accurately reporting the quantity of carbon emissions from the facility that have been captured and sequestered and report any quantities of carbon released from the site or sites at which carbon emissions were sequestered in prior years, based on continuous monitoring of such sites. If, in any year after the first year of commercial operation, the owner of the facility fails to demonstrate that the initial clean coal facility captured and sequestered at least 50% of the total carbon emissions that the facility would otherwise emit or that sequestration of emissions from prior years has failed, resulting in the release of carbon dioxide into the atmosphere, the owner of the facility must offset excess emissions. Any such carbon offsets must be permanent, additional, verifiable, real, located within the State of Illinois, and legally and practicably enforceable. The cost of such offsets for the facility that are not recoverable shall not exceed $15 million in any given year. No costs of any such purchases of carbon offsets may be recovered from a utility or its customers. All carbon offsets purchased for this purpose and any carbon emission credits associated with sequestration of carbon from the facility must be permanently retired. The initial clean coal facility shall not forfeit its designation as a clean coal facility if the facility fails to fully comply with the applicable carbon sequestration requirements in any given year, provided the requisite offsets are purchased. However, the Attorney General, on behalf of the People of the State of Illinois, may specifically enforce the facility's sequestration requirement and the other terms of this contract provision. Compliance with the sequestration requirements and offset purchase requirements specified in paragraph (3) of this subsection (d) shall be reviewed annually by an independent expert retained by the owner of the initial clean coal facility, with the advance written approval of the Attorney General. The Commission may, in the course of the review specified in item (vii), reduce the allowable return on equity for the facility if the facility wilfully fails to comply with the carbon capture and sequestration requirements set forth in~~

~~this item (v);~~

(vi) ~~include limits on, and accordingly~~ provide for a reduction ~~modification~~ of~~,~~ the amount the utility is required to source under the sourcing agreement consistent with paragraph (2) of this subsection (d);

~~(vii) require Commission review: (1) to determine the justness, reasonableness, and prudence of the inputs to the formula referenced in subparagraphs (A)(i) through (A)(iii) of paragraph (3) of this subsection (d), prior to an adjustment in those inputs including, without limitation, the capital structure and return on equity, fuel costs, and other operations and maintenance costs and (2) to approve the costs to be passed through to customers under the sourcing agreement by which the utility satisfies its statutory obligations. Commission review shall occur no less than every 3 years, regardless of whether any adjustments have been proposed, and shall be completed within 9 months;~~

(vii) ~~(viii)~~ limit the utility's obligation to such amount as the utility is allowed to recover through tariffs filed with the Commission~~, provided that neither the clean coal facility nor the utility waives any right to assert federal pre-emption or any other argument in response to a purported disallowance of recovery costs~~;

(viii) ~~(ix)~~ limit the utility's or alternative retail electric supplier's obligation to incur any liability to only those times after ~~until such time as~~ the facility is in commercial operation and generating power and energy and such power and energy is being delivered to the facility busbar;

(ix) provide that each electric utility shall have the right to determine whether the obligations of the utility party under the sourcing agreement shall be governed by the power purchase provisions or the contract for differences provisions before entering into the sourcing agreements; the provisions of this item (ix) are severable under Section 1.31 of the Statute on Statutes;

~~(x) provide that the owner or owners of the initial clean coal facility, which is the counterparty to such sourcing agreement, shall have the right from time to time to elect whether the obligations of the utility party thereto shall be governed by the power purchase provisions or the contract for differences provisions;~~

(x) ~~(xi)~~ append documentation showing that the formula rate and contract, insofar as they relate to the power purchase provisions, have been approved by the Federal Energy Regulatory Commission pursuant to Section 205 of the Federal Power Act;

(xi) ~~(xii)~~ provide that any changes to the terms of the contract, insofar as such changes relate to the power purchase provisions, are subject to review under the public interest standard applied by the Federal Energy Regulatory Commission pursuant to Sections 205 and 206 of the Federal Power Act; ~~and~~

(xii) ~~(xiii)~~ conform with customary lender requirements in power purchase agreements used as the basis for financing non-utility generators; ~~.~~

(xiii) provide for performance incentives regarding availability, efficiency, and by-product quantities, with premium performance and shortfalls in performance to result in positive and negative adjustments, respectively, to the rate of return approved by the Commission, provided that such rate of return in any year shall not be decreased by more than $25,000,000 or increased by more than $12,500,000 as a result of such performance incentives. Such performance incentives shall be structured so that any increases in the rate of return as a result of such performance incentives are designed not to exceed the projected benefits to the buyers resulting from the initial clean coal facility's achievement of that performance incentive;

(xiv) include forecasting and scheduling obligations that take account of the requirements of the applicable regional transmission organizations;

(xv) include operating guidelines relating to the operating configuration and dispatch of the initial clean coal facility, which guidelines shall be subject to change from time to time with input from a committee consisting of representatives of the electric utilities and alternative retail electric suppliers that are parties to sourcing agreements with the initial clean coal facility; such operating guidelines shall take account the initial clean coal facility's obligations under any agreement for the purchase of SNG entered into pursuant to item (xvi) of this subparagraph (D) and shall be based on principles of economic dispatch and the assumption that the variable cost of SNG purchased pursuant to such agreement is equal to the market price of natural gas delivered to the initial clean coal facility; any actions taken or not taken by the owner of the initial clean coal facility in compliance with such operating guidelines shall be deemed to be prudent, and the prudence of the costs resulting from the action shall be evaluated in light of the fact that the initial clean coal facility is required to comply with such operating guidelines; and

(xvi) authorize the initial clean coal facility to enter into an agreement with a clean coal SNG facility or a clean coal SNG brownfield facility for the purchase by the initial clean coal facility during

all or part of the term of the sourcing agreement a quantity of SNG produced by such clean coal SNG facility or clean coal SNG brownfield facility each year up to the lesser of (x) the initial clean coal facility's requirements for imported methane in such year and (y) 16% of the SNG produced by such clean coal SNG facility or clean coal SNG brownfield facility during such year at a delivered price to be set forth in such agreement; such agreement shall provide for the timing of gas deliveries in a manner that reasonably accommodates the initial clean coal facility's fuel requirements and generation schedule; the parties to such agreement may, if they mutually agree, structure such agreement as a financial settlement arrangement for the quantities of SNG set forth above, and such arrangement shall be deemed to be an agreement contemplated by this item (xvi); the form for such agreement shall be subject to approval by the Agency pursuant to a procedure substantially the same as that provided in paragraph (4) of this subsection (d) for the sourcing agreements, with the clean coal SNG facility or clean coal SNG brownfield facility participating in place of each electric utility, and pursuant to a schedule to be proposed by the initial clean coal facility and approved by the Agency.

(4) Effective date of sourcing agreements with the initial clean coal facility. No later than 30 days after the effective date of this amendatory Act of the 97th General Assembly, the initial clean coal facility shall submit a draft sourcing agreement to the Agency and each electric utility required to enter into such agreements pursuant to paragraph (3) of this subsection and the initial clean coal facility and each such electric utility shall promptly and diligently negotiate in good faith over the terms of the sourcing agreement. Within 30 days after receipt of the draft sourcing agreement, each such electric utility shall provide the Agency and the owner of the initial clean coal facility with its comments and recommended revisions to the draft sourcing agreement. Within 15 days after the receipt of the electric utility's comments and recommended revisions, the owner of the initial clean coal facility shall submit its responsive comments and a further revised draft of the sourcing agreement to the Agency. The Agency shall review the draft sourcing agreement and comments and retain an independent, qualified, and experienced mediator to mediate disputes over the draft sourcing agreement's terms. The mediator shall not own or control any direct or indirect interest in the initial clean coal facility and shall have no contractual relationship with the initial clean coal facility. The mediator shall have knowledge of the energy industry.

If the parties to the sourcing agreement do not agree on the terms in the sourcing agreement within 15 days after receiving the owner's responsive comments and further revised draft, then the mediator retained by the Agency shall mediate the dispute between the parties. If the parties are in agreement on the terms of the sourcing agreement, then the Agency shall approve the final draft sourcing agreement within 30 days after the parties reach agreement and notify the Commission of that agreement. If, within 30 days after the commencement of mediation, the parties have failed to come to agreement, then the Agency shall, with assistance, as appropriate, from the mediator retained pursuant to this paragraph (4), review and revise the draft sourcing agreement as necessary.

The Agency may approve a sourcing agreement only after it finds the sourcing agreement is consistent with the provisions of this Act and contains only terms that are balanced and equitable and fairly protect the interests of the parties to the sourcing agreement, with such approval to occur no later than 60 days after the commencement of the mediation. The Agency shall not withhold or condition its approval of the sourcing agreement based upon least cost resource principles or whether or not it would be prudent for buyers to enter into such an agreement if there were no legal requirement to do so, nor shall the resolution of open issues be based on these principles.

If the sourcing agreement is approved, then each electric utility required to enter into a sourcing agreement shall have 30 days after either the Agency's approval or the issuance of any necessary approval by the Federal Energy Regulatory Commission, whichever is later, to enter into the sourcing agreement. The Agency shall submit the approved sourcing agreement to the Commission within 15 days after approval. Each electric utility and the initial clean coal facility shall pay a reasonable fee as required by the Agency for its services under this paragraph (4) and shall pay the mediator's reasonable fees, if any. The Agency shall adopt and make public a policy detailing the process for retaining a mediator under this paragraph (4).

~~(4) Effective date of sourcing agreements with the initial clean coal facility.~~ Any proposed sourcing agreement with the initial clean coal facility shall not become effective unless a facility cost report and Commission report, as described in this paragraph (4), ~~the following reports~~ are prepared and submitted , whether prepared and submitted before or after the effective date of this amendatory Act of the 97th General Assembly. ~~and authorizations and approvals obtained:~~

~~(i) Facility cost report.~~ The owner of the initial clean coal facility shall submit to the Commission, the

Agency, and the General Assembly a front-end engineering and design study, a facility cost report, method of financing (including but not limited to structure and associated costs), and an operating and maintenance cost quote for the facility (collectively "facility cost report"), which shall be prepared in accordance with the requirements of this paragraph (4) of subsection (d) of this Section, and shall provide the Commission and the Agency access to the work papers, relied upon documents, and any other backup documentation related to the facility cost report.

~~(ii) Commission report.~~ Within 6 months following receipt of the facility cost report, the Commission, in consultation with the Agency, shall submit a Commission report to the General Assembly setting forth its analysis of the facility cost report. Such report shall include, but not be limited to, a comparison of the costs associated with electricity generated by the initial clean coal facility to the costs associated with electricity generated by other types of generation facilities, an analysis of the rate impacts on residential and small business customers over the life of the sourcing agreements, and an analysis of the likelihood that the initial clean coal facility will commence commercial operation by and be delivering power to the facility's busbar by 2016. To assist in the preparation of its report, the Commission, in consultation with the Agency, may hire one or more experts or consultants, the costs of which shall be paid for by the owner of the initial clean coal facility. The Commission and Agency may begin the process of selecting such experts or consultants prior to receipt of the facility cost report.

~~(iii) General Assembly approval. The proposed sourcing agreements shall not take effect unless, based on the facility cost report and the Commission's report, the General Assembly enacts authorizing legislation approving (A) the projected price, stated in cents per kilowatthour, to be charged for electricity generated by the initial clean coal facility, (B) the projected impact on residential and small business customers' bills over the life of the sourcing agreements, and (C) the maximum allowable return on equity for the project; and~~

~~(iv) Commission review. If the General Assembly enacts authorizing legislation pursuant to subparagraph (iii) approving a sourcing agreement, the Commission shall, within 90 days of such enactment, complete a review of such sourcing agreement. During such time period, the Commission shall implement any directive of the General Assembly, resolve any disputes between the parties to the sourcing agreement concerning the terms of such agreement, approve the form of such agreement, and issue an order finding that the sourcing agreement is prudent and reasonable.~~

~~The facility cost report shall be prepared as follows:~~

(A) The facility cost report shall be prepared by duly licensed engineering and construction firms detailing the estimated capital costs payable to one or more contractors or suppliers for the engineering, procurement and construction of the components comprising the initial clean coal facility and the estimated costs of operation and maintenance of the facility. The facility cost report shall include:

(i) an estimate of the capital cost of the core plant based on one or more front end engineering and design studies for the gasification island and related facilities. The core plant shall include all civil, structural, mechanical, electrical, control, and safety systems ; and ~~.~~

(ii) an estimate of the capital cost of the balance of the plant, including any capital costs associated with sequestration of carbon dioxide emissions and all interconnects and interfaces required to operate the facility, such as transmission of electricity, construction or backfeed power supply, pipelines to transport substitute natural gas or carbon dioxide, potable water supply, natural gas supply, water supply, water discharge, landfill, access roads, and coal delivery.

In the facility cost report, the ~~The~~ quoted construction costs shall be expressed in nominal dollars as of the date that the quote is prepared and shall include ~~(1)~~ capitalized financing costs during construction, ~~(2)~~ taxes, insurance, and other owner's costs, and ~~(3)~~ an assumed escalation in materials and labor beyond the date as of which the construction cost quote is expressed.

(B) In the facility cost report, the ~~The~~ front end engineering and design study for the gasification island and the cost study for the balance of plant shall include sufficient design work to permit quantification of major categories of materials, commodities and labor hours, and receipt of quotes from vendors of major equipment required to construct and operate the clean coal facility.

(C) The facility cost report shall also include an operating and maintenance cost quote that will provide the estimated cost of delivered fuel, personnel, maintenance contracts, chemicals, catalysts, consumables, spares, and other fixed and variable operations and maintenance

costs.

~~(a)~~ The delivered fuel cost estimate will be provided by a recognized third party expert or experts in the fuel and transportation industries.

~~(b)~~ The balance of the operating and maintenance cost quote, excluding delivered fuel costs, will be developed based on the inputs provided by duly licensed engineering and construction firms performing the construction cost quote, potential vendors under long-term service agreements and plant operating agreements, or recognized third party plant operator or operators.

The operating and maintenance cost quote (including the cost of the front end engineering and design study) shall be expressed in nominal dollars as of the date that the quote is prepared and shall include ~~(1)~~ taxes, insurance, and other owner's costs, and ~~(2)~~ an assumed escalation in materials and labor beyond the date as of which the operating and maintenance cost quote is expressed.

(D) The facility cost report shall also include ~~(i)~~ an analysis of the initial clean coal facility's ability to deliver power and energy into the applicable regional transmission organization markets and ~~(ii)~~ an analysis of the expected capacity factor for the initial clean coal facility.

(E) Amounts paid to third parties unrelated to the owner or owners of the initial clean coal facility to prepare the core plant construction cost quote, including the front end engineering and design study, and the operating and maintenance cost quote will be reimbursed through Coal Development Bonds.

(5) Re-powering and retrofitting coal-fired power plants previously owned by Illinois utilities to qualify as clean coal facilities. During the 2009 procurement planning process and thereafter, the Agency and the Commission shall consider sourcing agreements covering electricity generated by power plants that were previously owned by Illinois utilities and that have been or will be converted into clean coal facilities, as defined by Section 1-10 of this Act. Pursuant to such procurement planning process, the owners of such facilities may propose to the Agency sourcing agreements with utilities and alternative retail electric suppliers required to comply with subsection (d) of this Section and item (5) of subsection (d) of Section 16-115 of the Public Utilities Act, covering electricity generated by such facilities. In the case of sourcing agreements that are power purchase agreements, the contract price for electricity sales shall be established on a cost of service basis. In the case of sourcing agreements that are contracts for differences, the contract price from which the reference price is subtracted shall be established on a cost of service basis. The Agency and the Commission may approve any such utility sourcing agreements that do not exceed cost-based benchmarks developed by the procurement administrator, in consultation with the Commission staff, Agency staff and the procurement monitor, subject to Commission review and approval. The Commission shall have authority to inspect all books and records associated with these clean coal facilities during the term of any such contract.

(6) Costs incurred by a utility under this subsection (d) or pursuant to a contract or sourcing agreement entered into under this subsection (d) shall be deemed prudently incurred and reasonable in amount and the electric utility shall be entitled to full cost recovery pursuant to the tariffs filed with the Commission.

(e) The draft procurement plans are subject to public comment, as required by Section 16-111.5 of the Public Utilities Act and Section 1-78 of this Act.

(f) The Agency shall submit the final procurement plan to the Commission. The Agency shall revise a procurement plan if the Commission determines that it does not meet the standards set forth in Section 16-111.5 of the Public Utilities Act and Section 1-78 of this Act.

(g) The Agency shall assess fees to each affected utility to recover the costs incurred in preparation of the annual procurement plan for the utility.

(h) The Agency shall assess fees to each bidder to recover the costs incurred in connection with a competitive procurement process.

(i) The Agency shall assess fees to the initial clean coal facility to recover the costs incurred in preparation of each procurement plan for the initial clean coal facility.

(j) The General Assembly finds that enterprises owned by minorities, women, and persons with disabilities are under-represented in sales of goods and services used in the construction of energy projects and accordingly deems it a prudent business practice that is in the interests of the people of the State of Illinois to develop and promote economic opportunities for enterprises owned by minorities, women, and persons with disabilities in the energy production industry.

The initial clean coal facility, any clean coal facility, any clean coal SNG brownfield facility, and any

clean coal SNG facility shall include in any agreement to sell electric power or SNG entered into pursuant to this Act provisions that require the owner of the facility to make a good faith effort to ensure that an amount equal to not less than 15% of the value of its prime construction contract for the facility shall be established as a goal to be awarded to minority owned businesses, female owned businesses, and businesses owned by a person with a disability; provided that at least 75% of the amount of such total goal shall be for minority owned businesses.

"Minority owned business", "female owned business", and "business owned by a person with a disability" shall have the meanings ascribed to them in Section 2 of the Business Enterprise for Minorities, Females, and Persons with Disabilities Act.

(k) Any clean coal SNG facility or clean coal SNG brownfield facility shall be authorized to enter into an SNG purchase agreement with the initial clean coal facility as described in item (xvi) of subparagraph (D) of paragraph (3) of subsection (d) of this Section.

(Source: P.A. 96-159, eff. 8-10-09; 96-1437, eff. 8-17-10; 97-325, eff. 8-12-11.)

(20 ILCS 3855/1-76 new)

Sec. 1-76. Costs and revenue recoverable by the initial clean coal facility.

(a) The price paid for electricity generated by the initial clean coal facility shall be based on a formula rate using a cost of service methodology applicable to wholesale electric power contracts employing a level or deferred capital component and in accordance with the Uniform System of Accounts, subject to and as specifically limited by the provisions set forth in this Section.

The formula rate shall determine 3 components of the price under the sourcing agreements: (1) a fuel charge, (2) an electric generation variable charge, and (3) a fixed monthly charge. The fuel charge for any month shall be stated in dollars per month and shall consist of the total actual fuel costs incurred, after taking account of the subtraction of miscellaneous net revenue as provided in subsection (d) of this Section. The electric generation variable charge for any period shall be stated in dollars per MWh and shall consist of all costs incurred by the initial clean coal facility, other than fuel costs, associated with production of electric energy by the initial clean coal facility's power block, which costs vary directly with the level of production of electric energy. The fixed monthly charge shall be stated in dollars per month per MW of nameplate capacity of the initial clean coal facility's power block and shall consist of all costs incurred by the initial clean coal facility that are described in, and as limited by the provisions of, subsections (b), (c), (d), (e), (f), and (g) of this Section, other than the costs incorporated into the calculation of the fuel charge and the electric generation variable charge.

No later than 30 days after the approval of the sourcing agreement by the Agency pursuant to paragraph (4) of subsection (d) of Section 1-75 of this Act, the initial clean coal facility shall provide to the Commission projections of its costs for the term of the sourcing agreements. Within 90 days thereafter, the Commission shall, based upon such projections and the provisions of this Section, determine the projected components of the price for each year for the initial clean coal facility. No later than 6 months before the expected commencement of commercial operation of the initial clean coal facility and the commencement of each operating year thereafter, the initial clean coal facility shall submit to the Commission projections of its costs and dispatch levels for the upcoming year. Within 120 days after the receipt of the initial clean coal facility's projections of its costs and dispatch levels for the upcoming year, the Commission shall calculate a fixed monthly charge and an electric generation variable charge for the upcoming year using the inputs to the formula rate under the provisions of this Section. If the Commission does not calculate such components of the price for any year as of the beginning of such year, then the initial clean coal facility shall calculate such components of the price based upon its projections and the provisions of this Section, with any subsequent cost disallowance by the Commission to be reflected through a true-up of costs in the next year. If at any time the Commission, acting in accordance with this Section, disallows any cost, then the amount of such disallowance shall be incorporated as a deduction into the calculation of the fixed monthly charge and the electric generation variable charge, as applicable, for the next year.

(b) Capital costs set by the Commission according to this subsection (b) shall be included in the formula rate. "Capital costs" means costs for the purchase of land, buildings, construction, and equipment to be used in the production of electricity, and other costs recorded in the Electric Plant Accounts and other applicable Balance Sheet Accounts of the Uniform System of Accounts for the initial clean coal facility. The Capital Development Board shall calculate a range of capital costs that it believes would be a reasonable cost for the initial clean coal facility. The Capital Development Board shall commence performing its responsibilities under this subsection (b) within 30 days after the effective date of this amendatory Act of the 97th General Assembly. In determining a range of capital costs, the Capital Development Board shall base its evaluation and judgment on professional engineering and regulatory accounting principles and include any cost information and update on costs that may be

provided by the initial clean coal facility and shall not employ least cost resource principles. In addition, the Capital Development Board may:

(1) include in its consideration the information in a facility cost report, if any, that was prepared and submitted by the initial clean coal facility to the Commission in accordance with paragraph (4) of subsection (d) of Section 1-75 of this Act;

(2) consult as much as it deems necessary with the initial clean coal facility;

(3) conduct whatever research and investigation it deems necessary; and

(4) retain third parties to assist in its determination, provided that such third parties shall not own or control any direct or indirect interest in the initial clean coal facility and shall have no contractual relationship with the initial clean coal facility.

The initial clean coal facility shall cooperate with the Capital Development Board in any investigation it deems necessary.

The Capital Development Board shall make its final determination of the range of capital costs confidentially and shall submit that range to the Commission in a confidential filing no later than 90 days after the Capital Development Board is required to commence performing its responsibilities under this subsection (b). The initial clean coal facility shall submit to the Commission its estimate of the capital costs to be included in the formula rate. Only after the initial clean coal facility has submitted this estimate shall the Commission publicly announce the range of capital costs submitted by the Capital Development Board. In the event that the estimate submitted by the initial clean coal facility is within or below the range submitted by the Capital Development Board, the initial clean coal facility's estimate shall be approved by the Commission as the amount of pre-approved capital costs.

In the event that the estimate submitted by the initial clean coal facility is above the range submitted by the Capital Development Board, the amount of capital costs at the lowest end of the range submitted by the Capital Development Board shall be approved by the Commission as the amount of pre-approved capital costs. "Pre-approved capital costs" means the amount of capital costs that will be included in the formula rate to the extent such costs are actually incurred, with no further review or approval with respect to whether they are prudently incurred. The Commission's determination of pre-approved capital costs shall be made within 15 days after the initial clean coal facility submits its capital cost estimate. The Commission's decision regarding pre-approved capital costs shall be final and shall not be subject to judicial or administrative review.

Once made, the Commission's determination of the amount of pre-approved capital costs may not be increased unless the Commission determines that the incremental costs are reasonable, in which case one-third of such reasonable incremental costs shall be included in the formula rate and recoverable by the initial clean coal facility and two-thirds of such costs shall be borne by the initial clean coal facility and its contractors, provided that to the extent such reasonable incremental costs are the result of change in law or non-insurable force majeure, all of such costs shall be included in the formula rate and recoverable by the initial clean coal facility.

"Change in law" means any change, including any enactment, repeal, or amendment, in a law, ordinance, rule, regulation, interpretation, permit, license, consent or order, including those relating to taxes or to environmental matters, or in the interpretation or application thereof by any governmental authority occurring after May 31, 2011.

"Non-insurable force majeure" means events outside of the reasonable control of the owner of the initial clean coal facility and its contractors, subcontractors, and agents that are not included on a list, to be attached to the sourcing agreement and subject to the procedures set forth in paragraph (4) of subsection (d) of Section 1-75 of this Act, of events that are customarily covered by builder's risk insurance policies for the construction of electric generating plants and other large process plants in the United States. "Non-insurable force majeure" shall not include changes in prices or other changes in market conditions.

Any rebates, refunds, or other payments received by the owner of the initial clean coal facility from any of its contractors with respect to the contractor bearing risk for capital cost overruns shall be excluded from miscellaneous net revenue and shall not otherwise reduce the costs of the owner of the initial clean coal facility for purposes of the formula rate. For purposes of this subsection (b), "reasonable" means that the decisions, construction, and supervision of construction by the owner of the initial clean coal facility and its contractors underlying the initial capital cost and significant additions to the initial capital cost of the initial clean coal facility resulted in efficient, economical, and timely construction. In determining the reasonableness of the capital costs of the initial clean coal facility, the Commission shall consider the knowledge and circumstances prevailing at the time of each relevant decision or action of the owner of the initial clean coal facility and its contractors.

The Commission may determine that the amount of pre-approved capital costs may be increased only

after notice and a hearing. At that hearing, the Capital Development Board shall submit a report recommending whether the incremental costs should be approved in full or in part or rejected. The Commission may approve in whole or in part or reject the incremental capital costs based on whether they are reasonable. At the request of the owner of the initial clean coal facility made not more often than once every 12 months during the construction period of the initial clean coal facility, the Commission shall conduct interim reviews to determine whether capital costs specified in such request and incurred or to be incurred by the owner of the initial clean coal facility, are reasonable.

The Capital Development Board shall monitor the construction of the initial clean coal facility for the full duration of construction. The Capital Development Board, in its discretion, may retain third parties to facilitate such monitoring, provided that such third parties shall not own or control any direct or indirect interest in the initial clean coal facility and shall have no contractual relationship with the initial clean coal facility. The initial clean coal facility shall pay a reasonable fee as required by the Capital Development Board for the Capital Development Board's services under this subsection (b), and such fee shall not be passed through to a utility or its customers. If a third party is retained by the Capital Development Board for the determination of a range of capital costs or monitoring of construction, the initial clean coal facility must pay for the third party's reasonable fees, and such costs may not be passed through to a utility or its customers.

The provisions of this subsection (b) shall apply to the capital costs for the initial construction of the initial clean coal facility and not to capital costs incurred beyond the initial construction, including costs for replacement of equipment and capital improvements, which capital costs shall be subject to review by the Commission and included in the formula rate to the extent they are determined to be prudently incurred.

(c) Operations and maintenance costs set by the Commission according to this subsection (c) shall be included in the formula rate. Operations and maintenance costs mean costs incurred for the administration, supervision, operation, maintenance, preservation, and protection of the initial clean coal facility's physical plant and other costs recorded in the Operation and Maintenance Expense Accounts and other applicable Income Statement Accounts of the Uniform System of Accounts for the initial clean coal facility. The Commission shall assess the prudency of the operations and maintenance costs for the initial clean coal facility and shall allow the initial clean coal facility to include in the formula rate only those costs the Commission deems to be prudent. The Commission may in its discretion retain an expert to assist in its review of operations and maintenance costs. The initial clean coal facility shall pay for the expert's fees if an expert is retained by the Commission, and such costs may not be passed through to a utility or its customers. The Commission's determination regarding the amount of operations and maintenance costs that may be included in the formula rate for each year shall be made in accordance with this Section.

(d) Actual fuel costs shall be set by the Agency through a SNG feedstock procurement, pursuant to Section 1-79 of this Act, to be performed at least every 5 years, and purchased by the initial clean coal facility pursuant to a reasonable fuel supply plan, with coal comprising at least 50% of the total feedstock over the term of a sourcing agreement with all coal having high volatile bituminous rank and greater than 1.7 pounds of sulfur per million btu content, SNG derived from coal comprising at least 50% of the fuel to generate electricity, SNG derived from biomass comprising up to 10% of the fuel to generate electricity with the approval of the Commission, and natural gas comprising the remainder of the fuel to generate electricity. Actual fuel costs shall consist of all costs associated with the procurement of fuel, including, but not limited to, commodity costs, transportation costs, administrative costs, and costs relating to the procurement process. Actual fuel costs, as so determined, shall be reduced by miscellaneous net revenue received by the owner of the initial clean coal facility, including, but not limited to, net revenue from the sale of emission allowances, if any, substitute natural gas, if any, grants or other support provided by the State of Illinois or the United States Government, firm transmission rights, if any, by-products produced by the facility, any capacity derived from the facility and bid into the capacity markets or otherwise sold and any energy generated as a result of such capacity being called, whether generated from synthesis gas derived from coal, from SNG, or from natural gas, less non-generation variable costs. "Non-generation variable costs" means all costs, other than fuel costs, associated with the production of SNG that is not consumed by the initial clean coal facility's power block, which costs vary directly with the level of production of SNG. Actual fuel costs shall be calculated pursuant to this subsection (d) and included in the formula rate without any determination by the Commission as to prudency.

(e) Sequestration costs set by the Commission according to this subsection (e) shall be included in the formula rate.

"Sequestration costs" means costs incurred to (1) capture carbon dioxide; (2) compress carbon

dioxide; (3) build, operate, and maintain a sequestration site in which carbon dioxide may be injected; (4) build, operate, and maintain a carbon dioxide pipeline, which is owned by the initial clean coal facility; (5) transport the carbon dioxide to a sequestration site or a pipeline; and (6) perform monitoring, verification and other activities associated with carbon capture and sequestration.

"Sequestration capital costs" means sequestration costs recorded in the Electric Plant Accounts and other applicable Balance Sheet Accounts of the Uniform System of Accounts for the initial clean coal facility.

"Sequestration operations and maintenance costs" means sequestration costs that are recorded in the Operation and Maintenance Expense Accounts and other applicable Income Statement Accounts of the Uniform System of Accounts for the initial clean coal facility and shall include maintenance, monitoring, and verification costs.

The Capital Development Board shall calculate an estimate of sequestration capital costs that it believes would be a reasonable cost for the initial clean coal facility's sequestration facilities and an estimate of average annual sequestration operations and maintenance costs that it believes would be a reasonable average annual operation and maintenance cost for the initial clean coal facility's carbon capture and sequestration activities. The Capital Development Board shall commence performing its responsibilities under this subsection (e) within 30 days after the effective date of this amendatory Act of the 97th General Assembly. In determining sequestration capital costs and sequestration operations and maintenance costs, the Capital Development Board shall base its evaluation and judgment on professional engineering and regulatory accounting principles and include any cost information and update on costs that may be provided by the initial clean coal facility and shall not employ least cost resource principles. In addition the Capital Development Board may: (A) include in its consideration cost estimate information in a facility cost report, if any, that was prepared and submitted by the initial clean coal facility to the Commission in accordance with paragraph (4) of subsection (d) of Section 1-75 of this Act; (B) consult as much as it deems necessary with the initial clean coal facility; (C) conduct whatever research and investigation it deems necessary; and (D) retain third parties to assist in its determination, provided that such third parties shall not own or control any direct or indirect interest in the initial clean coal facility and shall have no contractual relationship with the initial clean coal facility. The initial clean coal facility shall cooperate with the Capital Development Board in any investigation it deems necessary.

The Capital Development Board shall make its final determination of sequestration capital costs and sequestration operations and maintenance costs and submit such determination to the Commission no later than 90 days after the Capital Development Board is required to commence performing its responsibilities under this subsection (e). The Capital Development Board shall monitor construction of the sequestration facilities in the same manner, and with the same rights to retain an expert and recover the costs thereof, as set forth in subsection (b) of this Section.

"Actual sequestration costs" means for any year the sum of: (i) the annual amortized portion of sequestration capital costs, based on level amortization from the later of the date such costs are incurred and the commercial operation date until the end of the term of the sourcing agreements; (ii) the rate of return approved by the Commission pursuant to subsection (f) of this Section applied to sequestration capital costs; and (iii) the sequestration operations and maintenance costs incurred in such year.

"Target sequestration costs" means the sum of: (i) the annual amortized portion of the estimated sequestration capital costs determined by the Capital Development Board, based on level amortization from the later of the date such costs are incurred and the commercial operation date until the end of the term of the sourcing agreements; (ii) the rate of return approved by the Commission pursuant to subsection (f) of this Section applied to the estimated sequestration capital costs determined by the Capital Development Board; (iii) the estimate of average annual sequestration operations and maintenance costs determined by the Capital Development Board, escalated in accordance with an escalation factor to be provided in the sourcing agreement from the date of the Capital Development Board's determination to the mid-point of the applicable year; (iv) the sequestration cost underrun, if any, for the immediately preceding year, except to the extent applied to allow recovery of a sequestration cost overrun from a prior year; and (v) any sequestration costs that are the result of a change in law or non-insurable force majeure.

"Sequestration cost underrun" means for any year the excess, if any, of target sequestration costs for such year over actual sequestration costs for such year.

"Sequestration cost overrun" means for any year the excess, if any, of actual sequestration costs for such year over target sequestration costs for such year.

For any year in which there is a sequestration cost underrun, all actual sequestration costs shall be conclusively deemed to be prudent and shall be included in the formula rate with no further review or

approval in respect of whether they are prudently incurred. The Commission shall review the costs to ensure they are mathematically correct.

For any year in which there is a sequestration cost overrun, the Commission shall determine whether all or a portion of such sequestration cost overrun was prudently incurred, except that the rate of return shall not be subject to review. If the Commission determines that the sequestration cost overrun was prudently incurred, one-third of such sequestration cost overrun shall be included in the formula rate and recoverable by the initial clean coal facility and two-thirds of such sequestration cost overrun shall be borne by the initial clean coal facility and not passed through to a utility, an alternative retail electric supplier, or the customers of a utility unless and until there is a sequestration cost underrun for a subsequent year, in which event the sequestration cost overrun will be included in the formula rate and recoverable by the initial clean coal facility up to the amount of the sequestration cost underrun; provided, however, that if for any year two-thirds of such sequestration cost overrun exceeds the difference of $20,000,000 minus the amount of penalty, if any, payable by the initial clean coal facility pursuant to Section 1-76.5 with respect to that year, the amount of such excess shall also be included in the formula rate and recoverable by the initial clean coal facility. The detailed procedures for implementing this provision shall be set forth in the sourcing agreements, which procedures shall include a mechanism for equitably adjusting target sequestration costs for any year in which the quantity of carbon dioxide actually captured and sequestered by the initial clean coal facility is greater than the quantity assumed in calculating the estimated costs for such year.

"Change in law" means any change, including any enactment, repeal, or amendment, in a law, ordinance, rule, regulation, interpretation, permit, license, consent or order, including those relating to taxes or to environmental matters, or in the interpretation or application thereof by any governmental authority occurring after May 31, 2011.

"Non-insurable force majeure" means events outside of the reasonable control of the owner of the initial clean coal facility and its contractors, subcontractors, and agents that are not included on a list, to be attached to the sourcing agreement and subject to the procedures set forth in paragraph (4) of subsection (d) of Section 1-75 of this Act, of events that are customarily covered by builder's risk insurance policies for the construction of electric generating plants and other large process plants in the United States. "Non-insurable force majeure" shall not include changes in prices or other changes in market conditions.

(f) The Commission shall determine within 120 days after the effective date of this amendatory Act of the 97th General Assembly or 120 days after the owner of the initial clean coal facility files initial direct testimony regarding rate of return with the Commission, whichever is later, the total rate of return on invested capital for the initial clean coal facility following notice and a public hearing. At the hearing, all interested parties, including utilities, alternative retail electric suppliers, the Attorney General, the Agency, and customers, shall be given an opportunity to be heard. In determining the rate of return, the Commission shall select a sufficient return on investment so as to enable the initial clean coal facility to attract capital in financial markets at competitive rates. The Commission shall consider the rates of return received by developers of facilities similar to the initial clean coal facility inside or outside Illinois, the need to balance an incentive for clean-coal technology with the need to protect Illinois ratepayers from high electricity costs, and any other information the Commission deems relevant.

The Agency shall recommend a rate of return to the Commission utilizing the criteria in this subsection (f). The Commission shall further take into account the recommendation of the Agency, but shall not be bound by it. The rate of return shall be no lower than 75 basis points lower than the weighted average authorized total rates of return of the electric utilities in accordance with original cost rate base for their electric distribution assets as of January 1, 2011. Notwithstanding the minimum rate of return established in the preceding sentence, the rate of return shall be no greater than the total rate of return on invested capital that the initial clean coal facility would achieve based on an assumed 55% debt and 45% equity capital structure, with the cost of debt being the actual average cost, including all associated costs and fees, of the initial clean coal facility's debt and the cost of equity being 11.5%. The Commission's determination of the rate of return shall include a mechanism providing for a one-time adjustment at or about the commencement of commercial operation of the initial clean coal facility to adjust for changes in applicable Treasury yield rates between the date of its provisional determination of the rate of return and the dates of construction period borrowing by the initial clean coal facility, which adjustment shall apply to 55% of total capital.

The Commission's decision shall be final and not subject to any rehearing or administrative or judicial review. The rate of return determined by the Commission pursuant to this subsection (f) shall apply for the term of the sourcing agreements and shall not be subject to change, except for the one-time adjustment to reflect Treasury yield rate changes as expressly contemplated by this subsection (f) and as

otherwise expressly provided in subsection (b) of Section 1-76.5 of this Act.

(g) The following shall not be included in determining the formula rate: advertising expenses that do not meet the requirements of Sections 9-225 and 9-226 of the Public Utilities Act, political activity or lobbying expenses as defined by Section 9-224 of the Public Utilities Act, social club dues, or charitable contributions, to the extent, in each case, that a utility would not be permitted to recover such costs.

(h) Except as otherwise provided in subsections (b) and (f) of this Section 1-76, within 30 days after a decision of the Commission on recoverable costs under this Section, any interested party to the Commission's decision may apply for a rehearing with respect to the decision. The Commission shall receive and consider such application for rehearing and shall grant or deny the application in whole or in part within 20 days from the date of the receipt thereof by the Commission. If no rehearing is applied for within the required 30 days or an application for rehearing is denied, the Commission decision shall be final.

If an application for rehearing is granted, the Commission shall hold a rehearing within 30 days after granting the application. The decision of the Commission upon rehearing shall be final. Except as otherwise provided in subsections (b) and (f) of this Section 1-76, any person affected by a decision of the Commission under this Section 1-76 may have the decision reviewed only under and in accordance with the Administrative Review Law. Except as otherwise provided in subsections (b) and (f) of this Section 1-76, the provisions of the Administrative Review Law, all amendments and modifications thereof and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisions of the Commission under this subsection (h). The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure.

(i) The Capital Development Board shall adopt and make public a policy detailing the process for retaining third parties under this Section. Any third parties retained to assist with calculating the capital costs or sequestration costs shall be retained no later than 45 days after the effective date of this amendatory Act of the 97th General Assembly.

(20 ILCS 3855/1-76.5 new)

Sec. 1-76.5. Capture and sequestration requirements for initial clean coal facility.

(a) The initial clean coal facility shall provide documentation to the Commission each year of commercial operation accurately reporting the quantity of carbon emissions from the facility that have been captured and sequestered and report any quantities of carbon released from the site or sites at which carbon emissions were sequestered in prior years, based on continuous monitoring of such sites. If, in any year, the owner of the facility fails to demonstrate that (1) the portion of the facility that produces SNG captured and sequestered at least 90% of the carbon dioxide it would otherwise emit and (2) the initial clean coal facility as a whole captured and sequestered at least 50% of the total carbon emissions that the facility would otherwise emit or if the sequestration of emissions from prior years has failed, resulting in the release of carbon dioxide into the atmosphere, or both, then the owner of the initial clean coal facility must pay a penalty of $20,000,000, which shall be deposited into the Energy Efficiency Trust Fund and distributed pursuant to subsection (b) of Section 6-6 of the Renewable Energy, Energy Efficiency, and Coal Resources Development Law of 1997.

If during the first 12 months of commercial operation of the initial clean coal facility, there are more than 4 stops and starts of the portion of the facility that produces SNG, with each stop and start of an individual unit constituting one stop and start, then the calculation of the quantities described in this subsection (a) shall not take into account any carbon dioxide emissions from the portion of the facility that produces SNG occurring during the stop and start-up periods, including related periods of non-steady state operation, associated with such excess stops and starts. The penalty resulting from the failure to capture and sequester at least the minimum amount of carbon dioxide shall not be passed through to a utility, an alternative retail electric supplier, or the customers of a utility. The initial clean coal facility shall not forfeit its designation as the initial clean coal facility if the facility fails to fully comply with the applicable carbon sequestration requirements in any given year, provided the requisite penalties are complied with.

(b) In addition to any penalty for the initial clean coal facility's failure to capture and sequester at least its minimum sequestration requirement, the Attorney General, on behalf of the People of the State of Illinois, shall specifically enforce the facility's sequestration requirement and the other terms of this contract provision. Such action may be filed in any circuit court in Illinois. By entering into a sourcing agreement pursuant to subsection (d) of Section 1-75 of this Act, the initial clean coal facility agrees to waive any objections to venue or to the jurisdiction of the court with regard to the Attorney General's action for specific performance under this Section. The Commission may reduce the recoverable rate of return approved pursuant to Section 1-76 of this Act for the facility if the facility willfully fails to comply with the carbon capture and sequestration requirements set forth in this Section.

(c) Compliance with the capture and sequestration requirements of this Section shall be assessed annually by the Commission, which may in its discretion retain an expert to facilitate its assessment. The initial clean coal facility shall pay for the expert's reasonable fees if an expert is retained by the Commission, and such costs shall not be passed through to a utility, an alternative retail electric supplier, or the customers of a utility. The Commission shall adopt and make public a policy detailing the process for retaining an expert under this Section.

(d) Responsibility for compliance with the capture and sequestration requirements specified in this Section for the initial clean coal facility shall reside solely with the initial clean coal facility regardless of whether the facility has contracted with another party to capture, transport, or sequester carbon dioxide.

(20 ILCS 3855/1-77.5 new)

Sec. 1-77.5 Sequestration permitting, oversight, and investigations.

(a) No clean coal facility, initial clean coal facility, clean coal SNG brownfield facility, or clean coal SNG facility may transport or sequester carbon dioxide unless the Commission approves the method of carbon dioxide transportation or sequestration as provided in this Section. Approval shall be required regardless of whether the facility has contracted with another party to transport or sequester the carbon dioxide. Nothing in this subsection (a) shall release the owner or operator of a carbon dioxide sequestration site or carbon dioxide pipeline from any other permitting requirements under applicable State and federal laws, statutes, rules, or regulations.

(b) No later than 3 months prior to the date upon which the company intends to commence construction of the facility, the owner of the facility shall file with the Commission a carbon dioxide transportation or sequestration plan. The Commission shall review proposed carbon dioxide transportation and sequestration methods and shall approve those methods it deems reasonable and cost-effective. For purposes of this review, "cost-effective" means a commercially reasonable price for similar carbon dioxide transportation or sequestration techniques. In determining whether sequestration through injection is reasonable and cost-effective, the Commission may consult with the Illinois State Geological Survey.

The Commission shall hold a public hearing within 30 days after receipt of the facility's carbon dioxide transportation or sequestration plan. The Commission shall post notice of the review on its website upon submission of a carbon dioxide transportation or sequestration method and shall accept written public comments. The Commission shall take the comments into account when making its decision. However, the Commission shall not approve a carbon dioxide sequestration method if the owner or operator of the sequestration site has not received (1) an Underground Injection Control permit from the Illinois Environmental Protection Agency or the United States Environmental Protection Agency pursuant to the Environmental Protection Act, (2) an Underground Injection Control permit from the Illinois Department of Natural Resources pursuant to the Illinois Oil and Gas Act, or (3) any applicable permit from the state in which the sequestration site is located if the sequestration shall take place outside of Illinois. The Commission shall approve or deny the carbon dioxide transportation or sequestration method within 90 days after the receipt of all required information.

(c) At least annually, the Illinois Environmental Protection Agency shall inspect all carbon dioxide sequestration sites in Illinois to ensure the safety and feasibility of those sequestration sites. However, the Illinois Environmental Protection Agency may, as often as deemed necessary, monitor and conduct investigations of those sites. The owner or operator of the sequestration site must cooperate with the Illinois Environmental Protection Agency investigations of carbon dioxide sequestration sites. If the Illinois Environmental Protection Agency determines at any time a site creates conditions that warrant the issuance of a seal order under Section 34 of the Environmental Protection Act, then the Illinois Environmental Protection Agency shall seal the site pursuant to the Environmental Protection Act. If the Illinois Environmental Protection Agency determines at any time a carbon dioxide sequestration site creates conditions that warrant the institution of a civil action for an injunction under Section 43 of the Environmental Protection Act, then the Illinois Environmental Protection Agency shall request the State's Attorney or the Attorney General to institute such action. The Illinois Environmental Protection Agency shall provide notice of any such actions as soon as possible on its website.

(d) At least annually, the Commission shall inspect all carbon dioxide pipelines in Illinois that transport carbon dioxide to ensure the safety and feasibility of those pipelines. However, the Commission may, as often as deemed necessary, monitor and conduct investigations of those pipelines. The owner or operator of the pipeline must cooperate with the Commission investigations of the carbon dioxide pipelines. If the Commission determines at any time that a carbon dioxide pipeline creates conditions that warrant the issuance of a seal order under Section 34 of the Environmental Protection Act, then the Commission shall notify the Illinois Environmental Protection Agency of such conditions. In circumstances in which the carbon dioxide pipeline creates a substantial danger to the environment or

public health or to the welfare of persons when the danger is to the livelihood of those persons, the State's Attorney or Attorney General may, upon the request of the Commission or on his or her own motion, institute a civil action for an immediate injunction to halt any discharge or other activity causing or contributing to the danger or require any other action as may be necessary. The Court may issue an ex parte order and shall schedule a hearing on the matter no later than 3 business days after the date of the injunction. The Commission shall provide notice of any such actions as soon as possible on its website.

(20 ILCS 3855/1-79 new)

Sec. 1-79. Feedstock procurement.

(a) A feedstock procurement plan shall, every 5 years, or more frequently with respect to feedstock that cannot reasonably be procured for a 5-year period on acceptable terms, be prepared for the initial clean coal facility based on the initial clean coal facility's projection of feedstock usage and ratios, and consistent with the applicable requirements of this Act. The plan shall specifically identify the feedstock products to be procured following plan approval and shall follow all the requirements set forth in this Act and all applicable State and federal laws, statutes, rules, or regulations, as well as Commission orders. Nothing in this Section precludes consideration of contracts longer than 5 years and related forecast data. Any feedstock procurement occurring in accordance with this plan shall be competitively bid through a request for proposals process. Approval and implementation of the feedstock procurement plan shall be subject to review and approval by the Commission according to the provisions set forth in this Section. A feedstock procurement plan shall include each of the following components:

(1) Daily generation analysis. This analysis shall include:

(A) multi-year historical analysis of hourly generation; and

(B) known or projected changes to future generation.

(2) Determination of the fuel specifications required for the initial clean coal facility, including:

(A) feedstock mix, as set by the initial clean coal facility with coal having high volatile bituminous rank and greater than 1.7 pounds of sulfur per million btu content and comprising at least 50% of the total feedstock over the term of the sourcing agreement;

(B) volume of each feedstock required;

(C) quality standards of each feedstock;

(D) transportation and delivery requirements and associated costs and impacts on the performance, availability, and reliability of the initial clean coal facility;

(E) technical specifications of the initial clean coal facility for its feedstocks; and

(F) appropriate testing of any proposed feedstock before it is incorporated into the feedstock procurement plan or process to determine the effect of such feedstock on the performance, availability, and reliability of the initial clean coal facility.

(b) The feedstock procurement process shall be administered by a feedstock procurement administrator and monitored by a feedstock procurement monitor.

(1) The feedstock procurement administrator shall:

(A) design the final feedstock procurement process in accordance with subsection (d) of this Section following Commission approval of the feedstock procurement plan;

(B) develop feedstock benchmarks in accordance with paragraph (3) of subsection (d) of this Section to be used to evaluate bids; these benchmarks shall be submitted to the Commission for review and approval on a confidential basis prior to the feedstock procurement event;

(C) serve as the interface between the initial clean coal facility and feedstock suppliers regarding bidding and contract negotiations;

(D) manage the bidder pre-qualification and registration process;

(E) obtain the initial clean coal facility's agreement to the final form of all supply contracts and credit collateral agreements;

(F) administer the request for feedstock proposals process;

(G) have the discretion to negotiate to determine whether bidders are willing to lower the price of bids that meet the benchmarks approved by the Commission; any post-bid negotiations with bidders shall be limited to price only and shall be completed within 24 hours after opening the sealed bids and shall be conducted in a fair and unbiased manner; in conducting the negotiations, there shall be no disclosure of any information derived from proposals submitted by competing bidders; if information is disclosed to any bidder, it shall be provided to all competing bidders;

(H) maintain confidentiality of supplier and bidding information in a manner consistent with all applicable laws, rules, regulations, and tariffs;

(I) submit a confidential report to the Commission recommending acceptance or rejection of bids;

(J) notify the facility of contract counterparties and contract specifics; and

(K) administer related contingency feedstock procurement events.

(2) The feedstock procurement monitor, who shall be retained by the Commission, shall:

(A) monitor interactions among the feedstock procurement administrator, suppliers, and the initial clean coal facility;

(B) monitor and report to the Commission on the progress of the feedstock procurement process;

(C) provide an independent confidential report to the Commission regarding the results of the feedstock procurement event;

(D) preserve the confidentiality of supplier and bidding information in a manner consistent with all applicable laws, rules, regulations, and tariffs;

(E) provide expert advice to the Commission and consult with the feedstock procurement administrator regarding issues related to feedstock procurement process design, rules, protocols, and policy-related matters;

(F) consult with the feedstock procurement administrator regarding the development and use of benchmark criteria, standard form contracts, credit policies, and bid documents; and

(G) assess compliance with the procurement plans approved by the Commission.

(c) The feedstock procurement process shall be conducted as follows:

(1) Beginning in 2012, the initial clean coal facility shall annually provide a range of feedstock requirement forecasts to the Agency by July 15 of each year, or such other date as may be required by the Commission or Agency. The feedstock requirement forecasts shall cover the 5-year feedstock procurement planning period for the next feedstock procurement plan, or such other longer period that the Agency or the Commission may require, and shall include daily data representing a high generation, low generation and expected generation scenario for the initial clean coal facility. The initial clean coal facility shall provide supporting data and assumptions for each of the scenarios.

(2) Beginning in 2012, the Agency shall at least every 5 years prepare a feedstock procurement plan by August 15th of the applicable year, or such other date as may be required by the Commission. The feedstock procurement plan shall identify the portfolio of feedstocks to be procured. Copies of the feedstock procurement plan shall be posted and made publicly available on the Agency's and Commission's websites, and copies shall also be provided to the initial clean coal facility. The initial clean coal facility shall have 30 days following the date of posting to provide comment to the Agency on the feedstock procurement plan. Other interested entities also may comment on the feedstock procurement plan. All comments submitted to the Agency shall be specific, supported by data or other detailed analyses, and, if objecting to all or a portion of the feedstock procurement plan, accompanied by specific alternative wording or proposals. All comments shall be posted on the Agency's and Commission's websites. During this 30-day comment period, the Agency shall hold at least one public hearing for the purpose of receiving public comment on the procurement plan. Within 14 days following the end of the 30-day review period, the Agency shall revise the feedstock procurement plan as necessary based on the comments received, file the feedstock procurement plan with the Commission, and post the feedstock procurement plan on the websites.

(3) Within 5 days after the filing of the feedstock procurement plan, any person objecting to the feedstock procurement plan shall file an objection with the Commission. Within 10 days after the filing, the Commission shall determine whether a hearing is necessary. The Commission shall enter its order confirming or modifying the feedstock procurement plan within 90 days after the filing of the feedstock procurement plan by the Agency.

(4) The Commission shall approve the feedstock procurement plan, including expressly the forecast used in the feedstock procurement plan, if the Commission determines that it shall ensure adequate, reliable, affordable, and environmentally sustainable feedstocks to the initial clean coal facility at the lowest total cost over time, taking into account any benefits of price stability and other criteria set forth in this Section.

(d) The feedstock procurement process shall include each of the following components:

(1) Solicitation, pre-qualification, and registration of bidders. The feedstock procurement administrator shall disseminate information to potential bidders to promote a feedstock procurement event, notify potential bidders that the feedstock procurement administrator may enter into a post-bid price negotiation with bidders that meet the applicable benchmarks, provide supply requirements, and otherwise explain the competitive feedstock procurement process. In addition to such other publication as the feedstock procurement administrator determines is appropriate, this information shall be posted on the Agency's and the Commission's websites. The feedstock procurement administrator shall also administer the prequalification process, including evaluation of creditworthiness, compliance with feedstock procurement rules, and agreement to the standard form contract developed pursuant to paragraph (2) of this subsection (d). The feedstock procurement administrator shall then identify and

register bidders to participate in the feedstock procurement event.

(2) Standard contract forms and credit terms and instruments. The feedstock procurement administrator, in consultation with the initial clean coal facility, electric utilities, alternative retail electric suppliers, the Commission, and other interested parties and subject to Commission oversight, shall develop and provide standard contract forms for the supplier contracts that meet generally accepted industry practices. Standard credit terms and instruments that meet generally accepted industry practices shall be similarly developed. The feedstock procurement administrator shall make available to the Commission all written comments it receives on the contract forms, credit terms, or instruments. If the feedstock procurement administrator cannot reach agreement with the initial clean coal facility as to the contract terms and conditions, then the feedstock procurement administrator must notify the Commission of any disputed terms and the Commission shall resolve the dispute. The terms of the contracts shall not be subject to negotiation by winning bidders, and the bidders must agree to the terms of the contract in advance so that winning bids are selected solely on the basis of price.

(3) Establishment of a market-based price benchmark. As part of the development of the feedstock procurement process, the feedstock procurement administrator, in consultation with the Commission staff, Agency staff, and the feedstock procurement monitor, shall establish benchmarks for evaluating the final prices in the contracts for each of the feedstocks that shall be procured through the feedstock procurement process. The benchmarks shall be based on price data for similar feedstocks for the same delivery period and similar delivery points, or other delivery points after adjusting for that difference. The price benchmarks may also be adjusted to take into account differences between the information reflected in the underlying data sources and the specific feedstocks and gasification feedstock procurement process being used to procure for the initial clean coal facility. The benchmarks shall be confidential but shall be provided to the Commission, and shall be subject to Commission review and approval, prior to a feedstock procurement event.

(4) Request for proposals. The feedstock procurement administrator shall design and issue a request for proposals to supply coal or natural gas in accordance with the initial clean coal facility's usage plan, as approved by the Commission. The request for proposals shall set forth a procedure for sealed, binding commitment bidding with pay-as-bid settlement, and provision for selection of bids on the basis of price.

(5) A plan for implementing contingencies in the event of supplier default or failure of the feedstock procurement process to fully meet the expected generation requirement due to insufficient supplier participation, Commission rejection of results, or any other cause. The plan must be specific to the initial clean coal facility's feedstock specifications and requirements.

The feedstock procurement process described in this subsection (d) is exempt from the requirements of the Illinois Procurement Code pursuant to Section 20-10 of the Illinois Procurement Code.

(e) Within 2 business days after opening the sealed bids, the feedstock procurement administrator shall submit a confidential report to the Commission. The report shall contain the results of the bidding for each of the feedstock types along with the feedstock procurement administrator's recommendation for the acceptance and rejection of bids based on the price benchmark criteria and other factors observed in the process. The feedstock procurement monitor also shall submit a confidential report to the Commission within 2 business days after opening the sealed bids. The report shall contain the feedstock procurement monitor's assessment of bidder behavior in the process, as well as an assessment of the feedstock procurement administrator's compliance with the feedstock procurement process and rules. The Commission shall review the confidential reports submitted by the feedstock procurement administrator and feedstock procurement monitor and shall accept or reject the recommendations of the feedstock procurement administrator within 2 business days after receipt of the reports.

(f) Within 3 business days after the Commission decision approving the results of a feedstock procurement event, the initial clean coal facility shall enter into binding contractual arrangements with the winning suppliers using standard form contracts.

(g) The names of the successful bidders and the amount of feedstock to be delivered for each contract type and for each contract term shall be made available to the public at the time of Commission approval of a feedstock procurement event. The Commission, the feedstock procurement monitor, the feedstock procurement administrator, the Agency, and all participants in the feedstock procurement process shall maintain the confidentiality of all other supplier and bidding information in a manner consistent with all applicable laws, rules, regulations, and tariffs. Confidential information, including the confidential reports submitted by the feedstock procurement administrator and feedstock procurement monitor pursuant to subsection (e) of this Section, shall not be made publicly available and shall not be discoverable by any party in any proceeding, absent a compelling demonstration of need, nor shall those reports be admissible in any proceeding other than one for law enforcement purposes.

(h) Within 2 business days after a Commission decision approving the results of a feedstock

procurement event or such other date as may be required by the Commission from time to time, the initial clean coal facility shall file for informational purposes with the Commission its actual or estimated feedstock costs reflecting the costs associated with the feedstock procurement.

(i) The initial clean coal facility shall pay for reasonable costs incurred by the Agency in administering the feedstock procurement events. The Agency shall determine the amount owed for each feedstock procurement event, and the initial clean coal facility shall pay that amount to the Agency within 30 days after being informed by the Agency of the amount owed. Those funds shall be deposited into the Agency Operations Fund, pursuant to Section 1-55 of this Act, to be used to reimburse expenses related to the feedstock procurement.

(j) The Commission has the authority to adopt rules to carry out the provisions of this Section. For the public interest, safety, and welfare, the Commission also has the authority to adopt rules to carry out the provisions of this Section on an emergency basis.

(k) On or before April 1 of each year, the Commission may, hold an informal hearing for the purpose of receiving comments on the prior year's feedstock procurement process and any recommendations for change.

(l) For all purposes of this Section 1-79 and subsection (a-5) of Section 1-75 of this Act, (i) feedstock procurement shall be deemed to include transportation of the feedstock products to the initial clean coal facility (including the acquisition by the initial clean coal facility, as appropriate, of trucks, railcars or other transportation equipment), (ii) feedstock procurement shall not be deemed to include day-to-day performance and administration of feedstock procurement and transportation arrangements, including scheduling, weighing, quality determination, acceptance or rejection of shipments, price adjustments, documentation and related activities, all of which shall be performed by the owner of the initial clean coal facility, and (iii) feedstock supplier shall be deemed to include feedstock transporters and providers of feedstock transportation equipment.

(m) Any agreement for the purchase of SNG entered into by the initial clean coal facility pursuant to item (xvi) of subparagraph (D) of paragraph (3) of subsection (d) of Section 1-75 of this Act shall be deemed for all purposes, including, but not limited to, the inclusion of costs under such agreement being included as part of the initial clean coal facility's actual fuel costs pursuant to subsection (d) of Section 1-76 of this Act, to have been entered into pursuant to the procurement process set forth in this Section 1-79, even though such agreement shall not be subject to competitive bidding. The Agency, the feedstock procurement administrator, and the feedstock procurement monitor shall take account of the initial clean coal facility's obligations under any such agreement in determining the feedstock procurement arrangements that may be entered into by the initial clean coal facility pursuant to this Section 1-79, as well as the implementation and administration of such feedstock procurement arrangements.

(20 ILCS 3855/1-81 new)

Sec. 1-81. Limited non-impairment.

(a) The State of Illinois pledges that the State shall not enact any law or take any action to:

(1) break, or repeal the authority for, sourcing agreements in a form approved by the Agency and entered into between electric utilities and the initial clean coal facility pursuant to subsection (d) of Section 1-75 of this Act;

(2) break, or repeal the authority for, sourcing agreements in a form approved by the Agency and entered into between alternative retail electric suppliers and the initial clean coal facility;

(3) deny electric utilities full cost recovery for their costs incurred under those sourcing agreements;

(4) deny the initial clean coal facility full cost recovery under those sourcing agreements for costs that are recoverable under Section 1-76 of this Act.

(5) repeal or remove the requirement that electric utilities shall enter into sourcing agreements with the initial clean coal facility under paragraph (3) of subsection (d) of Section 1-75 of this Act or subsection (c) of Section 16-116 of the Public Utilities Act; or

(6) repeal or remove the requirement that alternative retail electric suppliers shall enter into sourcing agreements with the initial clean coal facility under item (iv) of paragraph (5) of subsection (d) of Section 16-115 of the Public Utilities Act.

These pledges are for the benefit of the parties to those sourcing agreements and the issuers and holders of bonds or other obligations issued or incurred to finance or refinance the initial clean coal facility. The initial clean coal facility is authorized to include and refer to these pledges in any financing agreement into which it may enter in regard to those sourcing agreements.

(b) The State of Illinois retains and reserves all other rights to enact new or amendatory legislation or take any other action, without impairment of the right of the initial clean coal facility to recover prudently incurred costs resulting from the new or amendatory legislation or other action as approved by

the Commission, including, but not limited to, legislation or other action that would: (1) directly or indirectly raise the costs that the initial clean coal facility must incur; (2) directly or indirectly place additional restrictions, regulations, or requirements on the initial clean coal facility; (3) prohibit sequestration in general or prohibit a specific sequestration method or project; or (4) increase minimum sequestration requirements for the initial clean coal facility to a technically feasible extent.

Section 10. The Illinois Procurement Code is amended by changing Sections 1-10 and 20-10 as follows:

(30 ILCS 500/1-10)

Sec. 1-10. Application.

(a) This Code applies only to procurements for which contractors were first solicited on or after July 1, 1998. This Code shall not be construed to affect or impair any contract, or any provision of a contract, entered into based on a solicitation prior to the implementation date of this Code as described in Article 99, including but not limited to any covenant entered into with respect to any revenue bonds or similar instruments. All procurements for which contracts are solicited between the effective date of Articles 50 and 99 and July 1, 1998 shall be substantially in accordance with this Code and its intent.

(b) This Code shall apply regardless of the source of the funds with which the contracts are paid, including federal assistance moneys. This Code shall not apply to:

(1) Contracts between the State and its political subdivisions or other governments, or between State governmental bodies except as specifically provided in this Code.

(2) Grants, except for the filing requirements of Section 20-80.

(3) Purchase of care.

(4) Hiring of an individual as employee and not as an independent contractor, whether pursuant to an employment code or policy or by contract directly with that individual.

(5) Collective bargaining contracts.

(6) Purchase of real estate, except that notice of this type of contract with a value of more than $25,000 must be published in the Procurement Bulletin within 7 days after the deed is recorded in the county of jurisdiction. The notice shall identify the real estate purchased, the names of all parties to the contract, the value of the contract, and the effective date of the contract.

(7) Contracts necessary to prepare for anticipated litigation, enforcement actions, or investigations, provided that the chief legal counsel to the Governor shall give his or her prior approval when the procuring agency is one subject to the jurisdiction of the Governor, and provided that the chief legal counsel of any other procuring entity subject to this Code shall give his or her prior approval when the procuring entity is not one subject to the jurisdiction of the Governor.

(8) Contracts for services to Northern Illinois University by a person, acting as an independent contractor, who is qualified by education, experience, and technical ability and is selected by negotiation for the purpose of providing non-credit educational service activities or products by means of specialized programs offered by the university.

(9) Procurement expenditures by the Illinois Conservation Foundation when only private funds are used.

(10) Procurement expenditures by the Illinois Health Information Exchange Authority involving private funds from the Health Information Exchange Fund. "Private funds" means gifts, donations, and private grants.

(11) Public-private agreements entered into according to the procurement requirements of Section 20 of the Public-Private Partnerships for Transportation Act and design-build agreements entered into according to the procurement requirements of Section 25 of the Public-Private Partnerships for Transportation Act.

(c) This Code does not apply to the electric power procurement process provided for under Section 1-75 of the Illinois Power Agency Act and Section 16-111.5 of the Public Utilities Act.

(d) Except for Section 20-160 and Article 50 of this Code, and as expressly required by Section 9.1 of the Illinois Lottery Law, the provisions of this Code do not apply to the procurement process provided for under Section 9.1 of the Illinois Lottery Law.

(e) This Code does not apply to the process used by the Capital Development Board to retain a person or entity to assist the Capital Development Board with its duties related to the determination of costs of a clean coal SNG brownfield facility, as defined by Section 1-10 of the Illinois Power Agency Act, as required in subsection (h-3) of Section 9-220 of the Public Utilities Act, including calculating the range of capital costs, the range of operating and maintenance costs, or the sequestration costs or monitoring the construction of clean coal SNG brownfield facility for the full duration of construction.

(f) This Code does not apply to the process used by the Illinois Power Agency to retain a mediator to

mediate sourcing agreement disputes between gas utilities and the clean coal SNG brownfield facility, as defined in Section 1-10 of the Illinois Power Agency Act, as required under subsection (h-1) of Section 9-220 of the Public Utilities Act.

(g) ~~(e)~~ This Code does not apply to the processes used by the Illinois Power Agency to retain a mediator to mediate contract disputes between gas utilities and the clean coal SNG facility and to retain an expert to assist in the review of contracts under subsection (h) of Section 9-220 of the Public Utilities Act. This Code does not apply to the process used by the Illinois Commerce Commission to retain an expert to assist in determining the actual incurred costs of the clean coal SNG facility and the reasonableness of those costs as required under subsection (h) of Section 9-220 of the Public Utilities Act.

(h) This Code does not apply to the process used by the Capital Development Board to retain a person or entity to assist the Capital Development Board with its duties related to the determination of costs of an initial clean coal facility, as defined under Section 1-10 of the Illinois Power Agency Act, as required under Section 1-76 of the Illinois Power Agency Act, including calculating the range of capital costs or the sequestration costs or monitoring the construction of initial clean coal facility for the full duration of construction.

(i) This Code does not apply to the process used by the Illinois Power Agency to retain a mediator to mediate sourcing agreement disputes between electric utilities or alternative retail electric suppliers and the initial clean coal facility, as defined under Section 1-10 of the Illinois Power Agency Act, as required under paragraph (4) of subsection (d) of Section 1-75 of the Illinois Power Agency Act. This Code does not apply to the process used by the Illinois Commerce Commission to retain an expert to assist the Commission with its duties related to the determination of the costs of an initial clean coal facility, as defined under Section 1-10 of the Illinois Power Agency Act, as required under Section 1-76 of the Illinois Power Agency Act, including determining the initial clean coal facility's operations and maintenance costs, or compliance with capture and sequestration requirements.

(Source: P.A. 96-840, eff. 12-23-09; 96-1331, eff. 7-27-10; 97-96, eff. 7-13-11; 97-239, eff. 8-2-11; 97-502, eff. 8-23-11; revised 9-7-11.)

(30 ILCS 500/20-10)

(Text of Section from P.A. 96-159, 96-588, 97-96, and 97-198)

Sec. 20-10. Competitive sealed bidding; reverse auction.

(a) Conditions for use. All contracts shall be awarded by competitive sealed bidding except as otherwise provided in Section 20-5.

(b) Invitation for bids. An invitation for bids shall be issued and shall include a purchase description and the material contractual terms and conditions applicable to the procurement.

(c) Public notice. Public notice of the invitation for bids shall be published in the Illinois Procurement Bulletin at least 14 days before the date set in the invitation for the opening of bids.

(d) Bid opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The name of each bidder, the amount of each bid, and other relevant information as may be specified by rule shall be recorded. After the award of the contract, the winning bid and the record of each unsuccessful bid shall be open to public inspection.

(e) Bid acceptance and bid evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Code. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award, such as discounts, transportation costs, and total or life cycle costs, shall be objectively measurable. The invitation for bids shall set forth the evaluation criteria to be used.

(f) Correction or withdrawal of bids. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards of contracts based on bid mistakes, shall be permitted in accordance with rules. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the State or fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids based on bid mistakes shall be supported by written determination made by a State purchasing officer.

(g) Award. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, except when a State purchasing officer determines it is not in the best interest of the State and by written explanation determines another bidder shall receive the award. The explanation shall appear in the appropriate volume of the Illinois Procurement Bulletin.

(h) Multi-step sealed bidding. When it is considered impracticable to initially prepare a purchase

description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

(i) Alternative procedures. Notwithstanding any other provision of this Act to the contrary, the Director of the Illinois Power Agency may create alternative bidding procedures to be used in procuring professional services under subsections ~~subsection~~ (a) and (a-5) of Section 1-75 and subsection (d) of Section 1-78 and subsection (d) of Section 1-79 of the Illinois Power Agency Act and Section 16-111.5(c) of the Public Utilities Act and to procure renewable energy resources under Section 1-56 of the Illinois Power Agency Act. These alternative procedures shall be set forth together with the other criteria contained in the invitation for bids, and shall appear in the appropriate volume of the Illinois Procurement Bulletin.

(j) Reverse auction. Notwithstanding any other provision of this Section and in accordance with rules adopted by the Director of Central Management Services as chief procurement officer, a State purchasing officer under that chief procurement officer's jurisdiction may procure supplies or services through a competitive electronic auction bidding process after the purchasing officer explains in writing to the chief procurement officer his or her determination that the use of such a process will be in the best interest of the State. The chief procurement officer shall publish that determination in his or her next volume of the Illinois Procurement Bulletin.

An invitation for bids shall be issued and shall include (i) a procurement description, (ii) all contractual terms, whenever practical, and (iii) conditions applicable to the procurement, including a notice that bids will be received in an electronic auction manner.

Public notice of the invitation for bids shall be given in the same manner as provided in subsection (c).

Bids shall be accepted electronically at the time and in the manner designated in the invitation for bids. During the auction, a bidder's price shall be disclosed to other bidders. Bidders shall have the opportunity to reduce their bid prices during the auction. At the conclusion of the auction, the record of the bid prices received and the name of each bidder shall be open to public inspection.

After the auction period has terminated, withdrawal of bids shall be permitted as provided in subsection (f).

The contract shall be awarded within 60 days after the auction by written notice to the lowest responsible bidder, or all bids shall be rejected except as otherwise provided in this Code. Extensions of the date for the award may be made by mutual written consent of the State purchasing officer and the lowest responsible bidder.

This subsection does not apply to (i) procurements of professional and artistic services, including but not limited to telecommunications services, communications services, Internet services, and information services, and (ii) contracts for construction projects.

(Source: P.A. 95-481, eff. 8-28-07; 96-159, eff. 8-10-09; 96-588, eff. 8-18-09; 97-96, eff. 7-13-11.)

(Text of Section from P.A. 96-159, 96-795, 97-96, and 97-198)

Sec. 20-10. Competitive sealed bidding; reverse auction.

(a) Conditions for use. All contracts shall be awarded by competitive sealed bidding except as otherwise provided in Section 20-5.

(b) Invitation for bids. An invitation for bids shall be issued and shall include a purchase description and the material contractual terms and conditions applicable to the procurement.

(c) Public notice. Public notice of the invitation for bids shall be published in the Illinois Procurement Bulletin at least 14 days before the date set in the invitation for the opening of bids.

(d) Bid opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The name of each bidder, the amount of each bid, and other relevant information as may be specified by rule shall be recorded. After the award of the contract, the winning bid and the record of each unsuccessful bid shall be open to public inspection.

(e) Bid acceptance and bid evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Code. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award, such as discounts, transportation costs, and total or life cycle costs, shall be objectively measurable. The invitation for bids shall set forth the evaluation criteria to be used.

(f) Correction or withdrawal of bids. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards of contracts based on bid mistakes, shall be permitted in accordance with rules. After bid opening, no changes in bid prices or other provisions of bids prejudicial

to the interest of the State or fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids based on bid mistakes shall be supported by written determination made by a State purchasing officer.

(g) Award. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, except when a State purchasing officer determines it is not in the best interest of the State and by written explanation determines another bidder shall receive the award. The explanation shall appear in the appropriate volume of the Illinois Procurement Bulletin. The written explanation must include:

(1) a description of the agency's needs;

(2) a determination that the anticipated cost will be fair and reasonable;

(3) a listing of all responsible and responsive bidders; and

(4) the name of the bidder selected, pricing, and the reasons for selecting that bidder.

Each chief procurement officer may adopt guidelines to implement the requirements of this subsection (g).

The written explanation shall be filed with the Legislative Audit Commission and the Procurement Policy Board and be made available for inspection by the public within 30 days after the agency's decision to award the contract.

(h) Multi-step sealed bidding. When it is considered impracticable to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

(i) Alternative procedures. Notwithstanding any other provision of this Act to the contrary, the Director of the Illinois Power Agency may create alternative bidding procedures to be used in procuring professional services under subsections ~~subsection~~ (a) and (a-5) of Section 1-75, ~~and~~ subsection (d) of Section 1-78 , and subsection (d) of Section 1-79 of the Illinois Power Agency Act and Section 16-111.5(c) of the Public Utilities Act and to procure renewable energy resources under Section 1-56 of the Illinois Power Agency Act. These alternative procedures shall be set forth together with the other criteria contained in the invitation for bids, and shall appear in the appropriate volume of the Illinois Procurement Bulletin.

(j) Reverse auction. Notwithstanding any other provision of this Section and in accordance with rules adopted by the chief procurement officer, that chief procurement officer may procure supplies or services through a competitive electronic auction bidding process after the chief procurement officer determines that the use of such a process will be in the best interest of the State. The chief procurement officer shall publish that determination in his or her next volume of the Illinois Procurement Bulletin.

An invitation for bids shall be issued and shall include (i) a procurement description, (ii) all contractual terms, whenever practical, and (iii) conditions applicable to the procurement, including a notice that bids will be received in an electronic auction manner.

Public notice of the invitation for bids shall be given in the same manner as provided in subsection (c).

Bids shall be accepted electronically at the time and in the manner designated in the invitation for bids. During the auction, a bidder's price shall be disclosed to other bidders. Bidders shall have the opportunity to reduce their bid prices during the auction. At the conclusion of the auction, the record of the bid prices received and the name of each bidder shall be open to public inspection.

After the auction period has terminated, withdrawal of bids shall be permitted as provided in subsection (f).

The contract shall be awarded within 60 days after the auction by written notice to the lowest responsible bidder, or all bids shall be rejected except as otherwise provided in this Code. Extensions of the date for the award may be made by mutual written consent of the State purchasing officer and the lowest responsible bidder.

This subsection does not apply to (i) procurements of professional and artistic services, (ii) telecommunications services, communication services, and information services, and (iii) contracts for construction projects.

(Source: P.A. 96-159, eff. 8-10-09; 96-795, eff. 7-1-10 (see Section 5 of P.A. 96-793 for the effective date of changes made by P.A. 96-795); 97-96, eff. 7-13-11.)

Section 15. The Public Utilities Act is amended by changing Sections 16-107.5, 16-108, 16-111.5, 16-115, 16-115D, and 16-116 as follows:

(220 ILCS 5/16-107.5)

Sec. 16-107.5. Net electricity metering.

(a) The Legislature finds and declares that a program to provide net electricity metering, as defined in this Section, for eligible customers can encourage private investment in renewable energy resources, stimulate economic growth, enhance the continued diversification of Illinois' energy resource mix, and protect the Illinois environment.

(b) As used in this Section, (i) "eligible customer" means a retail customer that owns or operates a solar, wind, or other eligible renewable electrical generating facility with a rated capacity of not more than 2,000 kilowatts that is located on the customer's premises or is interconnected to the distribution grid of the customer's electricity provider or alternative retail electric supplier and is intended primarily to offset the customer's own electrical requirements; (ii) "electricity provider" means an electric utility or alternative retail electric supplier; (iii) "eligible renewable electrical generating facility" means a generator powered by solar electric energy, wind, dedicated crops grown for electricity generation, agricultural residues, untreated and unadulterated wood waste, landscape trimmings, livestock manure, anaerobic digestion of livestock or food processing waste, fuel cells or microturbines powered by renewable fuels, or hydroelectric energy; and (iv) "net electricity metering" (or "net metering") means the measurement, during the billing period applicable to an eligible customer, of the net amount of electricity supplied by an electricity provider to the customer's premises or provided to the electricity provider by the customer.

(c) A net metering facility shall be equipped with metering equipment that can measure the flow of electricity in both directions at the same rate. For eligible ~~residential~~ customers, this shall typically be accomplished through use of a single, bi-directional meter. If the eligible customer's existing electric revenue meter does not meet this requirement, the electricity provider shall arrange for the local electric utility or a meter service provider to install and maintain a new revenue meter at the electricity provider's expense. ~~For non-residential customers, the electricity provider may arrange for the local electric utility or a meter service provider to install and maintain metering equipment capable of measuring the flow of electricity both into and out of the customer's facility at the same rate and ratio, typically through the use of a dual channel meter. For generators with a nameplate rating of 40 kilowatts and below, the costs of installing such equipment shall be paid for by the electricity provider. For generators with a nameplate rating over 40 kilowatts and up to 2,000 kilowatts capacity, the costs of installing such equipment shall be paid for by the customer. Any subsequent revenue meter change necessitated by any eligible customer shall be paid for by the customer.~~

(d) An electricity provider shall measure and charge or credit for the net electricity supplied to eligible customers or provided by eligible customers in the following manner:

(1) If the amount of electricity used by the customer during the billing period exceeds the amount of electricity produced by the customer, the electricity provider shall charge the customer for the net electricity supplied to and used by the customer as provided in subsection (e) of this Section.

(2) If the amount of electricity produced by a customer during the billing period exceeds the amount of electricity used by the customer during that billing period, the electricity provider supplying that customer shall apply a 1:1 kilowatt-hour credit to a subsequent bill for service to the customer for the net electricity supplied to the electricity provider. The electricity provider shall continue to carry over any excess kilowatt-hour credits earned and apply those credits to subsequent billing periods to offset any customer-generator consumption in those billing periods until all credits are used or until service is terminated ~~or until the end of the annualized period~~.

(3) In ~~At the end of the year or annualized over the period that service is supplied by means of net metering, or in~~ the event that the retail customer terminates service with the electricity provider ~~prior to the end of the year or the annualized period~~, any remaining credits in the customer's account shall expire.

(e) An electricity provider shall provide to net metering customers electric service at non-discriminatory rates that are identical, with respect to rate structure, retail rate components, and any monthly charges, to the rates that the customer would be charged if not a net metering customer. An electricity provider shall not charge net metering customers any fee or charge or require additional equipment, insurance, or any other requirements not specifically authorized by interconnection standards authorized by the Commission, unless the fee, charge, or other requirement would apply to other similarly situated customers who are not net metering customers. The customer will remain responsible for all taxes, fees, and utility delivery charges that would otherwise be applicable to the net amount of electricity used by the customer. Subsections (c) through (e) of this Section shall not be construed to prevent an arms-length agreement between an electricity provider and an eligible customer that sets forth different prices, terms, and conditions for the provision of net metering service, including, but not limited to, the provision of the appropriate metering equipment for non-residential customers.

(f) ~~Notwithstanding the requirements of subsections (c) through (e) of this Section, an electricity provider must require dual channel metering for non-residential customers operating eligible renewable electrical generating facilities with a nameplate rating over 40 kilowatts and up to 2,000 kilowatts. In such cases, electricity charges and credits shall be determined as follows:~~

~~(1) The electricity provider shall assess and the customer remains responsible for all taxes, fees, and utility delivery charges that would otherwise be applicable to the gross amount of kilowatt-hours supplied to the eligible customer by the electricity provider.~~

~~(2) Each month that service is supplied by means of dual channel metering, the electricity provider shall compensate the eligible customer for any excess kilowatt-hour credits at the electricity provider's avoided cost of electricity supply over the monthly period or as otherwise specified by the terms of a power purchase agreement negotiated between the customer and electricity provider.~~

~~(3)~~ For all eligible net metering customers taking service from an electricity provider under contracts or tariffs employing time of use rates, any monthly consumption of electricity shall be calculated according to the terms of the contract or tariff to which the same customer would be assigned to or be eligible for if the customer was not a net metering customer. When those same customer-generators are net generators during any discrete time of use period, the net kilowatt-hours produced shall be valued at the same price per kilowatt-hour as the electric service provider would charge for retail kilowatt-hour sales during that same time of use period.

(g) For purposes of federal and State laws providing renewable energy credits or greenhouse gas credits, the eligible customer shall be treated as owning and having title to the renewable energy attributes, renewable energy credits, and greenhouse gas emission credits related to any electricity produced by the qualified generating unit. The electricity provider may not condition participation in a net metering program on the signing over of a customer's renewable energy credits; provided, however, this subsection (g) shall not be construed to prevent an arms-length agreement between an electricity provider and an eligible customer that sets forth the ownership or title of the credits.

(h) Within 120 days after the effective date of this amendatory Act of the 95th General Assembly, the Commission shall establish standards for net metering and, if the Commission has not already acted on its own initiative, standards for the interconnection of eligible renewable generating equipment to the utility system. The interconnection standards shall address any procedural barriers, delays, and administrative costs associated with the interconnection of customer-generation while ensuring the safety and reliability of the units and the electric utility system. The Commission shall consider the Institute of Electrical and Electronics Engineers (IEEE) Standard 1547 and the issues of (i) reasonable and fair fees and costs, (ii) clear timelines for major milestones in the interconnection process, (iii) nondiscriminatory terms of agreement, and (iv) any best practices for interconnection of distributed generation.

(i) All electricity providers shall begin to offer net metering no later than April 1, 2008.

(j) An electricity provider shall provide net metering to eligible customers until the load of its net metering customers equals 5% ~~1%~~ of the total peak demand supplied by that electricity provider during the previous year. Electricity providers are authorized to offer net metering beyond the 5% ~~1%~~ level if they so choose. ~~The number of new eligible customers with generators that have a nameplate rating of 40 kilowatts and below will be limited to 200 total new billing accounts for the utilities (Ameren Companies, ComEd, and MidAmerican) for the period of April 1, 2008 through March 31, 2009.~~

(k) Each electricity provider shall maintain records and report annually to the Commission the total number of net metering customers served by the provider, as well as the type, capacity, and energy sources of the generating systems used by the net metering customers. Nothing in this Section shall limit the ability of an electricity provider to request the redaction of information deemed by the Commission to be confidential business information. Each electricity provider shall notify the Commission when the total generating capacity of its net metering customers is equal to or in excess of the 1% cap specified in subsection (j) of this Section.

(l) Notwithstanding the definition of "eligible customer" in item (i) of subsection (b) of this Section, each electricity provider shall ~~consider whether to~~ allow meter aggregation for the purposes of net metering on:

(1) properties owned or leased by multiple customers that contribute to the operation of an eligible renewable electrical generating facility, such as a community-owned wind project, a community-owned biomass project, a community-owned solar project, or a community methane digester processing livestock waste from multiple sources; ~~and~~

(2) individual units, apartments, or properties owned or leased by multiple customers and collectively served by a common eligible renewable electrical generating facility, such as an apartment building served by photovoltaic panels on the roof; and ~~.~~

(3) multiple meters that are located on an eligible customer's contiguous property and are used to measure only electricity used for the eligible customer's requirements.

For the purposes of this subsection (l), "meter aggregation" means the combination of reading and billing on a pro rata basis for the types of eligible customers described in this Section such as to allocate benefits of participation onto the customers' monthly electric bills. Meter aggregation shall be allowed whether the eligible renewable energy generating device is located on the premises of the eligible customer or is interconnected to the distribution grid of the eligible customer's electricity provider or alternative retail electric supplier. Such meter aggregation shall be subject to the terms and conditions approved by the Commission in a proceeding establishing the rules applicable to meter aggregation under this subsection (l), which shall commence no less than 180 days after the effective date of this amendatory Act of the 97th General Assembly and be completed within 365 days after the effective date of this amendatory Act of the 97th General Assembly.

(m) Nothing in this Section shall affect the right of an electricity provider to continue to provide, or the right of a retail customer to continue to receive service pursuant to a contract for electric service between the electricity provider and the retail customer in accordance with the prices, terms, and conditions provided for in that contract. Either the electricity provider or the customer may require compliance with the prices, terms, and conditions of the contract.

(Source: P.A. 95-420, eff. 8-24-07.)

(220 ILCS 5/16-108)

Sec. 16-108. Recovery of costs associated with the provision of delivery services.

(a) An electric utility shall file a delivery services tariff with the Commission at least 210 days prior to the date that it is required to begin offering such services pursuant to this Act. An electric utility shall provide the components of delivery services that are subject to the jurisdiction of the Federal Energy Regulatory Commission at the same prices, terms and conditions set forth in its applicable tariff as approved or allowed into effect by that Commission. The Commission shall otherwise have the authority pursuant to Article IX to review, approve, and modify the prices, terms and conditions of those components of delivery services not subject to the jurisdiction of the Federal Energy Regulatory Commission, including the authority to determine the extent to which such delivery services should be offered on an unbundled basis. In making any such determination the Commission shall consider, at a minimum, the effect of additional unbundling on (i) the objective of just and reasonable rates, (ii) electric utility employees, and (iii) the development of competitive markets for electric energy services in Illinois.

(b) The Commission shall enter an order approving, or approving as modified, the delivery services tariff no later than 30 days prior to the date on which the electric utility must commence offering such services. The Commission may subsequently modify such tariff pursuant to this Act.

(c) The electric utility's tariffs shall define the classes of its customers for purposes of delivery services charges. Delivery services shall be priced and made available to all retail customers electing delivery services in each such class on a nondiscriminatory basis regardless of whether the retail customer chooses the electric utility, an affiliate of the electric utility, or another entity as its supplier of electric power and energy. Charges for delivery services shall be cost based, and shall allow the electric utility to recover the costs of providing delivery services through its charges to its delivery service customers that use the facilities and services associated with such costs. Such costs shall include the costs of owning, operating and maintaining transmission and distribution facilities. Beginning June 1, 2012, charges for delivery services shall also include the recovery of the electric utility's costs of renewable energy credits and excluded renewable energy resources contract costs in accordance with subsection (k) of this Section. The Commission shall also be authorized to consider whether, and if so to what extent, the following costs are appropriately included in the electric utility's delivery services rates: (i) the costs of that portion of generation facilities used for the production and absorption of reactive power in order 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 (ii) the costs associated with the use and redispatch of generation facilities to mitigate constraints on the transmission or distribution system in order that retail customers located in the electric utility's service area can receive electric power and energy from suppliers other than the electric utility. Nothing in this subsection shall be construed as directing the Commission to allocate any of the costs described in (i) or (ii) that are found to be appropriately included in the electric utility's delivery services rates to any particular customer group or geographic area in setting delivery services rates.

(d) The Commission shall establish charges, terms and conditions for delivery services that are just and reasonable and shall take into account customer impacts when establishing such charges. In establishing charges, terms and conditions for delivery services, the Commission shall take into account

voltage level differences. A retail customer shall have the option to request to purchase electric service at any delivery service voltage reasonably and technically feasible from the electric facilities serving that customer's premises provided that there are no significant adverse impacts upon system reliability or system efficiency. A retail customer shall also have the option to request to purchase electric service at any point of delivery that is reasonably and technically feasible provided that there are no significant adverse impacts on system reliability or efficiency. Such requests shall not be unreasonably denied.

(e) Electric utilities shall recover the costs of installing, operating or maintaining facilities for the particular benefit of one or more delivery services customers, including without limitation any costs incurred in complying with a customer's request to be served at a different voltage level, directly from the retail customer or customers for whose benefit the costs were incurred, to the extent such costs are not recovered through the charges referred to in subsections (c) and (d) of this Section.

(f) An electric utility shall be entitled but not required to implement transition charges in conjunction with the offering of delivery services pursuant to Section 16-104. If an electric utility implements transition charges, it shall implement such charges for all delivery services customers and for all customers described in subsection (h), but shall not implement transition charges for power and energy that a retail customer takes from cogeneration or self-generation facilities located on that retail customer's premises, if such facilities meet the following criteria:

(i) the cogeneration or self-generation facilities serve a single retail customer and are located on that retail customer's premises (for purposes of this subparagraph and subparagraph (ii), an industrial or manufacturing retail customer and a third party contractor that is served by such industrial or manufacturing customer through such retail customer's own electrical distribution facilities under the circumstances described in subsection (vi) of the definition of "alternative retail electric supplier" set forth in Section 16-102, shall be considered a single retail customer);

(ii) the cogeneration or self-generation facilities either (A) are sized pursuant to generally accepted engineering standards for the retail customer's electrical load at that premises (taking into account standby or other reliability considerations related to that retail customer's operations at that site) or (B) if the facility is a cogeneration facility located on the retail customer's premises, the retail customer is the thermal host for that facility and the facility has been designed to meet that retail customer's thermal energy requirements resulting in electrical output beyond that retail customer's electrical demand at that premises, comply with the operating and efficiency standards applicable to "qualifying facilities" specified in title 18 Code of Federal Regulations Section 292.205 as in effect on the effective date of this amendatory Act of 1999;

(iii) the retail customer on whose premises the facilities are located either has an exclusive right to receive, and corresponding obligation to pay for, all of the electrical capacity of the facility, or in the case of a cogeneration facility that has been designed to meet the retail customer's thermal energy requirements at that premises, an identified amount of the electrical capacity of the facility, over a minimum 5-year period; and

(iv) if the cogeneration facility is sized for the retail customer's thermal load at that premises but exceeds the electrical load, any sales of excess power or energy are made only at wholesale, are subject to the jurisdiction of the Federal Energy Regulatory Commission, and are not for the purpose of circumventing the provisions of this subsection (f).

If a generation facility located at a retail customer's premises does not meet the above criteria, an electric utility implementing transition charges shall implement a transition charge until December 31, 2006 for any power and energy taken by such retail customer from such facility as if such power and energy had been delivered by the electric utility. Provided, however, that an industrial retail customer that is taking power from a generation facility that does not meet the above criteria but that is located on such customer's premises will not be subject to a transition charge for the power and energy taken by such retail customer from such generation facility if the facility does not serve any other retail customer and either was installed on behalf of the customer and for its own use prior to January 1, 1997, or is both predominantly fueled by byproducts of such customer's manufacturing process at such premises and sells or offers an average of 300 megawatts or more of electricity produced from such generation facility into the wholesale market. Such charges shall be calculated as provided in Section 16-102, and shall be collected on each kilowatt-hour delivered under a delivery services tariff to a retail customer from the date the customer first takes delivery services until December 31, 2006 except as provided in subsection (h) of this Section. Provided, however, that an electric utility, other than an electric utility providing service to at least 1,000,000 customers in this State on January 1, 1999, shall be entitled to petition for entry of an order by the Commission authorizing the electric utility to implement transition charges for an additional period ending no later than December 31, 2008. The electric utility shall file its petition with supporting evidence no earlier than 16 months, and no later than 12 months, prior to December 31,

2006. The Commission shall hold a hearing on the electric utility's petition and shall enter its order no later than 8 months after the petition is filed. The Commission shall determine whether and to what extent the electric utility shall be authorized to implement transition charges for an additional period. The Commission may authorize the electric utility to implement transition charges for some or all of the additional period, and shall determine the mitigation factors to be used in implementing such transition charges; provided, that the Commission shall not authorize mitigation factors less than 110% of those in effect during the 12 months ended December 31, 2006. In making its determination, the Commission shall consider the following factors: the necessity to implement transition charges for an additional period in order to maintain the financial integrity of the electric utility; the prudence of the electric utility's actions in reducing its costs since the effective date of this amendatory Act of 1997; the ability of the electric utility to provide safe, adequate and reliable service to retail customers in its service area; and the impact on competition of allowing the electric utility to implement transition charges for the additional period.

(g) The electric utility shall file tariffs that establish the transition charges to be paid by each class of customers to the electric utility in conjunction with the provision of delivery services. The electric utility's tariffs shall define the classes of its customers for purposes of calculating transition charges. The electric utility's tariffs shall provide for the calculation of transition charges on a customer-specific basis for any retail customer whose average monthly maximum electrical demand on the electric utility's system during the 6 months with the customer's highest monthly maximum electrical demands equals or exceeds 3.0 megawatts for electric utilities having more than 1,000,000 customers, and for other electric utilities for any customer that has an average monthly maximum electrical demand on the electric utility's system of one megawatt or more, and (A) for which there exists data on the customer's usage during the 3 years preceding the date that the customer became eligible to take delivery services, or (B) for which there does not exist data on the customer's usage during the 3 years preceding the date that the customer became eligible to take delivery services, if in the electric utility's reasonable judgment there exists comparable usage information or a sufficient basis to develop such information, and further provided that the electric utility can require customers for which an individual calculation is made to sign contracts that set forth the transition charges to be paid by the customer to the electric utility pursuant to the tariff.

(h) An electric utility shall also be entitled to file tariffs that allow it to collect transition charges from retail customers in the electric utility's service area that do not take delivery services but that take electric power or energy from an alternative retail electric supplier or from an electric utility other than the electric utility in whose service area the customer is located. Such charges shall be calculated, in accordance with the definition of transition charges in Section 16-102, for the period of time that the customer would be obligated to pay transition charges if it were taking delivery services, except that no deduction for delivery services revenues shall be made in such calculation, and usage data from the customer's class shall be used where historical usage data is not available for the individual customer. The customer shall be obligated to pay such charges on a lump sum basis on or before the date on which the customer commences to take service from the alternative retail electric supplier or other electric utility, provided, that the electric utility in whose service area the customer is located shall offer the customer the option of signing a contract pursuant to which the customer pays such charges ratably over the period in which the charges would otherwise have applied.

(i) An electric utility shall be entitled to add to the bills of delivery services customers charges pursuant to Sections 9-221, 9-222 (except as provided in Section 9-222.1), and Section 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.

(j) If a retail customer that obtains electric power and energy from cogeneration or self-generation facilities installed for its own use on or before January 1, 1997, subsequently takes service from an alternative retail electric supplier or an electric utility other than the electric utility in whose service area the customer is located for any portion of the customer's electric power and energy requirements formerly obtained from those facilities (including that amount purchased from the utility in lieu of such generation and not as standby power purchases, under a cogeneration displacement tariff in effect as of the effective date of this amendatory Act of 1997), the transition charges otherwise applicable pursuant to subsections (f), (g), or (h) of this Section shall not be applicable in any year to that portion of the customer's electric power and energy requirements formerly obtained from those facilities, provided, that for purposes of this subsection (j), such portion shall not exceed the average number of kilowatt-hours per year obtained from the cogeneration or self-generation facilities during the 3 years prior to the date on which the customer became eligible for delivery services, except as provided in subsection (f) of

Section 16-110.

(k) Beginning June 1, 2012, the electric utility shall be entitled to recover through its tariffed charges for delivery services (1) the costs of any renewable energy credits purchased to meet the renewable energy resource standards of subsection (c) of Section 1-75 of the Illinois Power Agency Act, pursuant to the electric utility's procurement plan as approved in accordance with Section 16-111.5 of this Act, and (2) any excluded renewable energy resources contract costs as defined in Section 1-10 of the Illinois Power Agency Act. The Commission shall determine a just and reasonable allocation of such costs to the various classes of customers taking delivery services from the electric utility, taking into account the provisions of paragraphs (2) and (6) of subsection (c) of Section 1-75 of the Illinois Power Agency Act and, with respect to excluded renewable energy resources contract costs, the extent to which the electric utility's eligible retail customers have become delivery services non-eligible retail customers subsequent to the year that the contracts giving rise to the excluded renewable energy resources costs were entered into. Provided, that in no event shall the Commission allocate the costs of renewable energy credits and excluded renewable energy resources contract costs in a manner that causes the rate limitations specified in paragraph (2) of subsection (c) of Section 1-75 of the Illinois Power Agency Act to be exceeded for any class of customers.

For purposes of recovery through the electric utility's tariffed charges for delivery services, the cost of the renewable energy credits included in purchases of bundled renewable energy resources, as defined in Section 1-10 of the Illinois Power Agency Act, to meet the renewable energy resource standards applicable to the load of the electric utility's eligible retail customers, as defined in subsection (a) of Section 16-111.5 of this Act, shall be the allocated renewable energy credit prices approved by the Commission in accordance with subsection (f) of Section 16-111.5 of this Act.

The electric utility shall be entitled to recover the cost of such renewable energy credits and excluded renewable energy resources contract costs through an automatic adjustment charge provision in the electric utility's delivery services tariffs that allows the electric utility to adjust its tariffed charges on an quarterly basis for changes in its costs incurred to purchase renewable energy credits and its excluded renewable energy resources contract costs, if any, without the need to file a general delivery services rate case. The electric utility's collections pursuant to such an automatic adjustment charge tariff shall be subject to annual review, reconciliation, and true-up against actual costs by the Commission pursuant to a procedure that shall be specified in the electric utility's tariff and approved by the Commission in connection with its approval of the tariff. The procedure shall provide that any difference between the electric utility's collections pursuant to the automatic adjustment charge for an annual period and the electric utility's actual costs of renewable energy credits and actual excluded renewable energy resources contract costs for the annual period shall be refunded to or collected from, as applicable, the electric utility's delivery services customers in subsequent periods.

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

(220 ILCS 5/16-111.5)

Sec. 16-111.5. Provisions relating to procurement.

(a) An electric utility that on December 31, 2005 served at least 100,000 customers in Illinois shall procure power, energy efficiency products, and energy for its eligible retail customers in accordance with the applicable provisions set forth in Section 1-75 of the Illinois Power Agency Act and this Section and, for years beginning on and after June 1, 2012, shall procure renewable energy credits with respect to the kilowatthour usage of delivery services non-eligible retail customers in the electric utility's service area in accordance with the applicable provisions set forth in Section 1-75 of the Illinois Power Agency Act and this Section. A small multi-jurisdictional electric utility that on December 31, 2005 served less than 100,000 customers in Illinois may elect to procure power and energy for all or a portion of its eligible Illinois retail customers in accordance with the applicable provisions set forth in this Section and Section 1-75 of the Illinois Power Agency Act. This Section shall not apply to a small multi-jurisdictional utility until such time as a small multi-jurisdictional utility requests the Illinois Power Agency to prepare a procurement plan for its eligible retail customers. "Eligible retail customers" for the purposes of this Section means those retail customers that purchase power and energy from the electric utility under fixed-price bundled service tariffs, other than those retail customers whose service is declared or deemed competitive under Section 16-113 and those other customer groups specified in this Section, including self-generating customers, customers electing hourly pricing, or those customers who are otherwise ineligible for fixed-price bundled tariff service. "Delivery services non-eligible retail customers" for the purposes of this Section has the meaning set forth in Section 1-10 of the Illinois Power Agency Act. Those customers that are excluded from the definition of "eligible retail customers" shall not be included in the procurement plan electric supply service ~~load~~ requirements, and the utility shall procure any supply requirements, including capacity, ancillary services, energy efficiency products,

and hourly priced energy, in the applicable markets as needed to serve those customers, provided that the utility may include in its procurement plan load requirements for the load that is associated with those retail customers whose service has been declared or deemed competitive pursuant to Section 16-113 of this Act to the extent that those customers are purchasing power and energy during one of the transition periods identified in subsection (b) of Section 16-113 of this Act.

(b) A procurement plan shall be prepared for each electric utility consistent with the applicable requirements of the Illinois Power Agency Act and this Section. For purposes of this Section, Illinois electric utilities that are affiliated by virtue of a common parent company are considered to be a single electric utility. Small multi-jurisdictional utilities may request a procurement plan for a portion of or all of its Illinois load. Each procurement plan shall analyze the projected balance of supply and demand for eligible retail customers over a 5-year period with the first planning year beginning on June 1 of the year following the year in which the plan is filed. The plan shall specifically identify the wholesale products to be procured following plan approval, and shall follow all the requirements set forth in the Public Utilities Act and all applicable State and federal laws, statutes, rules, or regulations, as well as Commission orders. Nothing in this Section precludes consideration of contracts longer than 5 years and related forecast data. Unless specified otherwise in this Section, in the procurement plan or in the implementing tariff, any procurement occurring in accordance with this plan shall be competitively bid through a request for proposals process. Approval and implementation of the procurement plan shall be subject to review and approval by the Commission according to the provisions set forth in this Section. A procurement plan shall include each of the following components:

(1) Hourly load analysis. This analysis shall include:

(i) multi-year historical analysis of hourly loads;

(ii) switching trends and competitive retail market analysis;

(iii) known or projected changes to future loads; and

(iv) growth forecasts by customer class.

(2) Analysis of the impact of any demand side and renewable energy initiatives. This analysis shall include:

(i) the impact of demand response programs and energy efficiency programs, both current and projected; for small multi-jurisdictional utilities, the impact of demand response and energy efficiency programs approved pursuant to Section 8-408 of this Act, both current and projected; and

(ii) supply side needs that are projected to be offset by purchases of renewable energy resources, if any.

(3) A plan for meeting the expected load requirements that will not be met through preexisting contracts. This plan shall include:

(i) definitions of the different Illinois retail customer classes for which supply is being purchased;

(ii) the proposed mix of demand-response products for which contracts will be executed during the next year. For small multi-jurisdictional electric utilities that on December 31, 2005 served fewer than 100,000 customers in Illinois, these shall be defined as demand-response products offered in an energy efficiency plan approved pursuant to Section 8-408 of this Act. The cost-effective demand-response measures shall be procured whenever the cost is lower than procuring comparable capacity products, provided that such products shall:

(A) be procured by a demand-response provider from eligible retail customers;

(B) at least satisfy the demand-response requirements of the regional transmission organization market in which the utility's service territory is located, including, but not limited to, any applicable capacity or dispatch requirements;

(C) provide for customers' participation in the stream of benefits produced by the demand-response products;

(D) provide for reimbursement by the demand-response provider of the utility for any costs incurred as a result of the failure of the supplier of such products to perform its obligations thereunder; and

(E) meet the same credit requirements as apply to suppliers of capacity, in the applicable regional transmission organization market;

(iii) the proposed energy efficiency products for which contracts will be executed during the next year. The cost effective energy efficiency measures shall be procured whenever the cost is lower than the combined avoided costs of energy, capacity, transmission, and the renewable portfolio standard for a comparable volume of energy provided that the energy efficiency products shall:

(A) be procured by a energy efficiency provider from eligible retail customers;

(B) at least satisfy evaluation, measurement, and verification standards established pursuant to Section 8-103 of this Act;

(C) provide for reimbursement by the energy efficiency provider of the utility for any costs incurred as a result of the failure of the supplier of such products to perform its obligations thereunder; and

(D) meet the same credit requirements as apply to suppliers of capacity, in the applicable regional transmission organization market;

(iv) ~~(iii)~~ monthly forecasted system supply requirements, including expected minimum, maximum,

and average values for the planning period;

(v) ~~(iv)~~ the proposed mix and selection of standard wholesale products for which contracts will be executed during the next year, separately or in combination, to meet that portion of its load requirements not met through pre-existing contracts, including but not limited to monthly 5 x 16 peak period block energy, monthly off-peak wrap energy, monthly 7 x 24 energy, annual 5 x 16 energy, annual off-peak wrap energy, annual 7 x 24 energy, monthly capacity, annual capacity, peak load capacity obligations, capacity purchase plan, and ancillary services;

(vi) ~~(v)~~ proposed term structures for each wholesale product type included in the proposed procurement plan portfolio of products; and

(vii) ~~(vi)~~ an assessment of the price risk, load uncertainty, and other factors that are associated with the proposed procurement plan; this assessment, to the extent possible, shall include an analysis of the following factors: contract terms, time frames for securing products or services, fuel costs, weather patterns, transmission costs, market conditions, and the governmental regulatory environment; the proposed procurement plan shall also identify alternatives for those portfolio measures that are identified as having significant price risk.

(4) Proposed procedures for balancing loads. The procurement plan shall include, for load requirements included in the procurement plan, the process for (i) hourly balancing of supply and demand and (ii) the criteria for portfolio re-balancing in the event of significant shifts in load.

(c) The procurement process set forth in Section 1-75 of the Illinois Power Agency Act and subsection (e) of this Section shall be administered by a procurement administrator and monitored by a procurement monitor.

(1) The procurement administrator shall:

(i) design the final procurement process in accordance with Section 1-75 of the Illinois Power Agency Act and subsection (e) of this Section following Commission approval of the procurement plan;

(ii) develop benchmarks in accordance with subsection (e)(3) to be used to evaluate bids; these benchmarks shall be submitted to the Commission for review and approval on a confidential basis prior to the procurement event;

(iii) serve as the interface between the electric utility and suppliers;

(iv) manage the bidder pre-qualification and registration process;

(v) obtain the electric utilities' agreement to the final form of all supply contracts and credit collateral agreements;

(vi) administer the request for proposals process;

(vii) have the discretion to negotiate to determine whether bidders are willing to lower the price of bids that meet the benchmarks approved by the Commission; any post-bid negotiations with bidders shall be limited to price only and shall be completed within 24 hours after opening the sealed bids and shall be conducted in a fair and unbiased manner; in conducting the negotiations, there shall be no disclosure of any information derived from proposals submitted by competing bidders; if information is disclosed to any bidder, it shall be provided to all competing bidders;

(viii) maintain confidentiality of supplier and bidding information in a manner consistent with all applicable laws, rules, regulations, and tariffs;

(ix) submit a confidential report to the Commission recommending acceptance or rejection of bids;

(x) notify the utility of contract counterparties and contract specifics; and

(xi) administer related contingency procurement events.

(2) The procurement monitor, who shall be retained by the Commission, shall:

(i) monitor interactions among the procurement administrator, suppliers, and utility;

(ii) monitor and report to the Commission on the progress of the procurement process;

(iii) provide an independent confidential report to the Commission regarding the

results of the procurement event;

(iv) assess compliance with the procurement plans approved by the Commission for each utility that on December 31, 2005 provided electric service to a least 100,000 customers in Illinois and for each small multi-jurisdictional utility that on December 31, 2005 served less than 100,000 customers in Illinois;

(v) preserve the confidentiality of supplier and bidding information in a manner consistent with all applicable laws, rules, regulations, and tariffs;

(vi) provide expert advice to the Commission and consult with the procurement administrator regarding issues related to procurement process design, rules, protocols, and policy-related matters; and

(vii) consult with the procurement administrator regarding the development and use of benchmark criteria, standard form contracts, credit policies, and bid documents.

(d) Except as provided in subsection (j), the planning process shall be conducted as follows:

(1) Beginning in 2008, each Illinois utility procuring power pursuant to this Section shall annually provide a range of load forecasts to the Illinois Power Agency by July 15 of each year, or such other date as may be required by the Commission or Agency. The load forecasts shall cover the 5-year procurement planning period for the next procurement plan and shall include hourly data representing a high-load, low-load and expected-load scenario for the load of the eligible retail customers. For procurement planning periods beginning on and after June 1, 2012, the electric utility shall provide a range of annual forecasts for the 5-year procurement planning period of the total kilowatthour usage of eligible retail customers and the total annual kilowatthour usage of delivery services non-eligible retail customers in its service area. The utility shall provide supporting data and assumptions for each of the scenarios.

(2) Beginning in 2008, the Illinois Power Agency shall prepare a procurement plan by August 15th of each year, or such other date as may be required by the Commission. The procurement plan shall identify the portfolio of demand-response, energy efficiency products, and power and energy products to be procured. Cost-effective demand-response measures and cost-effective energy measures shall be procured as set forth in items ~~item~~ (iii) and (iv) of subsection (b) of this Section. Copies of the procurement plan shall be posted and made publicly available on the Agency's and Commission's websites, and copies shall also be provided to each affected electric utility. An affected utility shall have 30 days following the date of posting to provide comment to the Agency on the procurement plan. Other interested entities also may comment on the procurement plan. All comments submitted to the Agency shall be specific, supported by data or other detailed analyses, and, if objecting to all or a portion of the procurement plan, accompanied by specific alternative wording or proposals. All comments shall be posted on the Agency's and Commission's websites. During this 30-day comment period, the Agency shall hold at least one public hearing within each utility's service area for the purpose of receiving public comment on the procurement plan. Within 14 days following the end of the 30-day review period, the Agency shall revise the procurement plan as necessary based on the comments received and file the procurement plan with the Commission and post the procurement plan on the websites.

(3) Within 5 days after the filing of the procurement plan, any person objecting to the procurement plan shall file an objection with the Commission. Within 10 days after the filing, the Commission shall determine whether a hearing is necessary. The Commission shall enter its order confirming or modifying the procurement plan within 90 days after the filing of the procurement plan by the Illinois Power Agency.

(4) The Commission shall approve the procurement plan, including expressly the forecast used in the procurement plan, if the Commission determines that it will ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability.

(e) The procurement process shall include each of the following components:

(1) Solicitation, pre-qualification, and registration of bidders. The procurement administrator shall disseminate information to potential bidders to promote a procurement event, notify potential bidders that the procurement administrator may enter into a post-bid price negotiation with bidders that meet the applicable benchmarks, provide supply requirements, and otherwise explain the competitive procurement process. In addition to such other publication as the procurement administrator determines is appropriate, this information shall be posted on the Illinois Power Agency's and the Commission's websites. The procurement administrator shall also administer the prequalification process, including evaluation of credit worthiness, compliance with procurement rules, and agreement to the standard form contract developed pursuant to paragraph (2) of this

subsection (e). The procurement administrator shall then identify and register bidders to participate in the procurement event.

(2) Standard contract forms and credit terms and instruments. The procurement administrator, in consultation with the utilities, the Commission, and other interested parties and subject to Commission oversight, shall develop and provide standard contract forms for the supplier contracts that meet generally accepted industry practices. Standard credit terms and instruments that meet generally accepted industry practices shall be similarly developed. The procurement administrator shall make available to the Commission all written comments it receives on the contract forms, credit terms, or instruments. If the procurement administrator cannot reach agreement with the applicable electric utility as to the contract terms and conditions, the procurement administrator must notify the Commission of any disputed terms and the Commission shall resolve the dispute. The terms of the contracts shall not be subject to negotiation by winning bidders, and the bidders must agree to the terms of the contract in advance so that winning bids are selected solely on the basis of price.

(3) Establishment of a market-based price benchmark. As part of the development of the procurement process, the procurement administrator, in consultation with the Commission staff, Agency staff, and the procurement monitor, shall establish benchmarks for evaluating the final prices in the contracts for each of the products that will be procured through the procurement process. The benchmarks shall be based on price data for similar products for the same delivery period and same delivery hub, or other delivery hubs after adjusting for that difference. The price benchmarks may also be adjusted to take into account differences between the information reflected in the underlying data sources and the specific products and procurement process being used to procure power for the Illinois utilities. The benchmarks shall be confidential but shall be provided to, and will be subject to Commission review and approval, prior to a procurement event.

(4) Request for proposals competitive procurement process. The procurement administrator shall design and issue a request for proposals to supply electricity in accordance with each utility's procurement plan, as approved by the Commission. The request for proposals shall set forth a procedure for sealed, binding commitment bidding with pay-as-bid settlement, and provision for selection of bids on the basis of price.

(5) A plan for implementing contingencies in the event of supplier default or failure of the procurement process to fully meet the expected load requirement due to insufficient supplier participation, Commission rejection of results, or any other cause.

(i) Event of supplier default: In the event of supplier default, the utility shall review the contract of the defaulting supplier to determine if the amount of supply is 200 megawatts or greater, and if there are more than 60 days remaining of the contract term. If both of these conditions are met, and the default results in termination of the contract, <u>then</u> the utility shall immediately notify the Illinois Power Agency that a request for proposals must be issued to procure replacement power <u>or energy efficiency products</u>, and the procurement administrator shall run an additional procurement event. If the contracted supply of the defaulting supplier is less than 200 megawatts or there are less than 60 days remaining of the contract term, the utility shall procure <u>energy efficiency products or</u> power and energy from the applicable regional transmission organization market, including ancillary services, capacity, <u>energy efficiency products,</u> and day-ahead or real time energy, or both, for the duration of the contract term to replace the contracted supply; provided, however, that if a needed product is not available through the regional transmission organization market it shall be purchased from the wholesale market.

(ii) Failure of the procurement process to fully meet the expected load requirement: If the procurement process fails to fully meet the expected load requirement due to insufficient supplier participation or due to a Commission rejection of the procurement results, the procurement administrator, the procurement monitor, and the Commission staff shall meet within 10 days to analyze potential causes of low supplier interest or causes for the Commission decision. If changes are identified that would likely result in increased supplier participation, or that would address concerns causing the Commission to reject the results of the prior procurement event, the procurement administrator may implement those changes and rerun the request for proposals process according to a schedule determined by those parties and consistent with Section 1-75 of the Illinois Power Agency Act and this subsection. In any event, a new request for proposals process shall be implemented by the procurement administrator within 90 days after the determination that the procurement process has failed to fully meet the expected load requirement.

(iii) In all cases where there is insufficient supply provided under contracts awarded through the procurement process to fully meet the electric utility's load requirement, the utility shall meet the load requirement by procuring power and energy from the applicable regional

transmission organization market, including ancillary services, capacity, and day-ahead or real time energy or both; provided, however, that if a needed product is not available through the regional transmission organization market it shall be purchased from the wholesale market.

(6) The procurement process described in this subsection is exempt from the requirements of the Illinois Procurement Code, pursuant to Section 20-10 of that Code.

(f) Within 2 business days after opening the sealed bids, the procurement administrator shall submit a confidential report to the Commission. The report shall contain the results of the bidding for each of the products along with the procurement administrator's recommendation for the acceptance and rejection of bids based on the price benchmark criteria and other factors observed in the process. For procurements applicable to periods beginning on and after June 1, 2012, the report shall also include, with respect to each recommended purchase of bundled renewable energy resources as defined in Section 1-10 of the Illinois Power Agency Act, an allocation of the price between the price of the electricity generated by renewable energy resources and the price of the associated renewable energy credits. The procurement monitor also shall submit a confidential report to the Commission within 2 business days after opening the sealed bids. The report shall contain the procurement monitor's assessment of bidder behavior in the process as well as an assessment of the procurement administrator's compliance with the procurement process and rules. The Commission shall review the confidential reports submitted by the procurement administrator and procurement monitor, and shall accept or reject the recommendations of the procurement administrator, including the recommended allocation of the price of each purchase of bundled renewable energy resources between the price of the electricity and the price of the associated renewable energy credits, within 2 business days after receipt of the reports.

(g) Within 3 business days after the Commission decision approving the results of a procurement event, the utility shall enter into binding contractual arrangements with the winning suppliers using the standard form contracts; except that the utility shall not be required either directly or indirectly to execute the contracts if a tariff that is consistent with subsection (l) of this Section has not been approved and placed into effect for that utility.

(h) The names of the successful bidders and the load weighted average of the winning bid prices for each contract type and for each contract term shall be made available to the public at the time of Commission approval of a procurement event. The Commission, the procurement monitor, the procurement administrator, the Illinois Power Agency, and all participants in the procurement process shall maintain the confidentiality of all other supplier and bidding information in a manner consistent with all applicable laws, rules, regulations, and tariffs. Confidential information, including the confidential reports submitted by the procurement administrator and procurement monitor pursuant to subsection (f) of this Section, shall not be made publicly available and shall not be discoverable by any party in any proceeding, absent a compelling demonstration of need, nor shall those reports be admissible in any proceeding other than one for law enforcement purposes.

(i) Within 2 business days after a Commission decision approving the results of a procurement event or such other date as may be required by the Commission from time to time, the utility shall file for informational purposes with the Commission its actual or estimated retail supply charges, as applicable, by customer supply group reflecting the costs associated with the procurement and computed in accordance with the tariffs filed pursuant to subsection (l) of this Section and approved by the Commission.

(j) Within 60 days following the effective date of this amendatory Act, each electric utility that on December 31, 2005 provided electric service to at least 100,000 customers in Illinois shall prepare and file with the Commission an initial procurement plan, which shall conform in all material respects to the requirements of the procurement plan set forth in subsection (b); provided, however, that the Illinois Power Agency Act shall not apply to the initial procurement plan prepared pursuant to this subsection. The initial procurement plan shall identify the portfolio of power and energy products to be procured and delivered for the period June 2008 through May 2009, and shall identify the proposed procurement administrator, who shall have the same experience and expertise as is required of a procurement administrator hired pursuant to Section 1-75 of the Illinois Power Agency Act. Copies of the procurement plan shall be posted and made publicly available on the Commission's website. The initial procurement plan may include contracts for renewable resources that extend beyond May 2009.

(i) Within 14 days following filing of the initial procurement plan, any person may file a detailed objection with the Commission contesting the procurement plan submitted by the electric utility. All objections to the electric utility's plan shall be specific, supported by data or other detailed analyses. The electric utility may file a response to any objections to its procurement plan within 7 days after the date objections are due to be filed. Within 7 days after the date the utility's response is due, the Commission shall determine whether a hearing is necessary. If it determines that a hearing is

necessary, it shall require the hearing to be completed and issue an order on the procurement plan within 60 days after the filing of the procurement plan by the electric utility.

(ii) The order shall approve or modify the procurement plan, approve an independent procurement administrator, and approve or modify the electric utility's tariffs that are proposed with the initial procurement plan. The Commission shall approve the procurement plan if the Commission determines that it will ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability.

(k) In order to promote price stability for residential and small commercial customers during the transition to competition in Illinois, and notwithstanding any other provision of this Act, each electric utility subject to this Section shall enter into one or more multi-year financial swap contracts that become effective on the effective date of this amendatory Act. These contracts may be executed with generators and power marketers, including affiliated interests of the electric utility. These contracts shall be for a term of no more than 5 years and shall, for each respective utility or for any Illinois electric utilities that are affiliated by virtue of a common parent company and that are thereby considered a single electric utility for purposes of this subsection (k), not exceed in the aggregate 3,000 megawatts for any hour of the year. The contracts shall be financial contracts and not energy sales contracts. The contracts shall be executed as transactions under a negotiated master agreement based on the form of master agreement for financial swap contracts sponsored by the International Swaps and Derivatives Association, Inc. and shall be considered pre-existing contracts in the utilities' procurement plans for residential and small commercial customers. Costs incurred pursuant to a contract authorized by this subsection (k) shall be deemed prudently incurred and reasonable in amount and the electric utility shall be entitled to full cost recovery pursuant to the tariffs filed with the Commission.

(l) An electric utility shall recover its costs incurred under this Section, including, but not limited to, the costs of procuring power, energy efficiency products, and energy demand-response resources under this Section. The utility shall file with the initial procurement plan its proposed tariffs through which its costs of procuring power that are incurred pursuant to a Commission-approved procurement plan and those other costs identified in this subsection (l), will be recovered. The tariffs shall include a formula rate or charge designed to pass through both the costs incurred by the utility in procuring a supply of electric power and energy for the applicable customer classes with no mark-up or return on the price paid by the utility for that supply, plus any just and reasonable costs that the utility incurs in arranging and providing for the supply of electric power and energy. The formula rate or charge shall also contain provisions that ensure that its application does not result in over or under recovery due to changes in customer usage and demand patterns, and that provide for the correction, on at least an annual basis, of any accounting errors that may occur. A utility shall recover through the tariff all reasonable costs incurred to implement or comply with any procurement plan that is developed and put into effect pursuant to Section 1-75 of the Illinois Power Agency Act and this Section, including any fees assessed by the Illinois Power Agency, costs associated with load balancing, and contingency plan costs. The electric utility shall also recover its full costs of procuring electric supply for which it contracted before the effective date of this Section in conjunction with the provision of full requirements service under fixed-price bundled service tariffs subsequent to December 31, 2006. All such costs shall be deemed to have been prudently incurred. The pass-through tariffs that are filed and approved pursuant to this Section shall not be subject to review under, or in any way limited by, Section 16-111(i) of this Act. Beginning June 1, 2012, the costs incurred by the electric utility to purchase renewable energy credits in accordance with subsection (c) of Section 1-75 of the Illinois Power Agency Act, and any excluded renewable energy resources contract costs as defined in Section 1-10 of the Illinois Power Agency Act, shall be recovered through the electric utility's tariffed charges for delivery services pursuant to Section 16-108 of this Act and shall not be recovered through the electric utility's tariffed charges for electric power and energy supply to its eligible retail customers.

(m) The Commission has the authority to adopt rules to carry out the provisions of this Section. For the public interest, safety, and welfare, the Commission also has authority to adopt rules to carry out the provisions of this Section on an emergency basis immediately following the effective date of this amendatory Act.

(n) Notwithstanding any other provision of this Act, any affiliated electric utilities that submit a single procurement plan covering their combined needs may procure for those combined needs in conjunction with that plan, and may enter jointly into power supply contracts, purchases, and other procurement arrangements, and allocate capacity, energy efficiency products, and energy and cost responsibility therefor among themselves in proportion to their requirements.

(o) On or before June 1 of each year, the Commission shall hold an informal hearing for the purpose of receiving comments on the prior year's procurement process and any recommendations for change.

(p) An electric utility subject to this Section may propose to invest, lease, own, or operate an electric generation facility as part of its procurement plan, provided the utility demonstrates that such facility is the least-cost option to provide electric service to eligible retail customers. If the facility is shown to be the least-cost option and is included in a procurement plan prepared in accordance with Section 1-75 of the Illinois Power Agency Act and this Section, then the electric utility shall make a filing pursuant to Section 8-406 of the Act, and may request of the Commission any statutory relief required thereunder. If the Commission grants all of the necessary approvals for the proposed facility, such supply shall thereafter be considered as a pre-existing contract under subsection (b) of this Section. The Commission shall in any order approving a proposal under this subsection specify how the utility will recover the prudently incurred costs of investing in, leasing, owning, or operating such generation facility through just and reasonable rates charged to eligible retail customers. Cost recovery for facilities included in the utility's procurement plan pursuant to this subsection shall not be subject to review under or in any way limited by the provisions of Section 16-111(i) of this Act. Nothing in this Section is intended to prohibit a utility from filing for a fuel adjustment clause as is otherwise permitted under Section 9-220 of this Act.

(Source: P.A. 97-325, eff. 8-12-11.)

(220 ILCS 5/16-115)

Sec. 16-115. Certification of alternative retail electric suppliers.

(a) Any alternative retail electric supplier must obtain a certificate of service authority from the Commission in accordance with this Section before serving any retail customer or other user located in this State. An alternative retail electric supplier may request, and the Commission may grant, a certificate of service authority for the entire State or for a specified geographic area of the State.

(b) An alternative retail electric supplier seeking a certificate of service authority shall file with the Commission a verified application containing information showing that the applicant meets the requirements of this Section. The alternative retail electric supplier shall publish notice of its application in the official State newspaper within 10 days following the date of its filing. No later than 45 days after the application is properly filed with the Commission, and such notice is published, the Commission shall issue its order granting or denying the application.

(c) An application for a certificate of service authority shall identify the area or areas in which the applicant intends to offer service and the types of services it intends to offer. Applicants that seek to serve residential or small commercial retail customers within a geographic area that is smaller than an electric utility's service area shall submit evidence demonstrating that the designation of this smaller area does not violate Section 16-115A. An applicant that seeks to serve residential or small commercial retail customers may state in its application for certification any limitations that will be imposed on the number of customers or maximum load to be served.

(d) The Commission shall grant the application for a certificate of service authority if it makes the findings set forth in this subsection based on the verified application and such other information as the applicant may submit:

(1) That the applicant possesses sufficient technical, financial and managerial resources and abilities to provide the service for which it seeks a certificate of service authority. In determining the level of technical, financial and managerial resources and abilities which the applicant must demonstrate, the Commission shall consider (i) the characteristics, including the size and financial sophistication, of the customers that the applicant seeks to serve, and (ii) whether the applicant seeks to provide electric power and energy using property, plant and equipment which it owns, controls or operates;

(2) That the applicant will comply with all applicable federal, State, regional and industry rules, policies, practices and procedures for the use, operation, and maintenance of the safety, integrity and reliability, of the interconnected electric transmission system;

(3) That the applicant will only provide service to retail customers in an electric utility's service area that are eligible to take delivery services under this Act;

(4) That the applicant will comply with such informational or reporting requirements as the Commission may by rule establish and provide the information required by Section 16-112. Any data related to contracts for the purchase and sale of electric power and energy shall be made available for review by the Staff of the Commission on a confidential and proprietary basis and only to the extent and for the purposes which the Commission determines are reasonably necessary in order to carry out the purposes of this Act;

(5) That the applicant will procure renewable energy resources in accordance with Section 16-115D of this Act, and will source electricity from clean coal facilities, as defined in Section 1-10 of the Illinois Power Agency Act, in amounts ~~at least~~ equal to the amounts ~~percentages~~

set forth in subsections (c) and (d) of Section 1-75 of the Illinois Power Agency Act. For purposes of this Section:

(i) (blank) ~~(Blank)~~;

(ii) (blank) ~~(Blank)~~;

(iii) (blank); ~~the required sourcing of electricity generated by clean coal facilities, other than the initial clean coal facility, shall be limited to the amount of electricity that can be procured or sourced at a price at or below the benchmarks approved by the Commission each year in accordance with item (1) of subsection (c) and items (1) and (5) of subsection (d) of Section 1-75 of the Illinois Power Agency Act;~~

(iv) all alternative retail electric suppliers, whether certified before or after the effective date of this amendatory Act of the 97th General Assembly, shall execute a sourcing agreement to source electricity from the initial clean coal facility, on the terms set forth in paragraphs (3) and (4) of subsection (d) of Section 1-75 of the Illinois Power Agency Act, with each reference therein to "utility" being deemed to be a reference to an alternative retail electric supplier, except that ~~in lieu of~~ the requirements in subparagraphs (B)(v), (D)(ii), and (D)(vii) ~~(A)(v), (B)(i), (C)(v), and (C)(vi)~~ of paragraph (3) of that subsection (d), shall not apply; ~~the applicant shall execute one or more of the following:~~

~~(1) if the sourcing agreement is a power purchase agreement, a contract with the initial clean coal facility to purchase in each hour an amount of electricity equal to all clean coal energy made available from the initial clean coal facility during such hour, which the utilities are not required to procure under the terms of subsection (d) of Section 1-75 of the Illinois Power Agency Act, multiplied by a fraction, the numerator of which is the alternative retail electric supplier's retail market sales of electricity (expressed in kilowatthours sold) in the State during the prior calendar month and the denominator of which is the total sales of electricity (expressed in kilowatthours sold) in the State by alternative retail electric suppliers during such prior month that are subject to the requirements of this paragraph (5) of subsection (d) of this Section and subsection (d) of Section 1-75 of the Illinois Power Agency Act plus the total sales of electricity (expressed in kilowatthours sold) by utilities outside of their service areas during such prior month, pursuant to subsection (e) of Section 16-116 of this Act; or~~

~~(2) if the sourcing agreement is a contract for differences, a contract with the initial clean coal facility in each hour with respect to an amount of electricity equal to all clean coal energy made available from the initial clean coal facility during such hour, which the utilities are not required to procure under the terms of subsection (d) of Section 1-75 of the Illinois Power Agency Act, multiplied by a fraction, the numerator of which is the alternative retail electric supplier's retail market sales of electricity (expressed in kilowatthours sold) in the State during the prior calendar month and the denominator of which is the total sales of electricity (expressed in kilowatthours sold) in the State by alternative retail electric suppliers during such prior month that are subject to the requirements of this paragraph (5) of subsection (d) of this Section and subsection (d) of Section 1-75 of the Illinois Power Agency Act plus the total sales of electricity (expressed in kilowatthours sold) by utilities outside of their service areas during such prior month, pursuant to subsection (e) of Section 16-116 of this Act;~~

(v) (blank); ~~if, in any year after the first year of commercial operation, the owner of the clean coal facility fails to demonstrate to the Commission that the initial clean coal facility captured and sequestered at least 50% of the total carbon emissions that the facility would otherwise emit or that sequestration of emissions from prior years has failed, resulting in the release of carbon into the atmosphere, the owner of the facility must offset excess emissions. Any such carbon offsets must be permanent, additional, verifiable, real, located within the State of Illinois, and legally and practicably enforceable. The costs of any such offsets that are not recoverable shall not exceed $15 million in any given year. No costs of any such purchases of carbon offsets may be recovered from an alternative retail electric supplier or its customers. All carbon offsets purchased for this purpose and any carbon emission credits associated with sequestration of carbon from the facility must be permanently retired. The initial clean coal facility shall not forfeit its designation as a clean coal facility if the facility fails to fully comply with the applicable carbon sequestration requirements in any given year, provided the requisite offsets are purchased. However, the Attorney General, on behalf of the People of the State of Illinois, may specifically enforce the facility's sequestration requirement and the other terms of this contract provision. Compliance with the sequestration requirements and offset purchase requirements that apply to the initial clean coal facility shall be reviewed annually by an independent expert retained by the owner of the initial clean coal facility, with the advance written approval of the Attorney General;~~

(vi) the ~~The Commission shall, after notice and hearing, revoke the certification of any alternative retail electric supplier that fails to execute a sourcing agreement with the initial clean coal facility as required by item (5) of subsection (d) of this Section. The~~ sourcing agreements with the ~~this~~ initial clean coal facility shall be subject to approval ~~both approval of the initial clean coal facility~~ by

the Illinois Power Agency pursuant to paragraph (4) of subsection (d) of Section 1-75 of the Illinois Power Agency Act ~~General Assembly and satisfaction of the requirements of item (4) of subsection (d) of Section 1-75 of the Illinois Power Agency Act,~~ and shall be executed within 30 ~~90~~ days after any such approval by the Illinois Power Agency or the issuance of any necessary approval by the Federal Energy Regulatory Commission, whichever is later;

(vii) The Commission shall have jurisdiction over disciplinary proceedings and complaints for violations of this Section. If, upon complaint, the Commission determines an alternative retail electric supplier has failed to execute a sourcing agreement with the initial clean coal facility, then the Commission shall issue notice of the finding to the alternative retail electric supplier. The alternative retail electric supplier shall have 30 days after the receipt of notice to enter into a sourcing agreement. If, after the notice period, the Commission finds an alternative retail electric supplier has failed to comply, then the Commission shall revoke the alternative retail electric supplier's certificate for 6 months ~~General Assembly. The Commission shall not accept an application for certification from an alternative retail electric supplier that has lost certification under this subsection (d), or any corporate affiliate thereof, for at least one year from the date of revocation~~;

(6) With respect to an applicant that seeks to serve residential or small commercial retail customers, that the area to be served by the applicant and any limitations it proposes on the number of customers or maximum amount of load to be served meet the provisions of Section 16-115A, provided, that the Commission can extend the time for considering such a certificate request by up to 90 days, and can schedule hearings on such a request;

(7) That the applicant meets the requirements of subsection (a) of Section 16-128; and

(8) That the applicant will comply with all other applicable laws and regulations.

(d-5) (Blank).

(e) A retail customer that owns a cogeneration or self-generation facility and that seeks certification only to provide electric power and energy from such facility to retail customers at separate locations which customers are both (i) owned by, or a subsidiary or other corporate affiliate of, such applicant and (ii) eligible for delivery services, shall be granted a certificate of service authority upon filing an application and notifying the Commission that it has entered into an agreement with the relevant electric utilities pursuant to Section 16-118. Provided, however, that if the retail customer owning such cogeneration or self-generation facility would not be charged a transition charge due to the exemption provided under subsection (f) of Section 16-108 prior to the certification, and the retail customers at separate locations are taking delivery services in conjunction with purchasing power and energy from the facility, the retail customer on whose premises the facility is located shall not thereafter be required to pay transition charges on the power and energy that such retail customer takes from the facility.

(f) The Commission shall have the authority to promulgate rules and regulations to carry out the provisions of this Section. On or before May 1, 1999, the Commission shall adopt a rule or rules applicable to the certification of those alternative retail electric suppliers that seek to serve only nonresidential retail customers with maximum electrical demands of one megawatt or more which shall provide for (i) expedited and streamlined procedures for certification of such alternative retail electric suppliers and (ii) specific criteria which, if met by any such alternative retail electric supplier, shall constitute the demonstration of technical, financial and managerial resources and abilities to provide service required by subsection (d) (1) of this Section, such as a requirement to post a bond or letter of credit, from a responsible surety or financial institution, of sufficient size for the nature and scope of the services to be provided; demonstration of adequate insurance for the scope and nature of the services to be provided; and experience in providing similar services in other jurisdictions.

(g) In any proceeding initiated by a public utility pursuant to Section 8-406 or Section 8-406.1 of this Act for a certificate of public convenience and necessity to construct and operate any utility plant, equipment, or facility required to provide service to the initial clean coal facility, it shall be conclusively presumed that the public convenience and necessary require the construction of such utility plant, equipment, or facility. In any proceeding initiated by a public utility pursuant to Section 8-503 of this Act for an order directing the addition, extension, or improvement of any utility plant, equipment, facilities, or other property or the erection of any new utility plant, equipment, or facilities to provide service to the initial clean coal facility, it shall be conclusively presumed that such additional, extended, improved or new utility plant, equipment, facility, or other property is necessary and should be added, extended, or erected.

(Source: P.A. 95-130, eff. 1-1-08; 95-1027, eff. 6-1-09; 96-159, eff. 8-10-09.)

(220 ILCS 5/16-115D)

Sec. 16-115D. Renewable portfolio standard for alternative retail electric suppliers and electric utilities operating outside their service territories.

(a) Until May 31, 2012, an ~~An~~ alternative retail electric supplier shall be responsible for procuring cost-effective renewable energy resources as required under item (5) of subsection (d) of Section 16-115 of this Act as outlined herein:

(1) The definition of renewable energy resources contained in Section 1-10 of the Illinois Power Agency Act applies to all renewable energy resources required to be procured by alternative retail electric suppliers.

(2) The quantity of renewable energy resources shall be measured as a percentage of the actual amount of metered electricity (megawatt-hours) delivered by the alternative retail electric supplier to Illinois retail customers during the 12-month period June 1 through May 31, commencing June 1, 2009, and the comparable 12-month period in each year thereafter except as provided in item (6) of this subsection (a).

(3) The quantity of renewable energy resources shall be in amounts at least equal to the annual percentages set forth in item (1) of subsection (c) of Section 1-75 of the Illinois Power Agency Act. At least 60% of the renewable energy resources procured pursuant to items (1) through (3) of subsection (b) of this Section shall come from wind generation and, starting June 1, 2015, at least 6% of the renewable energy resources procured pursuant to items (1) through (3) of subsection (b) of this Section shall come from solar photovoltaics. If, in any given year, an alternative retail electric supplier does not purchase at least these levels of renewable energy resources, then the alternative retail electric supplier shall make alternative compliance payments, as described in subsection (d) of this Section.

(4) The quantity and source of renewable energy resources shall be independently verified through the PJM Environmental Information System Generation Attribute Tracking System (PJM-GATS) or the Midwest Renewable Energy Tracking System (M-RETS), which shall document the location of generation, resource type, month, and year of generation for all qualifying renewable energy resources that an alternative retail electric supplier uses to comply with this Section. No later than June 1, 2009, the Illinois Power Agency shall provide PJM-GATS, M-RETS, and alternative retail electric suppliers with all information necessary to identify resources located in Illinois, within states that adjoin Illinois or within portions of the PJM and MISO footprint in the United States that qualify under the definition of renewable energy resources in Section 1-10 of the Illinois Power Agency Act for compliance with this Section 16-115D. Alternative retail electric suppliers shall not be subject to the requirements in item (3) of subsection (c) of Section 1-75 of the Illinois Power Agency Act.

(5) All renewable energy credits used to comply with this Section shall be permanently retired.

(6) The required procurement of renewable energy resources by an alternative retail electric supplier shall apply to all metered electricity delivered to Illinois retail customers by the alternative retail electric supplier pursuant to contracts executed or extended after March 15, 2009.

(b) Until May 31, 2012, an ~~An~~ alternative retail electric supplier shall comply with the renewable energy portfolio standards by making an alternative compliance payment, as described in subsection (d) of this Section, to cover at least one-half of the alternative retail electric supplier's compliance obligation and any one or combination of the following means to cover the remainder of the alternative retail electric supplier's compliance obligation:

(1) Generating electricity using renewable energy resources identified pursuant to item (4) of subsection (a) of this Section.

(2) Purchasing electricity generated using renewable energy resources identified pursuant to item (4) of subsection (a) of this Section through an energy contract.

(3) Purchasing renewable energy credits from renewable energy resources identified pursuant to item (4) of subsection (a) of this Section.

(4) Making an alternative compliance payment as described in subsection (d) of this Section.

(c) Use of renewable energy credits.

(1) Renewable energy credits that are not used by an alternative retail electric supplier to comply with a renewable portfolio standard in a compliance year may be banked and carried forward up to 2 12-month compliance periods after the compliance period in which the credit was generated for the purpose of complying with a renewable portfolio standard in those 2 subsequent compliance periods. For the 2009-2010 and 2010-2011 compliance periods, an alternative retail electric supplier may use renewable credits generated after December 31, 2008 and before June 1, 2009 to comply with this Section.

(2) An alternative retail electric supplier is responsible for demonstrating that a

renewable energy credit used to comply with a renewable portfolio standard is derived from a renewable energy resource and that the alternative retail electric supplier has not used, traded, sold, or otherwise transferred the credit.

(3) The same renewable energy credit may be used by an alternative retail electric supplier to comply with a federal renewable portfolio standard and a renewable portfolio standard established under this Act. An alternative retail electric supplier that uses a renewable energy credit to comply with a renewable portfolio standard imposed by any other state may not use the same credit to comply with a renewable portfolio standard established under this Act.

(d) Alternative compliance payments.

(1) The Commission shall establish and post on its website, within 5 business days after entering an order approving a procurement plan pursuant to Section 1-75 of the Illinois Power Agency Act, maximum alternative compliance payment rates, expressed on a per kilowatt-hour basis, that will be applicable in the first compliance period following the plan approval. A separate maximum alternative compliance payment rate shall be established for the service territory of each electric utility that is subject to subsection (c) of Section 1-75 of the Illinois Power Agency Act. Each maximum alternative compliance payment rate shall be equal to the maximum allowable annual estimated average net increase due to the costs of the utility's purchase of renewable energy resources included in the amounts paid by eligible retail customers in connection with electric service, as described in item (2) of subsection (c) of Section 1-75 of the Illinois Power Agency Act for the compliance period, and as established in the approved procurement plan. Following each procurement event through which renewable energy resources are purchased for one or more of these utilities for the compliance period, the Commission shall establish and post on its website estimates of the alternative compliance payment rates, expressed on a per kilowatt-hour basis, that shall apply for that compliance period. Posting of the estimates shall occur no later than 10 business days following the procurement event, however, the Commission shall not be required to establish and post such estimates more often than once per calendar month. By July 1 of each year, the Commission shall establish and post on its website the actual alternative compliance payment rates for the preceding compliance year. For compliance years beginning prior to June 1, 2014, each alternative compliance payment rate shall be equal to the total amount of dollars that the utility contracted to spend on renewable resources, excepting the additional incremental cost attributable to solar resources, for the compliance period divided by the forecasted load of eligible retail customers, at the customers' meters, as previously established in the Commission-approved procurement plan for that compliance year. For compliance years commencing on or after June 1, 2014, each alternative compliance payment rate shall be equal to the total amount of dollars that the utility contracted to spend on all renewable resources for the compliance period divided by the forecasted load of eligible retail customers, at the customers' meters, as previously established in the Commission-approved procurement plan for that compliance year. The actual alternative compliance payment rates may not exceed the maximum alternative compliance payment rates established for the compliance period. For purposes of this subsection (d), the term "eligible retail customers" has the same meaning as found in Section 16-111.5 of this Act.

(2) In any given compliance year, an alternative retail electric supplier may elect to use alternative compliance payments to comply with all or a part of the applicable renewable portfolio standard. In the event that an alternative retail electric supplier elects to make alternative compliance payments to comply with all or a part of the applicable renewable portfolio standard, such payments shall be made by September 1, 2010 for the period of June 1, 2009 to May 1, 2010 and by September 1 of each year thereafter for the subsequent compliance period, in the manner and form as determined by the Commission. Any election by an alternative retail electric supplier to use alternative compliance payments is subject to review by the Commission under subsection (e) of this Section.

(3) An alternative retail electric supplier's alternative compliance payments shall be computed separately for each electric utility's service territory within which the alternative retail electric supplier provided retail service during the compliance period, provided that the electric utility was subject to subsection (c) of Section 1-75 of the Illinois Power Agency Act. For each service territory, the alternative retail electric supplier's alternative compliance payment shall be equal to (i) the actual alternative compliance payment rate established in item (1) of this subsection (d), multiplied by (ii) the actual amount of metered electricity delivered by the alternative retail electric supplier to retail customers within the service territory during the compliance period, multiplied by (iii) the result of one minus the ratios of the quantity of renewable energy resources used by the alternative retail electric supplier to comply with the requirements of this Section within the service territory to the product of the percentage of renewable energy resources required under item (3) of subsection (a) of this Section and the actual amount of metered electricity delivered by the alternative retail electric

supplier to retail customers within the service territory during the compliance period.

(4) All alternative compliance payments by alternative retail electric suppliers shall be deposited in the Illinois Power Agency Renewable Energy Resources Fund and used to purchase renewable energy credits, in accordance with Section 1-56 of the Illinois Power Agency Act.

(5) The Commission, in consultation with the Illinois Power Agency, shall establish a process or proceeding to consider the impact of a federal renewable portfolio standard, if enacted, on the operation of the alternative compliance mechanism, which shall include, but not be limited to, developing, to the extent permitted by the applicable federal statute, an appropriate methodology to apportion renewable energy credits retired as a result of alternative compliance payments made in accordance with this Section. The Commission shall commence any such process or proceeding within 35 days after enactment of a federal renewable portfolio standard.

(e) Each alternative retail electric supplier shall, by September 1, 2010 and by September 1 of each year thereafter, prepare and submit to the Commission a report, in a format to be specified by the Commission on or before December 31, 2009, that provides information certifying compliance by the alternative retail electric supplier with this Section, including copies of all PJM-GATS and M-RETS reports, and documentation relating to banking, retiring renewable energy credits, and any other information that the Commission determines necessary to ensure compliance with this Section. An alternative retail electric supplier may file commercially or financially sensitive information or trade secrets with the Commission as provided under the rules of the Commission. To be filed confidentially, the information shall be accompanied by an affidavit that sets forth both the reasons for the confidentiality and a public synopsis of the information.

(f) The Commission may initiate a contested case to review allegations that the alternative retail electric supplier has violated this Section, including an order issued or rule promulgated under this Section. In any such proceeding, the alternative retail electric supplier shall have the burden of proof. If the Commission finds, after notice and hearing, that an alternative retail electric supplier has violated this Section, then the Commission shall issue an order requiring the alternative retail electric supplier to:

(1) immediately comply with this Section; and

(2) if the violation involves a failure to procure the requisite quantity of renewable energy resources or pay the applicable alternative compliance payment by the annual deadline, the Commission shall require the alternative retail electric supplier to double the applicable alternative compliance payment that would otherwise be required to bring the alternative retail electric supplier into compliance with this Section.

If an alternative retail electric supplier fails to comply with the renewable energy resource portfolio requirement in this Section more than once in a 5-year period, then the Commission shall revoke the alternative electric supplier's certificate of service authority. The Commission shall not accept an application for a certificate of service authority from an alternative retail electric supplier that has lost certification under this subsection (f), or any corporate affiliate thereof, for at least one year after the date of revocation.

(g) All of the provisions of this Section apply to electric utilities operating outside their service area except under item (2) of subsection (a) of this Section the quantity of renewable energy resources shall be measured as a percentage of the actual amount of electricity (megawatt-hours) supplied in the State outside of the utility's service territory during the 12-month period June 1 through May 31, commencing June 1, 2009, and the comparable 12-month period in each year thereafter except as provided in item (6) of subsection (a) of this Section.

If any such utility fails to procure the requisite quantity of renewable energy resources by the annual deadline, then the Commission shall require the utility to double the alternative compliance payment that would otherwise be required to bring the utility into compliance with this Section.

If any such utility fails to comply with the renewable energy resource portfolio requirement in this Section more than once in a 5-year period, then the Commission shall order the utility to cease all sales outside of the utility's service territory for a period of at least one year.

(h) The provisions of this Section and the provisions of subsection (d) of Section 16-115 of this Act relating to procurement of renewable energy resources shall not apply to an alternative retail electric supplier that operates a combined heat and power system in this State or that has a corporate affiliate that operates such a combined heat and power system in this State that supplies electricity primarily to or for the benefit of: (i) facilities owned by the supplier, its subsidiary, or other corporate affiliate; (ii) facilities electrically integrated with the electrical system of facilities owned by the supplier, its subsidiary, or other corporate affiliate; or (iii) facilities that are adjacent to the site on which the combined heat and power system is located.

(i) The obligations specified in this Section of alternative retail electric suppliers and electric utilities

operating outside their service territories to procure renewable energy resources, make alternative compliance payments, and file annual reports, and the obligations of the Commission to determine and post alternative compliance payment rates, shall terminate effective May 31, 2012, provided that alternative retail electric suppliers and electric utilities operating outside their service territories shall be obligated to make all alternative compliance payments that they were obligated to pay for periods through and including May 31, 2012, but were not paid as of that date and to file all required reports for periods prior to June 1, 2012. The Commission shall continue to enforce the payment of unpaid alternative compliance payments after May 31, 2012 in accordance with subsections (f) and (g) of this Section. All alternative compliance payments made after May 31, 2012 shall be deposited in the Illinois Power Agency Renewable Energy Resources Fund and used to purchase renewable energy credits, in accordance with Section 1-56 of the Illinois Power Agency Act.

(Source: P.A. 96-33, eff. 7-10-09; 96-159, eff. 8-10-09; 96-1437, eff. 8-17-10.)

(220 ILCS 5/16-116)

Sec. 16-116. Commission oversight of electric utilities serving retail customers outside their service areas or providing competitive, non-tariffed services.

(a) An electric utility that has a tariff on file for delivery services may, without regard to any otherwise applicable tariffs on file, provide electric power and energy to one or more retail customers located outside its service area, but only to the extent (i) such retail customer (A) is eligible for delivery services under any delivery services tariff filed with the Commission by the electric utility in whose service area the retail customer is located and (B) has either elected to take such delivery services or has paid or contracted to pay the charges specified in Sections 16-108 and 16-114, or (ii) if such retail customer is served by a municipal system or electric cooperative, the customer is eligible for delivery services under the terms and conditions for such service established by the municipal system or electric cooperative serving that customer.

(b) An electric utility may offer any competitive service to any customer or group of customers without filing contracts with or seeking approval of the Commission, notwithstanding any rule or regulation that would require such approval. The Commission shall not increase or decrease the prices, and may not alter or add to the terms and conditions for the utility's competitive services, from those agreed to by the electric utility and the customer or customers. Non-tariffed, competitive services shall not be subject to the provisions of the Electric Supplier Act or to Articles V, VII, VIII or IX of the Act, except to the extent that any provisions of such Articles are made applicable to alternative retail electric suppliers pursuant to Sections 16-115 and 16-115A, but shall be subject to the provisions of subsections (b) through (g) of Section 16-115A, and Section 16-115B to the same extent such provisions are applicable to the services provided by alternative retail electric suppliers.

(c) Electric utilities serving retail customers outside their service areas shall be subject to the requirements of paragraph (5) of subsection (d) of Section 16-115 of the Public Utilities Act~~, except that the numerators referred to in that subsection (d) shall be the utility's retail market sales of electricity (expressed in kilowatthours sold) in the State outside of the utility's service territory in the prior month~~.

(Source: P.A. 95-1027, eff. 6-1-09.)

Section 900. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.".

The motion prevailed.

And the amendment was adopted and ordered printed.

There being no further amendments, the foregoing Amendment No. 1 was ordered engrossed, and the bill, as amended, was ordered to a third reading.

On motion of Senator Cullerton, **Senate Bill No. 965** was recalled from the order of third reading to the order of second reading.

Senator Cullerton offered the following amendment and moved its adoption:

AMENDMENT NO. 1 TO SENATE BILL 965

AMENDMENT NO. 1. Amend Senate Bill 965 by replacing everything after the enacting clause with the following:

"Section 5. The Illinois Vehicle Code is amended by changing Section 6-306.5, 11-208, 11-208.3, 11-208.6, 11-612, and 12-610.5 and by adding Sections 1-105.1 and 11-208.8 as follows:

(625 ILCS 5/1-105.1 new)

Sec. 1-105.1. Automated speed enforcement system violation. A violation described in Section 11-208.8 of this Code.

(625 ILCS 5/6-306.5) (from Ch. 95 1/2, par. 6-306.5)

Sec. 6-306.5. Failure to pay fine or penalty for standing, parking, compliance, automated speed enforcement system, or automated traffic law violations; suspension of driving privileges.

(a) Upon receipt of a certified report, as prescribed by subsection (c) of this Section, from any municipality or county stating that the owner of a registered vehicle: (1) has failed to pay any fine or penalty due and owing as a result of 10 or more violations of a municipality's or county's vehicular standing, parking, or compliance regulations established by ordinance pursuant to Section 11-208.3 of this Code, (2) has failed to pay any fine or penalty due and owing as a result of 5 offenses for automated speed enforcement system violations or automated traffic violations as defined in Sections ~~Section~~ 11-208.6 , 11-208.8, or 11-1201.1, or combination thereof, or (3) is more than 14 days in default of a payment plan pursuant to which a suspension had been terminated under subsection (c) of this Section, the Secretary of State shall suspend the driving privileges of such person in accordance with the procedures set forth in this Section. The Secretary shall also suspend the driving privileges of an owner of a registered vehicle upon receipt of a certified report, as prescribed by subsection (f) of this Section, from any municipality or county stating that such person has failed to satisfy any fines or penalties imposed by final judgments for 5 or more automated speed enforcement system or automated traffic law violations, or combination thereof, or 10 or more violations of local standing, parking, or compliance regulations after exhaustion of judicial review procedures.

(b) Following receipt of the certified report of the municipality or county as specified in this Section, the Secretary of State shall notify the person whose name appears on the certified report that the person's drivers license will be suspended at the end of a specified period of time unless the Secretary of State is presented with a notice from the municipality or county certifying that the fine or penalty due and owing the municipality or county has been paid or that inclusion of that person's name on the certified report was in error. The Secretary's notice shall state in substance the information contained in the municipality's or county's certified report to the Secretary, and shall be effective as specified by subsection (c) of Section 6-211 of this Code.

(c) The report of the appropriate municipal or county official notifying the Secretary of State of unpaid fines or penalties pursuant to this Section shall be certified and shall contain the following:

(1) The name, last known address as recorded with the Secretary of State, as provided by the lessor of the cited vehicle at the time of lease, or as recorded in a United States Post Office approved database if any notice sent under Section 11-208.3 of this Code is returned as undeliverable, and drivers license number of the person who failed to pay the fine or penalty or who has defaulted in a payment plan and the registration number of any vehicle known to be registered to such person in this State.

(2) The name of the municipality or county making the report pursuant to this Section.

(3) A statement that the municipality or county sent a notice of impending drivers license suspension as prescribed by ordinance enacted pursuant to Section 11-208.3 of this Code or a notice of default in a payment plan, to the person named in the report at the address recorded with the Secretary of State or at the last address known to the lessor of the cited vehicle at the time of lease or, if any notice sent under Section 11-208.3 of this Code is returned as undeliverable, at the last known address recorded in a United States Post Office approved database; the date on which such notice was sent; and the address to which such notice was sent. In a municipality or county with a population of 1,000,000 or more, the report shall also include a statement that the alleged violator's State vehicle registration number and vehicle make, if specified on the automated speed enforcement system violation or automated traffic law violation notice, are correct as they appear on the citations.

(4) A unique identifying reference number for each request of suspension sent whenever a person has failed to pay the fine or penalty or has defaulted on a payment plan.

(d) Any municipality or county making a certified report to the Secretary of State pursuant to this Section shall notify the Secretary of State, in a form prescribed by the Secretary, whenever a person named in the certified report has paid the previously reported fine or penalty, whenever a person named in the certified report has entered into a payment plan pursuant to which the municipality or county has agreed to terminate the suspension, or whenever the municipality or county determines that the original report was in error. A certified copy of such notification shall also be given upon request and at no additional charge to the person named therein. Upon receipt of the municipality's or county's notification or presentation of a certified copy of such notification, the Secretary of State shall terminate the suspension.

(e) Any municipality or county making a certified report to the Secretary of State pursuant to this Section shall also by ordinance establish procedures for persons to challenge the accuracy of the certified report. The ordinance shall also state the grounds for such a challenge, which may be limited to (1) the person not having been the owner or lessee of the vehicle or vehicles receiving 10 or more standing, parking, or compliance violation notices or a combination of 5 or more automated speed enforcement system or automated traffic law violations on the date or dates such notices were issued; and (2) the person having already paid the fine or penalty for the 10 or more standing, parking, or compliance violations or combination of 5 or more automated speed enforcement system or automated traffic law violations indicated on the certified report.

(f) Any municipality or county, other than a municipality or county establishing vehicular standing, parking, and compliance regulations pursuant to Section 11-208.3, automated speed enforcement system regulations under Section 11-208.8, or automated traffic law regulations under Section 11-208.6 or 11-1201.1, may also cause a suspension of a person's drivers license pursuant to this Section. Such municipality or county may invoke this sanction by making a certified report to the Secretary of State upon a person's failure to satisfy any fine or penalty imposed by final judgment for 10 or more violations of local standing, parking, or compliance regulations or a combination of 5 or more automated speed enforcement system or automated traffic law violations after exhaustion of judicial review procedures, but only if:

(1) the municipality or county complies with the provisions of this Section in all respects except in regard to enacting an ordinance pursuant to Section 11-208.3;

(2) the municipality or county has sent a notice of impending drivers license suspension as prescribed by an ordinance enacted pursuant to subsection (g) of this Section; and

(3) in municipalities or counties with a population of 1,000,000 or more, the municipality or county has verified that the alleged violator's State vehicle registration number and vehicle make are correct as they appear on the citations.

(g) Any municipality or county, other than a municipality or county establishing standing, parking, and compliance regulations pursuant to Section 11-208.3, automated speed enforcement system regulations under Section 11-208.8, or automated traffic law regulations under Section 11-208.6 or 11-1201.1, may provide by ordinance for the sending of a notice of impending drivers license suspension to the person who has failed to satisfy any fine or penalty imposed by final judgment for 10 or more violations of local standing, parking, or compliance regulations or a combination of 5 or more automated speed enforcement system or automated traffic law violations after exhaustion of judicial review procedures. An ordinance so providing shall specify that the notice sent to the person liable for any fine or penalty shall state that failure to pay the fine or penalty owing within 45 days of the notice's date will result in the municipality or county notifying the Secretary of State that the person's drivers license is eligible for suspension pursuant to this Section. The notice of impending drivers license suspension shall be sent by first class United States mail, postage prepaid, to the address recorded with the Secretary of State or at the last address known to the lessor of the cited vehicle at the time of lease or, if any notice sent under Section 11-208.3 of this Code is returned as undeliverable, to the last known address recorded in a United States Post Office approved database.

(h) An administrative hearing to contest an impending suspension or a suspension made pursuant to this Section may be had upon filing a written request with the Secretary of State. The filing fee for this hearing shall be $20, to be paid at the time the request is made. A municipality or county which files a certified report with the Secretary of State pursuant to this Section shall reimburse the Secretary for all reasonable costs incurred by the Secretary as a result of the filing of the report, including but not limited to the costs of providing the notice required pursuant to subsection (b) and the costs incurred by the Secretary in any hearing conducted with respect to the report pursuant to this subsection and any appeal from such a hearing.

(i) The provisions of this Section shall apply on and after January 1, 1988.

(j) For purposes of this Section, the term "compliance violation" is defined as in Section 11-208.3.

(Source: P.A. 96-478, eff. 1-1-10; 96-1184, eff. 7-22-10; 96-1386, eff. 7-29-10; 97-333, eff. 8-12-11.)

(625 ILCS 5/11-208) (from Ch. 95 1/2, par. 11-208)

Sec. 11-208. Powers of local authorities.

(a) The provisions of this Code shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

1. Regulating the standing or parking of vehicles, except as limited by Sections 11-1306 and 11-1307 of this Act;
2. Regulating traffic by means of police officers or traffic control signals;
3. Regulating or prohibiting processions or assemblages on the highways;

4. Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction;

5. Regulating the speed of vehicles in public parks subject to the limitations set forth in Section 11-604;

6. Designating any highway as a through highway, as authorized in Section 11-302, and requiring that all vehicles stop before entering or crossing the same or designating any intersection as a stop intersection or a yield right-of-way intersection and requiring all vehicles to stop or yield the right-of-way at one or more entrances to such intersections;

7. Restricting the use of highways as authorized in Chapter 15;

8. Regulating the operation of bicycles and requiring the registration and licensing of same, including the requirement of a registration fee;

9. Regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;

10. Altering the speed limits as authorized in Section 11-604;

11. Prohibiting U-turns;

12. Prohibiting pedestrian crossings at other than designated and marked crosswalks or at intersections;

13. Prohibiting parking during snow removal operation;

14. Imposing fines in accordance with Section 11-1301.3 as penalties for use of any parking place reserved for persons with disabilities, as defined by Section 1-159.1, or disabled veterans by any person using a motor vehicle not bearing registration plates specified in Section 11-1301.1 or a special decal or device as defined in Section 11-1301.2 as evidence that the vehicle is operated by or for a person with disabilities or disabled veteran;

15. Adopting such other traffic regulations as are specifically authorized by this Code; or

16. Enforcing the provisions of subsection (f) of Section 3-413 of this Code or a similar local ordinance.

(b) No ordinance or regulation enacted under subsections 1, 4, 5, 6, 7, 9, 10, 11 or 13 of paragraph (a) shall be effective until signs giving reasonable notice of such local traffic regulations are posted.

(c) The provisions of this Code shall not prevent any municipality having a population of 500,000 or more inhabitants from prohibiting any person from driving or operating any motor vehicle upon the roadways of such municipality with headlamps on high beam or bright.

(d) The provisions of this Code shall not be deemed to prevent local authorities within the reasonable exercise of their police power from prohibiting, on private property, the unauthorized use of parking spaces reserved for persons with disabilities.

(e) No unit of local government, including a home rule unit, may enact or enforce an ordinance that applies only to motorcycles if the principal purpose for that ordinance is to restrict the access of motorcycles to any highway or portion of a highway for which federal or State funds have been used for the planning, design, construction, or maintenance of that highway. No unit of local government, including a home rule unit, may enact an ordinance requiring motorcycle users to wear protective headgear. Nothing in this subsection (e) shall affect the authority of a unit of local government to regulate motorcycles for traffic control purposes or in accordance with Section 12-602 of this Code. No unit of local government, including a home rule unit, may regulate motorcycles in a manner inconsistent with this Code. This subsection (e) is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State.

(f) A municipality or county designated in Section 11-208.6 may enact an ordinance providing for an automated traffic law enforcement system to enforce violations of this Code or a similar provision of a local ordinance and imposing liability on a registered owner or lessee of a vehicle used in such a violation.

(g) A municipality or county, as provided in Section 11-1201.1, may enact an ordinance providing for an automated traffic law enforcement system to enforce violations of Section 11-1201 of this Code or a similar provision of a local ordinance and imposing liability on a registered owner of a vehicle used in such a violation.

(h) A municipality or county designated in Section 11-208.8 may enact an ordinance providing for an automated speed enforcement system to enforce violations of Article VI of Chapter 11 of this Code or a similar provision of a local ordinance.

(Source: P.A. 96-478, eff. 1-1-10; 96-1256, eff. 1-1-11; 97-29, eff. 1-1-12.)

(625 ILCS 5/11-208.3) (from Ch. 95 1/2, par. 11-208.3)

Sec. 11-208.3. Administrative adjudication of violations of traffic regulations concerning the standing, parking, or condition of vehicles, ~~and~~ automated traffic law violations , and automated speed enforcement system violations.

(a) Any municipality or county may provide by ordinance for a system of administrative adjudication of vehicular standing and parking violations and vehicle compliance violations as described in this subsection, ~~and~~ automated traffic law violations as defined in Section 11-208.6 or 11-1201.1 , and automated speed enforcement system violations as defined in Section 11-208.8. The administrative system shall have as its purpose the fair and efficient enforcement of municipal or county regulations through the administrative adjudication of automated speed enforcement system or automated traffic law violations and violations of municipal or county ordinances regulating the standing and parking of vehicles, the condition and use of vehicle equipment, and the display of municipal or county wheel tax licenses within the municipality's or county's borders. The administrative system shall only have authority to adjudicate civil offenses carrying fines not in excess of $500 or requiring the completion of a traffic education program, or both, that occur after the effective date of the ordinance adopting such a system under this Section. For purposes of this Section, "compliance violation" means a violation of a municipal or county regulation governing the condition or use of equipment on a vehicle or governing the display of a municipal or county wheel tax license.

(b) Any ordinance establishing a system of administrative adjudication under this Section shall provide for:

(1) A traffic compliance administrator authorized to adopt, distribute and process parking, compliance, and automated speed enforcement system or automated traffic law violation notices and other notices required by this Section, collect money paid as fines and penalties for violation of parking and compliance ordinances and automated speed enforcement system or automated traffic law violations, and operate an administrative adjudication system. The traffic compliance administrator also may make a certified report to the Secretary of State under Section 6-306.5.

(2) A parking, standing, compliance, automated speed enforcement system, or automated traffic law violation notice that shall specify the date, time, and place of violation of a parking, standing, compliance, automated speed enforcement system, or automated traffic law regulation; the particular regulation violated; any requirement to complete a traffic education program; the fine and any penalty that may be assessed for late payment or failure to complete a required traffic education program, or both, when so provided by ordinance; the vehicle make and state registration number; and the identification number of the person issuing the notice. With regard to automated speed enforcement system or automated traffic law violations, vehicle make shall be specified on the automated speed enforcement system or automated traffic law violation notice if the make is available and readily discernible. With regard to municipalities or counties with a population of 1 million or more, it shall be grounds for dismissal of a parking violation if the state registration number or vehicle make specified is incorrect. The violation notice shall state that the completion of any required traffic education program, the payment of any indicated fine, and the payment of any applicable penalty for late payment or failure to complete a required traffic education program, or both, shall operate as a final disposition of the violation. The notice also shall contain information as to the availability of a hearing in which the violation may be contested on its merits. The violation notice shall specify the time and manner in which a hearing may be had.

(3) Service of the parking, standing, or compliance violation notice by affixing the original or a facsimile of the notice to an unlawfully parked vehicle or by handing the notice to the operator of a vehicle if he or she is present and service of an automated speed enforcement system or automated traffic law violation notice by mail to the address of the registered owner or lessee of the cited vehicle as recorded with the Secretary of State or the lessor of the motor vehicle within 30 days after the Secretary of State or the lessor of the motor vehicle notifies the municipality or county of the identity of the owner or lessee of the vehicle, but not later than 90 days after the violation, except that in the case of a lessee of a motor vehicle, service of an automated traffic law violation notice may occur no later than 210 days after the violation. A person authorized by ordinance to issue and serve parking, standing, and compliance violation notices shall certify as to the correctness of the facts entered on the violation notice by signing his or her name to the notice at the time of service or in the case of a notice produced by a computerized device, by signing a single certificate to be kept by the traffic compliance administrator attesting to the correctness of all notices produced by the device while it was under his or her control. In the case of an automated traffic law violation, the ordinance shall require a determination by a technician employed or contracted by the municipality or county

that, based on inspection of recorded images, the motor vehicle was being operated in violation of Section 11-208.6 or 11-1201.1 or a local ordinance. If the technician determines that the vehicle entered the intersection as part of a funeral procession or in order to yield the right-of-way to an emergency vehicle, a citation shall not be issued. In municipalities with a population of less than 1,000,000 inhabitants and counties with a population of less than 3,000,000 inhabitants, the automated traffic law ordinance shall require that all determinations by a technician that a motor vehicle was being operated in violation of Section 11-208.6 or 11-1201.1 or a local ordinance must be reviewed and approved by a law enforcement officer or retired law enforcement officer of the municipality or county issuing the violation. In municipalities with a population of 1,000,000 or more inhabitants and counties with a population of 3,000,000 or more inhabitants, the automated traffic law ordinance shall require that all determinations by a technician that a motor vehicle was being operated in violation of Section 11-208.6 or 11-1201.1 or a local ordinance must be reviewed and approved by a law enforcement officer or retired law enforcement officer of the municipality or county issuing the violation or by an additional fully-trained reviewing technician who is not employed by the contractor who employs the technician who made the initial determination. In the case of an automated speed enforcement system violation, the ordinance shall require a determination by a technician employed by the municipality, based upon an inspection of recorded images, video or other documentation, including documentation of the speed limit and automated speed enforcement signage, and documentation of the inspection, calibration, and certification of the speed equipment, that the vehicle was being operated in violation of Article VI of Chapter 11 of this Code or a similar local ordinance. If the technician determines that the vehicle speed was not determined by a calibrated, certified speed equipment device based upon the speed equipment documentation, or if the vehicle was an emergency vehicle, a citation may not be issued. The automated speed enforcement ordinance shall require that all determinations by a technician that a violation occurred be reviewed and approved by a law enforcement officer or retired law enforcement officer of the municipality issuing the violation or by an additional fully trained reviewing technician who is not employed by the contractor who employs the technician who made the initial determination. Routine and independent calibration of the speeds produced by automated speed enforcement systems and equipment shall be conducted by a qualified technician. Speeds produced by an automated speed enforcement system shall be compared with speeds produced by lidar or other independent equipment. Qualified technicians shall test radar or lidar equipment no less frequently than once every 60 days, and shall test loop based equipment no less frequently than once a year. Documentation of the calibration results, including the equipment tested, test date, technician performing the test, and test results, shall be maintained and available for use in the determination of an automated speed enforcement system violation and issuance of a citation. The technician performing the calibration and testing of the automated speed enforcement equipment shall be trained and certified in the use of equipment for speed enforcement purposes. Training on the speed enforcement equipment may be conducted by law enforcement, civilian, or manufacturer's personnel and shall be equivalent to the equipment use and operations training included in the Speed Measuring Device Operator Program developed by the National Highway Traffic Safety Administration (NHTSA). The technician who performs the work shall keep accurate records on each piece of equipment the technician calibrates and tests. As used in this paragraph, "fully-trained reviewing technician" means a person who has received at least 40 hours of supervised training in subjects which shall include image inspection and interpretation, the elements necessary to prove a violation, license plate identification, and traffic safety and management. In all municipalities and counties, the automated speed enforcement system or automated traffic law ordinance shall require that no additional fee shall be charged to the alleged violator for exercising his or her right to an administrative hearing, and persons shall be given at least 25 days following an administrative hearing to pay any civil penalty imposed by a finding that Section 11-208.6, 11-208.8, or 11-1201.1 or a similar local ordinance has been violated. The original or a facsimile of the violation notice or, in the case of a notice produced by a computerized device, a printed record generated by the device showing the facts entered on the notice, shall be retained by the traffic compliance administrator, and shall be a record kept in the ordinary course of business. A parking, standing, compliance, automated speed enforcement system, or automated traffic law violation notice issued, signed and served in accordance with this Section, a copy of the notice, or the computer generated record shall be prima facie correct and shall be prima facie evidence of the correctness of the facts shown on the notice. The notice, copy, or computer generated record shall be admissible in any subsequent administrative or legal proceedings.

(4) An opportunity for a hearing for the registered owner of the vehicle cited in the parking, standing, compliance, automated speed enforcement system, or automated traffic law

violation notice in which the owner may contest the merits of the alleged violation, and during which formal or technical rules of evidence shall not apply; provided, however, that under Section 11-1306 of this Code the lessee of a vehicle cited in the violation notice likewise shall be provided an opportunity for a hearing of the same kind afforded the registered owner. The hearings shall be recorded, and the person conducting the hearing on behalf of the traffic compliance administrator shall be empowered to administer oaths and to secure by subpoena both the attendance and testimony of witnesses and the production of relevant books and papers. Persons appearing at a hearing under this Section may be represented by counsel at their expense. The ordinance may also provide for internal administrative review following the decision of the hearing officer.

(5) Service of additional notices, sent by first class United States mail, postage prepaid, to the address of the registered owner of the cited vehicle as recorded with the Secretary of State or, if any notice to that address is returned as undeliverable, to the last known address recorded in a United States Post Office approved database, or, under Section 11-1306 or subsection (p) of Section 11-208.6, or subsection (p) of Section 11-208.8 of this Code, to the lessee of the cited vehicle at the last address known to the lessor of the cited vehicle at the time of lease or, if any notice to that address is returned as undeliverable, to the last known address recorded in a United States Post Office approved database. The service shall be deemed complete as of the date of deposit in the United States mail. The notices shall be in the following sequence and shall include but not be limited to the information specified herein:

(i) A second notice of parking, standing, or compliance violation. This notice shall specify the date and location of the violation cited in the parking, standing, or compliance violation notice, the particular regulation violated, the vehicle make and state registration number, any requirement to complete a traffic education program, the fine and any penalty that may be assessed for late payment or failure to complete a traffic education program, or both, when so provided by ordinance, the availability of a hearing in which the violation may be contested on its merits, and the time and manner in which the hearing may be had. The notice of violation shall also state that failure to complete a required traffic education program, to pay the indicated fine and any applicable penalty, or to appear at a hearing on the merits in the time and manner specified, will result in a final determination of violation liability for the cited violation in the amount of the fine or penalty indicated, and that, upon the occurrence of a final determination of violation liability for the failure, and the exhaustion of, or failure to exhaust, available administrative or judicial procedures for review, any incomplete traffic education program or any unpaid fine or penalty, or both, will constitute a debt due and owing the municipality or county.

(ii) A notice of final determination of parking, standing, compliance, automated speed enforcement system, or automated traffic law violation liability. This notice shall be sent following a final determination of parking, standing, compliance, automated speed enforcement system, or automated traffic law violation liability and the conclusion of judicial review procedures taken under this Section. The notice shall state that the incomplete traffic education program or the unpaid fine or penalty, or both, is a debt due and owing the municipality or county. The notice shall contain warnings that failure to complete any required traffic education program or to pay any fine or penalty due and owing the municipality or county, or both, within the time specified may result in the municipality's or county's filing of a petition in the Circuit Court to have the incomplete traffic education program or unpaid fine or penalty, or both, rendered a judgment as provided by this Section, or may result in suspension of the person's drivers license for failure to complete a traffic education program or to pay fines or penalties, or both, for 10 or more parking violations under Section 6-306.5, or a combination of 5 or more automated traffic law violations under Section 11-208.6 or automated speed enforcement system violations under Section 11-208.8.

(6) A notice of impending drivers license suspension. This notice shall be sent to the person liable for failure to complete a required traffic education program or to pay any fine or penalty that remains due and owing, or both, on 10 or more parking violations or combination of 5 or more unpaid automated speed enforcement system or automated traffic law violations. The notice shall state that failure to complete a required traffic education program or to pay the fine or penalty owing, or both, within 45 days of the notice's date will result in the municipality or county notifying the Secretary of State that the person is eligible for initiation of suspension proceedings under Section 6-306.5 of this Code. The notice shall also state that the person may obtain a photostatic copy of an original ticket imposing a fine or penalty by sending a self addressed, stamped envelope to the municipality or county along with a request for the photostatic copy. The notice of impending drivers license suspension shall be sent by first class United States mail, postage prepaid, to the address

recorded with the Secretary of State or, if any notice to that address is returned as undeliverable, to the last known address recorded in a United States Post Office approved database.

(7) Final determinations of violation liability. A final determination of violation liability shall occur following failure to complete the required traffic education program or to pay the fine or penalty, or both, after a hearing officer's determination of violation liability and the exhaustion of or failure to exhaust any administrative review procedures provided by ordinance. Where a person fails to appear at a hearing to contest the alleged violation in the time and manner specified in a prior mailed notice, the hearing officer's determination of violation liability shall become final: (A) upon denial of a timely petition to set aside that determination, or (B) upon expiration of the period for filing the petition without a filing having been made.

(8) A petition to set aside a determination of parking, standing, compliance, automated speed enforcement system, or automated traffic law violation liability that may be filed by a person owing an unpaid fine or penalty. A petition to set aside a determination of liability may also be filed by a person required to complete a traffic education program. The petition shall be filed with and ruled upon by the traffic compliance administrator in the manner and within the time specified by ordinance. The grounds for the petition may be limited to: (A) the person not having been the owner or lessee of the cited vehicle on the date the violation notice was issued, (B) the person having already completed the required traffic education program or paid the fine or penalty, or both, for the violation in question, and (C) excusable failure to appear at or request a new date for a hearing. With regard to municipalities or counties with a population of 1 million or more, it shall be grounds for dismissal of a parking violation if the state registration number, or vehicle make if specified, is incorrect. After the determination of parking, standing, compliance, automated speed enforcement system, or automated traffic law violation liability has been set aside upon a showing of just cause, the registered owner shall be provided with a hearing on the merits for that violation.

(9) Procedures for non-residents. Procedures by which persons who are not residents of the municipality or county may contest the merits of the alleged violation without attending a hearing.

(10) A schedule of civil fines for violations of vehicular standing, parking, compliance, automated speed enforcement system, or automated traffic law regulations enacted by ordinance pursuant to this Section, and a schedule of penalties for late payment of the fines or failure to complete required traffic education programs, provided, however, that the total amount of the fine and penalty for any one violation shall not exceed $250, except as provided in subsection (c) of Section 11-1301.3 of this Code.

(11) Other provisions as are necessary and proper to carry into effect the powers granted and purposes stated in this Section.

(c) Any municipality or county establishing vehicular standing, parking, compliance, automated speed enforcement system, or automated traffic law regulations under this Section may also provide by ordinance for a program of vehicle immobilization for the purpose of facilitating enforcement of those regulations. The program of vehicle immobilization shall provide for immobilizing any eligible vehicle upon the public way by presence of a restraint in a manner to prevent operation of the vehicle. Any ordinance establishing a program of vehicle immobilization under this Section shall provide:

(1) Criteria for the designation of vehicles eligible for immobilization. A vehicle shall be eligible for immobilization when the registered owner of the vehicle has accumulated the number of incomplete traffic education programs or unpaid final determinations of parking, standing, compliance, automated speed enforcement system, or automated traffic law violation liability, or both, as determined by ordinance.

(2) A notice of impending vehicle immobilization and a right to a hearing to challenge the validity of the notice by disproving liability for the incomplete traffic education programs or unpaid final determinations of parking, standing, compliance, automated speed enforcement system, or automated traffic law violation liability, or both, listed on the notice.

(3) The right to a prompt hearing after a vehicle has been immobilized or subsequently towed without the completion of the required traffic education program or payment of the outstanding fines and penalties on parking, standing, compliance, automated speed enforcement system, or automated traffic law violations, or both, for which final determinations have been issued. An order issued after the hearing is a final administrative decision within the meaning of Section 3-101 of the Code of Civil Procedure.

(4) A post immobilization and post-towing notice advising the registered owner of the vehicle of the right to a hearing to challenge the validity of the impoundment.

(d) Judicial review of final determinations of parking, standing, compliance, automated speed

enforcement system, or automated traffic law violations and final administrative decisions issued after hearings regarding vehicle immobilization and impoundment made under this Section shall be subject to the provisions of the Administrative Review Law.

(e) Any fine, penalty, incomplete traffic education program, or part of any fine or any penalty remaining unpaid after the exhaustion of, or the failure to exhaust, administrative remedies created under this Section and the conclusion of any judicial review procedures shall be a debt due and owing the municipality or county and, as such, may be collected in accordance with applicable law. Completion of any required traffic education program and payment in full of any fine or penalty resulting from a standing, parking, compliance, automated speed enforcement system, or automated traffic law violation shall constitute a final disposition of that violation.

(f) After the expiration of the period within which judicial review may be sought for a final determination of parking, standing, compliance, automated speed enforcement system, or automated traffic law violation, the municipality or county may commence a proceeding in the Circuit Court for purposes of obtaining a judgment on the final determination of violation. Nothing in this Section shall prevent a municipality or county from consolidating multiple final determinations of parking, standing, compliance, automated speed enforcement system, or automated traffic law violations against a person in a proceeding. Upon commencement of the action, the municipality or county shall file a certified copy or record of the final determination of parking, standing, compliance, automated speed enforcement system, or automated traffic law violation, which shall be accompanied by a certification that recites facts sufficient to show that the final determination of violation was issued in accordance with this Section and the applicable municipal or county ordinance. Service of the summons and a copy of the petition may be by any method provided by Section 2-203 of the Code of Civil Procedure or by certified mail, return receipt requested, provided that the total amount of fines and penalties for final determinations of parking, standing, compliance, automated speed enforcement system, or automated traffic law violations does not exceed $2500. If the court is satisfied that the final determination of parking, standing, compliance, automated speed enforcement system, or automated traffic law violation was entered in accordance with the requirements of this Section and the applicable municipal or county ordinance, and that the registered owner or the lessee, as the case may be, had an opportunity for an administrative hearing and for judicial review as provided in this Section, the court shall render judgment in favor of the municipality or county and against the registered owner or the lessee for the amount indicated in the final determination of parking, standing, compliance, automated speed enforcement system, or automated traffic law violation, plus costs. The judgment shall have the same effect and may be enforced in the same manner as other judgments for the recovery of money.

(g) The fee for participating in a traffic education program under this Section shall not exceed $25.

A low-income individual required to complete a traffic education program under this Section who provides proof of eligibility for the federal earned income tax credit under Section 32 of the Internal Revenue Code or the Illinois earned income tax credit under Section 212 of the Illinois Income Tax Act shall not be required to pay any fee for participating in a required traffic education program.

(Source: P.A. 96-288, eff. 8-11-09; 96-478, eff. 1-1-10; 96-1000, eff. 7-2-10; 96-1016, eff. 1-1-11; 96-1386, eff. 7-29-10; 97-29, eff. 1-1-12; 97-333, eff. 8-12-11.)".

(625 ILCS 5/11-208.6)

Sec. 11-208.6. Automated traffic law enforcement system.

(a) As used in this Section, "automated traffic law enforcement system" means a device with one or more motor vehicle sensors working in conjunction with a red light signal to produce recorded images of motor vehicles entering an intersection against a red signal indication in violation of Section 11-306 of this Code or a similar provision of a local ordinance.

An automated traffic law enforcement system is a system, in a municipality or county operated by a governmental agency, that produces a recorded image of a motor vehicle's violation of a provision of this Code or a local ordinance and is designed to obtain a clear recorded image of the vehicle and the vehicle's license plate. The recorded image must also display the time, date, and location of the violation.

(b) As used in this Section, "recorded images" means images recorded by an automated traffic law enforcement system on:

(1) 2 or more photographs;

(2) 2 or more microphotographs;

(3) 2 or more electronic images; or

(4) a video recording showing the motor vehicle and, on at least one image or portion of the recording, clearly identifying the registration plate number of the motor vehicle.

(b-5) A municipality or county that produces a recorded image of a motor vehicle's violation of a provision of this Code or a local ordinance must make the recorded images of a violation accessible to

the alleged violator by providing the alleged violator with a website address, accessible through the Internet.

(c) Except as provided under Section 11-208.8 of this Code, a ~~A~~ county or municipality, including a home rule county or municipality, may not use an automated traffic law enforcement system to provide recorded images of a motor vehicle for the purpose of recording its speed. Except as provided under Section 11-208.8 of this Code, the ~~The~~ regulation of the use of automated traffic law enforcement systems to record vehicle speeds is an exclusive power and function of the State. This subsection (c) is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

(c-5) A county or municipality, including a home rule county or municipality, may not use an automated traffic law enforcement system to issue violations in instances where the motor vehicle comes to a complete stop and does not enter the intersection, as defined by Section 1-132 of this Code, during the cycle of the red signal indication unless one or more pedestrians or bicyclists are present, even if the motor vehicle stops at a point past a stop line or crosswalk where a driver is required to stop, as specified in subsection (c) of Section 11-306 of this Code or a similar provision of a local ordinance.

(d) For each violation of a provision of this Code or a local ordinance recorded by an automatic traffic law enforcement system, the county or municipality having jurisdiction shall issue a written notice of the violation to the registered owner of the vehicle as the alleged violator. The notice shall be delivered to the registered owner of the vehicle, by mail, within 30 days after the Secretary of State notifies the municipality or county of the identity of the owner of the vehicle, but in no event later than 90 days after the violation.

The notice shall include:

(1) the name and address of the registered owner of the vehicle;

(2) the registration number of the motor vehicle involved in the violation;

(3) the violation charged;

(4) the location where the violation occurred;

(5) the date and time of the violation;

(6) a copy of the recorded images;

(7) the amount of the civil penalty imposed and the requirements of any traffic education program imposed and the date by which the civil penalty should be paid and the traffic education program should be completed;

(8) a statement that recorded images are evidence of a violation of a red light signal;

(9) a warning that failure to pay the civil penalty, to complete a required traffic education program, or to contest liability in a timely manner is an admission of liability and may result in a suspension of the driving privileges of the registered owner of the vehicle;

(10) a statement that the person may elect to proceed by:

(A) paying the fine, completing a required traffic education program, or both; or

(B) challenging the charge in court, by mail, or by administrative hearing; and

(11) a website address, accessible through the Internet, where the person may view the recorded images of the violation.

(e) If a person charged with a traffic violation, as a result of an automated traffic law enforcement system, does not pay the fine or complete a required traffic education program, or both, or successfully contest the civil penalty resulting from that violation, the Secretary of State shall suspend the driving privileges of the registered owner of the vehicle under Section 6-306.5 of this Code for failing to complete a required traffic education program or to pay any fine or penalty due and owing, or both, as a result of a combination of 5 violations of the automated traffic law enforcement system or the automated speed enforcement system under Section 11-208.8 of this Code.

(f) Based on inspection of recorded images produced by an automated traffic law enforcement system, a notice alleging that the violation occurred shall be evidence of the facts contained in the notice and admissible in any proceeding alleging a violation under this Section.

(g) Recorded images made by an automatic traffic law enforcement system are confidential and shall be made available only to the alleged violator and governmental and law enforcement agencies for purposes of adjudicating a violation of this Section, for statistical purposes, or for other governmental purposes. Any recorded image evidencing a violation of this Section, however, may be admissible in any proceeding resulting from the issuance of the citation.

(h) The court or hearing officer may consider in defense of a violation:

(1) that the motor vehicle or registration plates of the motor vehicle were stolen before the violation occurred and not under the control of or in the possession of the owner at the time of the violation;

(2) that the driver of the vehicle passed through the intersection when the light was red either (i) in order to yield the right-of-way to an emergency vehicle or (ii) as part of a funeral procession; and

(3) any other evidence or issues provided by municipal or county ordinance.

(i) To demonstrate that the motor vehicle or the registration plates were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation, the owner must submit proof that a report concerning the stolen motor vehicle or registration plates was filed with a law enforcement agency in a timely manner.

(j) Unless the driver of the motor vehicle received a Uniform Traffic Citation from a police officer at the time of the violation, the motor vehicle owner is subject to a civil penalty not exceeding $100 or the completion of a traffic education program, or both, plus an additional penalty of not more than $100 for failure to pay the original penalty or to complete a required traffic education program, or both, in a timely manner, if the motor vehicle is recorded by an automated traffic law enforcement system. A violation for which a civil penalty is imposed under this Section is not a violation of a traffic regulation governing the movement of vehicles and may not be recorded on the driving record of the owner of the vehicle.

(j-3) A registered owner who is a holder of a valid commercial driver's license is not required to complete a traffic education program.

(j-5) For purposes of the required traffic education program only, a registered owner may submit an affidavit to the court or hearing officer swearing that at the time of the alleged violation, the vehicle was in the custody and control of another person. The affidavit must identify the person in custody and control of the vehicle, including the person's name and current address. The person in custody and control of the vehicle at the time of the violation is required to complete the required traffic education program. If the person in custody and control of the vehicle at the time of the violation completes the required traffic education program, the registered owner of the vehicle is not required to complete a traffic education program.

(k) An intersection equipped with an automated traffic law enforcement system must be posted with a sign visible to approaching traffic indicating that the intersection is being monitored by an automated traffic law enforcement system.

(k-3) A municipality or county that has one or more intersections equipped with an automated traffic law enforcement system must provide notice to drivers by posting the locations of automated traffic law systems on the municipality or county website.

(k-5) An intersection equipped with an automated traffic law enforcement system must have a yellow change interval that conforms with the Illinois Manual on Uniform Traffic Control Devices (IMUTCD) published by the Illinois Department of Transportation.

(k-7) A municipality or county operating an automated traffic law enforcement system shall conduct a statistical analysis to assess the safety impact of each automated traffic law enforcement system at an intersection following installation of the system. The statistical analysis shall be based upon the best available crash, traffic, and other data, and shall cover a period of time before and after installation of the system sufficient to provide a statistically valid comparison of safety impact. The statistical analysis shall be consistent with professional judgment and acceptable industry practice. The statistical analysis also shall be consistent with the data required for valid comparisons of before and after conditions and shall be conducted within a reasonable period following the installation of the automated traffic law enforcement system. The statistical analysis required by this subsection (k-7) shall be made available to the public and shall be published on the website of the municipality or county. If the statistical analysis for the 36 month period following installation of the system indicates that there has been an increase in the rate of accidents at the approach to the intersection monitored by the system, the municipality or county shall undertake additional studies to determine the cause and severity of the accidents, and may take any action that it determines is necessary or appropriate to reduce the number or severity of the accidents at that intersection.

(l) The compensation paid for an automated traffic law enforcement system must be based on the value of the equipment or the services provided and may not be based on the number of traffic citations issued or the revenue generated by the system.

(m) This Section applies only to the counties of Cook, DuPage, Kane, Lake, Madison, McHenry, St. Clair, and Will and to municipalities located within those counties.

(n) The fee for participating in a traffic education program under this Section shall not exceed $25.

A low-income individual required to complete a traffic education program under this Section who provides proof of eligibility for the federal earned income tax credit under Section 32 of the Internal Revenue Code or the Illinois earned income tax credit under Section 212 of the Illinois Income Tax Act

shall not be required to pay any fee for participating in a required traffic education program.

(o) A municipality or county shall make a certified report to the Secretary of State pursuant to Section 6-306.5 of this Code whenever a registered owner of a vehicle has failed to pay any fine or penalty due and owing as a result of a combination of 5 offenses for automated traffic law or speed enforcement system violations.

(p) No person who is the lessor of a motor vehicle pursuant to a written lease agreement shall be liable for an automated speed or traffic law enforcement system violation involving such motor vehicle during the period of the lease; provided that upon the request of the appropriate authority received within 120 days after the violation occurred, the lessor provides within 60 days after such receipt the name and address of the lessee. The drivers license number of a lessee may be subsequently individually requested by the appropriate authority if needed for enforcement of this Section.

Upon the provision of information by the lessor pursuant to this subsection, the county or municipality may issue the violation to the lessee of the vehicle in the same manner as it would issue a violation to a registered owner of a vehicle pursuant to this Section, and the lessee may be held liable for the violation. (Source: P.A. 96-288, eff. 8-11-09; 96-1016, eff. 1-1-11; 97-29, eff. 1-1-12.)

(625 ILCS 5/11-208.8 new)

Sec. 11-208.8. Automated speed enforcement systems in safety zones.

(a) As used in this Section:

"Automated speed enforcement system" means a photographic device, radar device, laser device, or other electrical or mechanical device or devices installed or utilized in a safety zone and designed to record the speed of a vehicle and obtain a clear photograph or other recorded image of the vehicle and the vehicle's registration plate while the driver is violating Article VI of Chapter 11 of this Code or a similar provision of a local ordinance.

An automated speed enforcement system is a system, located in a safety zone which is under the jurisdiction of a municipality, that produces a recorded image of a motor vehicle's violation of a provision of this Code or a local ordinance and is designed to obtain a clear recorded image of the vehicle and the vehicle's license plate. The recorded image must also display the time, date, and location of the violation.

"Owner" means the person or entity to whom the vehicle is registered.

"Recorded image" means images recorded by an automated speed enforcement system on:

(1) 2 or more photographs;

(2) 2 or more microphotographs;

(3) 2 or more electronic images; or

(4) a video recording showing the motor vehicle and, on at least one image or portion of the recording, clearly identifying the registration plate number of the motor vehicle.

"Safety zone" means an area that is within one-eighth of a mile from the nearest property line of any facility, area, or land owned by a park district, school district, community college district, or public or private college or university that is used for recreational or educational purposes; provided that if any portion a roadway is within that radius, the safety zone also shall include the roadway extended to the furthest portion of the next furthest intersection. The term "safety zone" does not include any portion of the roadway known as Lake Shore Drive or any controlled access highway with 8 or more lanes of traffic.

(b) A municipality that produces a recorded image of a motor vehicle's violation of a provision of this Code or a local ordinance must make the recorded images of a violation accessible to the alleged violator by providing the alleged violator with a website address, accessible through the Internet.

(c) Notwithstanding any penalties for any other violations of this Code, the owner of a motor vehicle used in a traffic violation recorded by an automated speed enforcement system shall be subject to a civil penalty not exceeding $100 for each violation, plus an additional penalty of not more than $100 for failure to pay the original penalty in a timely manner, unless the driver of the motor vehicle received a Uniform Traffic Citation from a police officer for a speeding violation occurring within one-eighth of a mile and 15 minutes of the violation that was recorded by the system. A violation for which a civil penalty is imposed under this Section is not a violation of a traffic regulation governing the movement of vehicles and may not be recorded on the driving record of the owner of the vehicle. A law enforcement officer is not required to be present or to witness the violation.

(d) The net proceeds that a municipality receives from civil penalties imposed under an automated speed enforcement system, after deducting all non-personnel and personnel costs associated with the operation and maintenance of such system, shall be expended or obligated by the municipality for the following purposes:

(i) public safety initiatives to ensure safe passage around schools, and to provide police protection

and surveillance around schools and parks, including but not limited to: (1) personnel costs; and (2) non-personnel costs such as construction and maintenance of public safety infrastructure and equipment;

(ii) initiatives to improve pedestrian and traffic safety; and

(iii) construction and maintenance of infrastructure within the municipality, including but not limited to roads and bridges.

(e) For each violation of a provision of this Code or a local ordinance recorded by an automated speed enforcement system, the municipality having jurisdiction shall issue a written notice of the violation to the registered owner of the vehicle as the alleged violator. The notice shall be delivered to the registered owner of the vehicle, by mail, within 30 days after the Secretary of State notifies the municipality of the identity of the owner of the vehicle, but in no event later than 90 days after the violation.

(f) The notice required under subsection (e) of this Section shall include:

(1) the name and address of the registered owner of the vehicle;

(2) the registration number of the motor vehicle involved in the violation;

(3) the violation charged;

(4) the date, time, and location where the violation occurred;

(5) a copy of the recorded image or images;

(6) the amount of the civil penalty imposed and the date by which the civil penalty should be paid;

(7) a statement that recorded images are evidence of a violation of a speed restriction;

(8) a warning that failure to pay the civil penalty or to contest liability in a timely manner is an admission of liability and may result in a suspension of the driving privileges of the registered owner of the vehicle;

(9) a statement that the person may elect to proceed by:

(A) paying the fine; or

(B) challenging the charge in court, by mail, or by administrative hearing; and

(10) a website address, accessible through the Internet, where the person may view the recorded images of the violation.

(g) If a person charged with a traffic violation, as a result of an automated speed enforcement system, does not pay the fine or successfully contest the civil penalty resulting from that violation, the Secretary of State shall suspend the driving privileges of the registered owner of the vehicle under Section 6-306.5 of this Code for failing to pay any fine or penalty due and owing, or both, as a result of a combination of 5 violations of the automated speed enforcement system or the automated traffic law under Section 11-208.6 of this Code.

(h) Based on inspection of recorded images produced by an automated speed enforcement system, a notice alleging that the violation occurred shall be evidence of the facts contained in the notice and admissible in any proceeding alleging a violation under this Section.

(i) Recorded images made by an automated speed enforcement system are confidential and shall be made available only to the alleged violator and governmental and law enforcement agencies for purposes of adjudicating a violation of this Section, for statistical purposes, or for other governmental purposes. Any recorded image evidencing a violation of this Section, however, may be admissible in any proceeding resulting from the issuance of the citation.

(j) The court or hearing officer may consider in defense of a violation:

(1) that the motor vehicle or registration plates of the motor vehicle were stolen before the violation occurred and not under the control or in the possession of the owner at the time of the violation;

(2) that the driver of the motor vehicle received a Uniform Traffic Citation from a police officer for a speeding violation occurring within one-eighth of a mile and 15 minutes of the violation that was recorded by the system; and

(3) any other evidence or issues provided by municipal ordinance.

(k) To demonstrate that the motor vehicle or the registration plates were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation, the owner must submit proof that a report concerning the stolen motor vehicle or registration plates was filed with a law enforcement agency in a timely manner.

(l) A roadway equipped with an automated speed enforcement system shall be posted with a sign conforming to the national Manual on Uniform Traffic Control Devices that is visible to approaching traffic stating that vehicle speeds are being photo-enforced and indicating the speed limit. The municipality shall install such additional signage as it determines is necessary to give reasonable notice to drivers as to where automated speed enforcement systems are installed.

(m) A roadway where a new automated speed enforcement system is installed shall be posted with signs providing 30 days notice of the use of a new automated speed enforcement system prior to the issuance of any citations through the automated speed enforcement system.

(n) The compensation paid for an automated speed enforcement system must be based on the value of the equipment or the services provided and may not be based on the number of traffic citations issued or the revenue generated by the system.

(o) A municipality shall make a certified report to the Secretary of State pursuant to Section 6-306.5 of this Code whenever a registered owner of a vehicle has failed to pay any fine or penalty due and owing as a result of a combination of 5 offenses for automated speed or traffic law enforcement system violations.

(p) No person who is the lessor of a motor vehicle pursuant to a written lease agreement shall be liable for an automated speed or traffic law enforcement system violation involving such motor vehicle during the period of the lease; provided that upon the request of the appropriate authority received within 120 days after the violation occurred, the lessor provides within 60 days after such receipt the name and address of the lessee. The drivers license number of a lessee may be subsequently individually requested by the appropriate authority if needed for enforcement of this Section.

Upon the provision of information by the lessor pursuant to this subsection, the municipality may issue the violation to the lessee of the vehicle in the same manner as it would issue a violation to a registered owner of a vehicle pursuant to this Section, and the lessee may be held liable for the violation.

(q) A municipality using an automated speed enforcement system must provide notice to drivers by publishing the locations of all safety zones where system equipment is installed on the website of the municipality.

(r) A municipality operating an automated speed enforcement system shall conduct a statistical analysis to assess the safety impact of the system. The statistical analysis shall be based upon the best available crash, traffic, and other data, and shall cover a period of time before and after installation of the system sufficient to provide a statistically valid comparison of safety impact. The statistical analysis shall be consistent with professional judgment and acceptable industry practice. The statistical analysis also shall be consistent with the data required for valid comparisons of before and after conditions and shall be conducted within a reasonable period following the installation of the automated traffic law enforcement system. The statistical analysis required by this subsection shall be made available to the public and shall be published on the website of the municipality.

(s) This Section applies only to municipalities with a population of 1,000,000 or more inhabitants.

(625 ILCS 5/11-612)

Sec. 11-612. Certain systems to record vehicle speeds prohibited. Except as authorized in the Automated Traffic Control Systems in Highway Construction or Maintenance Zones Act and Section 11-208.8 of this Code, no photographic, video, or other imaging system may be used in this State to record vehicle speeds for the purpose of enforcing any law or ordinance regarding a maximum or minimum speed limit unless a law enforcement officer is present at the scene and witnesses the event. No State or local governmental entity, including a home rule county or municipality, may use such a system in a way that is prohibited by this Section. The regulation of the use of such systems is an exclusive power and function of the State. This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

(Source: P.A. 94-771, eff. 1-1-07; 94-795, eff. 5-22-06; 94-814, eff. 1-1-07.)

(625 ILCS 5/12-610.5)

Sec. 12-610.5. Registration plate covers.

(a) In this Section, "registration plate cover" means any tinted, colored, painted, marked, clear, or illuminated object that is designed to:

(1) cover any of the characters of a motor vehicle's registration plate; or

(2) distort a recorded image of any of the characters of a motor vehicle's registration plate recorded by an automated traffic law enforcement system as defined in Section 11-208.6 of this Code or an automated speed enforcement system as defined in Section 11-208.8 of this Code, or recorded by an automated traffic control system as defined in Section 15 of the Automated Traffic Control Systems in Highway Construction or Maintenance Zones Act.

(b) It shall be unlawful to operate any motor vehicle that is equipped with registration plate covers.

(c) A person may not sell or offer for sale a registration plate cover.

(d) A person may not advertise for the purpose of promoting the sale of registration plate covers.

(e) A violation of this Section or a similar provision of a local ordinance shall be an offense against laws and ordinances regulating the movement of traffic.

(Source: P.A. 96-328, eff. 8-11-09.)

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

Section 99. Effective date. This Act takes effect July 1, 2012.".

The motion prevailed.

And the amendment was adopted and ordered printed.

Senator Cullerton offered the following amendment and moved its adoption:

AMENDMENT NO. 2 TO SENATE BILL 965

AMENDMENT NO. 2 . Amend Senate Bill 965, AS AMENDED, with reference to page and line numbers of Senate Amendment No. 1, on page 12, line 10, by deleting "or county"; and

on page 18, lines 13 and 14, by replacing "every 60 days" with "each week"; and

on page 18, line 15, after "year.", by inserting the following:
"Radar equipment shall be checked for accuracy by a qualified technician when the unit is serviced, when unusual or suspect readings persist, or when deemed necessary by a reviewing technician. Radar equipment shall be checked with certified tuning forks, the internal circuit test, and diode display test whenever the radar is turned on. Technicians must be alert for any unusual or suspect readings, and if unusual or suspect readings of a radar unit persist, that unit shall be immediately be removed from service and not returned to service until it has been checked by a qualified technician and determined to be functioning properly."; and

on page 41, by replacing lines 15 through 19 with the following:
"mile from the nearest property line of any public or private elementary or secondary school, or from the nearest property line of any facility, area, or land owned by a school district that is used for educational purposes approved by the Illinois State Board of Education, not including school district headquarters or administrative buildings. A safety zone also includes an area that is within one-eighth of a mile from the nearest property line of any facility, area, or land owned by a park district used for recreational purposes. However, if any portion of a roadway is within either one-eighth mile radius, the safety"; and

on page 41, by inserting immediately below line 24 the following:
"(a-5) The automated speed enforcement system shall be operational and violations shall be recorded only at the following times:

(i) if the safety zone is based upon the property line of any facility, area, or land owned by a school district, on school days no earlier than 6 a.m. and no later than 10 p.m.; and

(ii) if the safety zone is based upon the property line of any facility, area, or land owned by a park district, no earlier than one hour prior to the time that the facility, area, or land is open to the public or other patrons, and no later than one hour after the facility, area, or land is closed to the public or other patrons."; and

on page 42, line 19, after "violation.", by inserting the following:
"No penalty may be imposed under this Section if the recorded speed of a vehicle is 5 miles per hour or less over the legal speed limit. The municipality may send, in the same manner that notices are sent under this Section, a speed violation warning notice where the violation involves a speed of 5 miles per hour or less above the legal speed limit.".

The motion prevailed.

And the amendment was adopted and ordered printed.

There being no further amendments, the foregoing Amendments numbered 1 and 2 were ordered engrossed, and the bill, as amended, was ordered to a third reading.

READING BILL OF THE SENATE A THIRD TIME

On motion of Senator Cullerton, **Senate Bill No. 965** having been transcribed and typed and all amendments adopted thereto having been printed, was taken up and read by title a third time.

And the question being, “Shall this bill pass?” it was decided in the affirmative by the following vote:

YEAS 32; NAYS 24.

The following voted in the affirmative:

Brady	Hunter	Maloney	Silverstein
Clayborne	Hutchinson	Martinez	Steans
Collins, J.	Jacobs	Mulroe	Trotter
Crotty	Jones, E.	Muñoz	Wilhelmi
Delgado	Koehler	Noland	Mr. President
Dillard	Kotowski	Radogno	
Garrett	Landek	Raoul	
Haine	Lightford	Sandoval	
Harmon	Link	Schoenberg	

The following voted in the negative:

Althoff	Johnson, C.	McCarter	Schmidt
Bivins	Johnson, T.	Millner	Sullivan
Collins, A.	Jones, J.	Murphy	Syverson
Cultra	LaHood	Pankau	
Duffy	Lauzen	Rezin	
Frerichs	Luechtefeld	Righter	
Holmes	McCann	Sandack	

This bill, having received the vote of a constitutional majority of the members elected, was declared passed, and all amendments not adopted were tabled pursuant to Senate Rule No. 5-4(a).

Ordered that the Secretary inform the House of Representatives thereof and ask their concurrence therein.

LEGISLATIVE MEASURE FILED

The following Floor amendment to the Senate Bill listed below has been filed with the Secretary and referred to the Committee on Assignments:

Senate Floor Amendment No. 3 to Senate Bill 747

At the hour of 5:09 o'clock p.m., the Chair announced that the Senate stand at ease.

AT EASE

At the hour of 5:10 o'clock p.m. the Senate resumed consideration of business.
Senator Sullivan, presiding.

REPORT FROM COMMITTEE ON ASSIGNMENTS

Senator Clayborne, Chairperson of the Committee on Assignments, during its October 26, 2011 meeting, reported the following Legislative Measures have been assigned to the indicated Standing Committees of the Senate:

Executive: **Senate Floor Amendment No. 4 to Senate Bill 405**.

Human Services: **HOUSE BILL 3091**.

Senator Clayborne, Chairperson of the Committee on Assignments, during its October 26, 2011 meeting, reported that the following Legislative Measure has been approved for consideration:

Senate Floor Amendment No. 3 to Senate Bill 747

The foregoing floor amendment was placed on the Secretary's Desk.

COMMUNICATION

ILLINOIS STATE SENATE
DON HARMON
ASSISTANT MAJORITY LEADER
STATE SENATOR · 39TH DISTRICT

October 26, 2011

The Honorable Jillayne Rock
Secretary of the Senate
Room 403 Capitol Building
Springfield, IL 62704

Madame Secretary:

Today, the Senate consented to the appointment by the Governor of members of the Illinois Finance Authority ("IFA") and the Illinois Student Assistance Commission ("ISAC"). Other lawyers in the law firm that employs me provide legal services to the IFA and the ISAC, and clients engaged in transactions with the IFA and the ISAC. Accordingly, to avoid the appearance of conflict of interest, I abstained from voting on the question of the confirmation of the Board members for both bodies, and I hereby disclose that fact to the Senate.

Sincerely,
s/Don Harmon
Don Harmon

At the hour of 5:16 o'clock p.m., the Chair announced the Senate stand adjourned until Thursday, October 27, 2011, at 9:00 o'clock a.m.