SENATE JOURNAL

STATE OF ILLINOIS

NINETY-FIFTH GENERAL ASSEMBLY

75TH LEGISLATIVE DAY

THURSDAY, JULY 26, 2007

1:28 O'CLOCK P.M.

NO. 75
[July 26, 2007]

SENATE
Daily Journal Index
75th Legislative Day

The Senate met pursuant to adjournment.
Senator James A. DeLeo, Chicago, Illinois, presiding.
Prayer by Dr. Maryam Mostoufi, Islamic Society of Greater Springfield, Springfield, Illinois.
Senator Maloney led the Senate in the Pledge of Allegiance.

The Journal of Wednesday, July 25, 2007, 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.

REPORT RECEIVED

The Secretary placed before the Senate the following report:

Personal Information Protection Act Report, submitted by Southern Illinois University School of Medicine.

The foregoing report was ordered received and placed on file in the Secretary's Office.

LEGISLATIVE MEASURES FILED

The following Committee amendment to the Senate Resolution listed below has been filed with the Secretary and referred to the Committee on Rules:

Senate Committee Amendment No. 1 to Senate Resolution 256

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

Senate Floor Amendment No. 3 to Senate Bill 2
Senate Floor Amendment No. 1 to Senate Bill 1110
Senate Floor Amendment No. 2 to Senate Bill 1110
Senate Floor Amendment No. 3 to Senate Bill 1110

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

Senate Floor Amendment No. 2 to House Bill 556
Senate Floor Amendment No. 3 to House Bill 556
Senate Floor Amendment No. 4 to House Bill 556

PRESENTATION OF RESOLUTION

SENATE RESOLUTION 308

Offered by Senator Link and all Senators:
Mourns the death of John Della Valle of Waukegan.

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

REPORTS FROM STANDING COMMITTEES

Senator Wilhelmi, Chairperson of the Committee on Judiciary Criminal Law, to which was referred the Motions to Concur with House Amendments to the following Senate Bills, reported that the Committee recommends do adopt:

Motion to Concur in House Amendment 1 to Senate Bill 363; Motion to Concur in House Amendment 1 to Senate Bill 1023

Under the rules, the foregoing motions are eligible for consideration by the Senate.

Senator Munoz, Chairperson of the Committee on Transportation, to which was referred the Motion to Recede from Senate Amendment to the following House Bill, reported that the Committee recommends do adopt:

Motion to Recede from Senate Amendment 1 to House Bill 654

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

Senator Clayborne, Chairperson of the Committee on Environment and Energy, to which was referred **House Bill No. 3388,** reported the same back with amendments having been adopted thereto, with the recommendation that the bill, as amended, do pass.

Under the rules, the bill was ordered to a second reading.

Senator Clayborne, Chairperson of the Committee on Environment and Energy, to which was referred the Motion to Concur with House Amendment to the following Senate Bill, reported that the Committee recommends do adopt:

Motion to Concur in House Amendments 1 and 2 to Senate Bill 1704

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

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

Senate Floor Amendment No. 3 to Senate Bill 1

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

Senator Ronen, Chairperson of the Committee on Licensed Activities, to which was referred the Motion to Concur with House Amendment to the following Senate Bill, reported that the Committee recommends do adopt:

Motion to Concur in House Amendments 1 and 2 to Senate Bill 128

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

MESSAGE FROM THE HOUSE

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

Mr. President -- I am directed to inform the Senate that the House of Representatives has concurred with the Senate in the passage of a bill of the following title, to-wit:

SENATE BILL NO. 509

A bill for AN ACT concerning regulation.

Together with the following amendments which are attached, in the adoption of which I am instructed to ask the concurrence of the Senate, to-wit:

House Amendment No. 6 to SENATE BILL NO. 509
House Amendment No. 7 to SENATE BILL NO. 509
House Amendment No. 8 to SENATE BILL NO. 509
Passed the House, as amended, July 26, 2007.

MARK MAHONEY, Clerk of the House

AMENDMENT NO. 6 TO SENATE BILL 509

AMENDMENT NO. 6. Amend Senate Bill 509 by replacing everything after the enacting clause with the following:

"Section 5. The Regulatory Sunset Act is amended by changing Section 4.18 and by adding Section 4.28 as follows:

(5 ILCS 80/4.18)

Sec. 4.18. Acts repealed January 1, 2008 and December 31, 2008.

(a) The following Acts are repealed on January 1, 2008:

The Acupuncture Practice Act.
The Clinical Social Work and Social Work Practice Act.
The Home Medical Equipment and Services Provider License Act.
The Nursing and Advanced Practice Nursing Act.
The Illinois Speech-Language Pathology and Audiology Practice Act.
The Marriage and Family Therapy Licensing Act.
The Nursing Home Administrators Licensing and Disciplinary Act.
~~The Pharmacy Practice Act of 1987.~~
The Physician Assistant Practice Act of 1987.
The Podiatric Medical Practice Act of 1987.
The Structural Pest Control Act.

(b) The following Acts are repealed on December 31, 2008:

The Medical Practice Act of 1987.
The Environmental Health Practitioner Licensing Act.

(Source: P.A. 94-754, eff. 5-10-06; 94-1075, eff. 12-29-06; 94-1085, eff. 1-19-07; revised 1-22-07.)

(5 ILCS 80/4.28 new)

Sec. 4.28. Act repealed on January 1, 2018. The following Act is repealed on January 1, 2018:

The Pharmacy Practice Act.

Section 10. The Illinois Act on the Aging is amended by changing Section 4.01 as follows:

(20 ILCS 105/4.01) (from Ch. 23, par. 6104.01)

Sec. 4.01. Additional powers and duties of the Department. In addition to powers and duties otherwise provided by law, the Department shall have the following powers and duties:

(1) To evaluate all programs, services, and facilities for the aged and for minority senior citizens within the State and determine the extent to which present public or private programs, services and facilities meet the needs of the aged.

(2) To coordinate and evaluate all programs, services, and facilities for the Aging and for minority senior citizens presently furnished by State agencies and make appropriate recommendations regarding such services, programs and facilities to the Governor and/or the General Assembly.

(3) To function as the sole State agency to develop a comprehensive plan to meet the needs of the State's senior citizens and the State's minority senior citizens.

(4) To receive and disburse State and federal funds made available directly to the Department including those funds made available under the Older Americans Act and the Senior Community Service Employment Program for providing services for senior citizens and minority senior citizens or for purposes related thereto, and shall develop and administer any State Plan for the Aging required by federal law.

(5) To solicit, accept, hold, and administer in behalf of the State any grants or legacies of money, securities, or property to the State of Illinois for services to senior citizens and minority senior citizens or purposes related thereto.

(6) To provide consultation and assistance to communities, area agencies on aging, and groups developing local services for senior citizens and minority senior citizens.

(7) To promote community education regarding the problems of senior citizens and minority senior citizens through institutes, publications, radio, television and the local press.

(8) To cooperate with agencies of the federal government in studies and conferences designed to examine the needs of senior citizens and minority senior citizens and to prepare programs and facilities to meet those needs.

(9) To establish and maintain information and referral sources throughout the State when not provided by other agencies.

(10) To provide the staff support as may reasonably be required by the Council and the Coordinating Committee of State Agencies Serving Older Persons.

(11) To make and enforce rules and regulations necessary and proper to the performance of its duties.

(12) To establish and fund programs or projects or experimental facilities that are specially designed as alternatives to institutional care.

(13) To develop a training program to train the counselors presently employed by the Department's aging network to provide Medicare beneficiaries with counseling and advocacy in Medicare, private health insurance, and related health care coverage plans. The Department shall report to the General Assembly on the implementation of the training program on or before December 1, 1986.

(14) To make a grant to an institution of higher learning to study the feasibility of establishing and implementing an affirmative action employment plan for the recruitment, hiring, training and retraining of persons 60 or more years old for jobs for which their employment would not be precluded by law.

(15) To present one award annually in each of the categories of community service, education, the performance and graphic arts, and the labor force to outstanding Illinois senior citizens and minority senior citizens in recognition of their individual contributions to either community service, education, the performance and graphic arts, or the labor force. The awards shall be presented to four senior citizens and minority senior citizens selected from a list of 44 nominees compiled annually by the Department. Nominations shall be solicited from senior citizens' service providers, area agencies on aging, senior citizens' centers, and senior citizens' organizations. The Department shall consult with the Coordinating Committee of State Agencies Serving Older Persons to determine which of the nominees shall be the recipient in each category of community service. The Department shall establish a central location within the State to be designated as the Senior Illinoisans Hall of Fame for the public display of all the annual awards, or replicas thereof.

(16) To establish multipurpose senior centers through area agencies on aging and to fund those new and existing multipurpose senior centers through area agencies on aging, the establishment and funding to begin in such areas of the State as the Department shall designate by rule and as specifically appropriated funds become available.

(17) To develop the content and format of the acknowledgment regarding non-recourse reverse mortgage loans under Section 6.1 of the Illinois Banking Act; to provide independent consumer information on reverse mortgages and alternatives; and to refer consumers to independent counseling services with expertise in reverse mortgages.

(18) To develop a pamphlet in English and Spanish which may be used by physicians licensed to practice medicine in all of its branches pursuant to the Medical Practice Act of 1987, pharmacists licensed pursuant to the Pharmacy Practice Act ~~of 1987~~, and Illinois residents 65 years of age or older for the purpose of assisting physicians, pharmacists, and patients in monitoring prescriptions provided by various physicians and to aid persons 65 years of age or older in complying with directions for proper use of pharmaceutical prescriptions. The pamphlet may provide space for recording information including but not limited to the following:

(a) name and telephone number of the patient;

(b) name and telephone number of the prescribing physician;

(c) date of prescription;

(d) name of drug prescribed;

(e) directions for patient compliance; and

(f) name and telephone number of dispensing pharmacy.

In developing the pamphlet, the Department shall consult with the Illinois State Medical Society, the Center for Minority Health Services, the Illinois Pharmacists Association and senior citizens organizations. The Department shall distribute the pamphlets to physicians, pharmacists and persons 65 years of age or older or various senior citizen organizations throughout the State.

(19) To conduct a study by April 1, 1994 of the feasibility of implementing the Senior Companion Program throughout the State for the fiscal year beginning July 1, 1994.

(20) With respect to contracts in effect on July 1, 1994, the Department shall increase the grant amounts so that the reimbursement rates paid through the community care program for chore

housekeeping services and homemakers are at the same rate, which shall be the higher of the 2 rates currently paid. With respect to all contracts entered into, renewed, or extended on or after July 1, 1994, the reimbursement rates paid through the community care program for chore housekeeping services and homemakers shall be the same.

(21) From funds appropriated to the Department from the Meals on Wheels Fund, a special fund in the State treasury that is hereby created, and in accordance with State and federal guidelines and the intrastate funding formula, to make grants to area agencies on aging, designated by the Department, for the sole purpose of delivering meals to homebound persons 60 years of age and older.

(22) To distribute, through its area agencies on aging, information alerting seniors on safety issues regarding emergency weather conditions, including extreme heat and cold, flooding, tornadoes, electrical storms, and other severe storm weather. The information shall include all necessary instructions for safety and all emergency telephone numbers of organizations that will provide additional information and assistance.

(23) To develop guidelines for the organization and implementation of Volunteer Services Credit Programs to be administered by Area Agencies on Aging or community based senior service organizations. The Department shall hold public hearings on the proposed guidelines for public comment, suggestion, and determination of public interest. The guidelines shall be based on the findings of other states and of community organizations in Illinois that are currently operating volunteer services credit programs or demonstration volunteer services credit programs. The Department shall offer guidelines for all aspects of the programs including, but not limited to, the following:

(a) types of services to be offered by volunteers;

(b) types of services to be received upon the redemption of service credits;

(c) issues of liability for the volunteers and the administering organizations;

(d) methods of tracking service credits earned and service credits redeemed;

(e) issues of time limits for redemption of service credits;

(f) methods of recruitment of volunteers;

(g) utilization of community volunteers, community service groups, and other resources for delivering services to be received by service credit program clients;

(h) accountability and assurance that services will be available to individuals who have earned service credits; and

(i) volunteer screening and qualifications.

The Department shall submit a written copy of the guidelines to the General Assembly by July 1, 1998.
(Source: P.A. 92-651, eff. 7-11-02.)

Section 15. The Mental Health and Developmental Disabilities Administrative Act is amended by changing Section 56 as follows:

(20 ILCS 1705/56) (from Ch. 91 1/2, par. 100-56)

Sec. 56. The Secretary, upon making a determination based upon information in the possession of the Department, that continuation in practice of a licensed health care professional would constitute an immediate danger to the public, shall submit a written communication to the Director of Professional Regulation indicating such determination and additionally providing a complete summary of the information upon which such determination is based, and recommending that the Director of Professional Regulation immediately suspend such person's license. All relevant evidence, or copies thereof, in the Department's possession may also be submitted in conjunction with the written communication. A copy of such written communication, which is exempt from the copying and inspection provisions of the Freedom of Information Act, shall at the time of submittal to the Director of Professional Regulation be simultaneously mailed to the last known business address of such licensed health care professional by certified or registered postage, United States Mail, return receipt requested. Any evidence, or copies thereof, which is submitted in conjunction with the written communication is also exempt from the copying and inspection provisions of the Freedom of Information Act.

For the purposes of this Section, "licensed health care professional" means any person licensed under the Illinois Dental Practice Act, the Nursing and Advanced Practice Nursing Act, the Medical Practice Act of 1987, the Pharmacy Practice Act ~~of 1987~~, the Podiatric Medical Practice Act of 1987, and the Illinois Optometric Practice Act of 1987.
(Source: P.A. 89-507, eff. 7-1-97; 90-742, eff. 8-13-98.)

Section 20. The Department of Professional Regulation Law of the Civil Administrative Code of Illinois is amended by changing Section 2105-400 as follows:

(20 ILCS 2105/2105-400)

Sec. 2105-400. Emergency Powers.

(a) Upon proclamation of a disaster by the Governor, as provided for in the Illinois Emergency Management Agency Act, the Secretary of Financial and Professional Regulation shall have the following powers, which shall be exercised only in coordination with the Illinois Emergency Management Agency and the Department of Public Health:

(1) The power to suspend the requirements for permanent or temporary licensure of persons who are licensed in another state and are working under the direction of the Illinois Emergency Management Agency and the Department of Public Health pursuant to a declared disaster.

(2) The power to modify the scope of practice restrictions under any licensing act administered by the Department for any person working under the direction of the Illinois Emergency Management Agency and the Illinois Department of Public Health pursuant to the declared disaster.

(3) The power to expand the exemption in Section 4(a) of the Pharmacy Practice Act ~~of 1987~~ to those licensed professionals whose scope of practice has been modified, under paragraph (2) of subsection (a) of this Section, to include any element of the practice of pharmacy as defined in the Pharmacy Practice Act ~~of 1987~~ for any person working under the direction of the Illinois Emergency Management Agency and the Illinois Department of Public Health pursuant to the declared disaster.

(b) Persons exempt from licensure under paragraph (1) of subsection (a) of this Section and persons operating under modified scope of practice provisions under paragraph (2) of subsection (a) of this Section shall be exempt from licensure or be subject to modified scope of practice only until the declared disaster has ended as provided by law. For purposes of this Section, persons working under the direction of an emergency services and disaster agency accredited by the Illinois Emergency Management Agency and a local public health department, pursuant to a declared disaster, shall be deemed to be working under the direction of the Illinois Emergency Management Agency and the Department of Public Health.

(c) The Director shall exercise these powers by way of proclamation.

(Source: P.A. 93-829, eff. 7-28-04; 94-733, eff. 4-27-06.)

Section 25. The Department of Public Health Powers and Duties Law of the Civil Administrative Code of Illinois is amended by changing Section 2310-140 as follows:

(20 ILCS 2310/2310-140) (was 20 ILCS 2310/55.37a)

Sec. 2310-140. Recommending suspension of licensed health care professional. The Director, upon making a determination based upon information in the possession of the Department that continuation in practice of a licensed health care professional would constitute an immediate danger to the public, shall submit a written communication to the Director of Professional Regulation indicating that determination and additionally (i) providing a complete summary of the information upon which the determination is based and (ii) recommending that the Director of Professional Regulation immediately suspend the person's license. All relevant evidence, or copies thereof, in the Department's possession may also be submitted in conjunction with the written communication. A copy of the written communication, which is exempt from the copying and inspection provisions of the Freedom of Information Act, shall at the time of submittal to the Director of Professional Regulation be simultaneously mailed to the last known business address of the licensed health care professional by certified or registered postage, United States Mail, return receipt requested. Any evidence, or copies thereof, that is submitted in conjunction with the written communication is also exempt from the copying and inspection provisions of the Freedom of Information Act.

For the purposes of this Section, "licensed health care professional" means any person licensed under the Illinois Dental Practice Act, the Nursing and Advanced Practice Nursing Act, the Medical Practice Act of 1987, the Pharmacy Practice Act ~~of 1987~~, the Podiatric Medical Practice Act of 1987, or the Illinois Optometric Practice Act of 1987.

(Source: P.A. 90-742, eff. 8-13-98; 91-239, eff. 1-1-00.)

Section 30. The Illinois Municipal Code is amended by changing Section 11-22-1 as follows:

(65 ILCS 5/11-22-1) (from Ch. 24, par. 11-22-1)

Sec. 11-22-1. The corporate authorities of each municipality may erect, establish, and maintain hospitals, nursing homes and medical dispensaries, all on a nonprofit basis, and may locate and regulate hospitals, medical dispensaries, sanitariums, and undertaking establishments; provided that the corporate authorities of any municipality shall not regulate any pharmacy or drugstore registered under the Pharmacy Practice Act ~~of 1987~~. Any hospital maintained under this Section is authorized to provide any service and enter into any contract or other arrangement not prohibited by a hospital licensed under the Hospital Licensing Act, incorporated under the General Not-For-Profit Corporation Act, and exempt

from taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code.

For purposes of erecting, establishing and maintaining a nursing home on a nonprofit basis pursuant to this Section, the corporate authorities of each municipality shall have the power to borrow money; execute a promissory note or notes, execute a mortgage or trust deed to secure payment of such notes or deeds, or execute such other security instrument or document as needed, and pledge real and personal nursing home property as security for any such promissory note, mortgage or trust deed; and issue revenue or general obligation bonds.

(Source: P.A. 86-739.)

Section 35. The School Employee Benefit Act is amended by changing Section 25 as follows:

(105 ILCS 55/25)

Sec. 25. Pharmacy providers.

(a) The Department or its contractor may enter into a contract with a pharmacy registered or licensed under Section 16a of the Pharmacy Practice Act ~~of 1987~~.

(b) Before entering into an agreement with other pharmacy providers, pursuant to Sections 15 and 20 of this Act, the Department or its contractor must by rule or contract establish terms or conditions that must be met by pharmacy providers desiring to contract with the Department or its contractor. If a pharmacy licensed under Section 15 of the Pharmacy Practice Act ~~of 1987~~ rejects the terms and conditions established, the Department or its contractor may offer other terms and conditions necessary to comply with the network adequacy requirements.

(c) Notwithstanding the provisions of subsection (a) of this Section, the Department or its contractor may not refuse to contract with a pharmacy licensed under Section 15 of the Pharmacy Practice Act ~~of 1987~~ that meets the terms and conditions established by the Department or its contractor under subsection (a) or (b) of this Section.

(Source: P.A. 93-1036, eff. 9-14-04.)

Section 40. The Illinois Insurance Code is amended by changing Section 512-7 as follows:

(215 ILCS 5/512-7) (from Ch. 73, par. 1065.59-7)

Sec. 512-7. Contractual provisions.

(a) Any agreement or contract entered into in this State between the administrator of a program and a pharmacy shall include a statement of the method and amount of reimbursement to the pharmacy for services rendered to persons enrolled in the program, the frequency of payment by the program administrator to the pharmacy for those services, and a method for the adjudication of complaints and the settlement of disputes between the contracting parties.

(b)(1) A program shall provide an annual period of at least 30 days during which any pharmacy licensed under the Pharmacy Practice Act ~~of 1987~~ may elect to participate in the program under the program terms for at least one year.

(2) If compliance with the requirements of this subsection (b) would impair any provision of a contract between a program and any other person, and if the contract provision was in existence before January 1, 1990, then immediately after the expiration of those contract provisions the program shall comply with the requirements of this subsection (b).

(3) This subsection (b) does not apply if:

(A) the program administrator is a licensed health maintenance organization that owns or controls a pharmacy and that enters into an agreement or contract with that pharmacy in accordance with subsection (a); or

(B) the program administrator is a licensed health maintenance organization that is owned or controlled by another entity that also owns or controls a pharmacy, and the administrator enters into an agreement or contract with that pharmacy in accordance with subsection (a).

(4) This subsection (b) shall be inoperative after October 31, 1992.

(c) The program administrator shall cause to be issued an identification card to each person enrolled in the program. The identification card shall include:

(1) the name of the individual enrolled in the program; and

(2) an expiration date if required under the contractual arrangement or agreement between a provider of pharmaceutical services and prescription drug products and the third party prescription program administrator.

(Source: P.A. 86-473; 87-254.)

Section 45. The Health Maintenance Organization Act is amended by changing Section 2-3.1 as follows:

(215 ILCS 125/2-3.1) (from Ch. 111 1/2, par. 1405.1)

Sec. 2-3.1. (a) No health maintenance organization shall cause to be dispensed any drug other than that prescribed by a physician. Nothing herein shall prohibit drug product selection under Section 3.14 of the "Illinois Food, Drug and Cosmetic Act", approved June 29, 1967, as amended, and in accordance with the requirements of Section 25 of the "Pharmacy Practice Act ~~of 1987~~", approved September 24, 1987, as amended.

(b) No health maintenance organization shall include in any contract with any physician providing for health care services any provision requiring such physician to prescribe any particular drug product to any enrollee unless the enrollee is a hospital in-patient where such drug product may be permitted pursuant to written guidelines or procedures previously established by a pharmaceutical or therapeutics committee of a hospital, approved by the medical staff of such hospital and specifically approved, in writing, by the prescribing physician for his or her patients in such hospital, and unless it is compounded, dispensed or sold by a pharmacy located in a hospital, as defined in Section 3 of the Hospital Licensing Act or a hospital organized under "An Act in relation to the founding and operation of the University of Illinois Hospital and the conduct of University of Illinois health care programs", approved July 3, 1931, as amended.

(Source: P.A. 85-1246.)

Section 50. The Illinois Dental Practice Act is amended by changing Section 51 as follows:

(225 ILCS 25/51) (from Ch. 111, par. 2351)

(Section scheduled to be repealed on January 1, 2016)

Sec. 51. Dispensing Drugs or Medicine. Any dentist who dispenses any drug or medicine shall dispense such drug or medicine in good faith and shall affix to the box, bottle, vessel or package containing the same a label indicating:

(a) the date on which such drug or medicine is dispensed;

(b) the name of the patient;

(c) the last name of the person dispensing such drug or medicine;

(d) the directions for use thereof; and

(e) the proprietary name or names or the established name or names of the drug or medicine, the dosage and quantity, except as otherwise authorized by regulation of the Department.

This Section shall not apply to drugs and medicines in a package which bears a label of the manufacturer containing information describing its contents which is in compliance with requirements of the Federal Food, Drug, and Cosmetic Act and the Illinois Food, Drug, and Cosmetic Act and which is dispensed without consideration by a dentist. "Drug" and "medicine" have the meanings ascribed to them in the Pharmacy Practice Act ~~of 1987~~, as now or hereafter amended; "good faith" has the meaning ascribed to it in subsection (v) of Section 102 of the "Illinois Controlled Substances Act", as amended.

(Source: P.A. 85-1209.)

Section 55. The Health Care Worker Self-Referral Act is amended by changing Section 15 as follows:

(225 ILCS 47/15)

Sec. 15. Definitions. In this Act:

(a) "Board" means the Health Facilities Planning Board.

(b) "Entity" means any individual, partnership, firm, corporation, or other business that provides health services but does not include an individual who is a health care worker who provides professional services to an individual.

(c) "Group practice" means a group of 2 or more health care workers legally organized as a partnership, professional corporation, not-for-profit corporation, faculty practice plan or a similar association in which:

(1) each health care worker who is a member or employee or an independent contractor of the group provides substantially the full range of services that the health care worker routinely provides, including consultation, diagnosis, or treatment, through the use of office space, facilities, equipment, or personnel of the group;

(2) the services of the health care workers are provided through the group, and payments received for health services are treated as receipts of the group; and

(3) the overhead expenses and the income from the practice are distributed by methods previously determined by the group.

(d) "Health care worker" means any individual licensed under the laws of this State to provide health services, including but not limited to: dentists licensed under the Illinois Dental Practice Act; dental hygienists licensed under the Illinois Dental Practice Act; nurses and advanced practice nurses licensed

under the Nursing and Advanced Practice Nursing Act; occupational therapists licensed under the Illinois Occupational Therapy Practice Act; optometrists licensed under the Illinois Optometric Practice Act of 1987; pharmacists licensed under the Pharmacy Practice Act ~~of 1987~~; physical therapists licensed under the Illinois Physical Therapy Act; physicians licensed under the Medical Practice Act of 1987; physician assistants licensed under the Physician Assistant Practice Act of 1987; podiatrists licensed under the Podiatric Medical Practice Act of 1987; clinical psychologists licensed under the Clinical Psychologist Licensing Act; clinical social workers licensed under the Clinical Social Work and Social Work Practice Act; speech-language pathologists and audiologists licensed under the Illinois Speech-Language Pathology and Audiology Practice Act; or hearing instrument dispensers licensed under the Hearing Instrument Consumer Protection Act, or any of their successor Acts.

(e) "Health services" means health care procedures and services provided by or through a health care worker.

(f) "Immediate family member" means a health care worker's spouse, child, child's spouse, or a parent.

(g) "Investment interest" means an equity or debt security issued by an entity, including, without limitation, shares of stock in a corporation, units or other interests in a partnership, bonds, debentures, notes, or other equity interests or debt instruments except that investment interest for purposes of Section 20 does not include interest in a hospital licensed under the laws of the State of Illinois.

(h) "Investor" means an individual or entity directly or indirectly owning a legal or beneficial ownership or investment interest, (such as through an immediate family member, trust, or another entity related to the investor).

(i) "Office practice" includes the facility or facilities at which a health care worker, on an ongoing basis, provides or supervises the provision of professional health services to individuals.

(j) "Referral" means any referral of a patient for health services, including, without limitation:

(1) The forwarding of a patient by one health care worker to another health care worker or to an entity outside the health care worker's office practice or group practice that provides health services.

(2) The request or establishment by a health care worker of a plan of care outside the health care worker's office practice or group practice that includes the provision of any health services.

(Source: P.A. 89-72, eff. 12-31-95; 90-742, eff. 8-13-98.)

Section 60. The Medical Practice Act of 1987 is amended by changing Section 33 as follows:

(225 ILCS 60/33) (from Ch. 111, par. 4400-33)

(Section scheduled to be repealed on December 31, 2008)

Sec. 33. Any person licensed under this Act to practice medicine in all of its branches shall be authorized to purchase legend drugs requiring an order of a person authorized to prescribe drugs, and to dispense such legend drugs in the regular course of practicing medicine. The dispensing of such legend drugs shall be the personal act of the person licensed under this Act and may not be delegated to any other person not licensed under this Act or the Pharmacy Practice Act ~~of 1987~~ unless such delegated dispensing functions are under the direct supervision of the physician authorized to dispense legend drugs. Except when dispensing manufacturers' samples or other legend drugs in a maximum 72 hour supply, persons licensed under this Act shall maintain a book or file of prescriptions as required in the Pharmacy Practice Act ~~of 1987~~. Any person licensed under this Act who dispenses any drug or medicine shall dispense such drug or medicine in good faith and shall affix to the box, bottle, vessel or package containing the same a label indicating (a) the date on which such drug or medicine is dispensed; (b) the name of the patient; (c) the last name of the person dispensing such drug or medicine; (d) the directions for use thereof; and (e) the proprietary name or names or, if there are none, the established name or names of the drug or medicine, the dosage and quantity, except as otherwise authorized by regulation of the Department of Professional Regulation. The foregoing labeling requirements shall not apply to drugs or medicines in a package which bears a label of the manufacturer containing information describing its contents which is in compliance with requirements of the Federal Food, Drug, and Cosmetic Act and the Illinois Food, Drug, and Cosmetic Act. "Drug" and "medicine" have the meaning ascribed to them in the Pharmacy Practice Act ~~of 1987~~, as now or hereafter amended; "good faith" has the meaning ascribed to it in subsection (v) of Section 102 of the "Illinois Controlled Substances Act", approved August 16, 1971, as amended.

Prior to dispensing a prescription to a patient, the physician shall offer a written prescription to the patient which the patient may elect to have filled by the physician or any licensed pharmacy.

A violation of any provision of this Section shall constitute a violation of this Act and shall be grounds for disciplinary action provided for in this Act.

(Source: P.A. 85-1209.)

Section 65. The Illinois Optometric Practice Act of 1987 is amended by changing Section 3 as follows:

(225 ILCS 80/3) (from Ch. 111, par. 3903)

(Section scheduled to be repealed on January 1, 2017)

Sec. 3. Practice of optometry defined; referrals; manufacture of lenses and prisms.

(a) The practice of optometry is defined as the employment of any and all means for the examination, diagnosis, and treatment of the human visual system, the human eye, and its appendages without the use of surgery, including but not limited to: the appropriate use of ocular pharmaceutical agents; refraction and other determinants of visual function; prescribing corrective lenses or prisms; prescribing, dispensing, or management of contact lenses; vision therapy; visual rehabilitation; or any other procedures taught in schools and colleges of optometry approved by the Department, and not specifically restricted in this Act, subject to demonstrated competency and training as required by the Board, and pursuant to rule or regulation approved by the Board and adopted by the Department.

A person shall be deemed to be practicing optometry within the meaning of this Act who:

(1) In any way presents himself or herself to be qualified to practice optometry.

(2) Performs refractions or employs any other determinants of visual function.

(3) Employs any means for the adaptation of lenses or prisms.

(4) Prescribes corrective lenses, prisms, vision therapy, visual rehabilitation, or ocular pharmaceutical agents.

(5) Prescribes or manages contact lenses for refractive, cosmetic, or therapeutic purposes.

(6) Evaluates the need for, or prescribes, low vision aids to partially sighted persons.

(7) Diagnoses or treats any ocular abnormality, disease, or visual or muscular anomaly of the human eye or visual system.

(8) Practices, or offers or attempts to practice, optometry as defined in this Act

either on his or her own behalf or as an employee of a person, firm, or corporation, whether under the supervision of his or her employer or not.

Nothing in this Section shall be interpreted (i) to prevent a person from functioning as an assistant under the direct supervision of a person licensed by the State of Illinois to practice optometry or medicine in all of its branches or (ii) to prohibit visual screening programs that are conducted without a fee (other than voluntary donations), by charitable organizations acting in the public welfare under the supervision of a committee composed of persons licensed by the State of Illinois to practice optometry or persons licensed by the State of Illinois to practice medicine in all of its branches.

(b) When, in the course of providing optometric services to any person, an optometrist licensed under this Act finds an indication of a disease or condition of the eye which in his or her professional judgment requires professional service outside the scope of practice as defined in this Act, he or she shall refer such person to a physician licensed to practice medicine in all of its branches, or other appropriate health care practitioner. Nothing in this Act shall preclude an optometrist from rendering appropriate nonsurgical emergency care.

(c) Nothing contained in this Section shall prohibit a person from manufacturing ophthalmic lenses and prisms or the fabrication of contact lenses according to the specifications prescribed by an optometrist or a physician licensed to practice medicine in all of its branches, but shall specifically prohibit the sale or delivery of ophthalmic lenses, prisms, and contact lenses without a prescription signed by an optometrist or a physician licensed to practice medicine in all of its branches.

(d) Nothing in this Act shall restrict the filling of a prescription by a pharmacist licensed under the Pharmacy Practice Act ~~of 1987~~.

(Source: P.A. 94-787, eff. 5-19-06.)

Section 70. The Pharmacy Practice Act of 1987 is amended by changing Sections 2, 3, 5, 6, 7, 7.5, 8, 9, 10, 11, 12, 13, 15, 16, 16a, 17, 17.1, 18, 19, 20, 22, 22a, 25, 26, 27, 30, 35.1, 35.2, 35.5, 35.7, 35.10, 35.12, 35.16, and 35.19 and by adding Sections 2.5, 9.5, 14.1, 16b, 22b, 25.5, 25.10, 25.15, and 25.20 as follows:

(225 ILCS 85/2) (from Ch. 111, par. 4122)

(Section scheduled to be repealed on January 1, 2008)

Sec. 2. This Act shall be known as the "Pharmacy Practice Act ~~of 1987~~".

(Source: P.A. 85-796.)

(225 ILCS 85/2.5 new)

Sec. 2.5. References to Department or Director of Professional Regulation. References in this Act (i)

to the Department of Professional Regulation are deemed, in appropriate contexts, to be references to the Department of Financial and Professional Regulation and (ii) to the Director of Professional Regulation are deemed, in appropriate contexts, to be references to the Secretary of Financial and Professional Regulation.

(225 ILCS 85/3) (from Ch. 111, par. 4123)

(Section scheduled to be repealed on January 1, 2008)

Sec. 3. Definitions. For the purpose of this Act, except where otherwise limited therein:

(a) "Pharmacy" or "drugstore" means and includes every store, shop, pharmacy department, or other place where pharmacist ~~pharmaceutical~~ care is provided by a pharmacist (1) where drugs, medicines, or poisons are dispensed, sold or offered for sale at retail, or displayed for sale at retail; or (2) where prescriptions of physicians, dentists, advanced practice nurses, physician assistants, veterinarians, podiatrists, or ~~therapeutically certified~~ optometrists, within the limits of their licenses, are compounded, filled, or dispensed; or (3) which has upon it or displayed within it, or affixed to or used in connection with it, a sign bearing the word or words "Pharmacist", "Druggist", "Pharmacy", "Pharmaceutical Care", "Apothecary", "Drugstore", "Medicine Store", "Prescriptions", "Drugs", "Dispensary", "Medicines", or any word or words of similar or like import, either in the English language or any other language; or (4) where the characteristic prescription sign (Rx) or similar design is exhibited; or (5) any store, or shop, or other place with respect to which any of the above words, objects, signs or designs are used in any advertisement.

(b) "Drugs" means and includes (l) articles recognized in the official United States Pharmacopoeia/National Formulary (USP/NF), or any supplement thereto and being intended for and having for their main use the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals, as approved by the United States Food and Drug Administration, but does not include devices or their components, parts, or accessories; and (2) all other articles intended for and having for their main use the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals, as approved by the United States Food and Drug Administration, but does not include devices or their components, parts, or accessories; and (3) articles (other than food) having for their main use and intended to affect the structure or any function of the body of man or other animals; and (4) articles having for their main use and intended for use as a component or any articles specified in clause (l), (2) or (3); but does not include devices or their components, parts or accessories.

(c) "Medicines" means and includes all drugs intended for human or veterinary use approved by the United States Food and Drug Administration.

(d) "Practice of pharmacy" means (1) the interpretation and the provision of assistance in the monitoring, evaluation, and implementation of prescription drug orders; (2) the dispensing of prescription drug orders; (3) participation in drug and device selection; (4) drug administration limited to the administration of oral, topical, injectable, and inhalation as follows: in the context of patient education on the proper use or delivery of medications; vaccination of patients 14 years of age and older pursuant to a valid prescription or standing order, by a physician licensed to practice medicine in all its branches, upon completion of appropriate training, including how to address contraindications and adverse reactions set forth by rule, with notification to the patient's physician and appropriate record retention, or pursuant to hospital pharmacy and therapeutics committee policies and procedures; (5) drug regimen review; (6) drug or drug-related research; (7) the provision of patient counseling; (8) the practice of telepharmacy; (9) the provision of those acts or services necessary to provide pharmacist care; (10) medication therapy management; and (11) the responsibility for compounding and labeling of drugs and devices (except labeling by a manufacturer, repackager, or distributor of non-prescription drugs and commercially packaged legend drugs and devices), proper and safe storage of drugs and devices, and maintenance of required records. A pharmacist who performs any of the acts defined as the practice of pharmacy in this State must be actively licensed as a pharmacist under this Act. ~~means the provision of pharmaceutical care to patients as determined by the pharmacist's professional judgment in the following areas, which may include but are not limited to (1) patient counseling, (2) interpretation and assisting in the monitoring of appropriate drug use and prospective drug utilization review, (3) providing information on the therapeutic values, reactions, drug interactions, side effects, uses, selection of medications and medical devices, and outcome of drug therapy, (4) participation in drug selection, drug monitoring, drug utilization review, evaluation, administration, interpretation, application of pharmacokinetic and laboratory data to design safe and effective drug regimens, (5) drug research (clinical and scientific), and (6) compounding and dispensing of drugs and medical devices.~~

(e) "Prescription" means and includes any written, oral, facsimile, or electronically transmitted order for drugs or medical devices, issued by a physician licensed to practice medicine in all its branches, dentist, veterinarian, or podiatrist, or ~~therapeutically certified~~ optometrist, within the limits of their

licenses, by a physician assistant in accordance with subsection (f) of Section 4, or by an advanced practice nurse in accordance with subsection (g) of Section 4, containing the following: (l) name of the patient; (2) date when prescription was issued; (3) name and strength of drug or description of the medical device prescribed; and (4) quantity, (5) directions for use, (6) prescriber's name, address and signature, and (7) DEA number where required, for controlled substances. DEA numbers shall not be required on inpatient drug orders.

(f) "Person" means and includes a natural person, copartnership, association, corporation, government entity, or any other legal entity.

(g) "Department" means the Department of Financial and Professional Regulation.

(h) "Board of Pharmacy" or "Board" means the State Board of Pharmacy of the Department of Financial and Professional Regulation.

(i) "Secretary" ~~"Director"~~ means the Secretary ~~Director~~ of Financial and Professional Regulation.

(j) "Drug product selection" means the interchange for a prescribed pharmaceutical product in accordance with Section 25 of this Act and Section 3.14 of the Illinois Food, Drug and Cosmetic Act.

(k) "Inpatient drug order" means an order issued by an authorized prescriber for a resident or patient of a facility licensed under the Nursing Home Care Act or the Hospital Licensing Act, or "An Act in relation to the founding and operation of the University of Illinois Hospital and the conduct of University of Illinois health care programs", approved July 3, 1931, as amended, or a facility which is operated by the Department of Human Services (as successor to the Department of Mental Health and Developmental Disabilities) or the Department of Corrections.

(k-5) "Pharmacist" means an individual health care professional and provider currently licensed by this State to engage in the practice of pharmacy.

(l) "Pharmacist in charge" means the licensed pharmacist whose name appears on a pharmacy license and who is responsible for all aspects of the operation related to the practice of pharmacy.

(m) "Dispense" or "dispensing" means the interpretation, evaluation, and implementation of a prescription drug order, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to or use by a patient in accordance with applicable State and federal laws and regulations. ~~delivery of drugs and medical devices, in accordance with applicable State and federal laws and regulations, to the patient or the patient's representative authorized to receive these products, including the preparation, compounding, packaging, and labeling necessary for delivery, computer entry, and verification of medication orders and prescriptions, and any recommending or advising concerning the contents and therapeutic values and uses thereof.~~ "Dispense" or "dispensing" does not mean the physical delivery to a patient or a patient's representative in a home or institution by a designee of a pharmacist or by common carrier. "Dispense" or "dispensing" also does not mean the physical delivery of a drug or medical device to a patient or patient's representative by a pharmacist's designee within a pharmacy or drugstore while the pharmacist is on duty and the pharmacy is open.

(n) "Nonresident pharmacy" ~~"Mail order pharmacy"~~ means a pharmacy that is located in a state , commonwealth, or territory of the United States, other than Illinois, that delivers, dispenses, or distributes, through the United States Postal Service, commercially acceptable parcel delivery service, or other common carrier, to Illinois residents, any substance which requires a prescription.

(o) "Compounding" means the preparation and mixing of components, excluding flavorings, (1) as the result of a prescriber's prescription drug order or initiative based on the prescriber-patient-pharmacist relationship in the course of professional practice or (2) for the purpose of, or incident to, research, teaching, or chemical analysis and not for sale or dispensing. "Compounding" includes the preparation of drugs or devices in anticipation of receiving prescription drug orders based on routine, regularly-observed dispensing patterns. Commercially available products may be compounded for dispensing to individual patients only if all of the following conditions are met: (i) the commercial product is not reasonably available from normal distribution channels in a timely manner to meet the patient's needs and (ii) the prescribing practitioner has requested that the drug be compounded. ~~, mixing, assembling, packaging, or labeling of a drug or medical device: (1) as the result of a practitioner's prescription drug order or initiative that is dispensed pursuant to a prescription in the course of professional practice; or (2) for the purpose of, or incident to, research, teaching, or chemical analysis; or (3) in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.~~

(p) (Blank). ~~"Confidential information" means information, maintained by the pharmacist in the patient's records, released only (i) to the patient or, as the patient directs, to other practitioners and other pharmacists or (ii) to any other person authorized by law to receive the information.~~

(q) (Blank). ~~"Prospective drug review" or "drug utilization evaluation" means a screening for potential drug therapy problems due to therapeutic duplication, drug-disease contraindications, drug-drug~~

~~interactions (including serious interactions with nonprescription or over the counter drugs), drug food interactions, incorrect drug dosage or duration of drug treatment, drug allergy interactions, and clinical abuse or misuse.~~

(r) "Patient counseling" means the communication between a pharmacist or a pharmacy intern under the supervision of a pharmacist and a patient or the patient's representative about the patient's medication or device for the purpose of optimizing proper use of prescription medications or devices. "Patient counseling" may include without limitation (1) obtaining a medication history; (2) acquiring a patient's allergies and health conditions; (3) facilitation of the patient's understanding of the intended use of the medication; (4) proper directions for use; (5) significant potential adverse events; (6) potential food-drug interactions; and (7) the need to be compliant with the medication therapy. A pharmacy technician may only participate in the following aspects of patient counseling under the supervision of a pharmacist: (1) obtaining medication history; (2) providing the offer for counseling by a pharmacist or intern; and (3) acquiring a patient's allergies and health conditions. ~~or a student pharmacist under the direct supervision of a pharmacist and a patient or the patient's representative about the patient's medication or device for the purpose of optimizing proper use of prescription medications or devices. The offer to counsel by the pharmacist or the pharmacist's designee, and subsequent patient counseling by the pharmacist or student pharmacist, shall be made in a face to face communication with the patient or patient's representative unless, in the professional judgment of the pharmacist, a face to face communication is deemed inappropriate or unnecessary. In that instance, the offer to counsel or patient counseling may be made in a written communication, by telephone, or in a manner determined by the pharmacist to be appropriate.~~

(s) "Patient profiles" or "patient drug therapy record" means the obtaining, recording, and maintenance of patient prescription information, including prescriptions for controlled substances, and personal information.

(t) (Blank). ~~"Pharmaceutical care" includes, but is not limited to, the act of monitoring drug use and other patient care services intended to achieve outcomes that improve the patient's quality of life but shall not include the sale of over the counter drugs by a seller of goods and services who does not dispense prescription drugs.~~

(u) "Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, required under federal law to bear the label "Caution: Federal law requires dispensing by or on the order of a physician". A seller of goods and services who, only for the purpose of retail sales, compounds, sells, rents, or leases medical devices shall not, by reasons thereof, be required to be a licensed pharmacy.

(v) "Unique identifier" means an electronic signature, handwritten signature or initials, thumb print, or other acceptable ~~individual~~ biometric or electronic identification process as approved by the Department.

(w) "Current usual and customary retail price" means the ~~actual~~ price that a pharmacy charges to a non-third-party payor ~~a retail purchaser~~.

(x) "Automated pharmacy system" means a mechanical system located within the confines of the pharmacy or remote location that performs operations or activities, other than compounding or administration, relative to storage, packaging, dispensing, or distribution of medication, and which collects, controls, and maintains all transaction information.

(y) "Drug regimen review" means and includes the evaluation of prescription drug orders and patient records for (1) known allergies; (2) drug or potential therapy contraindications; (3) reasonable dose, duration of use, and route of administration, taking into consideration factors such as age, gender, and contraindications; (4) reasonable directions for use; (5) potential or actual adverse drug reactions; (6) drug-drug interactions; (7) drug-food interactions; (8) drug-disease contraindications; (9) therapeutic duplication; (10) patient laboratory values when authorized and available; (11) proper utilization (including over or under utilization) and optimum therapeutic outcomes; and (12) abuse and misuse.

(z) "Electronic transmission prescription" means any prescription order for which a facsimile or electronic image of the order is electronically transmitted from a licensed prescriber to a pharmacy. "Electronic transmission prescription" includes both data and image prescriptions.

(aa) "Medication therapy management services" means a distinct service or group of services offered by licensed pharmacists, physicians licensed to practice medicine in all its branches, advanced practice nurses authorized in a written agreement with a physician licensed to practice medicine in all its branches, or physician assistants authorized in guidelines by a supervising physician that optimize therapeutic outcomes for individual patients through improved medication use. In a retail or other non-hospital pharmacy, medication therapy management services shall consist of the evaluation of prescription drug orders and patient medication records to resolve conflicts with the following:

(1) known allergies;

(2) drug or potential therapy contraindications;

(3) reasonable dose, duration of use, and route of administration, taking into consideration factors such as age, gender, and contraindications;

(4) reasonable directions for use;

(5) potential or actual adverse drug reactions;

(6) drug-drug interactions;

(7) drug-food interactions;

(8) drug-disease contraindications;

(9) identification of therapeutic duplication;

(10) patient laboratory values when authorized and available;

(11) proper utilization (including over or under utilization) and optimum therapeutic outcomes; and

(12) drug abuse and misuse.

"Medication therapy management services" includes the following:

(1) documenting the services delivered and communicating the information provided to patients' prescribers within an appropriate time frame, not to exceed 48 hours;

(2) providing patient counseling designed to enhance a patient's understanding and the appropriate use of his or her medications; and

(3) providing information, support services, and resources designed to enhance a patient's adherence with his or her prescribed therapeutic regimens.

"Medication therapy management services" may also include patient care functions authorized by a physician licensed to practice medicine in all its branches for his or her identified patient or groups of patients under specified conditions or limitations in a standing order from the physician.

"Medication therapy management services" in a licensed hospital may also include the following:

(1) reviewing assessments of the patient's health status; and

(2) following protocols of a hospital pharmacy and therapeutics committee with respect to the fulfillment of medication orders.

(bb) "Pharmacist care" means the provision by a pharmacist of medication therapy management services, with or without the dispensing of drugs or devices, intended to achieve outcomes that improve patient health, quality of life, and comfort and enhance patient safety.

(cc) "Protected health information" means individually identifiable health information that, except as otherwise provided, is:

(1) transmitted by electronic media;

(2) maintained in any medium set forth in the definition of "electronic media" in the federal Health Insurance Portability and Accountability Act; or

(3) transmitted or maintained in any other form or medium.

"Protected health information" does not include individually identifiable health information found in:

(1) education records covered by the federal Family Educational Right and Privacy Act; or

(2) employment records held by a licensee in its role as an employer.

(dd) "Standing order" means a specific order for a patient or group of patients issued by a physician licensed to practice medicine in all its branches in Illinois.

(ee)"Address of record" means the address recorded by the Department in the applicant's or licensee's application file or license file, as maintained by the Department's licensure maintenance unit.

(ff) "Home pharmacy" means the location of a pharmacy's primary operations.

(Source: P.A. 93-571, eff. 8-20-03; 93-1075, eff. 1-18-05; 94-459, eff. 1-1-06.)

(225 ILCS 85/5) (from Ch. 111, par. 4125)

(Section scheduled to be repealed on January 1, 2008)

Sec. 5. Application of Act.

(a) It shall be unlawful for any person to engage in the practice of pharmacy in this State and it shall be unlawful for any employer to allow any person in his or her employ to engage in the practice of pharmacy in this State, unless such person who shall engage in the practice of pharmacy in this State shall be first authorized to do so under the provisions of this Act.

(b) Nothing contained in this Act shall be construed to invalidate any existing valid and unexpired certificate of registration, nor any existing rights or privileges thereunder, of any ~~registered~~ pharmacist, registered assistant pharmacist, local ~~registered~~ pharmacist, or registered pharmacy apprentice, in force on January 1, 1956 and issued under any prior Act of this State also in force on January 1, 1956. Every person holding such a certificate of registration shall have the authority to practice under this Act, but shall be subject to the same limitations and restrictions as were applicable to him or her in the Act under which his or her certificate of registration was issued. Each such certificate may be renewed as provided in Section 12.

(c) It shall be unlawful for any person to take, use or exhibit any word, object, sign or design

described in subsection (a) of Section 3 in connection with any drug store, shop or other place or in any other manner to advertise or hold himself out as operating or conducting a drug store unless such drug store, shop, pharmacy department or other place shall be operated and conducted in compliance with the provisions of this Act.

(d) Nothing in this Act shall be construed to authorize a pharmacist to prescribe or perform medical diagnosis of human ailments or conditions.

(Source: P.A. 90-253, eff. 7-29-97.)

(225 ILCS 85/6) (from Ch. 111, par. 4126)

(Section scheduled to be repealed on January 1, 2008)

Sec. 6. Each individual seeking licensure as a registered pharmacist shall make application to the Department and shall provide evidence of the following:

1. that he or she is a United States citizen or legally admitted alien;

2. that he or she has not engaged in conduct or behavior determined to be grounds for discipline under this Act;

3. that he or she is a graduate of a first professional degree program in pharmacy of a university recognized and approved by the Department;

4. that he or she has successfully completed a program of practice experience under the direct supervision of a ~~registered~~ pharmacist in a pharmacy in this State, or in any other State; and

5. that he or she has passed an examination recommended by the Board of Pharmacy and authorized by the Department.

~~The program of practice experience referred to in paragraph (4) of this Section shall be fulfilled by the successful completion of a practice course offered by a school or college of pharmacy or department of pharmacy recognized and approved by the Department, which shall be a minimum of one academic quarter in length.~~

~~Any person applying for a license as a registered pharmacist in this State who has graduated from a first professional degree program in pharmacy of at least 5 academic years from a school or college of pharmacy, which at the time of such graduation was not recognized and approved as reputable and in good standing by the Department, shall be required, in order to qualify for admittance to take the Department's examination for licensure as a registered pharmacist, to pass a preliminary diagnostic examination recommended by the Board and authorized by the Department, covering proficiency in the English language and such academic areas as the Board may deem essential to a satisfactory pharmacy curriculum and by rule prescribe. Any applicant who submits to and fails to pass the preliminary diagnostic examination may be required to satisfy the Board that he has taken additional remedial work previously approved by the Board to correct deficiencies in his pharmaceutical education indicated by the results of the last preliminary diagnostic examination prior to taking the preliminary diagnostic examination again.~~

~~Any applicant who has graduated from a first professional degree program in pharmacy of at least 5 academic years from a school or college of pharmacy, which at the time of such graduation was not recognized and approved as reputable and in good standing by the Department, shall complete a clinical program previously approved by the Board on the basis of its equivalence to programs that are components of first professional degree programs in pharmacy approved by the Department.~~

~~Any person required by Section 6 to submit to a preliminary diagnostic examination in advance of admittance to an examination for registration as a registered pharmacist under this Act shall be permitted to take such preliminary diagnostic examination, provided that he is not less than 21 years of age and furnishes the Department with satisfactory evidence that he has: successfully completed a program of preprofessional education (postsecondary school) consisting of course work equivalent to that generally required for admission to U.S. colleges of pharmacy recognized and approved as reputable and in good standing by the Department; and has received a degree in pharmacy as required in this Section.~~

The Department shall issue a license as a registered pharmacist to any applicant who has qualified as aforesaid and who has filed the required applications and paid the required fees in connection therewith; and such registrant shall have the authority to practice the profession of pharmacy in this State.

(Source: P.A. 85-796.)

(225 ILCS 85/7) (from Ch. 111, par. 4127)

(Section scheduled to be repealed on January 1, 2008)

Sec. 7. Application; examination. Applications for original licenses shall be made to the Department in writing on forms prescribed by the Department and shall be accompanied by the required fee, which shall not be refundable. Any such application shall require such information as in the judgment of the Department will enable the Board and Department to pass on the qualifications of the applicant for a license.

The Department shall authorize examinations of applicants as pharmacists not less than 3 times per year at such times and places as it may determine. The examination of applicants shall be of a character to give a fair test of the qualifications of the applicant to practice pharmacy.

Applicants for examination as pharmacists shall be required to pay, either to the Department or the designated testing service, a fee covering the cost of providing the examination. Failure to appear for the examination on the scheduled date, at the time and place specified, after the applicant's application for examination has been received and acknowledged by the Department or the designated testing service, shall result in the forfeiture of the examination fee. The examination shall be developed and provided by the National Association of Boards of Pharmacy.

If an applicant neglects, fails or refuses to take an examination or fails to pass an examination for a license under this Act within 3 years after filing his application, the application is denied. However, such applicant may thereafter make a new application accompanied by the required fee and show evidence of meeting the requirements in force at the time of the new application.

The Department shall notify applicants taking the examination of their results within 7 weeks of the examination date. Further, the Department shall have the authority to immediately authorize such applicants who successfully pass the examination to engage in the practice of pharmacy.

An applicant shall have one year from the date of notification of successful completion of the examination to apply to the Department for a license. If an applicant fails to make such application within one year the applicant shall be required to again take and pass the examination.

An applicant who has graduated with a professional degree from a school of pharmacy located outside of the United States must do the following:

(1) obtain a Foreign Pharmacy Graduate Examination Committee (FPGEC) Certificate;

(2) complete 1,200 hours of clinical training and experience, as defined by rule, in the United States or its territories; and

(3) successfully complete the licensing requirements set forth in Section 6 of this Act, as well as those adopted by the Department by rule.

The Department may employ consultants for the purpose of preparing and conducting examinations.
(Source: P.A. 90-253, eff. 7-29-97.)

(225 ILCS 85/7.5)

(Section scheduled to be repealed on January 1, 2008)

Sec. 7.5. Social Security Number or unique identifying number on license application. In addition to any other information required to be contained in the application, every application for an original, renewal, or restored license under this Act shall include the applicant's Social Security Number or other unique identifying number deemed appropriate by the Department.
(Source: P.A. 90-144, eff. 7-23-97.)

(225 ILCS 85/8) (from Ch. 111, par. 4128)

(Section scheduled to be repealed on January 1, 2008)

Sec. 8. Licensure by endorsement; emergency licensure. The Department may, in its discretion, license as a pharmacist, without examination, on payment of the required fee, an applicant who is so licensed under the laws of another U.S. jurisdiction or another country, if the requirements for licensure in the other jurisdiction in which the applicant was licensed, were, at the date of his or her licensure deemed by the Board to be substantially equivalent to the requirements then in force in this State.

A person holding an active, unencumbered license in good standing in another jurisdiction who applies for a license pursuant to Section 7 of this Act due to a natural disaster or catastrophic event in another jurisdiction may be temporarily authorized by the Secretary to practice pharmacy pending the issuance of the license. This temporary authorization shall expire upon issuance of the license or upon notification that the Department has denied licensure.

Upon a declared Executive Order due to an emergency caused by a natural or manmade disaster or any other exceptional situation that causes an extraordinary demand for pharmacist services, the Department may issue a pharmacist who holds a license to practice pharmacy in another state an emergency license to practice in this State.
(Source: P.A. 85-796.)

(225 ILCS 85/9) (from Ch. 111, par. 4129)

(Section scheduled to be repealed on January 1, 2008)

Sec. 9. Registration as pharmacy technician. Any person shall be entitled to registration as a registered pharmacy technician who is of the age of 16 or over, has not engaged in conduct or behavior determined to be grounds for discipline under this Act, ~~is of temperate habits,~~ is attending or has graduated from an accredited high school or comparable school or educational institution or received a GED, and has filed a written application for registration on a form to be prescribed and furnished by the Department for that

purpose. The Department shall issue a certificate of registration as a registered pharmacy technician to any applicant who has qualified as aforesaid, and such registration shall be the sole authority required to assist licensed pharmacists in the practice of pharmacy, under the ~~personal~~ supervision of a licensed pharmacist. A registered pharmacy technician may, under the supervision of a pharmacist, assist in the practice of pharmacy and perform such functions as assisting in the dispensing process, offering counseling, receiving new verbal prescription orders, and having prescriber contact concerning prescription drug order clarification. A registered pharmacy technician may not engage in patient counseling, drug regimen review, or clinical conflict resolution.

Beginning on January 1, 2010, within 2 years after being employed as a registered technician, a pharmacy technician must become certified by successfully passing the Pharmacy Technician Certification Board (PTCB) examination or another Board-approved pharmacy technician examination in order to continue to perform pharmacy technician's duties. This requirement does not apply to pharmacy technicians hired prior to January 1, 2008.

Any person registered as a pharmacy technician who is also enrolled in a first professional degree program in pharmacy in a school or college of pharmacy or a department of pharmacy of a university approved by the Department shall be considered a "pharmacy intern" ~~"student pharmacist"~~ and entitled to use the title "pharmacy intern". A pharmacy intern must meet all of the requirements for registration as a pharmacy technician set forth in this Section and pay the required pharmacy technician registration fees ~~"student pharmacist"~~.

The Department, upon the recommendation of the Board, may take any action set forth in Section 30 of this Act with regard to certificates pursuant to this Section.

Any person who is enrolled in a non-traditional Pharm.D. program at an ACPE accredited college of pharmacy and is a licensed pharmacist under the laws of another United States jurisdiction shall be permitted to engage in the program of practice experience required in the academic program by virtue of such license. Such person shall be exempt from the requirement of registration as a registered pharmacy technician while engaged in the program of practice experience required in the academic program.

An applicant for registration as a pharmacy technician may assist a ~~registered~~ pharmacist in the practice of pharmacy for a period of up to 60 days prior to the issuance of a certificate of registration if the applicant has submitted the required fee and an application for registration to the Department. The applicant shall keep a copy of the submitted application on the premises where the applicant is assisting in the practice of pharmacy. The Department shall forward confirmation of receipt of the application with start and expiration dates of practice pending registration.

(Source: P.A. 92-16, eff. 6-28-01.)

(225 ILCS 85/9.5 new)

Sec. 9.5. Certified pharmacy technician.

(a) An individual registered as a pharmacy technician under this Act may receive certification as a certified pharmacy technician, if he or she meets all of the following requirements:

(1) He or she has submitted a written application in the form and manner prescribed by the Board.

(2) He or she has attained the age of 18.

(3) He or she is of good moral character, as determined by the Department.

(4) He or she has (i) graduated from pharmacy technician training meeting the requirements set forth in subsection (a) of Section 17.1 of this Act or (ii) obtained documentation from the pharmacist-in-charge of the pharmacy where the applicant is employed verifying that he or she has successfully completed a training program and has successfully completed an objective assessment mechanism prepared in accordance with rules established by the Board.

(5) He or she has successfully passed an examination accredited by the National Organization of Certifying Agencies, as approved and required by the Board.

(6) He or she has paid the required certification fees.

(b) No pharmacist whose license has been denied, revoked, suspended, or restricted for disciplinary purposes may be eligible to be registered as a certified pharmacy technician.

(c) The Board may, by rule, establish any additional requirements for certification under this Section.

(225 ILCS 85/10) (from Ch. 111, par. 4130)

(Section scheduled to be repealed on January 1, 2008)

Sec. 10. State Board of Pharmacy. There is created in the Department the State Board of Pharmacy. It shall consist of 9 members, 7 of whom shall be licensed pharmacists. Each of those 7 members must be a licensed pharmacist in good standing in this State, a graduate of an accredited college of pharmacy or hold a Bachelor of Science degree in Pharmacy and have at least 5 years' practical experience in the practice of pharmacy subsequent to the date of his licensure as a licensed pharmacist in the State of Illinois. There shall be 2 public members, who shall be voting members, who shall not be licensed

pharmacists in this State or any other state.

Each member shall be appointed by the Governor.

Members ~~The terms of all members serving as of March 31, 1999 shall expire on that date. The Governor shall appoint 3 persons to serve one year terms, 3 persons to serve 3 year terms, and 3 persons to serve 5 year terms to begin April 1, 1999. Otherwise, members~~ shall be appointed to 5 year terms. The Governor shall fill any vacancy for the remainder of the unexpired term. Partial terms over 3 years in length shall be considered full terms. A member may be reappointed for a successive term, but no member shall serve more than 2 full terms in his or her lifetime. ~~No member shall be eligible to serve more than 12 consecutive years.~~

In making the appointment of members on the Board, the Governor shall give due consideration to recommendations by the members of the profession of pharmacy and by pharmacy ~~pharmaceutical~~ organizations therein. The Governor shall notify the pharmacy ~~pharmaceutical~~ organizations promptly of any vacancy of members on the Board and in appointing members shall give consideration to individuals engaged in all types and settings of pharmacy practice.

The Governor may remove any member of the Board for misconduct, incapacity or neglect of duty and he shall be the sole judge of the sufficiency of the cause for removal.

~~Every person appointed a member of the Board shall take and subscribe the constitutional oath of office and file it with the Secretary of State.~~ Each member of the Board shall be reimbursed for such actual and legitimate expenses as he may incur in going to and from the place of meeting and remaining thereat during sessions of the Board. In addition, each member of the Board may ~~shall~~ receive a per diem payment in an amount determined from time to time by the Director for attendance at meetings of the Board and conducting other official business of the Board.

The Board shall hold quarterly meetings ~~and an annual meeting in January of each year and such other meetings~~ at such times and places and upon ~~such~~ notice as the Department ~~Board~~ may determine and as its business may require. A majority of the Board members currently appointed shall constitute a quorum. A vacancy in the membership of the Board shall not impair the right of a quorum to exercise all the rights and perform all the duties of the Board. ~~Five members of the Board shall constitute a quorum for the transaction of business. The Director shall appoint a pharmacy coordinator, who shall be someone other than a member of the Board. The pharmacy coordinator shall be a registered pharmacist in good standing in this State, shall be a graduate of an accredited college of pharmacy, or hold at a minimum a Bachelor of Science degree in Pharmacy and shall have at least 5 years' experience in the practice of pharmacy immediately prior to his appointment. The pharmacy coordinator shall be the executive administrator and the chief enforcement officer of the Pharmacy Practice Act of 1987.~~

The Board shall exercise the rights, powers and duties which have been vested in the Board under this Act, and any other duties conferred upon the Board by law.

~~The Director shall, in conformity with the Personnel Code, employ not less than 7 pharmacy investigators and 2 pharmacy supervisors. Each pharmacy investigator and each supervisor shall be a registered pharmacist in good standing in this State, and shall be a graduate of an accredited college of pharmacy and have at least 5 years of experience in the practice of pharmacy. The Department shall also employ at least one attorney who is a pharmacist to prosecute violations of this Act and its rules. The Department may, in conformity with the Personnel Code, employ such clerical and other employees as are necessary to carry out the duties of the Board.~~

~~The duly authorized pharmacy investigators of the Department shall have the right to enter and inspect during business hours any pharmacy or any other place in the State of Illinois holding itself out to be a pharmacy where medicines or drugs or drug products or proprietary medicines are sold, offered for sale, exposed for sale, or kept for sale. The pharmacy investigators shall be the only Department investigators authorized to inspect, investigate, and monitor probation compliance of pharmacists, pharmacies, and pharmacy technicians.~~

(Source: P.A. 91-827, eff. 6-13-00; 92-651, eff. 7-11-02; 92-880, eff. 1-1-04.)

(225 ILCS 85/11) (from Ch. 111, par. 4131)

(Section scheduled to be repealed on January 1, 2008)

Sec. 11. Duties of the Department. The Department shall exercise the powers and duties prescribed by the Civil Administrative Code of Illinois for the administration of Licensing Acts and shall exercise such other powers and duties necessary for effectuating the purpose of this Act. However, the following powers and duties shall be exercised only upon review ~~action and report in writing of a majority~~ of the Board of Pharmacy to take such action:

(a) Formulate such rules, not inconsistent with law and subject to the Illinois Administrative Procedure Act, as may be necessary to carry out the purposes and enforce the provisions of this Act. The Director may grant variances from any such rules as provided for in this Section;

(b) The suspension, revocation, placing on probationary status, reprimand, and refusing to issue or restore any license or certificate of registration issued under the provisions of this Act for the reasons set forth in Section 30 of this Act.

(c) The issuance, renewal, restoration or reissuance of any license or certificate which has been previously refused to be issued or renewed, or has been revoked, suspended or placed on probationary status.

The granting of variances from rules promulgated pursuant to this Section in individual cases where there is a finding that:

(1) the provision from which the variance is granted is not statutorily mandated;

(2) no party will be injured by the granting of the variance; and

(3) the rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.

The Director shall notify the State Board of Pharmacy of the granting of such variance and the reasons therefor, at the next meeting of the Board.

(d) The Secretary shall appoint a chief pharmacy coordinator and at least 2 deputy pharmacy coordinators, all of whom shall be registered pharmacists in good standing in this State, shall be graduates of an accredited college of pharmacy or hold, at a minimum, a bachelor of science degree in pharmacy, and shall have at least 5 years of experience in the practice of pharmacy immediately prior to his or her appointment. The chief pharmacy coordinator shall be the executive administrator and the chief enforcement officer of this Act. The deputy pharmacy coordinators shall report to the chief pharmacy coordinator. The Secretary shall assign at least one deputy pharmacy coordinator to a region composed of Cook County and such other counties as the Secretary may deem appropriate, and such deputy pharmacy coordinator shall have his or her primary office in Chicago. The Secretary shall assign at least one deputy pharmacy coordinator to a region composed of the balance of counties in the State, and such deputy pharmacy coordinator shall have his or her primary office in Springfield.

(e) The Secretary shall, in conformity with the Personnel Code, employ not less than 4 pharmacy investigators who shall report to the pharmacy coordinator or a deputy pharmacy coordinator. Each pharmacy investigator shall be a graduate of a 4-year college or university and shall (i) have at least 2 years of investigative experience; (ii) have 2 years of responsible pharmacy experience; or (iii) be a licensed pharmacist. The Department shall also employ at least one attorney to prosecute violations of this Act and its rules. The Department may, in conformity with the Personnel Code, employ such clerical and other employees as are necessary to carry out the duties of the Board and Department.

The duly authorized pharmacy investigators of the Department shall have the right to enter and inspect, during business hours, any pharmacy or any other place in this State holding itself out to be a pharmacy where medicines, drugs or drug products, or proprietary medicines are sold, offered for sale, exposed for sale, or kept for sale.

(Source: P.A. 90-253, eff. 7-29-97.)

(225 ILCS 85/12) (from Ch. 111, par. 4132)

(Section scheduled to be repealed on January 1, 2008)

Sec. 12. Expiration of license; renewal. The expiration date and renewal period for each license and certificate of registration issued under this Act shall be set by rule.

As a condition for the renewal of a certificate of registration as a ~~registered~~ pharmacist, the registrant shall provide evidence to the Department of completion of a total of 30 hours of pharmacy continuing education during the 24 months ~~2 calendar years~~ preceding the expiration date of the certificate. Such continuing education shall be approved by the Accreditation Council on Pharmacy ~~American Council on Pharmaceutical~~ Education.

The Department shall establish by rule a means for the verification of completion of the continuing education required by this Section. This verification may be accomplished through audits of records maintained by registrants, by requiring the filing of continuing education certificates with the Department or a qualified organization selected by the Department to maintain such records or by other means established by the Department.

Rules developed under this Section may provide for a reasonable biennial fee, not to exceed $20, to fund the cost of such recordkeeping. The Department shall, by rule, further provide an orderly process for the reinstatement of licenses which have not been renewed due to the failure to meet the continuing education requirements of this Section. The requirements of continuing education may be waived, in whole or in part, in cases of extreme hardship as defined by rule of the Department. Such waivers shall be granted for not more than one of any 3 consecutive renewal periods.

Any pharmacist who has permitted his license to expire or who has had his license on inactive status may have his license restored by making application to the Department and filing proof acceptable to the

Department of his fitness to have his license restored, and by paying the required restoration fee. The Department shall determine, by an evaluation program established by rule his fitness for restoration of his license and shall establish procedures and requirements for such restoration. However, any pharmacist who demonstrates that he has continuously maintained active practice in another jurisdiction pursuant to a license in good standing, and who has substantially complied with the continuing education requirements of this Section shall not be subject to further evaluation for purposes of this Section.

Any licensee who shall engage in the practice for which his or her license was issued while the license is expired or on inactive status shall be considered to be practicing without a license which, shall be grounds for discipline under Section 30 of this Act.

Any pharmacy operating on an expired license is engaged in the unlawful practice of pharmacy and is subject to discipline under Section 30 of this Act. A pharmacy whose license has been expired for one year or more may not have its license restored but must apply for a new license and meet all requirements for licensure. Any pharmacy whose license has been expired for less than one year may apply for restoration of its license and shall have its license restored.

However, any pharmacist whose license expired while he was (l) in Federal Service on active duty with the Armed Forces of the United States, or the State Militia called into service or training, or (2) in training or education under the supervision of the United States preliminary to induction into the military service, may have his license or certificate restored without paying any lapsed renewal fees, if within 2 years after honorable termination of such service, training or education he furnishes the Department with satisfactory evidence to the effect that he has been so engaged and that his service, training or education has been so terminated.

(Source: P.A. 90-253, eff. 7-29-97.)

(225 ILCS 85/13) (from Ch. 111, par. 4133)

(Section scheduled to be repealed on January 1, 2008)

Sec. 13. Inactive status. Any pharmacist or pharmacy technician who notifies the Department, in writing on forms prescribed by the Department, may elect to place his or her license on an inactive status and shall be excused from payment of renewal fees and completion of continuing education requirements until he or she notifies the Department in writing of his or her intent to restore his license.

Any pharmacist or pharmacist technician requesting restoration from inactive status shall be required to pay the current renewal fee and shall be required to restore his or her license or certificate, as provided by rule of the Department.

Any pharmacist or pharmacist technician whose license is in inactive status shall not practice in the State of Illinois.

A ~~Neither a~~ pharmacy license ~~nor a pharmacy technician license~~ may not be placed on inactive status.

Continued practice on a license which has lapsed or been placed on inactive status shall be considered to be practicing without a license.

(Source: P.A. 90-253, eff. 7-29-97.)

(225 ILCS 85/14.1 new)

Sec. 14.1. Structural and equipment requirements. The Department shall establish structural and equipment requirements for a pharmacy by rule.

(225 ILCS 85/15) (from Ch. 111, par. 4135)

(Section scheduled to be repealed on January 1, 2008)

Sec. 15. Pharmacy requirements. It shall be unlawful for the owner of any pharmacy, as defined in this Act, to operate or conduct the same, or to allow the same to be operated or conducted, unless:

(a) It has a licensed pharmacist, authorized to practice pharmacy in this State under the provisions of this Act, on duty whenever the practice of pharmacy is conducted;

(b) Security provisions for all drugs and devices, as determined by rule of the Department, are provided during the absence from the licensed pharmacy of all licensed pharmacists. Maintenance of security provisions is the responsibility of the licensed ~~registered~~ pharmacist in charge; and

(c) The pharmacy is licensed under this Act to conduct the practice of pharmacy in any and all forms from the physical address of the pharmacy's primary inventory where U.S. mail is delivered. If a facility, company, or organization operates multiple pharmacies from multiple physical addresses, a separate pharmacy license is required for each different physical address ~~to do business~~.

(d) The Department may allow a pharmacy that is not located at the same location as its home pharmacy and at which pharmacy services are provided during an emergency situation, as defined by rule, to be operated as an emergency remote pharmacy. An emergency remote pharmacy operating under this subsection (d) shall operate under the license of the home pharmacy.

~~The Department shall, by rule, provide requirements for each division of pharmacy license and shall, as well provide guidelines for the designation of a registered pharmacist in charge for each division.~~

~~Division I. Retail Licenses for pharmacies which are open to, or offer pharmacy services to, the general public.~~

~~Division II. Licenses for pharmacies whose primary pharmacy service is provided to patients or residents of facilities licensed under the Nursing Home Care Act or the Hospital Licensing Act, or "An Act in relation to the founding and operation of the University of Illinois Hospital and the conduct of University of Illinois health care programs", approved July 3, 1931, as amended, and which are not located in the facilities they serve.~~

~~Division III. Licenses for pharmacies which are located in a facility licensed under the Nursing Home Care Act or the Hospital Licensing Act, or "An Act in relation to the founding and operation of the University of Illinois Hospital and the conduct of University of Illinois health care programs", approved July 3, 1931, as amended, or a facility which is operated by the Department of Human Services (as successor to the Department of Mental Health and Developmental Disabilities) or the Department of Corrections, and which provide pharmacy services to residents or patients of the facility, as well as employees, prescribers and students of the facility.~~

~~Division IV. Licenses for pharmacies which provide or offer for sale radioactive materials.~~

~~Division V. Licenses for pharmacies which hold licenses in Division II or Division III which also provide pharmacy services to the general public, or pharmacies which are located in or whose primary pharmacy service is to ambulatory care facilities or schools of veterinary medicine or other such institution or facility.~~

~~Division VI. Licenses for pharmacies that provide pharmacy services to patients of institutions serviced by pharmacies with a Division II or Division III license, without using their own supply of drugs. Division VI pharmacies may provide pharmacy services only in cooperation with an institution's pharmacy or pharmacy provider. Nothing in this paragraph shall constitute a change to the practice of pharmacy as defined in Section 3 of this Act. Nothing in this amendatory Act of the 94th General Assembly shall in any way alter the definition or operation of any other division of pharmacy as provided in this Act.~~

The Director may waive the requirement for a pharmacist to be on duty at all times for State facilities not treating human ailments.

It shall be unlawful for any person, who is not a licensed pharmacy or health care facility, to purport to be such or to use in name, title, or sign designating, or in connection with that place of business, any of the words: "pharmacy", "pharmacist", "pharmacy department", "apothecary", "druggist", "drug", "drugs", "medicines", "medicine store", "drug sundries", "prescriptions filled", or any list of words indicating that drugs are compounded or sold to the lay public, or prescriptions are dispensed therein. Each day during which, or a part which, such representation is made or appears or such a sign is allowed to remain upon or in such a place of business shall constitute a separate offense under this Act.

The holder of any license or certificate of registration shall conspicuously display it in the pharmacy in which he is engaged in the practice of pharmacy. The ~~registered~~ pharmacist in charge shall conspicuously display his name in such pharmacy. The pharmacy license shall also be conspicuously displayed.

(Source: P.A. 94-84, eff. 6-28-05.)

(225 ILCS 85/16) (from Ch. 111, par. 4136)

(Section scheduled to be repealed on January 1, 2008)

Sec. 16. The Department shall require and provide for the licensure of every pharmacy doing business in this State. Such licensure shall expire 30 ~~10~~ days after the pharmacist in charge dies or leaves the place where the pharmacy is licensed or after such pharmacist's license has been suspended or revoked.

In the event the designated pharmacist in charge dies or otherwise ceases to function in that capacity, or when the license of the pharmacist in charge has been suspended or revoked, the owner of the pharmacy shall be required to notify the Department, on forms provided by the Department, of the identity of the new pharmacist in charge.

It is the duty of every pharmacist in charge who ceases to function in that capacity to report to the Department within 30 ~~10~~ days of the date on which he ceased such functions for such pharmacy. It is the duty of every owner of a pharmacy licensed under this Act to report to the Department within 30 ~~10~~ days of the date on which the pharmacist in charge died or ceased to function in that capacity. Failure to provide such notification to the Department shall be grounds for disciplinary action.

No license shall be issued to any pharmacy unless such pharmacy has a pharmacist in charge and each such pharmacy license shall indicate on the face thereof the pharmacist in charge.

(Source: P.A. 85-796.)

(225 ILCS 85/16a) (from Ch. 111, par. 4136a)

(Section scheduled to be repealed on January 1, 2008)

Sec. 16a. (a) The Department shall establish rules and regulations, consistent with the provisions of this Act, governing nonresident ~~mail order~~ pharmacies, including pharmacies providing services via the Internet, which sell, or offer for sale, drugs, medicines, or other pharmaceutical services in this State.

(b) The Board shall require and provide for an annual nonresident special pharmacy registration for all pharmacies located outside of this State that dispense medications for Illinois residents and mail, ship, or deliver prescription medications into this State. Nonresident special pharmacy registration shall be granted by the Board upon the disclosure and certification by a pharmacy:

(1) that it is licensed in the state in which the dispensing facility is located and from which the drugs are dispensed;

(2) of the location, names, and titles of all principal corporate officers and all pharmacists who are dispensing drugs to residents of this State;

(3) that it complies with all lawful directions and requests for information from the board of pharmacy of each state in which it is licensed or registered, except that it shall respond directly to all communications from the Board concerning emergency circumstances arising from the dispensing of drugs to residents of this State;

(4) that it maintains its records of drugs dispensed to residents of this State so that the records are readily retrievable from the records of other drugs dispensed;

(5) that it cooperates with the Board in providing information to the board of pharmacy of the state in which it is licensed concerning matters related to the dispensing of drugs to residents of this State; and

(6) that during its regular hours of operation, but not less than 6 days per week, for a minimum of 40 hours per week, a toll-free telephone service is provided to facilitate communication between patients in this State and a pharmacist at the pharmacy who has access to the patients' records. The toll-free number must be disclosed on the label affixed to each container of drugs dispensed to residents of this State.

(Source: P.A. 91-438, eff. 1-1-00.)

(225 ILCS 85/16b new)

Sec. 16b. Prescription pick up and drop off. Nothing contained in this Act shall prohibit a pharmacist or pharmacy, by means of its employee or by use of a common carrier or the U.S. mail, at the request of the patient, from picking up prescription orders from the prescriber or delivering prescription drugs to the patient or the patient's agent at the residence or place of employment of the person for whom the prescription was issued or at the hospital or medical care facility in which the patient is confined. Conversely, the patient or patient's agent may drop off prescriptions at a designated area.

(225 ILCS 85/17) (from Ch. 111, par. 4137)

(Section scheduled to be repealed on January 1, 2008)

Sec. 17. Disposition of legend drugs on cessation of pharmacy operations.

(a) The pharmacist in charge of a pharmacy which has its pharmacy license revoked or otherwise ceases operation shall notify the Department and forward to the Department a copy of the closing inventory of controlled substances and a statement indicating the intended manner of disposition of all legend drugs and prescription files within 30 ~~10~~ days of such revocation or cessation of operation.

(b) The Department shall approve the intended manner of disposition of all legend drugs prior to disposition of such drugs by the pharmacist in charge.

(1) The Department shall notify the pharmacist in charge of approval of the manner of disposition of all legend drugs, or disapproval accompanied by reasons for such disapproval, within 30 ~~10~~ days of receipt of the statement from the pharmacist in charge. In the event that the manner of disposition is not approved, the pharmacist in charge shall notify the Department of an alternative manner of disposition within 30 ~~10~~ days of the receipt of disapproval.

(2) If disposition of all legend drugs does not occur within 30 ~~10~~ days after approval is received from the Department, or if no alternative method of disposition is submitted to the Department within 30 ~~10~~ days of the Department's disapproval, the Director shall notify the pharmacist in charge by mail at the address of the closing pharmacy, of the Department's intent to confiscate all legend drugs. The Notice of Intent to Confiscate shall be the final administrative decision of the Department, as that term is defined in the Administrative Review Law, and the confiscation of all prescription drugs shall be effected.

(b-5) In the event that the pharmacist in charge has died or is otherwise physically incompetent to perform the duties of this Section, the owner of a pharmacy that has its license revoked or otherwise ceases operation shall be required to fulfill the duties otherwise imposed upon the pharmacist in charge.

(c) The pharmacist in charge of a pharmacy which acquires prescription files from a pharmacy which ceases operation shall be responsible for the preservation of such acquired prescriptions for the

remainder of the term that such prescriptions are required to be preserved by this Act.

(d) Failure to comply with this Section shall be grounds for denying an application or renewal application for a pharmacy license or for disciplinary action against a registration.

(e) Compliance with the provisions of the Illinois Controlled Substances Act concerning the disposition of controlled substances shall be deemed compliance with this Section with respect to legend drugs which are controlled substances.

(Source: P.A. 90-253, eff. 7-29-97.)

(225 ILCS 85/17.1)

(Section scheduled to be repealed on January 1, 2008)

Sec. 17.1. Pharmacy technician training.

(a) Beginning January 1, 2004, it shall be the joint responsibility of a pharmacy and its pharmacist in charge to have trained all of its pharmacy technicians or obtain proof of prior training in all of the following topics as they relate to the practice site:

(1) The duties and responsibilities of the technicians and pharmacists.

(2) Tasks and technical skills, policies, and procedures.

(3) Compounding, packaging, labeling, and storage.

(4) Pharmaceutical and medical terminology.

(5) Record keeping requirements.

(6) The ability to perform and apply arithmetic calculations.

(b) Within 6 months after initial employment or changing the duties and responsibilities of a pharmacy technician, it shall be the joint responsibility of the pharmacy and the pharmacist in charge to train the pharmacy technician or obtain proof of prior training in the areas listed in subsection (a) of this Section as they relate to the practice site or to document that the pharmacy technician is making appropriate progress.

(c) All ~~divisions of~~ pharmacies shall maintain an up-to-date training program describing the duties and responsibilities of a pharmacy technician.

(d) All ~~divisions of~~ pharmacies shall create and maintain retrievable records of training or proof of training as required in this Section.

(Source: P.A. 92-880, eff. 1-1-04.)

(225 ILCS 85/18) (from Ch. 111, par. 4138)

(Section scheduled to be repealed on January 1, 2008)

Sec. 18. Record retention. ~~(a)~~ Except as provided in subsection (b), there shall be kept in every drugstore or pharmacy a suitable book, file, or electronic record keeping system in which shall be preserved for a period of not less than 5 years the original , or an exact, unalterable image, of every written prescription and the original transcript or copy of every verbal prescription filled, compounded, or dispensed, in such pharmacy; and such book or file of prescriptions shall at all reasonable times be open to inspection to the pharmacy coordinator and the duly authorized agents or employees of the Department.

Every prescription filled or refilled shall contain the unique identifiers ~~identifier~~ of the persons ~~person~~ authorized to practice pharmacy under the provision of this Act who fills or refills the prescription.

Records kept pursuant to this Section may be maintained in an alternative data retention system, such as a direct digital imaging system, provided that:

(1) the records maintained in the alternative data retention system contain all of the information required in a manual record;

(2) the data processing system is capable of producing a hard copy of the electronic record on the request of the Board, its representative, or other authorized local, State, or federal law enforcement or regulatory agency; ~~and~~

(3) the digital images are recorded and stored only by means of a technology that does not allow subsequent revision or replacement of the images; and ~~.~~

(4) the prescriptions may be retained in written form or recorded in a data processing system, provided that such order can be produced in printed form upon lawful request.

As used in this Section, "digital imaging system" means a system, including people, machines, methods of organization, and procedures, that provides input, storage, processing, communications, output, and control functions for digitized representations of original prescription records.

Inpatient drug orders may be maintained within an institution in a manner approved by the Department.

~~(b) The record retention requirements for a Division VI pharmacy shall be set by rule.~~

(Source: P.A. 94-84, eff. 6-28-05.)

(225 ILCS 85/19) (from Ch. 111, par. 4139)

(Section scheduled to be repealed on January 1, 2008)

Sec. 19. Nothing contained in this Act shall be construed to prohibit a pharmacist licensed in this State from filling or refilling a valid prescription for prescription drugs which is on file in a pharmacy licensed in any state and has been transferred from one pharmacy to another by any means, including by way of electronic data processing equipment upon the following conditions and exceptions:

(1) Prior to dispensing pursuant to any such prescription, the dispensing pharmacist shall:

(a) Advise the patient that the prescription on file at such other pharmacy must be canceled before he or she will be able to fill or refill it.

(b) Determine that the prescription is valid and on file at such other pharmacy and that such prescription may be filled or refilled, as requested, in accordance with the prescriber's intent expressed on such prescription.

(c) Notify the pharmacy where the prescription is on file that the prescription must be canceled.

(d) Record in writing the prescription order, the name of the pharmacy at which the prescription was on file, the prescription number, the name of the drug and the original amount dispensed, the date of original dispensing, and the number of remaining authorized refills.

(e) Obtain the consent of the prescriber to the refilling of the prescription when the prescription, in the professional judgment of the dispensing pharmacist, so requires.

(2) Upon receipt of a request for prescription information set forth in subparagraph (d) of paragraph (1) of this Section, if the requested pharmacist is satisfied in his professional judgment that such request is valid and legal, the requested pharmacist shall:

(a) Provide such information accurately and completely.

(b) Record electronically or, if in writing, on the face of the prescription, the name of the requesting pharmacy and pharmacist and the date of request.

(c) Cancel the prescription on file by writing the word "void" on its face or the electronic equivalent, if not in written format. No further prescription information shall be given or medication dispensed pursuant to such original prescription.

(3) In the event that, after the information set forth in subparagraph (d) of paragraph (1) of this Section has been provided, a prescription is not dispensed by the requesting pharmacist, then such pharmacist shall provide notice of this fact to the pharmacy from which such information was obtained; such notice shall then cancel the prescription in the same manner as set forth in subparagraph (c) of paragraph (2) of this Section.

(4) When filling or refilling a valid prescription on file in another state, the dispensing pharmacist shall be required to follow all the requirements of Illinois law which apply to the dispensing of prescription drugs. If anything in Illinois law prevents the filling or refilling of the original prescription it shall be unlawful to dispense pursuant to this Section.

(5) Prescriptions for drugs in Schedules III, IV, and V of the Illinois Controlled Substances Act may be transferred only once and may not be further transferred. However, pharmacies electronically sharing a real-time, online database may transfer up to the maximum refills permitted by the law and the prescriber's authorization.

(Source: P.A. 92-880, eff. 1-1-04.)

(225 ILCS 85/20) (from Ch. 111, par. 4140)

(Section scheduled to be repealed on January 1, 2008)

Sec. 20. Two or more pharmacies may establish and use a common electronic file to maintain required dispensing information.

Pharmacies using such a common electronic file are not required to physically transfer prescriptions or information for dispensing purposes between or among pharmacies participating in the same common prescription file; provided, however any such common file must contain complete and adequate records of such prescription and refill dispensed as stated in Section 18.

The Department and Board may formulate such rules and regulations, not inconsistent with law, as may be necessary to carry out the purposes of and to enforce the provisions of this Section within the following exception: The Department and Board shall not impose greater requirements on either common electronic files or a hard copy record system.

Drugs shall in no event be dispensed more frequently or in larger amounts than the prescriber ordered without direct prescriber authorization by way of a new prescription order.

The dispensing by a pharmacist licensed in this State or another state of a prescription contained in a common database shall not constitute a transfer, provided that (i) all pharmacies involved in the

transactions pursuant to which the prescription is dispensed and all pharmacists engaging in dispensing functions are properly licensed, permitted, or registered in this State or another jurisdiction, (ii) a policy and procedures manual that governs all participating pharmacies and pharmacists is available to the Department upon request and includes the procedure for maintaining appropriate records for regulatory oversight for tracking a prescription during each stage of the filling and dispensing process, and (iii) the pharmacists involved in filling and dispensing the prescription and counseling the patient are identified. A pharmacist shall be accountable only for the specific tasks performed.

Nothing in this Section shall prohibit a pharmacist who is exercising his or her professional judgment from dispensing additional quantities of medication up to the total number of dosage units authorized by the prescriber on the original prescription and any refills.

(Source: P.A. 85-796.)

(225 ILCS 85/22) (from Ch. 111, par. 4142)

(Section scheduled to be repealed on January 1, 2008)

Sec. 22. Except only in the case of a drug, medicine or poison which is lawfully sold or dispensed, at retail, in the original and unbroken package of the manufacturer, packer, or distributor thereof, and which package bears the original label thereon showing the name and address of the manufacturer, packer, or distributor thereof, and the name of the drug, medicine, or poison therein contained, and the directions for its use, no person shall sell or dispense, at retail, any drug, medicine, or poison, without affixing to the box, bottle, vessel, or package containing the same, a label bearing the name of the article distinctly shown, and the directions for its use, with the name and address of the pharmacy wherein the same is sold or dispensed. However, in the case of a drug, medicine, or poison which is sold or dispensed pursuant to a prescription of a physician licensed to practice medicine in all of its branches, licensed dentist, licensed veterinarian, licensed podiatrist, or therapeutically or diagnostically certified optometrist authorized by law to prescribe drugs or medicines or poisons, the label affixed to the box, bottle, vessel, or package containing the same shall show: (a) the name and address of the pharmacy wherein the same is sold or dispensed; (b) the name or initials of the person, authorized to practice pharmacy under the provisions of this Act, selling or dispensing the same, (c) the date on which such prescription was filled; (d) the name of the patient; (e) the serial number of such prescription as filed in the prescription files; (f) the last name of the practitioner who prescribed such prescriptions; (g) the directions for use thereof as contained in such prescription; and (h) the proprietary name or names or the established name or names of the drugs, the dosage and quantity, except as otherwise authorized by regulation of the Department. ~~The Department shall establish rules governing labeling in Division II and Division III pharmacies.~~

(Source: P.A. 92-880, eff. 1-1-04.)

(225 ILCS 85/22a)

(Section scheduled to be repealed on January 1, 2008)

Sec. 22a. Automated dispensing and storage systems. The Department shall establish rules governing the use of automated dispensing and storage systems ~~by Division I through V pharmacies~~.

(Source: P.A. 90-253, eff. 7-29-97.)

(225 ILCS 85/22b new)

Sec. 22b. Automated pharmacy systems; remote dispensing.

(a) Automated pharmacy systems must have adequate security and procedures to comply with federal and State laws and regulations and maintain patient confidentiality, as defined by rule.

(b) Access to and dispensing from an automated pharmacy system shall be limited to pharmacists or personnel who are designated in writing by the pharmacist-in-charge and have completed documented training concerning their duties associated with the automated pharmacy system.

(c) All drugs stored in relation to an automated pharmacy system must be stored in compliance with this Act and the rules adopted under this Act, including the requirements for temperature, proper storage containers, handling of outdated drugs, prescription dispensing, and delivery.

(d) An automated pharmacy system operated from a remote site shall be under the continuous supervision of a home pharmacy pharmacist. To qualify as continuous supervision, the pharmacist is not required to be physically present at the site of the automated pharmacy system if the system is supervised electronically by a pharmacist, as defined by rule.

(e) Drugs may only be dispensed at a remote site through an automated pharmacy system after receipt of an original prescription drug order by a pharmacist at the home pharmacy. A pharmacist at the home pharmacy must control all operations of the automated pharmacy system and approve the release of the initial dose of a prescription drug order. Refills from an approved prescription drug order may be removed from the automated medication system after this initial approval. Any change made in the prescription drug order shall require a new approval by a pharmacist to release the drug.

(f) If an automated pharmacy system uses removable cartridges or containers to store a drug, the stocking or restocking of the cartridges or containers may occur at a licensed wholesale drug distributor and be sent to the home pharmacy to be loaded after pharmacist verification by personnel designated by the pharmacist, provided that the individual cartridge or container is transported to the home pharmacy in a secure, tamper evident container. An automated pharmacy system must use a bar code verification or weight verification or electronic verification or similar process to ensure that the cartridge or container is accurately loaded into the automated pharmacy system. The pharmacist verifying the filling and labeling shall be responsible for ensuring that the cartridge or container is stocked or restocked correctly by personnel designated to load the cartridges or containers. An automated pharmacy system must use a bar code verification, electronic, or similar process, as defined by rule, to ensure that the proper medication is dispensed from the automated system. A record of each transaction with the automated pharmacy system must be maintained for 5 years. A prescription dispensed from an automated pharmacy system shall be deemed to have been approved by the pharmacist. No automated pharmacy system shall be operated prior to inspection and approval by the Department.

(225 ILCS 85/25) (from Ch. 111, par. 4145)

(Section scheduled to be repealed on January 1, 2008)

Sec. 25. No person shall compound, or sell or offer for sale, or cause to be compounded, sold or offered for sale any medicine or preparation under or by a name recognized in the United States Pharmacopoeia National Formulary, for internal or external use, which differs from the standard of strength, quality or purity as determined by the test laid down in the United States Pharmacopoeia National Formulary official at the time of such compounding, sale or offering for sale. Nor shall any person compound, sell or offer for sale, or cause to be compounded, sold, or offered for sale, any drug, medicine, poison, chemical or pharmaceutical preparation, the strength or purity of which shall fall below the professed standard of strength or purity under which it is sold. Except as set forth in Section 26 of this Act, if the physician or other authorized prescriber, when transmitting an oral or written prescription, does not prohibit drug product selection, a different brand name or nonbrand name drug product of the same generic name may be dispensed by the pharmacist, provided that the selected drug has a unit price less than the drug product specified in the prescription. A generic drug determined to be therapeutically equivalent by the United States Food and Drug Administration (FDA) shall be available for substitution in Illinois in accordance with this Act and the Illinois Food, Drug and Cosmetic Act, provided that each manufacturer submits to the Director of the Department of Public Health a notification containing product technical bioequivalence information as a prerequisite to product substitution when they have completed all required testing to support FDA product approval and, in any event, the information shall be submitted no later than 60 days prior to product substitution in the State. On the prescription forms of prescribers, shall be placed a signature line and the words ~~"may substitute" and~~ "may not substitute". The prescriber, in his or her own handwriting, shall place a mark beside ~~either the "may substitute" or~~ "may not substitute" ~~alternatives~~ to direct ~~guide~~ the pharmacist in the dispensing of the prescription. ~~A prescriber placing a mark beside the "may substitute" alternative or failing in his or her own handwriting to place a mark beside either alternative authorizes drug product selection in accordance with this Act.~~ Preprinted or rubber stamped marks, or other deviations from the above prescription format shall not be permitted. The prescriber shall sign the form in his or her own handwriting to authorize the issuance of the prescription. ~~When a person presents a prescription to be dispensed, the pharmacist to whom it is presented may inform the person if the pharmacy has available a different brand name or nonbrand name of the same generic drug prescribed and the price of the different brand name or nonbrand name of the drug product. If the person presenting the prescription is the one to whom the drug is to be administered, the pharmacist may dispense the prescription with the brand prescribed or a different brand name or nonbrand name product of the same generic name, if the drug is of lesser unit cost and the patient is informed and agrees to the selection and the pharmacist shall enter such information into the pharmacy record. If the person presenting the prescription is someone other than the one to whom the drug is to be administered the pharmacist shall not dispense the prescription with a brand other than the one specified in the prescription unless the pharmacist has the written or oral authorization to select brands from the person to whom the drug is to be administered or a parent, legal guardian or spouse of that person.~~

In every case in which a selection is made as permitted by the Illinois Food, Drug and Cosmetic Act, the pharmacist shall indicate on the pharmacy record of the filled prescription the name or other identification of the manufacturer of the drug which has been dispensed.

The selection of any drug product by a pharmacist shall not constitute evidence of negligence if the selected nonlegend drug product was of the same dosage form and each of its active ingredients did not vary by more than 1 percent from the active ingredients of the prescribed, brand name, nonlegend drug

product. Failure of a prescribing physician to specify that drug product selection is prohibited does not constitute evidence of negligence unless that practitioner has reasonable cause to believe that the health condition of the patient for whom the physician is prescribing warrants the use of the brand name drug product and not another.

The Department is authorized to employ an analyst or chemist of recognized or approved standing whose duty it shall be to examine into any claimed adulteration, illegal substitution, improper selection, alteration, or other violation hereof, and report the result of his investigation, and if such report justify such action the Department shall cause the offender to be prosecuted.

(Source: P.A. 93-841, eff. 7-30-04; 94-936, eff. 6-26-06.)

(225 ILCS 85/25.5 new)

Sec. 25.5. Centralized prescription filling.

(a) In this Section, "centralized prescription filling" means the filling of a prescription by one pharmacy upon request by another pharmacy to fill or refill the prescription. "Centralized prescription filling" includes the performance by one pharmacy for another pharmacy of other pharmacy duties such as drug utilization review, therapeutic drug utilization review, claims adjudication, and the obtaining of refill authorizations.

(b) A pharmacy licensed under this Act may perform centralized prescription filling for another pharmacy, provided that both pharmacies have the same owner or have a written contract specifying (i) the services to be provided by each pharmacy, (ii) the responsibilities of each pharmacy, and (iii) the manner in which the pharmacies shall comply with federal and State laws, rules, and regulations.

(225 ILCS 85/25.10 new)

Sec. 25.10. Remote prescription processing.

(a) In this Section, "remote prescription processing" means and includes the outsourcing of certain prescription functions to another pharmacy or licensed non-resident pharmacy, including the dispensing of drugs. "Remote prescription processing" includes any of the following activities related to the dispensing process:

(1) Receiving, interpreting, evaluating, or clarifying prescriptions.

(2) Entering prescription and patient data into a data processing system.

(3) Transferring prescription information.

(4) Performing a drug regimen review.

(5) Obtaining refill or substitution authorizations or otherwise communicating with the prescriber concerning a patient's prescription.

(6) Evaluating clinical data for prior authorization for dispensing.

(7) Discussing therapeutic interventions with prescribers.

(8) Providing drug information or counseling concerning a patient's prescription to the patient or patient's agent, as defined in this Act.

(b) A pharmacy may engage in remote prescription processing under the following conditions:

(1) The pharmacies shall either have the same owner or have a written contract describing the scope of services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with all federal and State laws and regulations related to the practice of pharmacy.

(2) The pharmacies shall share a common electronic file or have technology that allows sufficient information necessary to process a non-dispensing function.

(3) The records may be maintained separately by each pharmacy or in common electronic file shared by both pharmacies, provided that the system can produce a record at either location showing each processing task, the identity of the person performing each task, and the location where each task was performed.

(c) Nothing in this Section shall prohibit an individual employee licensed as a pharmacist from accessing the employer pharmacy's database from a pharmacist's home or other remote location or home verification for the purpose of performing certain prescription processing functions, provided that the pharmacy establishes controls to protect the privacy and security of confidential records.

(225 ILCS 85/25.15 new)

Sec. 25.15. Telepharmacy.

(a) In this Section, "telepharmacy" means the provision of pharmacist care by a pharmacist that is accomplished through the use of telecommunications or other technologies to patients or their agents who are at a distance and are located within the United States, and which follows all federal and State laws, rules, and regulations with regard to privacy and security.

(b) Any pharmacy engaged in the practice of telepharmacy must meet all of the following conditions:

(1) All events involving the contents of an automated pharmacy system must be stored in a secure location and may be recorded electronically.

(2) An automated pharmacy or prescription dispensing machine system may be used in conjunction with the pharmacy's practice of telepharmacy after inspection and approval by the Department.

(3) The pharmacist in charge shall:

(A) be responsible for the practice of telepharmacy performed at a remote pharmacy, including the supervision of any prescription dispensing machine or automated medication system;

(B) ensure that the home pharmacy has sufficient pharmacists on duty for the safe operation and supervision of all remote pharmacies;

(C) ensure, through the use of a video and auditory communication system, that a certified pharmacy technician at the remote pharmacy has accurately and correctly prepared any prescription for dispensing according to the prescription;

(D) be responsible for the supervision and training of certified pharmacy technicians at remote pharmacies who shall be subject to all rules and regulations; and

(E) ensure that patient counseling at the remote pharmacy is performed by a pharmacist or pharmacist intern.

(225 ILCS 85/25.20 new)

Sec. 25.20. Electronic visual image prescriptions. If a pharmacy's computer system can capture an unalterable electronic visual image of the prescription drug order, the electronic image shall constitute the original prescription and a hard copy of the prescription drug order is not required. The computer system must be capable of maintaining, printing, and providing, upon a request by the Department, the Department's compliance officers, and other authorized agents, all of the prescription information required by State law and regulations of the Department within 72 hours of the request.

(225 ILCS 85/26)

(Section scheduled to be repealed on January 1, 2008)

Sec. 26. Anti-epileptic drug product selection prohibited.

(a) The General Assembly finds that this Section is necessary for the immediate preservation of the public peace, health, and safety.

(b) In this Section:

"Anti-epileptic drug means (i) any drug prescribed for the treatment of epilepsy or (ii) a drug used to treat or prevent seizures.

"Epilepsy" means a neurological condition characterized by recurrent seizures.

"Seizure" means a brief disturbance in the electrical activity of the brain.

(c) When the prescribing physician has indicated on the original prescription ~~"dispense as written" or~~ "may not substitute", a pharmacist may not interchange an anti-epileptic drug or formulation of an anti-epileptic drug for the treatment of epilepsy without notification and the documented consent of the prescribing physician and the patient or the patient's parent, legal guardian, or spouse. This Section does not apply to medication orders issued for anti-epileptic drugs for any in-patient care in a licensed hospital.

(Source: P.A. 94-936, eff. 6-26-06.)

(225 ILCS 85/27) (from Ch. 111, par. 4147)

(Section scheduled to be repealed on January 1, 2008)

Sec. 27. Fees.

(a) The Department shall, by rule, provide for a schedule of fees to be paid for licenses and certificates. These fees shall be for the administration and enforcement of this Act, including without limitation original licensure and renewal and restoration of licensure. All fees are nonrefundable.

(b) Applicants ~~The following fees are not refundable. (A) Certificate of pharmacy technician. (1) The fee for application for a certificate of registration as a pharmacy technician is $40. (2) The fee for the renewal of a certificate of registration as a pharmacy technician shall be calculated at the rate of $25 per year. (B) License as a pharmacist. (1) The fee for application for a license is $75. (2) In addition, applicants~~ for any examination as a ~~registered~~ pharmacist shall be required to pay, either to the Department or to the designated testing service, a fee covering the cost of determining an applicant's eligibility and providing the examination. Failure to appear for the examination on the scheduled date, at the time and place specified, after the applicant's application for examination has been received and acknowledged by the Department or the designated testing service, shall result in the forfeiture of the examination fee.

~~(3) The fee for a license as a registered pharmacist registered or licensed under the laws of another state or territory of the United States is $200.~~

~~(4) The fee upon the renewal of a license shall be calculated at the rate of $75 per year.~~

~~(5) The fee for the restoration of a certificate other than from inactive status is $10 plus all lapsed renewal fees.~~

(c) ~~(6)~~ Applicants for the preliminary diagnostic examination shall be required to pay, either to the Department or to the designated testing service, a fee covering the cost of determining an applicant's eligibility and providing the examination. Failure to appear for the examination on the scheduled date, at the time and place specified, after the application for examination has been received and acknowledged by the Department or the designated testing service, shall result in the forfeiture of the examination fee.

~~(7) The fee to have the scoring of an examination authorized by the Department reviewed and verified is $20 plus any fee charged by the applicable testing service.~~

~~(C) License as a pharmacy.~~

~~(1) The fee for application for a license for a pharmacy under this Act is $100.~~

~~(2) The fee for the renewal of a license for a pharmacy under this Act shall be calculated at the rate of $100 per year.~~

~~(3) The fee for the change of a pharmacist in charge is $25.~~

~~(D) General Fees.~~

~~(1) The fee for the issuance of a duplicate license, for the issuance of a replacement license for a license that has been lost or destroyed or for the issuance of a license with a change of name or address other than during the renewal period is $20. No fee is required for name and address changes on Department records when no duplicate certification is issued.~~

~~(2) The fee for a certification of a registrant's record for any purpose is $20.~~

~~(3) The fee to have the scoring of an examination administered by the Department reviewed and verified is $20.~~

~~(4) The fee for a wall certificate showing licensure or registration shall be the actual cost of producing the certificate.~~

~~(5) The fee for a roster of persons registered as pharmacists or registered pharmacies in this State shall be the actual cost of producing the roster.~~

~~(6) The fee for pharmacy licensing, disciplinary or investigative records obtained pursuant to a subpoena is $1 per page.~~

(d) All fees, fines, or penalties ~~(E) Except as provided in subsection (F), all moneys~~ received by the Department under this Act shall be deposited in the Illinois State Pharmacy Disciplinary Fund hereby created in the State Treasury and shall be used by the Department in the exercise of its powers and performance of its duties under this Act, including, but not limited to, the provision for evidence in pharmacy investigations. ~~only for the following purposes: (a) by the State Board of Pharmacy in the exercise of its powers and performance of its duties, as such use is made by the Department upon the recommendations of the State Board of Pharmacy, (b) for costs directly related to license renewal of persons licensed under this Act, and (c) for direct and allocable indirect costs related to the public purposes of the Department of Professional Regulation.~~

Moneys in the Fund may be transferred to the Professions Indirect Cost Fund as authorized under Section 2105-300 of the Department of Professional Regulation Law (20 ILCS 2105/2105-300).

The moneys deposited in the Illinois State Pharmacy Disciplinary Fund shall be invested to earn interest which shall accrue to the Fund. ~~The Department shall present to the Board for its review and comment all appropriation requests from the Illinois State Pharmacy Disciplinary Fund. The Department shall give due consideration to any comments of the Board in making appropriation requests.~~

(e) ~~(F)~~ From the money received for license renewal fees, $5 from each pharmacist fee, and $2.50 from each pharmacy technician fee, shall be set aside within the Illinois State Pharmacy Disciplinary Fund for the purpose of supporting a substance abuse program for pharmacists and pharmacy technicians. ~~The State Board of Pharmacy shall, pursuant to all provisions of the Illinois Procurement Code, determine how and to whom the money set aside under this subsection is disbursed.~~

~~(G) (Blank).~~

(Source: P.A. 91-239, eff. 1-1-00; 92-880, eff. 1-1-04.)

(225 ILCS 85/30) (from Ch. 111, par. 4150)

(Section scheduled to be repealed on January 1, 2008)

Sec. 30. (a) In accordance with Section 11 of this Act, the Department may refuse to issue, restore, or renew, or may revoke, suspend, place on probation, or reprimand ~~or take other disciplinary action~~ as the Department may deem proper with regard to any license or certificate of registration or may impose a fine upon a licensee or registrant not to exceed $10,000 per violation for any one or combination of the following causes:

1. Material misstatement in furnishing information to the Department.
2. Violations of this Act, or the rules promulgated hereunder.
3. Making any misrepresentation for the purpose of obtaining licenses.

4. A pattern of conduct which demonstrates incompetence or unfitness to practice.

5. Aiding or assisting another person in violating any provision of this Act or rules.

6. Failing, within 60 days, to respond to a written request made by the Department for information.

7. Engaging in dishonorable or ~~,~~ unethical ~~or unprofessional~~ conduct of a character likely to deceive, defraud or harm the public.

8. Discipline by another U.S. jurisdiction or foreign nation, if at least one of the grounds for the discipline is the same or substantially equivalent to those set forth herein.

9. Directly or indirectly giving to or receiving from any person, firm, corporation, partnership or association any fee, commission, rebate or other form of compensation for any professional services not actually or personally rendered.

10. A finding by the Department that the licensee, after having his license placed on probationary status has violated the terms of probation.

11. Selling or engaging in the sale of drug samples provided at no cost by drug manufacturers.

12. Physical illness, including but not limited to, deterioration through the aging process, or loss of motor skill which results in the inability to practice the profession with reasonable judgment, skill or safety.

13. A finding that licensure or registration has been applied for or obtained by fraudulent means.

14. The applicant~~,~~ or licensee has been convicted in state or federal court of or entered a plea of guilty, nolo contendere, or the equivalent in a state or federal court to any crime which is a felony or any misdemeanor related to the practice of pharmacy, of which an essential element is dishonesty.

15. Habitual or excessive use or addiction to alcohol, narcotics, stimulants or any other chemical agent or drug which results in the inability to practice with reasonable judgment, skill or safety.

16. Willfully making or filing false records or reports in the practice of pharmacy, including, but not limited to false records to support claims against the medical assistance program of the Department of Healthcare and Family Services (formerly Department of Public Aid) under the Public Aid Code.

17. Gross and willful overcharging for professional services including filing false statements for collection of fees for which services are not rendered, including, but not limited to, filing false statements for collection of monies for services not rendered from the medical assistance program of the Department of Healthcare and Family Services (formerly Department of Public Aid) under the Public Aid Code.

18. Repetitiously dispensing prescription drugs without receiving a written or oral prescription.

19. Upon a finding of a substantial discrepancy in a Department audit of a prescription drug, including controlled substances, as that term is defined in this Act or in the Illinois Controlled Substances Act.

20. Physical or mental illness or any other impairment or disability, including without limitation deterioration through the aging process or loss of motor skills that ~~which~~ results in the inability to practice with reasonable judgment, skill or safety, or mental incompetence, ~~incompetency~~ as declared by a court of competent jurisdiction.

21. Violation of the Health Care Worker Self-Referral Act.

22. Failing to sell or dispense any drug, medicine, or poison in good faith. "Good faith", for the purposes of this Section, has the meaning ascribed to it in subsection (u) of Section 102 of the Illinois Controlled Substances Act.

23. Interfering with the professional judgment of a pharmacist by any registrant under this Act, or his or her agents or employees.

24. Failing to report within 60 days to the Department any adverse final action taken against a pharmacist, pharmacist technician, or certified pharmacist technician by another licensing jurisdiction in any other state or any territory of the United States or any foreign jurisdiction, any governmental agency, any law enforcement agency, or any court for acts or conduct similar to acts or conduct that would constitute grounds for discipline as defined in this Section.

25. Failing to comply with a subpoena issued in accordance with Section 35.5 of this Act.

(b) The Department may refuse to issue or may suspend the license or registration of any person who fails to file a return, or to pay the tax, penalty or interest shown in a filed return, or to pay any final assessment of tax, penalty or interest, as required by any tax Act administered by the Illinois Department of Revenue, until such time as the requirements of any such tax Act are satisfied.

(c) The Department shall revoke the license or certificate of registration issued under the provisions of this Act or any prior Act of this State of any person who has been convicted a second time of committing any felony under the Illinois Controlled Substances Act, or who has been convicted a second time of committing a Class 1 felony under Sections 8A-3 and 8A-6 of the Illinois Public Aid Code. A person whose license or certificate of registration issued under the provisions of this Act or any prior Act of this State is revoked under this subsection (c) shall be prohibited from engaging in the practice of pharmacy in this State.

(d) The Department may adopt rules for the imposition of fines in disciplinary cases, not to exceed $10,000 for each violation of this Act. Fines may be imposed in conjunction with other forms of disciplinary action, but shall not be the exclusive disposition of any disciplinary action arising out of conduct resulting in death or injury to a patient. Any funds collected from such fines shall be deposited in the Illinois State Pharmacy Disciplinary Fund. ~~In any order issued in resolution of a disciplinary proceeding, the Board may request any licensee found guilty of a charge involving a significant violation of subsection (a) of Section 5, or paragraph 19 of Section 30 as it pertains to controlled substances, to pay to the Department a fine not to exceed $2,000.~~

(e) The entry of an order or judgment by any circuit court establishing that any person holding a license or certificate under this Act is a person in need of mental treatment operates as a suspension of that license. A licensee may resume his or her practice only upon the entry of an order of the Department based upon a finding by the Board that he or she has been determined to be recovered from mental illness by the court and upon the Board's recommendation that the licensee be permitted to resume his or her practice. ~~In any order issued in resolution of a disciplinary proceeding, in addition to any other disciplinary action, the Board may request any licensee found guilty of noncompliance with the continuing education requirements of Section 12 to pay the Department a fine not to exceed $1000.~~

(f) The Department shall issue quarterly to the Board a status of all complaints related to the profession received by the Department.

(g) In enforcing this Section, the Board or the Department, upon a showing of a possible violation, may compel any licensee or applicant for licensure under this Act to submit to a mental or physical examination or both, as required by and at the expense of the Department. The examining physician shall be those specifically designated by the Department. The Board or the Department may order the examining physician to present testimony concerning this mental or physical examination of the licensee or applicant. No information shall be excluded by reason of any common law or statutory privilege relating to communication between the licensee or applicant and the examining physician. The individual to be examined may have, at his or her own expense, another physician of his or her choice present during all aspects of the examination. Failure of any individual to submit to a mental or physical examination when directed shall be grounds for suspension of his or her license until such time as the individual submits to the examination if the Board finds, after notice and hearing, that the refusal to submit to the examination was without reasonable cause. If the Board finds a pharmacist or pharmacy technician unable to practice because of the reasons set forth in this Section, the Board shall require such pharmacist or pharmacy technician to submit to care, counseling, or treatment by physicians approved or designated by the Board as a condition for continued, reinstated, or renewed licensure to practice. Any pharmacist or pharmacy technician whose license was granted, continued, reinstated, renewed, disciplined, or supervised, subject to such terms, conditions, or restrictions, and who fails to comply with such terms, conditions, or restrictions or to complete a required program of care, counseling, or treatment, as determined by the chief pharmacy coordinator or a deputy pharmacy coordinator, shall be referred to the Secretary for a determination as to whether the licensee shall have his or her license suspended immediately, pending a hearing by the Board. In instances in which the Secretary immediately suspends a license under this subsection (g), a hearing upon such person's license must be convened by the Board within 15 days after such suspension and completed without appreciable delay. The Board shall have the authority to review the subject pharmacist's or pharmacy technician's record of treatment and counseling regarding the impairment.

(Source: P.A. 92-880, eff. 1-1-04; revised 12-15-05.)

(225 ILCS 85/35.1) (from Ch. 111, par. 4155.1)

(Section scheduled to be repealed on January 1, 2008)

Sec. 35.1. (a) If any person violates the provision of this Act, the Director may, in the name of the People of the State of Illinois, through the Attorney General of the State of Illinois, or the State's

Attorney of any county in which the action is brought, petition, for an order enjoining such violation or for an order enforcing compliance with this Act. Upon the filing of a verified petition in such court, the court may issue a temporary restraining order, without notice or bond, and may preliminarily and permanently enjoin such violation, and if it is established that such person has violated or is violating the injunction, the Court may punish the offender for contempt of court. Proceedings under this Section shall be in addition to, and not in lieu of, all other remedies and penalties provided by this Act.

(b) If any person shall practice as a pharmacist or hold himself out as a pharmacist or operate a pharmacy or drugstore, including a nonresident ~~mail order~~ pharmacy under Section 16a, without being licensed under the provisions of this Act, then any licensed pharmacist, any interested party or any person injured thereby may, in addition to the Director, petition for relief as provided in subsection (a) of this Section.

Whoever knowingly practices or offers to practice in this State without being appropriately licensed or registered under this Act shall be guilty of a Class A misdemeanor and for each subsequent conviction, shall be guilty of a Class 4 felony.

(c) Whenever in the opinion of the Department any person not licensed in good standing under this Act violates any provision of this Act, the Department may issue a rule to show cause why an order to cease and desist should not be entered against him. The rule shall clearly set forth the grounds relied upon by the Department and shall provide a period of 7 days from the date of the rule to file an answer to the satisfaction of the Department. Failure to answer to the satisfaction of the Department shall cause an order to cease and desist to be issued forthwith.

(Source: P.A. 92-678, eff. 7-16-02.)

(225 ILCS 85/35.2) (from Ch. 111, par. 4155.2)

(Section scheduled to be repealed on January 1, 2008)

Sec. 35.2. The Department's pharmacy investigators may investigate the actions of any applicant or of any person or persons holding or claiming to hold a license or registration. The Department shall, before suspending, revoking, placing on probationary status, or taking any other disciplinary action as the Department may deem proper with regard to any license or certificate, at least 30 days prior to the date set for the hearing, notify the accused in writing of any charges made and the time and place for a hearing of the charges before the Board, direct him or her to file his or her written answer thereto to the Board under oath within 20 days after the service on him or her of such notice and inform him or her that if he or she fails to file such answer default will be taken against him or her and his or her license or certificate may be suspended, revoked, placed on probationary status, or have other disciplinary action, including limiting the scope, nature or extent of his or her practice, provided for herein. Such written notice may be served by personal delivery or certified or registered mail to the respondent at his or her ~~the~~ address of record ~~his last notification to the Department~~. At the time and place fixed in the notice, the Board shall proceed to hear the charges and the parties or their counsel shall be accorded ample opportunity to present such statements, testimony, evidence and argument as may be pertinent to the charges or to the defense thereto. Such hearing may be continued from time to time. In case the accused person, after receiving notice, fails to file an answer, his or her license or certificate may in the discretion of the Director, having received first the recommendation of the Board, be suspended, revoked, placed on probationary status, or the Director may take whatever disciplinary action as he or she may deem proper as provided herein, including limiting the scope, nature, or extent of said person's practice, without a hearing, if the act or acts charged constitute sufficient grounds for such action under this Act.

(Source: P.A. 88-428.)

(225 ILCS 85/35.5) (from Ch. 111, par. 4155.5)

(Section scheduled to be repealed on January 1, 2008)

Sec. 35.5. The Department shall have power to subpoena and bring before it any person in this State and to take testimony, either orally or by deposition or both, with the same fees and mileage and in the same manner as prescribed by law in judicial proceedings in civil cases in circuit courts of this State. The Department may subpoena and compel the production of documents, papers, files, books, and records in connection with any hearing or investigation.

The Director, and any member of the Board, shall each have power to administer oaths to witnesses at any hearing which the Department is authorized to conduct under this Act, and any other oaths required or authorized to be administered by the Department hereunder.

(Source: P.A. 85-796.)

(225 ILCS 85/35.7) (from Ch. 111, par. 4155.7)

(Section scheduled to be repealed on January 1, 2008)

Sec. 35.7. Notwithstanding the provisions of Section 35.6 of this Act, the Director shall have the authority to appoint any attorney duly licensed to practice law in the State of Illinois to serve as the

hearing officer in any action before the Board for refusal to issue, renew, or discipline of a license or certificate. The Director shall notify the Board of any such appointment. The hearing officer shall have full authority to conduct the hearing. There shall be present at least one member of the Board at any such hearing. The hearing officer shall report his findings of fact, conclusions of law and recommendations to the Board and the Director. The Board shall have 60 days from receipt of the report to review the report of the hearing officer and present their findings of fact, conclusions of law, and recommendations to the Director. If the Board fails to present its report within the 60 day period, the respondent may request in writing a direct appeal to the Secretary, in which case the Secretary shall, within 7 calendar days after the request, issue an order directing the Board to issue its findings of fact, conclusions of law, and recommendations to the Secretary within 30 calendar days after such order. If the Board fails to issue its findings of fact, conclusions of law, and recommendations within that time frame to the Secretary after the entry of such order, the Secretary shall, within 30 calendar days thereafter, issue an order based upon the report of the hearing officer and the record of the proceedings or issue an order remanding the matter back to the hearing officer for additional proceedings in accordance with the order. If (i) a direct appeal is requested, (ii) the Board fails to issue its findings of fact, conclusions of law, and recommendations within the 30-day mandate from the Secretary or the Secretary fails to order the Board to do so, and (iii) the Secretary fails to issue an order within 30 calendar days thereafter, then the hearing officer's report is deemed accepted and a final decision of the Secretary. Notwithstanding any other provision of this Section, if the Secretary, upon review, determines that substantial justice has not been done in the revocation, suspension, or refusal to issue or renew a license or other disciplinary action taken as the result of the entry of the hearing officer's report, the Secretary may order a rehearing by the same or other examiners. If the Secretary disagrees with the recommendation of the Board or the hearing officer, the Secretary may issue an order in contravention of the recommendation. ~~the Director may issue an order based on the report of the hearing officer. However, if the Board does present its report within the specified 60 days, the Director's order shall be based upon the report of the Board.~~

(Source: P.A. 85-796.)

(225 ILCS 85/35.10) (from Ch. 111, par. 4155.10)

(Section scheduled to be repealed on January 1, 2008)

Sec. 35.10. None of the disciplinary functions, powers and duties enumerated in this Act shall be exercised by the Department except upon the review ~~action and report in writing~~ of the Board.

In all instances, under this Act, in which the Board has rendered a recommendation to the Director with respect to a particular license or certificate, the Director shall, in the event that he or she disagrees with or takes action contrary to the recommendation of the Board, file with the Board ~~and the Secretary of State~~ his or her specific written reasons of disagreement with the Board. ~~Such reasons shall be filed within 30 days of the occurrence of the Director's contrary position having been taken.~~

~~The action and report in writing of a majority of the Board designated is sufficient authority upon which the Director may act.~~

(Source: P.A. 85-796.)

(225 ILCS 85/35.12) (from Ch. 111, par. 4155.12)

(Section scheduled to be repealed on January 1, 2008)

Sec. 35.12. Notwithstanding the provisions herein concerning the conduct of hearings and recommendations for disciplinary actions, the Director shall have the authority to negotiate agreements with licensees and registrants resulting in disciplinary consent orders provided a Board member is present and the discipline is recommended by the Board member. Such consent orders may provide for any of the forms of discipline otherwise provided herein. Such consent orders shall provide that they were not entered into as a result of any coercion by the Department. ~~The Director shall forward copies of all final consent orders to the Board within 30 days of their entry.~~

(Source: P.A. 88-428.)

(225 ILCS 85/35.16) (from Ch. 111, par. 4155.16)

(Section scheduled to be repealed on January 1, 2008)

Sec. 35.16. The Director may temporarily suspend the license of a pharmacist, pharmacy technician or registration as a distributor, without a hearing, simultaneously with the institution of proceedings for a hearing provided for in Section 35.2 of this Act, if the Director finds that evidence in his possession indicates that a continuation in practice would constitute an imminent danger to the public. In the event that the Director suspends, temporarily, this license or certificate without a hearing, a hearing by the Department must be held within 15 ~~10~~ days after such suspension has occurred, and be concluded without appreciable delay.

(Source: P.A. 85-796.)

(225 ILCS 85/35.19) (from Ch. 111, par. 4155.19)

(Section scheduled to be repealed on January 1, 2008)

Sec. 35.19. Any person who is found to have violated any provision of this Act is guilty of a Class A misdemeanor. On conviction of a second or subsequent offense, the violator shall be guilty of a Class 4 felony. All criminal fines, monies, or other property collected or received by the Department under this Section or any other State or federal statute, including, but not limited to, property forfeited to the Department under Section 505 of The Illinois Controlled Substances Act, shall be deposited into the Illinois State Pharmacy Disciplinary ~~Professional Regulation Evidence~~ Fund.

(Source: P.A. 86-685.)

Section 75. The Veterinary Medicine and Surgery Practice Act of 2004 is amended by changing Section 17 as follows:

(225 ILCS 115/17) (from Ch. 111, par. 7017)

(Section scheduled to be repealed on January 1, 2014)

Sec. 17. Any person licensed under this Act who dispenses any drug or medicine shall dispense such drug or medicine in good faith and shall affix to the container containing the same a label indicating: (a) the date on which such drug or medicine is dispensed, (b) the name of the owner, (c) the last name of the person dispensing such drug or medicine, (d) directions for use thereof, including dosage and quantity, and (e) the proprietary or generic name of the drug or medicine, except as otherwise authorized by rules of the Department. This Section shall not apply to drugs and medicines that are in a container which bears a label of the manufacturer with information describing its contents that are in compliance with requirements of the Federal Food, Drug, and Cosmetic Act or the Illinois Food, Drug and Cosmetic Act, approved June 29, 1967, as amended, and which are dispensed without consideration by a practitioner licensed under this Act. "Drug" and "medicine" have the meanings ascribed to them in the Pharmacy Practice Act ~~of 1987~~, as amended, and "good faith" has the meaning ascribed to it in subsection (v) of Section 102 of the "Illinois Controlled Substances Act", approved August 16, 1971, as amended.

(Source: P.A. 85-1209.)

Section 80. The Wholesale Drug Distribution Licensing Act is amended by changing Sections 15, 20, and 25, and by adding Sections 3, 24, 55, 56, 57, 58, and 59 as follows:

(225 ILCS 120/3 new)

(Section scheduled to be repealed on January 1, 2013)

Sec. 3. References to Department or Director of Professional Regulation. References in this Act (i) to the Department of Professional Regulation are deemed, in appropriate contexts, to be references to the Department of Financial and Professional Regulation and (ii) to the Director of Professional Regulation are deemed, in appropriate contexts, to be references to the Secretary of Financial and Professional Regulation.

(225 ILCS 120/15) (from Ch. 111, par. 8301-15)

(Section scheduled to be repealed on January 1, 2013)

Sec. 15. Definitions. As used in this Act:

"Authentication" means the affirmative verification, before any wholesale distribution of a prescription drug occurs, that each transaction listed on the pedigree has occurred.

"Authorized distributor of record" means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drug. An ongoing relationship is deemed to exist between a wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor, as defined in Section 1504 of the Internal Revenue Code, complies with the following:

(1) The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing the ongoing relationship; and

(2) The wholesale distributor is listed on the manufacturer's current list of authorized distributors of record, which is updated by the manufacturer on no less than a monthly basis.

"Blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing.

"Blood component" means that part of blood separated by physical or mechanical means.

"Board" means the State Board of Pharmacy of the Department of Professional Regulation.

"Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of the drugs to a group of chain or mail order pharmacies that have the same common ownership and control. Notwithstanding any other provision of this Act, a chain pharmacy warehouse shall be considered part of the normal distribution channel.

"Co-licensed partner or product" means an instance where one or more parties have the right to

engage in the manufacturing or marketing of a prescription drug, consistent with the FDA's implementation of the Prescription Drug Marketing Act.

"Department" means the Department of Financial and Professional Regulation.

~~"Director" means the Director of Professional Regulation.~~

"Drop shipment" means the sale of a prescription drug to a wholesale distributor by the manufacturer of the prescription drug or that manufacturer's co-licensed product partner, that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor or by an authorized distributor of record that purchased the product directly from the manufacturer or one of these entities whereby the wholesale distributor or chain pharmacy warehouse takes title but not physical possession of such prescription drug and the wholesale distributor invoices the pharmacy, chain pharmacy warehouse, or other person authorized by law to dispense or administer such drug to a patient and the pharmacy, chain pharmacy warehouse, or other authorized person receives delivery of the prescription drug directly from the manufacturer, that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor or from an authorized distributor of record that purchased the product directly from the manufacturer or one of these entities.

"Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

"Facility" means a facility of a wholesale distributor where prescription drugs are stored, handled, repackaged, or offered for sale.

"FDA" means the United States Food and Drug Administration.

"Manufacturer" means a person licensed or approved by the FDA to engage in the manufacture of drugs or devices, consistent with the definition of "manufacturer" set forth in the FDA's regulations and guidances implementing the Prescription Drug Marketing Act.

"Manufacturer's exclusive distributor" means anyone who contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the sale or disposition of the manufacturer's prescription drug. A manufacturer's exclusive distributor must be licensed as a wholesale distributor under this Act and, in order to be considered part of the normal distribution channel, must also be an authorized distributor of record.

"Normal distribution channel" means a chain of custody for a prescription drug that goes, directly or by drop shipment, from (i) a manufacturer of the prescription drug, (ii) that manufacturer to that manufacturer's co-licensed partner, (iii) that manufacturer to that manufacturer's third-party logistics provider, or (iv) that manufacturer to that manufacturer's exclusive distributor to:

(1) a pharmacy or to other designated persons authorized by law to dispense or administer the drug to a patient;

(2) a wholesale distributor to a pharmacy or other designated persons authorized by law to dispense or administer the drug to a patient;

(3) a wholesale distributor to a chain pharmacy warehouse to that chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer the drug to a patient;

(4) a chain pharmacy warehouse to the chain pharmacy warehouse's intracompany pharmacy or other designated persons authorized by law to dispense or administer the drug to the patient;

(5) an authorized distributor of record to one other authorized distributor of record to an office-based health care practitioner authorized by law to dispense or administer the drug to the patient; or

(6) an authorized distributor to a pharmacy or other persons licensed to dispense or administer the drug.

"Pedigree" means a document or electronic file containing information that records each wholesale distribution of any given prescription drug from the point of origin to the final wholesale distribution point of any given prescription drug.

~~"Manufacturer" means anyone who is engaged in the manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug.~~

"Person" means and includes a natural person, partnership, association or corporation.

"Pharmacy distributor" means any pharmacy licensed in this State or hospital pharmacy that is engaged in the delivery or distribution of prescription drugs either to any other pharmacy licensed in this State or to any other person or entity including, but not limited to, a wholesale drug distributor engaged in the delivery or distribution of prescription drugs who is involved in the actual, constructive, or attempted transfer of a drug in this State to other than the ultimate consumer except as otherwise provided for by law.

"Prescription drug" means any human drug, including any biological product (except for blood and blood components intended for transfusion or biological products that are also medical devices), required by federal law or regulation to be dispensed only by a prescription, including finished dosage forms and bulk drug substances ~~active ingredients~~ subject to ~~subsection (b) of~~ Section 503 of the Federal Food, Drug and Cosmetic Act.

"Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug, excluding that completed by the pharmacist responsible for dispensing the product to a patient.

"Secretary" means the Secretary of Financial and Professional Regulation.

"Third party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer, but does not take title to the prescription drug or have general responsibility to direct the prescription drug's sale or disposition. A third party logistics provider must be licensed as a wholesale distributor under this Act and, in order to be considered part of the normal distribution channel, must also be an authorized distributor of record.

"Wholesale distribution" ~~or "wholesale distributions"~~ means the distribution of prescription drugs to persons other than a consumer or patient, but does not include any of the following:

(1) ~~(a)~~ Intracompany sales of prescription drugs, meaning (i) ~~, defined as~~ any transaction or transfer between any division, subsidiary,

parent, or affiliated or related company under the common ownership and control of a corporate entity or (ii) any transaction or transfer between co-licensees of a co-licensed product.

(2) The sale, purchase, distribution, trade, or transfer of a prescription drug or offer to sell, purchase, distribute, trade, or transfer a prescription drug for emergency medical reasons.

(3) The distribution of prescription drug samples by manufacturers' representatives.

(4) Drug returns, when conducted by a hospital, health care entity, or charitable institution in accordance with federal regulation.

(5) The sale of minimal quantities of prescription drugs by retail pharmacies to licensed practitioners for office use.

(6) The sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription.

(7) The sale, transfer, merger, or consolidation of all or part of the business of a pharmacy or pharmacies from or with another pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets.

(8) The sale, purchase, distribution, trade, or transfer of a prescription drug from one authorized distributor of record to one additional authorized distributor of record when the manufacturer has stated in writing to the receiving authorized distributor of record that the manufacturer is unable to supply the prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had until that time been exclusively in the normal distribution channel.

(9) The delivery of or the offer to deliver a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs when the common carrier does not store, warehouse, or take legal ownership of the prescription drug.

(10) The sale or transfer from a retail pharmacy, mail order pharmacy, or chain pharmacy warehouse of expired, damaged, returned, or recalled prescription drugs to the original manufacturer, the originating wholesale distributor, or a third party returns processor. ~~(b) The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of a group organization.~~

~~(c) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in subsection (c)(3) of Section 501 of the U.S. Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law.~~

~~(d) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control. For purposes of this Act, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise.~~

~~(e) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons. For purposes of this Act, "emergency medical reasons" include transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage.~~

~~(f) The sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription.~~

~~(g) The distribution of drug samples by manufacturers' representatives or distributors' representatives.~~

~~(h) The sale, purchase, or trade of blood and blood components intended for transfusion.~~

"Wholesale drug distributor" means anyone ~~any person or entity~~ engaged in the wholesale distribution of prescription drugs, including without limitation ~~, but not limited to,~~ manufacturers; repackers; own label distributors; jobbers; private label distributors; brokers; warehouses, including manufacturers' and distributors' warehouses ; manufacturer's exclusive distributors; and authorized distributors of record; drug wholesalers or distributors; independent wholesale drug traders; specialty wholesale distributors; third party logistics providers; and retail pharmacies that conduct wholesale distribution; and chain pharmacy warehouses that conduct wholesale distribution. In order to be considered part of the normal distribution channel, a wholesale distributor must also be an authorized distributor of record ~~, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies that conduct wholesale distributions, including, but not limited to, any pharmacy distributor as defined in this Section. A wholesale drug distributor shall not include any for hire carrier or person or entity hired solely to transport prescription drugs~~.

(Source: P.A. 87-594.)

(225 ILCS 120/24 new)

(Section scheduled to be repealed on January 1, 2013)

Sec. 24. Bond required. The Department shall require every wholesale distributor applying for licensure under this Act to submit a bond not to exceed $100,000 or another equivalent means of security acceptable to the Department, such as an irrevocable letter of credit or a deposit in a trust account or financial institution, payable to a fund established by the Department. Chain pharmacy warehouses that are not engaged in wholesale distribution are exempt from the bond requirement of this Section. The purpose of the bond is to secure payment of any fines or penalties imposed by the Department and any fees and costs incurred by the Department regarding that license, which are authorized under State law and which the licensee fails to pay 30 days after the fines, penalties, or costs become final. The Department may make a claim against the bond or security until one year after the licensee's license ceases to be valid. A single bond may suffice to cover all facilities operated by an applicant or its affiliates licensed in this State.

The Department shall establish a fund, separate from its other accounts, in which to deposit the wholesale distributor bonds required under this Section.

(225 ILCS 120/25) (from Ch. 111, par. 8301-25)

(Section scheduled to be repealed on January 1, 2013)

Sec. 25. Wholesale drug distributor licensing requirements.

~~All wholesale distributors and pharmacy distributors, wherever located, who engage in wholesale distribution into, out of, or within the State shall be subject to the following requirements:~~

(a) Every resident wholesale distributor who engages in the wholesale distribution of prescription drugs must be licensed by the Department, and every non-resident wholesale distributor must be licensed in this State if it ships prescription drugs into this State, in accordance with this Act, before engaging in wholesale distributions of wholesale prescription drugs. ~~No person or distribution outlet shall act as a wholesale drug distributor without first obtaining a license to do so from the Department and paying any reasonable fee required by the Department.~~

(b) The Department shall require without limitation all of the following information from each applicant for licensure under this Act:

(1) The name, full business address, and telephone number of the licensee.

(2) All trade or business names used by the licensee.

(3) Addresses, telephone numbers, and the names of contact persons for all facilities used by the licensee for the storage, handling, and distribution of prescription drugs.

(4) The type of ownership or operation, such as a partnership, corporation, or sole proprietorship.

(5) The name of the owner or operator of the wholesale distributor, including:

(A) if a person, the name of the person;

(B) if a partnership, the name of each partner and the name of the partnership;

(C) if a corporation, the name and title of each corporate officer and director, the corporate names, and the name of the state of incorporation; and

(D) if a sole proprietorship, the full name of the sole proprietor and the name of the business entity.

(6) A list of all licenses and permits issued to the applicant by any other state that authorizes the applicant to purchase or possess prescription drugs.

(7) The name of the designated representative for the wholesale distributor, together with the

personal information statement and fingerprints, as required under subsection (c) of this Section.

(8) Minimum liability insurance and other insurance as defined by rule.

(9) Any additional information required by the Department. ~~may grant a temporary license when a wholesale drug distributor first applies for a license to operate within this State. A temporary license shall only be granted after the applicant meets the inspection requirements for regular licensure and shall remain valid until the Department finds that the applicant meets or fails to meet the requirements for regular licensure. Nevertheless, no temporary license shall be valid for more than 90 days from the date of issuance. Any temporary license issued under this subsection shall be renewable for a similar period of time not to exceed 90 days under policies and procedures prescribed by the Department.~~

(c) Each wholesale distributor must designate an individual representative who shall serve as the contact person for the Department. This representative must provide the Department with all of the following information:

(1) Information concerning whether the person has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating any federal or State law regulating the possession, control, or distribution of prescription drugs or criminal violations, together with details concerning any such event.

(2) A description of any involvement by the person with any business, including any investments, other than the ownership of stock in a publicly traded company or mutual fund which manufactured, administered, prescribed, distributed, or stored pharmaceutical products and any lawsuits in which such businesses were named as a party.

(3) A description of any misdemeanor or felony criminal offense of which the person, as an adult, was found guilty, regardless of whether adjudication of guilt was withheld or whether the person pled guilty or nolo contendere. If the person indicates that a criminal conviction is under appeal and submits a copy of the notice of appeal of that criminal offense, the applicant must, within 15 days after the disposition of the appeal, submit to the Department a copy of the final written order of disposition.

(4) The designated representative of an applicant for licensure as a wholesale drug distributor shall have his or her fingerprints submitted to the Department of State Police in an electronic format that complies with the form and manner for requesting and furnishing criminal history record information as prescribed by the Department of State Police. These fingerprints shall be checked against the Department of State Police and Federal Bureau of Investigation criminal history record databases now and hereafter filed. The Department of State Police shall charge applicants a fee for conducting the criminal history records check, which shall be deposited into the State Police Services Fund and shall not exceed the actual cost of the records check. The Department of State Police shall furnish, pursuant to positive identification, records of Illinois convictions to the Department. The Department may require applicants to pay a separate fingerprinting fee, either to the Department or to a vendor. The Department, in its discretion, may allow an applicant who does not have reasonable access to a designated vendor to provide his or her fingerprints in an alternative manner. The Department may adopt any rules necessary to implement this Section.

The designated representative of a licensee shall receive and complete continuing training in applicable federal and State laws governing the wholesale distribution of prescription drugs. ~~No license shall be issued or renewed for a wholesale drug distributor to operate unless the wholesale drug distributor shall operate in a manner prescribed by law and according to the rules and regulations promulgated by the Department.~~

(d) The Department may not issue a wholesale distributor license to an applicant, unless the Department first:

(1) ensures that a physical inspection of the facility satisfactory to the Department has occurred at the address provided by the applicant, as required under item (1) of subsection (b) of this Section; and

(2) determines that the designated representative meets each of the following qualifications:

(A) He or she is at least 21 years of age.

(B) He or she has been employed full-time for at least 3 years in a pharmacy or with a wholesale distributor in a capacity related to the dispensing and distribution of, and recordkeeping relating to, prescription drugs.

(C) He or she is employed by the applicant full time in a managerial level position.

(D) He or she is actively involved in and aware of the actual daily operation of the wholesale distributor.

(E) He or she is physically present at the facility of the applicant during regular business hours, except when the absence of the designated representative is authorized, including without limitation sick leave and vacation leave.

(F) He or she is serving in the capacity of a designated representative for only one applicant at a

time, except where more than one licensed wholesale distributor is co-located in the same facility and such wholesale distributors are members of an affiliated group, as defined in Section 1504 of the Internal Revenue Code. ~~require a separate license for each facility directly or indirectly owned or operated by the same business entity within this State, or for a parent entity with divisions, subsidiaries, and affiliate companies within this State when operations are conducted at more than one location and there exists joint ownership and control among all the entities.~~

(e) If a wholesale distributor distributes prescription drugs from more than one facility, the wholesale distributor shall obtain a license for each facility. ~~As a condition for receiving and renewing any wholesale drug distributor license issued under this Act, each applicant shall satisfy the Department that it has and will continuously maintain:~~

~~(1) acceptable storage and handling conditions plus facilities standards;~~

~~(2) minimum liability and other insurance as may be required under any applicable federal or State law;~~

~~(3) a security system that includes after hours, central alarm or comparable entry detection capability; restricted premises access; adequate outside perimeter lighting; comprehensive employment applicant screening; and safeguards against employee theft;~~

~~(4) an electronic, manual, or any other reasonable system of records, describing all wholesale distributor activities governed by this Act for the 2 year period following disposition of each product and reasonably accessible during regular business hours as defined by the Department's rules in any inspection authorized by the Department;~~

~~(5) officers, directors, managers, and other persons in charge of wholesale drug distribution, storage, and handling who must at all times demonstrate and maintain their capability of conducting business according to sound financial practices as well as State and federal law;~~

~~(6) complete, updated information, to be provided the Department as a condition for obtaining and renewing a license, about each wholesale distributor to be licensed under this Act, including all pertinent licensee ownership and other key personnel and facilities information deemed necessary for enforcement of this Act. Any changes in this information shall be submitted at the time of license renewal or within 45 days from the date of the change;~~

~~(7) written policies and procedures that assure reasonable wholesale distributor preparation for, protection against and handling of any facility security or operation problems, including, but not limited to, those caused by natural disaster or government emergency; inventory inaccuracies or product shipping and receiving; outdated product or other unauthorized product control; appropriate disposition of returned goods; and product recalls;~~

~~(8) sufficient inspection procedures for all incoming and outgoing product shipments; and~~

~~(9) operations in compliance with all federal legal requirements applicable to wholesale drug distribution.~~

(f) The information provided under this Section may not be disclosed to any person or entity other than the Department or another government entity in need of such information for licensing or monitoring purposes. ~~Department shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in wholesale distribution of prescription drugs in this State:~~

~~(1) any conviction of the applicant under any federal, State, or local laws relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances;~~

~~(2) any felony convictions of the applicant under federal, State, or local laws;~~

~~(3) the applicant's past experience in the manufacture or distribution of prescription drugs, including controlled substances;~~

~~(4) the furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or distribution;~~

~~(5) suspension or revocation by federal, State, or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drug, including controlled substances;~~

~~(6) compliance with licensing requirements under previously granted licenses, if any;~~

~~(7) compliance with requirements to maintain and make available to the Department or to federal, State, or local law enforcement officials those records required by this Act; and~~

~~(8) any other factors or qualifications the Department considers relevant to and consistent with the public health and safety, including whether the granting of the license would not be in the public interest.~~

~~(9) All requirements set forth in this subsection shall conform to wholesale drug distributor licensing guidelines formally adopted by the U.S. Food and Drug Administration (FDA). In case of conflict between any wholesale drug distributor licensing requirement imposed by the Department and any FDA wholesale drug distributor licensing guideline, the FDA guideline shall control.~~

~~(g) An agent or employee of any licensed wholesale drug distributor need not seek licensure under this Section and may lawfully possess pharmaceutical drugs when the agent or employee is acting in the usual course of business or employment.~~

~~(h) The issuance of a license under this Act shall not change or affect tax liability imposed by the State on any wholesale drug distributor.~~

~~(i) A license issued under this Act shall not be sold, transferred, or assigned in any manner.~~

(Source: P.A. 94-942, eff. 1-1-07.)

(225 ILCS 120/55) (from Ch. 111, par. 8301-55)

(Section scheduled to be repealed on January 1, 2013)

Sec. 55. Discipline; grounds.

(a) The Department may refuse to issue, restore, or renew, or may revoke, suspend, place on probation, reprimand or take other disciplinary action as the Department may deem proper for any of the following reasons:

(1) Violation of this Act or its rules.

(2) Aiding or assisting another person in violating any provision of this Act or its rules.

(3) Failing, within 60 days, to respond to a written requirement made by the Department for information.

(4) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public. This includes violations of "good faith" as defined by the Illinois Controlled Substances Act and applies to all prescription drugs.

(5) Discipline by another U.S. jurisdiction or foreign nation, if at least one of the grounds for the discipline is the same or substantially equivalent to those set forth in this Act.

(6) Selling or engaging in the sale of drug samples provided at no cost by drug manufacturers.

(7) Conviction of or entry of a plea of guilty or nolo contendere by the applicant or licensee, or any officer, director, manager or shareholder who owns more than 5% of stock, to any crime under the laws of the United States or any state or territory of the United States that is a felony or a misdemeanor, of which an essential element is dishonesty, or any crime that is directly related to the practice of this profession ~~in State or federal court of any crime that is a felony~~.

(8) Habitual or excessive use or addiction to alcohol, narcotics, stimulants, or any other chemical agent or drug that results in the inability to function with reasonable judgment, skill, or safety.

(b) The Department may refuse to issue, restore, or renew, or may revoke, suspend, place on probation, reprimand or take other disciplinary action as the Department may deem property including fines not to exceed $10,000 per offense ~~$1000~~ for any of the following reasons:

(1) Material misstatement in furnishing information to the Department.

(2) Making any misrepresentation for the purpose of obtaining a license.

(3) A finding by the Department that the licensee, after having his or her license placed on probationary status, has violated the terms of probation.

(4) A finding that licensure or registration has been applied for or obtained by fraudulent means.

(5) Willfully making or filing false records or reports.

(6) A finding of a substantial discrepancy in a Department audit of a prescription drug, including a controlled substance as that term is defined in this Act or in the Illinois Controlled Substances Act.

(c) The Department may refuse to issue or may suspend the license or registration of any person who fails to file a return, or to pay the tax, penalty or interest shown in a filed return, or to pay any final assessment of tax, penalty or interest, as required by any tax Act administered by the Illinois Department of Revenue, until the time the requirements of the tax Act are satisfied.

(d) The Department shall revoke the license or certificate of registration issued under this Act or any prior Act of this State of any person who has been convicted a second time of committing any felony under the Illinois Controlled Substances Act or the Methamphetamine Control and Community Protection Act or who has been convicted a second time of committing a Class 1 felony under Sections 8A-3 and 8A-6 of the Illinois Public Aid Code. A person whose license or certificate of registration issued under this Act or any prior Act of this State is revoked under this subsection (c) shall be prohibited from engaging in the practice of pharmacy in this State.

(Source: P.A. 94-556, eff. 9-11-05.)

(225 ILCS 120/56 new)

(Section scheduled to be repealed on January 1, 2013)

Sec. 56. Restrictions on transactions.

(a) A licensee shall receive prescription drug returns or exchanges from a pharmacy or other persons authorized to administer or dispense drugs or a chain pharmacy warehouse pursuant to the terms and conditions of the agreement between the wholesale distributor and the pharmacy or chain pharmacy warehouse. Returns of expired, damaged, recalled, or otherwise non-saleable pharmaceutical products shall be distributed by the receiving wholesale distributor only to either the original manufacturer or a third party returns processor. Returns or exchanges of prescription drugs, saleable or otherwise, including any redistribution by a receiving wholesaler, shall not be subject to the pedigree requirements of Section 57 of this Act, so long as they are exempt from the pedigree requirement of the FDA's currently applicable Prescription Drug Marketing Act guidance. Both licensees under this Act and pharmacies or other persons authorized to administer or dispense drugs shall be accountable for administering their returns process and ensuring that the aspects of this operation are secure and do not permit the entry of adulterated and counterfeit product.

(b) A manufacturer or wholesale distributor licensed under this Act may furnish prescription drugs only to a person licensed by the appropriate state licensing authorities. Before furnishing prescription drugs to a person not known to the manufacturer or wholesale distributor, the manufacturer or wholesale distributor must affirmatively verify that the person is legally authorized to receive the prescription drugs by contacting the appropriate state licensing authorities.

(c) Prescription drugs furnished by a manufacturer or wholesale distributor licensed under this Act may be delivered only to the premises listed on the license, provided that the manufacturer or wholesale distributor may furnish prescription drugs to an authorized person or agent of that person at the premises of the manufacturer or wholesale distributor if:

(1) the identity and authorization of the recipient is properly established; and

(2) this method of receipt is employed only to meet the immediate needs of a particular patient of the authorized person.

(d) Prescription drugs may be furnished to a hospital pharmacy receiving area, provided that a pharmacist or authorized receiving personnel signs, at the time of delivery, a receipt showing the type and quantity of the prescription drug received. Any discrepancy between the receipt and the type and quantity of the prescription drug actually received shall be reported to the delivering manufacturer or wholesale distributor by the next business day after the delivery to the pharmacy receiving area.

(e) A manufacturer or wholesale distributor licensed under this Act may not accept payment for, or allow the use of, a person or entity's credit to establish an account for the purchase of prescription drugs from any person other than the owner of record, the chief executive officer, or the chief financial officer listed on the license of a person or entity legally authorized to receive the prescription drugs. Any account established for the purchase of prescription drugs must bear the name of the licensee. This subsection (e) shall not be construed to prohibit a pharmacy or chain pharmacy warehouse from receiving prescription drugs if payment for the prescription drugs is processed through the pharmacy's or chain pharmacy warehouse's contractual drug manufacturer or wholesale distributor.

(225 ILCS 120/57 new)

(Section scheduled to be repealed on January 1, 2013)

Sec. 57. Pedigree.

(a) Each person who is engaged in the wholesale distribution of prescription drugs, including repackagers, but excluding the original manufacturer of the finished form of the prescription drug, that leave or have ever left the normal distribution channel shall, before each wholesale distribution of the drug, provide a pedigree to the person who receives the drug. A retail pharmacy, mail order pharmacy, or chain pharmacy warehouse must comply with the requirements of this Section only if the pharmacy or chain pharmacy warehouse engages in the wholesale distribution of prescription drugs. On or before July 1, 2009, the Department shall determine a targeted implementation date for electronic track and trace pedigree technology. This targeted implementation date shall not be sooner than July 1, 2010. Beginning on the date established by the Department, pedigrees may be implemented through an approved and readily available system that electronically tracks and traces the wholesale distribution of each prescription drug starting with the sale by the manufacturer through acquisition and sale by any wholesale distributor and until final sale to a pharmacy or other authorized person administering or dispensing the prescription drug. This electronic tracking system shall be deemed to be readily available only upon there being available a standardized system originating with the manufacturers and capable of being used on a wide scale across the entire pharmaceutical chain, including manufacturers, wholesale distributors, and pharmacies. Consideration must also be given to the large-scale implementation of this

technology across the supply chain and the technology must be proven to have no negative impact on the safety and efficacy of the pharmaceutical product.

(b) Each person who is engaged in the wholesale distribution of a prescription drug who is provided a pedigree for a prescription drug and attempts to further distribute that prescription drug, including repackagers, but excluding the original manufacturer of the finished form of the prescription drug, must affirmatively verify before any distribution of a prescription drug occurs that each transaction listed on the pedigree has occurred.

(c) The pedigree must include all necessary identifying information concerning each sale in the chain of distribution of the product from the manufacturer or the manufacturer's third party logistics provider, co-licensed product partner, or exclusive distributor through acquisition and sale by any wholesale distributor or repackager, until final sale to a pharmacy or other person dispensing or administering the drug. This necessary chain of distribution information shall include, without limitation all of the following:

(1) The name, address, telephone number and, if available, the e-mail address of each owner of the prescription drug and each wholesale distributor of the prescription drug.

(2) The name and address of each location from which the product was shipped, if different from the owner's.

(3) Transaction dates.

(4) Certification that each recipient has authenticated the pedigree.

(d) The pedigree must also include without limitation all of the following information concerning the prescription drug:

(1) The name and national drug code number of the prescription drug.

(2) The dosage form and strength of the prescription drug.

(3) The size of the container.

(4) The number of containers.

(5) The lot number of the prescription drug.

(6) The name of the manufacturer of the finished dosage form.

(e) Each pedigree or electronic file shall be maintained by the purchaser and the wholesale distributor for at least 3 years from the date of sale or transfer and made available for inspection or use within 5 business days upon a request of the Department.

(225 ILCS 120/58 new)

(Section scheduled to be repealed on January 1, 2013)

Sec. 58. Prohibited acts. It is unlawful for a person to perform or cause the performance of or aid and abet any of the following acts:

(1) Failure to obtain a license in accordance with this Act or operating without a valid license when a license is required by this Act.

(2) If the requirements of subsection (a) of Section 56 of this Act are applicable and are not met, the purchasing or otherwise receiving of a prescription drug from a pharmacy.

(3) If licensure is required pursuant to subsection (b) of Section 56 of this Act, the sale, distribution, or transfer of a prescription drug to a person that is not authorized under the law of the jurisdiction in which the person receives the prescription drug to receive the prescription drug.

(4) Failure to deliver prescription drugs to specified premises, as required by subsection (c) of Section 56 of this Act.

(5) Accepting payment or credit for the sale of prescription drugs in violation of subsection (e) of Section 56 of this Act.

(6) Failure to maintain or provide pedigrees as required by this Act.

(7) Failure to obtain, pass, or authenticate a pedigree as required by this Act.

(8) Providing the Department or any federal official with false or fraudulent records or making false or fraudulent statements regarding any matter within the provisions of this Act.

(9) Obtaining or attempting to obtain a prescription drug by fraud, deceit, or misrepresentation or engaging in misrepresentation or fraud in the distribution of a prescription drug.

(10) The manufacture, repacking, sale, transfer, delivery, holding, or offering for sale of any prescription drug that is adulterated, misbranded, counterfeit, suspected of being counterfeit, or that has otherwise been rendered unfit for distribution, except for the wholesale distribution by manufacturers of a prescription drug that has been delivered into commerce pursuant to an application approved under federal law by the FDA.

(11) The adulteration, misbranding, or counterfeiting of any prescription drug, except for the wholesale distribution by manufacturers of a prescription drug that has been delivered into commerce pursuant to an application approved under federal law by the FDA.

(12) The receipt of any prescription drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit, or suspected of being counterfeit and the delivery or proffered delivery of such drug for pay or otherwise.

(13) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of a prescription drug or the commission of any other act with respect to a prescription drug that results in the prescription drug being misbranded. The acts prohibited in this Section do not include the obtaining or the attempt to obtain a prescription drug for the sole purpose of testing the prescription drug for authenticity performed by a prescription drug manufacturer or the agent of a prescription drug manufacturer.

(225 ILCS 120/59 new)

(Section scheduled to be repealed on January 1, 2013)

Sec. 59. Enforcement; order to cease distribution of a drug.

(a) The Department shall issue an order requiring the appropriate person, including the distributors or retailers of a drug, to immediately cease distribution of the drug within this State, if the Department finds that there is a reasonable probability that:

(1) a wholesale distributor has (i) violated a provision in this Act or (ii) falsified a pedigree or sold, distributed, transferred, manufactured, repackaged, handled, or held a counterfeit prescription drug intended for human use;

(2) the prescription drug at issue, as a result of a violation in paragraph (1) of this subsection (a), could cause serious, adverse health consequences or death; and

(3) other procedures would result in unreasonable delay.

(b) An order issued under this Section shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than 10 days after the date of the issuance of the order, on the actions required by the order. If, after providing an opportunity for a hearing, the Department determines that inadequate grounds exist to support the actions required by the order, the Department shall vacate the order.

Section 85. The Illinois Public Aid Code is amended by changing Section 8A-7.1 as follows:

(305 ILCS 5/8A-7.1) (from Ch. 23, par. 8A-7.1)

Sec. 8A-7.1. The Director, upon making a determination based upon information in the possession of the Illinois Department, that continuation in practice of a licensed health care professional would constitute an immediate danger to the public, shall submit a written communication to the Director of Professional Regulation indicating such determination and additionally providing a complete summary of the information upon which such determination is based, and recommending that the Director of Professional Regulation immediately suspend such person's license. All relevant evidence, or copies thereof, in the Illinois Department's possession may also be submitted in conjunction with the written communication. A copy of such written communication, which is exempt from the copying and inspection provisions of the Freedom of Information Act, shall at the time of submittal to the Director of Professional Regulation be simultaneously mailed to the last known business address of such licensed health care professional by certified or registered postage, United States Mail, return receipt requested. Any evidence, or copies thereof, which is submitted in conjunction with the written communication is also exempt from the copying and inspection provisions of the Freedom of Information Act.

The Director, upon making a determination based upon information in the possession of the Illinois Department, that a licensed health care professional is willfully committing fraud upon the Illinois Department's medical assistance program, shall submit a written communication to the Director of Professional Regulation indicating such determination and additionally providing a complete summary of the information upon which such determination is based. All relevant evidence, or copies thereof, in the Illinois Department's possession may also be submitted in conjunction with the written communication.

Upon receipt of such written communication, the Director of Professional Regulation shall promptly investigate the allegations contained in such written communication. A copy of such written communication, which is exempt from the copying and inspection provisions of the Freedom of Information Act, shall at the time of submission to the Director of Professional Regulation, be simultaneously mailed to the last known address of such licensed health care professional by certified or registered postage, United States Mail, return receipt requested. Any evidence, or copies thereof, which is submitted in conjunction with the written communication is also exempt from the copying and inspection provisions of the Freedom of Information Act.

For the purposes of this Section, "licensed health care professional" means any person licensed under the Illinois Dental Practice Act, the Nursing and Advanced Practice Nursing Act, the Medical Practice

Act of 1987, the Pharmacy Practice Act ~~of 1987~~, the Podiatric Medical Practice Act of 1987, or the Illinois Optometric Practice Act of 1987.
(Source: P.A. 92-651, eff. 7-11-02.)

Section 90. The Elder Abuse and Neglect Act is amended by changing Section 2 as follows:
(320 ILCS 20/2) (from Ch. 23, par. 6602)
Sec. 2. Definitions. As used in this Act, unless the context requires otherwise:
(a) "Abuse" means causing any physical, mental or sexual injury to an eligible adult, including exploitation of such adult's financial resources.
Nothing in this Act shall be construed to mean that an eligible adult is a victim of abuse, neglect, or self-neglect for the sole reason that he or she is being furnished with or relies upon treatment by spiritual means through prayer alone, in accordance with the tenets and practices of a recognized church or religious denomination.
Nothing in this Act shall be construed to mean that an eligible adult is a victim of abuse because of health care services provided or not provided by licensed health care professionals.
(a-5) "Abuser" means a person who abuses, neglects, or financially exploits an eligible adult.
(a-7) "Caregiver" means a person who either as a result of a family relationship, voluntarily, or in exchange for compensation has assumed responsibility for all or a portion of the care of an eligible adult who needs assistance with activities of daily living.
(b) "Department" means the Department on Aging of the State of Illinois.
(c) "Director" means the Director of the Department.
(d) "Domestic living situation" means a residence where the eligible adult lives alone or with his or her family or a caregiver, or others, or a board and care home or other community-based unlicensed facility, but is not:
(1) A licensed facility as defined in Section 1-113 of the Nursing Home Care Act;
(2) A "life care facility" as defined in the Life Care Facilities Act;
(3) A home, institution, or other place operated by the federal government or agency thereof or by the State of Illinois;
(4) A hospital, sanitarium, or other institution, the principal activity or business of which is the diagnosis, care, and treatment of human illness through the maintenance and operation of organized facilities therefor, which is required to be licensed under the Hospital Licensing Act;
(5) A "community living facility" as defined in the Community Living Facilities Licensing Act;
(6) A "community residential alternative" as defined in the Community Residential Alternatives Licensing Act;
(7) A "community-integrated living arrangement" as defined in the Community-Integrated Living Arrangements Licensure and Certification Act;
(8) An assisted living or shared housing establishment as defined in the Assisted Living and Shared Housing Act; or
(9) A supportive living facility as described in Section 5-5.01a of the Illinois Public Aid Code.
(e) "Eligible adult" means a person 60 years of age or older who resides in a domestic living situation and is, or is alleged to be, abused, neglected, or financially exploited by another individual or who neglects himself or herself.
(f) "Emergency" means a situation in which an eligible adult is living in conditions presenting a risk of death or physical, mental or sexual injury and the provider agency has reason to believe the eligible adult is unable to consent to services which would alleviate that risk.
(f-5) "Mandated reporter" means any of the following persons while engaged in carrying out their professional duties:
(1) a professional or professional's delegate while engaged in: (i) social services, (ii) law enforcement, (iii) education, (iv) the care of an eligible adult or eligible adults, or (v) any of the occupations required to be licensed under the Clinical Psychologist Licensing Act, the Clinical Social Work and Social Work Practice Act, the Illinois Dental Practice Act, the Dietetic and Nutrition Services Practice Act, the Marriage and Family Therapy Licensing Act, the Medical Practice Act of 1987, the Naprapathic Practice Act, the Nursing and Advanced Practice Nursing Act, the Nursing Home Administrators Licensing and Disciplinary Act, the Illinois Occupational Therapy Practice Act, the Illinois Optometric Practice Act of 1987, the Pharmacy Practice Act ~~of 1987~~, the Illinois Physical Therapy Act, the Physician Assistant Practice Act of 1987, the Podiatric Medical Practice Act of 1987, the Respiratory Care Practice Act, the Professional Counselor and Clinical Professional

Counselor Licensing Act, the Illinois Speech-Language Pathology and Audiology Practice Act, the Veterinary Medicine and Surgery Practice Act of 2004, and the Illinois Public Accounting Act;

(2) an employee of a vocational rehabilitation facility prescribed or supervised by the Department of Human Services;

(3) an administrator, employee, or person providing services in or through an unlicensed community based facility;

(4) any religious practitioner who provides treatment by prayer or spiritual means alone in accordance with the tenets and practices of a recognized church or religious denomination, except as to information received in any confession or sacred communication enjoined by the discipline of the religious denomination to be held confidential;

(5) field personnel of the Department of Healthcare and Family Services, Department of Public Health, and Department of Human Services, and any county or municipal health department;

(6) personnel of the Department of Human Services, the Guardianship and Advocacy Commission, the State Fire Marshal, local fire departments, the Department on Aging and its subsidiary Area Agencies on Aging and provider agencies, and the Office of State Long Term Care Ombudsman;

(7) any employee of the State of Illinois not otherwise specified herein who is involved in providing services to eligible adults, including professionals providing medical or rehabilitation services and all other persons having direct contact with eligible adults;

(8) a person who performs the duties of a coroner or medical examiner; or

(9) a person who performs the duties of a paramedic or an emergency medical technician.

(g) "Neglect" means another individual's failure to provide an eligible adult with or willful withholding from an eligible adult the necessities of life including, but not limited to, food, clothing, shelter or health care. This subsection does not create any new affirmative duty to provide support to eligible adults. Nothing in this Act shall be construed to mean that an eligible adult is a victim of neglect because of health care services provided or not provided by licensed health care professionals.

(h) "Provider agency" means any public or nonprofit agency in a planning and service area appointed by the regional administrative agency with prior approval by the Department on Aging to receive and assess reports of alleged or suspected abuse, neglect, or financial exploitation.

(i) "Regional administrative agency" means any public or nonprofit agency in a planning and service area so designated by the Department, provided that the designated Area Agency on Aging shall be designated the regional administrative agency if it so requests. The Department shall assume the functions of the regional administrative agency for any planning and service area where another agency is not so designated.

(i-5) "Self-neglect" means a condition that is the result of an eligible adult's inability, due to physical or mental impairments, or both, or a diminished capacity, to perform essential self-care tasks that substantially threaten his or her own health, including: providing essential food, clothing, shelter, and health care; and obtaining goods and services necessary to maintain physical health, mental health, emotional well-being, and general safety.

(j) "Substantiated case" means a reported case of alleged or suspected abuse, neglect, financial exploitation, or self-neglect in which a provider agency, after assessment, determines that there is reason to believe abuse, neglect, or financial exploitation has occurred.

(Source: P.A. 93-281 eff. 12-31-03; 93-300, eff. 1-1-04; 94-1064, eff. 1-1-07.)

Section 95. The Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act is amended by changing Section 3.17 as follows:

(320 ILCS 25/3.17) (from Ch. 67 1/2, par. 403.17)

Sec. 3.17. "Authorized pharmacy" means any pharmacy registered in this State under the Pharmacy Practice Act ~~of 1987~~.

(Source: P.A. 85-1209.)

Section 100. The Illinois Prescription Drug Discount Program Act is amended by changing Section 15 as follows:

(320 ILCS 55/15)

Sec. 15. Definitions. As used in this Act:

"Authorized pharmacy" means any pharmacy registered in this State under the Pharmacy Practice Act ~~of 1987~~ or approved by the Department of Financial and Professional Regulation and approved by the Department or its program administrator.

"AWP" or "average wholesale price" means the amount determined from the latest publication of the

Red Book, a universally subscribed pharmacist reference guide annually published by the Hearst Corporation. "AWP" or "average wholesale price" may also be derived electronically from the drug pricing database synonymous with the latest publication of the Red Book and furnished in the National Drug Data File (NDDF) by First Data Bank (FDB), a service of the Hearst Corporation.

"Covered medication" means any medication included in the Illinois Prescription Drug Discount Program.

"Department" means the Department of Healthcare and Family Services.

"Director" means the Director of Healthcare and Family Services.

"Drug manufacturer" means any entity (1) that is located within or outside Illinois that is engaged in (i) the production, preparation, propagation, compounding, conversion, or processing of prescription drug products covered under the program, either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis or (ii) the packaging, repackaging, leveling, labeling, or distribution of prescription drug products covered under the program and (2) that elects to provide prescription drugs either directly or under contract with any entity providing prescription drug services on behalf of the State of Illinois. "Drug manufacturer", however, does not include a wholesale distributor of drugs or a retail pharmacy licensed under Illinois law.

"Federal Poverty Limit" or "FPL" means the Federal Poverty Income Guidelines published annually in the Federal Register.

"Prescription drug" means any prescribed drug that may be legally dispensed by an authorized pharmacy.

"Program" means the Illinois Prescription Drug Discount Program created under this Act.

"Program administrator" means the entity that is chosen by the Department to administer the program. The program administrator may, in this case, be the Director or a Pharmacy Benefits Manager (PBM) chosen to subcontract with the Director.

"Rules" includes rules adopted and forms prescribed by the Department.

(Source: P.A. 93-18, eff. 7-1-03; 94-86, eff. 1-1-06.)

Section 105. The Illinois Food, Drug and Cosmetic Act is amended by changing Sections 2.22, 3.14 and 3.21 as follows:

(410 ILCS 620/2.22) (from Ch. 56 1/2, par. 502.22)

Sec. 2.22. "Drug product selection", as used in Section 3.14 of this Act, means the act of selecting the source of supply of a drug product in a specified dosage form in accordance with Section 3.14 of this Act and Section 25 of the Pharmacy Practice Act ~~of 1987~~.

(Source: P.A. 85-1209.)

(410 ILCS 620/3.14) (from Ch. 56 1/2, par. 503.14)

Sec. 3.14. Dispensing or causing to be dispensed a different drug in place of the drug or brand of drug ordered or prescribed without the express permission of the person ordering or prescribing. Except as set forth in Section 26 of the Pharmacy Practice Act, this Section does not prohibit the interchange of different brands of the same generically equivalent drug product, when the drug products are not required to bear the legend "Caution: Federal law prohibits dispensing without prescription", provided that the same dosage form is dispensed and there is no greater than 1% variance in the stated amount of each active ingredient of the drug products. A generic drug determined to be therapeutically equivalent by the United States Food and Drug Administration (FDA) shall be available for substitution in Illinois in accordance with this Act and the Pharmacy Practice Act ~~of 1987~~, provided that each manufacturer submits to the Director of the Department of Public Health a notification containing product technical bioequivalence information as a prerequisite to product substitution when they have completed all required testing to support FDA product approval and, in any event, the information shall be submitted no later than 60 days prior to product substitution in the State.

(Source: P.A. 93-841, eff. 7-30-04; 94-936, eff. 6-26-06.)

(410 ILCS 620/3.21) (from Ch. 56 1/2, par. 503.21)

Sec. 3.21. Except as authorized by this Act, the Controlled Substances Act, the Pharmacy Practice Act ~~of 1987~~, the Dental Practice Act, the Medical Practice Act of 1987, the Veterinary Medicine and Surgery Practice Act of 2004, or the Podiatric Medical Practice Act of 1987, to sell or dispense a prescription drug without a prescription.

(Source: P.A. 93-281, eff. 12-31-03.)

Section 110. The Uniform Hazardous Substances Act of Illinois is amended by changing Section 13 as follows:

(430 ILCS 35/13) (from Ch. 111 1/2, par. 263)

Sec. 13. This Act shall not apply to:

(1) Any carrier, while lawfully engaged in transporting a hazardous substance within this State, if such carrier shall, upon request, permit the Director or his designated agent to copy all records showing the transactions in and movements of the articles;

(2) Public Officials of this State and of the federal government engaged in the performance of their official duties;

(3) The manufacturer or shipper of a hazardous substance for experimental use only:

(a) By or under the supervision of an agency of this State or of the federal government authorized by law to conduct research in the field of hazardous substances; or

(b) By others if the hazardous substance is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only -- Not to be sold", together with the manufacturer's name and address; provided, however, that if a written permit has been obtained from the Director, hazardous substances may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit;

(4) Any food, drug or cosmetic subject to the Federal Food, Drug and Cosmetic Act or to the Illinois Food, Drug and Cosmetic Act, or to preparations, drugs and chemicals which are dispensed by pharmacists authorized by and pursuant to the Pharmacy Practice Act ~~of 1987~~; provided that this Act shall apply to any pressurized container containing a food, drug, cosmetic, chemical or other preparation.

(5) Any economic poison subject to the Federal Insecticide, Fungicide and Rodenticide Act, or to the "Illinois Pesticide Act", approved August 14, 1979, as amended, but shall apply to any article which is not itself an economic poison within the meaning of the Federal Insecticide, Fungicide and Rodenticide Act or the Illinois Pesticide Act, approved August 14, 1979, as amended, but which is a hazardous substance within the meaning of Section 2-4 of this Act, by reason of bearing or containing such an economic poison.

(6) Fuel used primarily for cooking, heating or refrigeration when stored in containers and used in the heating, cooking or refrigeration system of a household.

(7) Any article of wearing apparel, bedding, fabric, doll or toy which is subject to the provisions of the Illinois Flammable Fabrics and Toys Act, by reason of its flammable nature, but this Act shall apply to such article if it bears or contains a substance or mixture of substances which is toxic, corrosive, an irritant, strong sensitizer, or which generates pressure through decomposition, heat or other means and which may cause substantial personal injury or illness during or as a proximate result of any customary or reasonably anticipated handling or use including reasonably foreseeable ingestion by children.

(8) Any source material, special nuclear material, or by-product material as defined in the Atomic Energy Act of 1954, as amended, and regulations issued pursuant thereto by the Atomic Energy Commission.

(9) The labeling of any equipment or facilities for the use, storage, transportation, or manufacture of any hazardous material which is required to be placarded by "An Act to require labeling of equipment and facilities for the use, transportation, storage and manufacture of hazardous materials and to provide for a uniform response system to hazardous materials emergencies", approved August 26, 1976, as amended.

The Director may exempt from the requirements established by or pursuant to this Act any hazardous substance or container of a hazardous substance with respect to which he finds adequate requirements satisfying the purposes of this Act have been established by or pursuant to and in compliance with any other federal or state law.

(Source: P.A. 85-1209.)

Section 115. The Illinois Abortion Law of 1975 is amended by changing Section 11 as follows:

(720 ILCS 510/11) (from Ch. 38, par. 81-31)

Sec. 11. (1) Any person who intentionally violates any provision of this Law commits a Class A misdemeanor unless a specific penalty is otherwise provided. Any person who intentionally falsifies any writing required by this Law commits a Class A misdemeanor.

Intentional, knowing, reckless, or negligent violations of this Law shall constitute unprofessional conduct which causes public harm under Section 22 of the Medical Practice Act of 1987, as amended; Sections 10-45 and 15-50 of the Nursing and Advanced Practice Nursing Act, and Section 21 of the Physician Assistant Practice Act of 1987, as amended.

Intentional, knowing, reckless or negligent violations of this Law will constitute grounds for refusal, denial, revocation, suspension, or withdrawal of license, certificate, or permit under Section 30 of the Pharmacy Practice Act ~~of 1987~~, as amended; Section 7 of the Ambulatory Surgical Treatment Center

Act, effective July 19, 1973, as amended; and Section 7 of the Hospital Licensing Act.

(2) Any hospital or licensed facility which, or any physician who intentionally, knowingly, or recklessly fails to submit a complete report to the Department in accordance with the provisions of Section 10 of this Law and any person who intentionally, knowingly, recklessly or negligently fails to maintain the confidentiality of any reports required under this Law or reports required by Sections 10.1 or 12 of this Law commits a Class B misdemeanor.

(3) Any person who sells any drug, medicine, instrument or other substance which he knows to be an abortifacient and which is in fact an abortifacient, unless upon prescription of a physician, is guilty of a Class B misdemeanor. Any person who prescribes or administers any instrument, medicine, drug or other substance or device, which he knows to be an abortifacient, and which is in fact an abortifacient, and intentionally, knowingly or recklessly fails to inform the person for whom it is prescribed or upon whom it is administered that it is an abortifacient commits a Class C misdemeanor.

(4) Any person who intentionally, knowingly or recklessly performs upon a woman what he represents to that woman to be an abortion when he knows or should know that she is not pregnant commits a Class 2 felony and shall be answerable in civil damages equal to 3 times the amount of proved damages.

(Source: P.A. 90-742, eff. 8-13-98.)

Section 120. The Illinois Controlled Substances Act is amended by changing Section 102 as follows:

(720 ILCS 570/102) (from Ch. 56 1/2, par. 1102)

Sec. 102. Definitions. As used in this Act, unless the context otherwise requires:

(a) "Addict" means any person who habitually uses any drug, chemical, substance or dangerous drug other than alcohol so as to endanger the public morals, health, safety or welfare or who is so far addicted to the use of a dangerous drug or controlled substance other than alcohol as to have lost the power of self control with reference to his addiction.

(b) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient, research subject, or animal (as defined by the Humane Euthanasia in Animal Shelters Act) by:

(1) a practitioner (or, in his presence, by his authorized agent),

(2) the patient or research subject at the lawful direction of the practitioner, or

(3) a euthanasia technician as defined by the Humane Euthanasia in Animal Shelters Act.

(c) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman.

(c-1) "Anabolic Steroids" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes:

(i) boldenone,
(ii) chlorotestosterone,
(iii) chostebol,
(iv) dehydrochlormethyltestosterone,
(v) dihydrotestosterone,
(vi) drostanolone,
(vii) ethylestrenol,
(viii) fluoxymesterone,
(ix) formebulone,
(x) mesterolone,
(xi) methandienone,
(xii) methandranone,
(xiii) methandriol,
(xiv) methandrostenolone,
(xv) methenolone,
(xvi) methyltestosterone,
(xvii) mibolerone,
(xviii) nandrolone,
(xix) norethandrolone,
(xx) oxandrolone,
(xxi) oxymesterone,
(xxii) oxymetholone,

(xxiii) stanolone,
(xxiv) stanozolol,
(xxv) testolactone,
(xxvi) testosterone,
(xxvii) trenbolone, and
(xxviii) any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth.

Any person who is otherwise lawfully in possession of an anabolic steroid, or who otherwise lawfully manufactures, distributes, dispenses, delivers, or possesses with intent to deliver an anabolic steroid, which anabolic steroid is expressly intended for and lawfully allowed to be administered through implants to livestock or other nonhuman species, and which is approved by the Secretary of Health and Human Services for such administration, and which the person intends to administer or have administered through such implants, shall not be considered to be in unauthorized possession or to unlawfully manufacture, distribute, dispense, deliver, or possess with intent to deliver such anabolic steroid for purposes of this Act.

(d) "Administration" means the Drug Enforcement Administration, United States Department of Justice, or its successor agency.

(e) "Control" means to add a drug or other substance, or immediate precursor, to a Schedule under Article II of this Act whether by transfer from another Schedule or otherwise.

(f) "Controlled Substance" means a drug, substance, or immediate precursor in the Schedules of Article II of this Act.

(g) "Counterfeit substance" means a controlled substance, which, or the container or labeling of which, without authorization bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(h) "Deliver" or "delivery" means the actual, constructive or attempted transfer of possession of a controlled substance, with or without consideration, whether or not there is an agency relationship.

(i) "Department" means the Illinois Department of Human Services (as successor to the Department of Alcoholism and Substance Abuse) or its successor agency.

(j) "Department of State Police" means the Department of State Police of the State of Illinois or its successor agency.

(k) "Department of Corrections" means the Department of Corrections of the State of Illinois or its successor agency.

(l) "Department of Professional Regulation" means the Department of Professional Regulation of the State of Illinois or its successor agency.

(m) "Depressant" or "stimulant substance" means:

(1) a drug which contains any quantity of (i) barbituric acid or any of the salts of barbituric acid which has been designated as habit forming under section 502 (d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352 (d)); or

(2) a drug which contains any quantity of (i) amphetamine or methamphetamine and any of their optical isomers; (ii) any salt of amphetamine or methamphetamine or any salt of an optical isomer of amphetamine; or (iii) any substance which the Department, after investigation, has found to be, and by rule designated as, habit forming because of its depressant or stimulant effect on the central nervous system; or

(3) lysergic acid diethylamide; or

(4) any drug which contains any quantity of a substance which the Department, after investigation, has found to have, and by rule designated as having, a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

(n) (Blank).

(o) "Director" means the Director of the Department of State Police or the Department of Professional Regulation or his designated agents.

(p) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a prescriber, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

(q) "Dispenser" means a practitioner who dispenses.

(r) "Distribute" means to deliver, other than by administering or dispensing, a controlled substance.

(s) "Distributor" means a person who distributes.

(t) "Drug" means (1) substances recognized as drugs in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any

supplement to any of them; (2) substances intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure of any function of the body of man or animals and (4) substances intended for use as a component of any article specified in clause (1), (2), or (3) of this subsection. It does not include devices or their components, parts, or accessories.

(t-5) "Euthanasia agency" means an entity certified by the Department of Professional Regulation for the purpose of animal euthanasia that holds an animal control facility license or animal shelter license under the Animal Welfare Act. A euthanasia agency is authorized to purchase, store, possess, and utilize Schedule II nonnarcotic and Schedule III nonnarcotic drugs for the sole purpose of animal euthanasia.

(t-10) "Euthanasia drugs" means Schedule II or Schedule III substances (nonnarcotic controlled substances) that are used by a euthanasia agency for the purpose of animal euthanasia.

(u) "Good faith" means the prescribing or dispensing of a controlled substance by a practitioner in the regular course of professional treatment to or for any person who is under his treatment for a pathology or condition other than that individual's physical or psychological dependence upon or addiction to a controlled substance, except as provided herein: and application of the term to a pharmacist shall mean the dispensing of a controlled substance pursuant to the prescriber's order which in the professional judgment of the pharmacist is lawful. The pharmacist shall be guided by accepted professional standards including, but not limited to the following, in making the judgment:

(1) lack of consistency of doctor-patient relationship,

(2) frequency of prescriptions for same drug by one prescriber for large numbers of patients,

(3) quantities beyond those normally prescribed,

(4) unusual dosages,

(5) unusual geographic distances between patient, pharmacist and prescriber,

(6) consistent prescribing of habit-forming drugs.

(u-1) "Home infusion services" means services provided by a pharmacy in compounding solutions for direct administration to a patient in a private residence, long-term care facility, or hospice setting by means of parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion.

(v) "Immediate precursor" means a substance:

(1) which the Department has found to be and by rule designated as being a principal compound used, or produced primarily for use, in the manufacture of a controlled substance;

(2) which is an immediate chemical intermediary used or likely to be used in the manufacture of such controlled substance; and

(3) the control of which is necessary to prevent, curtail or limit the manufacture of such controlled substance.

(w) "Instructional activities" means the acts of teaching, educating or instructing by practitioners using controlled substances within educational facilities approved by the State Board of Education or its successor agency.

(x) "Local authorities" means a duly organized State, County or Municipal peace unit or police force.

(y) "Look-alike substance" means a substance, other than a controlled substance which (1) by overall dosage unit appearance, including shape, color, size, markings or lack thereof, taste, consistency, or any other identifying physical characteristic of the substance, would lead a reasonable person to believe that the substance is a controlled substance, or (2) is expressly or impliedly represented to be a controlled substance or is distributed under circumstances which would lead a reasonable person to believe that the substance is a controlled substance. For the purpose of determining whether the representations made or the circumstances of the distribution would lead a reasonable person to believe the substance to be a controlled substance under this clause (2) of subsection (y), the court or other authority may consider the following factors in addition to any other factor that may be relevant:

(a) statements made by the owner or person in control of the substance concerning its nature, use or effect;

(b) statements made to the buyer or recipient that the substance may be resold for profit;

(c) whether the substance is packaged in a manner normally used for the illegal distribution of controlled substances;

(d) whether the distribution or attempted distribution included an exchange of or demand for money or other property as consideration, and whether the amount of the consideration was substantially greater than the reasonable retail market value of the substance.

Clause (1) of this subsection (y) shall not apply to a noncontrolled substance in its finished dosage form that was initially introduced into commerce prior to the initial introduction into commerce of a

controlled substance in its finished dosage form which it may substantially resemble.

Nothing in this subsection (y) prohibits the dispensing or distributing of noncontrolled substances by persons authorized to dispense and distribute controlled substances under this Act, provided that such action would be deemed to be carried out in good faith under subsection (u) if the substances involved were controlled substances.

Nothing in this subsection (y) or in this Act prohibits the manufacture, preparation, propagation, compounding, processing, packaging, advertising or distribution of a drug or drugs by any person registered pursuant to Section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360).

(y-1) "Mail-order pharmacy" means a pharmacy that is located in a state of the United States, other than Illinois, that delivers, dispenses or distributes, through the United States Postal Service or other common carrier, to Illinois residents, any substance which requires a prescription.

(z) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance other than methamphetamine, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling of its container, except that this term does not include:

(1) by an ultimate user, the preparation or compounding of a controlled substance for his own use; or

(2) by a practitioner, or his authorized agent under his supervision, the preparation, compounding, packaging, or labeling of a controlled substance:

(a) as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(b) as an incident to lawful research, teaching or chemical analysis and not for sale.

(z-1) (Blank).

(aa) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1), but not including the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw;

(4) coca leaves and any salts, compound, isomer, salt of an isomer, derivative, or preparation of coca leaves including cocaine or ecgonine, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine (for the purpose of this paragraph, the term "isomer" includes optical, positional and geometric isomers).

(bb) "Nurse" means a registered nurse licensed under the Nursing and Advanced Practice Nursing Act.

(cc) (Blank).

(dd) "Opiate" means any substance having an addiction forming or addiction sustaining liability similar to morphine or being capable of conversion into a drug having addiction forming or addiction sustaining liability.

(ee) "Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

(ff) "Parole and Pardon Board" means the Parole and Pardon Board of the State of Illinois or its successor agency.

(gg) "Person" means any individual, corporation, mail-order pharmacy, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other entity.

(hh) "Pharmacist" means any person who holds a <u>license or</u> certificate of registration as a registered pharmacist, a local registered pharmacist or a registered assistant pharmacist under the Pharmacy Practice Act ~~of 1987~~.

(ii) "Pharmacy" means any store, ship or other place in which pharmacy is authorized to be practiced under the Pharmacy Practice Act ~~of 1987~~.

(jj) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(kk) "Practitioner" means a physician licensed to practice medicine in all its branches, dentist, podiatrist, veterinarian, scientific investigator, pharmacist, physician assistant, advanced practice nurse, licensed practical nurse, registered nurse, hospital, laboratory, or pharmacy, or other person licensed,

registered, or otherwise lawfully permitted by the United States or this State to distribute, dispense, conduct research with respect to, administer or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.

(ll) "Pre-printed prescription" means a written prescription upon which the designated drug has been indicated prior to the time of issuance.

(mm) "Prescriber" means a physician licensed to practice medicine in all its branches, dentist, podiatrist or veterinarian who issues a prescription, a physician assistant who issues a prescription for a Schedule III, IV, or V controlled substance in accordance with Section 303.05 and the written guidelines required under Section 7.5 of the Physician Assistant Practice Act of 1987, or an advanced practice nurse with prescriptive authority in accordance with Section 303.05 and a written collaborative agreement under Sections 15-15 and 15-20 of the Nursing and Advanced Practice Nursing Act.

(nn) "Prescription" means a lawful written, facsimile, or verbal order of a physician licensed to practice medicine in all its branches, dentist, podiatrist or veterinarian for any controlled substance, of a physician assistant for a Schedule III, IV, or V controlled substance in accordance with Section 303.05 and the written guidelines required under Section 7.5 of the Physician Assistant Practice Act of 1987, or of an advanced practice nurse who issues a prescription for a Schedule III, IV, or V controlled substance in accordance with Section 303.05 and a written collaborative agreement under Sections 15-15 and 15-20 of the Nursing and Advanced Practice Nursing Act.

(oo) "Production" or "produce" means manufacture, planting, cultivating, growing, or harvesting of a controlled substance other than methamphetamine.

(pp) "Registrant" means every person who is required to register under Section 302 of this Act.

(qq) "Registry number" means the number assigned to each person authorized to handle controlled substances under the laws of the United States and of this State.

(rr) "State" includes the State of Illinois and any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(ss) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

(Source: P.A. 93-596, eff. 8-26-03; 93-626, eff. 12-23-03; 94-556, eff. 9-11-05.)

Section 125. The Illinois Controlled Substances Act is amended by changing Section 103 as follows:

(720 ILCS 570/103) (from Ch. 56 1/2, par. 1103)

Sec. 103. Scope of Act. Nothing in this Act limits the lawful authority granted by the Medical Practice Act of 1987, the Nursing and Advanced Practice Nursing Act, or the Pharmacy Practice Act ~~of 1987~~.

(Source: P.A. 90-742, eff. 8-13-98.)

Section 130. The Methamphetamine Control and Community Protection Act is amended by changing Section 110 as follows:

(720 ILCS 646/110)

Sec. 110. Scope of Act. Nothing in this Act limits any authority or activity authorized by the Illinois Controlled Substances Act, the Medical Practice Act of 1987, the Nursing and Advanced Practice Nursing Act, the Pharmacy Practice Act ~~of 1987~~, the Illinois Dental Practice Act, the Podiatric Medical Practice Act of 1987, or the Veterinary Medicine and Surgery Practice Act of 2004. Nothing in this Act limits the authority or activity of any law enforcement officer acting within the scope of his or her employment.

(Source: P.A. 94-556, eff. 9-11-05.)

Section 135. The Methamphetamine Precursor Control Act is amended by changing Sections 25 and 50 as follows:

(720 ILCS 648/25)

Sec. 25. Pharmacies.

(a) No targeted methamphetamine precursor may be knowingly distributed through a pharmacy, including a pharmacy located within, owned by, operated by, or associated with a retail distributor unless all terms of this Section are satisfied.

(b) Any targeted methamphetamine precursor other than a convenience package or a liquid, including but not limited to any targeted methamphetamine precursor in liquid-filled capsules, shall: be packaged in blister packs, with each blister containing not more than 2 dosage units, or when the use of blister packs is technically infeasible, in unit dose packets. Each targeted package shall contain no more than 3,000 milligrams of ephedrine or pseudoephedrine, their salts or optical isomers, or salts of optical

isomers.

(c) The targeted methamphetamine precursor shall be stored behind the pharmacy counter and distributed by a pharmacist or pharmacy technician licensed under the Pharmacy Practice Act ~~of 1987~~.

(d) Any retail distributor operating a pharmacy, and any pharmacist or pharmacy technician involved in the transaction or transactions, shall ensure that any person purchasing, receiving, or otherwise acquiring the targeted methamphetamine precursor complies with subsection (a) of Section 20 of this Act.

(e) Any retail distributor operating a pharmacy, and any pharmacist or pharmacy technician involved in the transaction or transactions, shall verify that:

(1) The person purchasing, receiving, or otherwise acquiring the targeted methamphetamine precursor is 18 years of age or older and resembles the photograph of the person on the government-issued identification presented by the person; and

(2) The name entered into the log referred to in subsection (a) of Section 20 of this Act corresponds to the name on the government-issued identification presented by the person.

(f) The logs referred to in subsection (a) of Section 20 of this Act shall be kept confidential, maintained for not less than 2 years, and made available for inspection and copying by any law enforcement officer upon request of that officer. These logs may be kept in an electronic format if they include all the information specified in subsection (a) of Section 20 of this Act in a manner that is readily retrievable and reproducible in hard-copy format.

(g) No retail distributor operating a pharmacy, and no pharmacist or pharmacy technician, shall knowingly distribute any targeted methamphetamine precursor to any person under 18 years of age.

(h) No retail distributor operating a pharmacy, and no pharmacist or pharmacy technician, shall knowingly distribute to a single person more than 2 targeted packages in a single retail transaction.

(i) No retail distributor operating a pharmacy, and no pharmacist or pharmacy technician, shall knowingly distribute to a single person in any 30-day period products containing more than a total of 7,500 milligrams of ephedrine or pseudoephedrine, their salts or optical isomers, or salts of optical isomers.

(j) A pharmacist or pharmacy technician may distribute a targeted methamphetamine precursor to a person who is without a form of identification specified in paragraph (1) of subsection (a) of Section 20 of this Act only if all other provisions of this Act are followed and either:

(1) the person presents a driver's license issued without a photograph by the State of Illinois pursuant to the Illinois Administrative Code, Title 92, Section 1030.90(b)(1) or 1030.90(b)(2); or

(2) the person is known to the pharmacist or pharmacy technician, the person presents some form of identification, and the pharmacist or pharmacy technician reasonably believes that the targeted methamphetamine precursor will be used for a legitimate medical purpose and not to manufacture methamphetamine.

(k) When a pharmacist or pharmacy technician distributes a targeted methamphetamine precursor to a person according to the procedures set forth in this Act, and the pharmacist or pharmacy technician does not have access to a working cash register at the pharmacy counter, the pharmacist or pharmacy technician may instruct the person to pay for the targeted methamphetamine precursor at a cash register located elsewhere in the retail establishment, whether that register is operated by a pharmacist, pharmacy technician, or other employee or agent of the retail establishment.

(Source: P.A. 94-694, eff. 1-15-06; 94-830, eff. 6-5-06.)

(720 ILCS 648/50)

Sec. 50. Scope of Act.

(a) Nothing in this Act limits the scope, terms, or effect of the Methamphetamine Control and Community Protection Act.

(b) Nothing in this Act limits the lawful authority granted by the Medical Practice Act of 1987, the Nursing and Advanced Practice Nursing Act, or the Pharmacy Practice Act ~~of 1987~~.

(c) Nothing in this Act limits the authority or activity of any law enforcement officer acting within the scope of his or her employment.

(Source: P.A. 94-694, eff. 1-15-06.)

Section 140. The Parental Right of Recovery Act is amended by changing Section 2 as follows:

(740 ILCS 120/2) (from Ch. 70, par. 602)

Sec. 2. For the purpose of this Act, unless the context clearly requires otherwise:

(1) "Illegal drug" means (i) any substance as defined and included in the Schedules of Article II of the Illinois Controlled Substances Act, (ii) any cannabis as defined in Section 3 of the Cannabis Control Act,

or (iii) any drug as defined in paragraph (b) of Section 3 of the Pharmacy Practice Act ~~of 1987~~ which is obtained without a prescription or otherwise in violation of the law.

(2) "Minor" means a person who has not attained age 18.

(3) "Legal guardian" means a person appointed guardian, or given custody, of a minor by a circuit court of this State, but does not include a person appointed guardian, or given custody, of a minor under the Juvenile Court Act or the Juvenile Court Act of 1987.

(4) "Parent" means any natural or adoptive parent of a minor.

(5) "Person" means any natural person, corporation, association, partnership or other organization.

(6) "Prescription" means any order for drugs, written or verbal, by a physician, dentist, veterinarian or other person authorized to prescribe drugs within the limits of his license, containing the following: (1) Name of the patient; (2) date when prescription was given; (3) name and strength of drug prescribed; (4) quantity, directions for use, prescriber's name, address and signature, and the United States Drug Enforcement Agency number where required, for controlled substances.

(7) "Sale or transfer" means the actual or constructive transfer of possession of an illegal drug, with or without consideration, whether directly or through an agent.

(Source: P.A. 85-1209.)

(225 ILCS 85/14 rep.) (225 ILCS 85/35.11 rep.)

Section 145. The Pharmacy Practice Act of 1987 is amended by repealing Sections 14 and 35.11.

(225 ILCS 120/45 rep.)

Section 150. The Wholesale Drug Distribution Licensing Act is amended by repealing Section 45.

Section 999. Effective date. This Act takes effect upon becoming law.".

AMENDMENT NO. 7 TO SENATE BILL 509

AMENDMENT NO. 7. Amend Senate Bill 509, AS AMENDED, with reference to page and line numbers of House Amendment No. 6, on page 125, line 14, after "warehouses", by inserting "and warehouses that are operated by agencies of this State".

AMENDMENT NO. 8 TO SENATE BILL 509

AMENDMENT NO. 8. Amend Senate Bill 509, AS AMENDED, with reference to page and line numbers of House Amendment No. 6, as follows:

by replacing line 25 on page 97 through line 2 on page 98 with the following:

"technicians.

(f) A pharmacy, manufacturer of controlled substances, or wholesale distributor of controlled substances that is licensed under this Act and owned and operated by the State is exempt from licensure, registration, renewal, and other fees required under this Act.

Pharmacists and pharmacy technicians working in facilities owned and operated by the State are not exempt from the payment of fees required by this Act and any rules adopted under this Act.

Nothing in this subsection (f) shall be construed to prohibit the Department from imposing any fine or other penalty allowed under this Act. ~~The State Board of Pharmacy shall, pursuant to all provisions of the Illinois Procurement Code, determine how and to whom the money set aside under this subsection is disbursed.~~

~~(G) (Blank).~~"; and

on page 114, line 21, by replacing "and 25," with "25, and 35"; and

on page 135, immediately below line 24, by inserting the following:

"(225 ILCS 120/35) (from Ch. 111, par. 8301-35)

(Section scheduled to be repealed on January 1, 2013)

Sec. 35. Fees; Illinois State Pharmacy Disciplinary Fund.

(a) The Department shall provide by rule for a schedule of fees for the administration and enforcement of this Act, including but not limited to original licensure, renewal, and restoration. The fees shall be nonrefundable.

(b) All fees collected under this Act shall be deposited into the Illinois State Pharmacy Disciplinary Fund and shall be appropriated to the Department for the ordinary and contingent expenses of the Department in the administration of this Act. Moneys in the Fund may be transferred to the Professions Indirect Cost Fund as authorized by Section 2105-300 of the Department of Professional Regulation Law (20 ILCS 2105/2105-300).

The moneys deposited into the Illinois State Pharmacy Disciplinary Fund shall be invested to earn interest which shall accrue to the Fund.

The Department shall present to the Board for its review and comment all appropriation requests from the Illinois State Pharmacy Disciplinary Fund. The Department shall give due consideration to any comments of the Board in making appropriation requests.

(c) Any person who delivers a check or other payment to the Department that is returned to the Department unpaid by the financial institution upon which it is drawn shall pay to the Department, in addition to the amount already owed to the Department, a fine of $50. The fines imposed by this Section are in addition to any other discipline provided under this Act for unlicensed practice or practice on a nonrenewed license. The Department shall notify the person that payment of fees and fines shall be paid to the Department by certified check or money order within 30 calendar days of the notification. If, after the expiration of 30 days from the date of the notification, the person has failed to submit the necessary remittance, the Department shall automatically terminate the license or certificate or deny the application, without hearing. If, after termination or denial, the person seeks a license or certificate, he or she shall apply to the Department for restoration or issuance of the license or certificate and pay all fees and fines due to the Department. The Department may establish a fee for the processing of an application for restoration of a license or certificate to pay all expenses of processing this application. The Director may waive the fines due under this Section in individual cases where the Director finds that the fines would be unreasonable or unnecessarily burdensome.

(d) The Department shall maintain a roster of the names and addresses of all registrants and of all persons whose licenses have been suspended or revoked. This roster shall be available upon written request and payment of the required fee.

(e) A manufacturer of controlled substances or wholesale distributor of controlled substances that is licensed under this Act and owned and operated by the State is exempt from licensure, registration, renewal, and other fees required under this Act. Nothing in this subsection (e) shall be construed to prohibit the Department from imposing any fine or other penalty allowed under this Act.

(Source: P.A. 91-239, eff. 1-1-00; 92-146, eff. 1-1-02; 92-586, eff. 6-26-02.)"; and

on page 165, line 4, by replacing "Section 102" with "Sections 102, 103, 301, and 309"; and

on page 179, by deleting lines 7 and 8; and

on page 179, immediately below line 14, by inserting the following:

"(720 ILCS 570/301) (from Ch. 56 1/2, par. 1301)

Sec. 301. The Department of Professional Regulation shall promulgate rules and charge reasonable fees and fines relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this State. All moneys received by the Department of Professional Regulation under this Act shall be deposited into the respective professional dedicated funds in like manner as the primary professional licenses.

A pharmacy, manufacturer of controlled substances, or wholesale distributor of controlled substances that is regulated under this Act and owned and operated by the State is exempt from fees required under this Act. Pharmacists and pharmacy technicians working in facilities owned and operated by the State are not exempt from the payment of fees required by this Act and any rules adopted under this Act. Nothing in this Section shall be construed to prohibit the Department from imposing any fine or other penalty allowed under this Act.

(Source: P.A. 89-204, eff. 1-1-96.)

(720 ILCS 570/309) (from Ch. 56 1/2, par. 1309)

Sec. 309. On or after April 1, 2000, no person shall issue a prescription for a Schedule II controlled substance, which is a narcotic drug listed in Section 206 of this Act; or which contains any quantity of amphetamine or methamphetamine, their salts, optical isomers or salts of optical isomers; phenmetrazine and its salts; gluthethimide; and pentazocine, other than on a written prescription; provided that in the case of an emergency, epidemic or a sudden or unforeseen accident or calamity, the prescriber may issue a lawful oral prescription where failure to issue such a prescription might result in loss of life or intense suffering, but such oral prescription shall include a statement by the prescriber concerning the accident or calamity, or circumstances constituting the emergency, the cause for which an oral prescription was used. Within 7 days after issuing an emergency prescription, the prescriber shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. The prescription shall have written on its face "Authorization for Emergency Dispensing", and the date of the emergency prescription. The written prescription may be delivered to the pharmacist in person, or by

mail, but if delivered by mail it must be postmarked within the 7-day period. Upon receipt, the dispensing pharmacist shall attach this prescription to the emergency oral prescription earlier received and reduced to writing. The dispensing pharmacist shall notify the Department of Human Services if the prescriber fails to deliver the authorization for emergency dispensing on the prescription to him. Failure of the dispensing pharmacist to do so shall void the authority conferred by this paragraph to dispense without a written prescription of a prescriber. All prescriptions issued for Schedule II controlled substances shall include both a written and numerical notation of quantity on the face of the prescription. No prescription for a Schedule II controlled substance may be refilled. The Department shall provide, at no cost, audit reviews and necessary information to the Department of Professional Regulation in conjunction with ongoing investigations being conducted in whole or part by the Department of Professional Regulation.

(Source: P.A. 91-576, eff. 4-1-00; 91-714, eff. 6-2-00.)".

Under the rules, the foregoing **Senate Bill No. 509**, with House Amendments numbered 6, 7 and 8, was referred to the Secretary's Desk.

A message from the House by

Mr. Mahoney, Clerk:

Mr. President -- I am directed to inform the Senate that the House of Representatives has concurred with the Senate in the passage of a bill of the following title, to-wit:

SENATE BILL NO. 1167

A bill for AN ACT concerning property.

Together with the following amendment which is attached, in the adoption of which I am instructed to ask the concurrence of the Senate, to-wit:

House Amendment No. 1 to SENATE BILL NO. 1167

Passed the House, as amended, July 26, 2007.

MARK MAHONEY, Clerk of the House

AMENDMENT NO. 1 TO SENATE BILL 1167

AMENDMENT NO. 1. Amend Senate Bill 1167 by replacing everything after the enacting clause with the following:

"Section 5. The Home Equity Assurance Act is amended by changing Section 11 as follows:

(65 ILCS 95/11) (from Ch. 24, par. 1611)

Sec. 11. Guarantee Fund.

(a) Each governing commission and program created by referendum under the provisions of this Act shall maintain a guarantee fund for the purposes of paying the costs of administering the program and extending protection to members pursuant to the limitations and procedures set forth in this Act.

(b) The guarantee fund shall be raised by means of an annual tax levied on all residential property within the territory of the program having at least one, but not more than 6 dwelling units and classified by county ordinance as residential. The rate of this tax may be changed from year to year by majority vote of the governing commission but in no case shall it exceed a rate of .12% of the equalized assessed valuation of all property in the territory of the program having at least one, but not more than 6 dwelling units and classified by county ordinance as residential, or the maximum tax rate approved by the voters of the territory at the referendum which created the program or, in the case of a merged program, the maximum tax rate approved by the voters at the referendum authorizing the merger, whichever rate is lower. The commissioners shall cause the amount to be raised by taxation in each year to be certified to the county clerk in the manner provided by law, and any tax so levied and certified shall be collected and enforced in the same manner and by the same officers as those taxes for the purposes of the county and city within which the territory of the commission is located. Any such tax, when collected, shall be paid over to the proper officer of the commission who is authorized to receive and receipt for such tax. The governing commission may issue tax anticipation warrants against the taxes to be assessed for the calendar year in which the program is created and for the first full calendar year after the creation of the program.

(c) The moneys deposited in the guarantee fund shall, as nearly as practicable, be fully and continuously invested or reinvested by the governing commission in investment obligations which shall be in such amounts, and shall mature at such times, that the maturity or date of redemption at the option

of the holder of such investment obligations shall coincide, as nearly as practicable, with the times at which monies will be required for the purposes of the program. For the purposes of this Section investment obligation shall mean direct general municipal, state, or federal obligations which at the time are legal investments under the laws of this State and the payment of principal of and interest on which are unconditionally guaranteed by the governing body issuing them.

(d) Except as permitted by this subsection and subsection (d-5), the guarantee fund shall be used solely and exclusively for the purpose of providing guarantees to members of the particular Guaranteed Home Equity Program and for reasonable salaries, expenses, bills, and fees incurred in administering the program, and shall be used for no other purpose.

A governing commission, with no less than $4,000,000 in its guarantee fund, may, if authorized by referendum duly adopted by a majority of the voters, establish a Low Interest Home Improvement Loan Program in accordance with and subject to procedures established by a financial institution, as defined in the Illinois Banking Act. Whenever the question of creating a Low Interest Home Improvement Loan Program is initiated by resolution or ordinance of the corporate authorities of the municipality or by a petition signed by not less than 10% of the total number of registered voters of each precinct in the territory, the registered voters of which are eligible to sign the petition, it shall be the duty of the election authority having jurisdiction over the municipality to submit the question of creating the program to the electors of each precinct within the territory at the regular election specified in the resolution, ordinance, or petition initiating the question. A petition initiating a question described in this subsection shall be filed with the election authority having jurisdiction over the municipality. The petition shall be filed and objections to the petition shall be made in the manner provided in the Election Code. A resolution, ordinance, or petition initiating a question described in this subsection shall specify the election at which the question is to be submitted. The referendum on the question shall be held in accordance with the Election Code. The question shall be in substantially the following form:

"Shall the (name of the home equity program) implement a Low Interest Home Improvement Loan Program with money from the guarantee fund of the established guaranteed home equity program?"

The votes must be recorded as "Yes" or "No".

Whenever a majority of the voters on the public question approve the creation of the program as certified by the proper election authorities, the commission shall establish the program and administer the program with funds collected under the Guaranteed Home Equity Program, subject to the following conditions:

(1) At any given time, the cumulative total of all loans and loan guarantees (if applicable) issued under this program may not reduce the balance of the guarantee fund to less than $3,000,000.

(2) Only eligible applicants may apply for a loan.

(3) The loan must be used for the repair, maintenance, remodeling, alteration, or improvement of a guaranteed residence. This condition is not intended to exclude the repair, maintenance, remodeling, alteration, or improvement of a guaranteed residence's landscape. This condition is intended to exclude the demolition of a current residence. This condition is also intended to exclude the construction of a new residence.

(4) An eligible applicant may not borrow more than the amount of equity value in his or her residence.

(5) A commission must ensure that loans issued are secured with collateral that is at least equal to the amount of the loan or loan guarantee.

(6) A commission shall charge an interest rate which it determines to be below the market rate of interest generally available to the applicant.

(7) A commission may, by resolution, establish other administrative rules and procedures as are necessary to implement this program including, but not limited to, loan dollar amounts and terms. A commission may also impose on loan applicants a one-time application fee for the purpose of defraying the costs of administering the program.

(d-5) A governing commission, with no less than $4,000,000 in its guarantee fund, may, if authorized by referendum duly adopted by a majority of the voters, establish a Foreclosure Prevention Loan Fund to provide low interest emergency loans to eligible applicants that may be forced into foreclosure proceedings.

Whenever the question of creating a Foreclosure Prevention Loan Fund is initiated by resolution or ordinance of the corporate authorities of the municipality or by a petition signed by not less than 10% of the total number of registered voters of each precinct in the territory, the registered voters of which are eligible to sign the petition, it shall be the duty of the election authority having jurisdiction over the

municipality to submit the question of creating the program to the electors of each precinct within the territory at the regular election specified in the resolution, ordinance, or petition initiating the question. A petition initiating a question described in this subsection shall be filed with the election authority having jurisdiction over the municipality. The petition shall be filed and objections to the petition shall be made in the manner provided in the Election Code. A resolution, ordinance, or petition initiating a question described in this subsection shall specify the election at which the question is to be submitted. The referendum on the question shall be held in accordance with the Election Code. The question shall be in substantially the following form:

"Shall the (name of the home equity program) implement a Foreclosure Prevention Loan Fund with money from the guarantee fund of the established guaranteed home equity program?"

The votes must be recorded as "Yes" or "No".

Whenever a majority of the voters on the public question approve the creation of a Foreclosure Prevention Loan Fund as certified by the proper election authorities, the commission shall establish the program and administer the program with funds collected under the Guaranteed Home Equity Program, subject to the following conditions:

(1) At any given time, the cumulative total of all loans and loan guarantees (if applicable) issued under this program may not exceed $3,000,000.

(2) Only eligible applicants may apply for a loan. The Commission may establish, by resolution, additional criteria for eligibility.

(3) The loan must be used to assist with preventing foreclosure proceedings.

(4) An eligible applicant may not borrow more than the amount of equity value in his or her residence.

(5) A commission must ensure that loans issued are secured as a second lien on the property.

(6) A commission shall charge an interest rate which it determines to be below the market rate of interest generally available to the applicant.

(7) A commission may, by resolution, establish other administrative rules and procedures as are necessary to implement this program including, but not limited to, eligibility requirements for eligible applicants, loan dollar amounts, and loan terms.

(8) A commission may also impose on loan applicants a one-time application fee for the purpose of defraying the costs of administering the program.

(e) The guarantee fund shall be maintained, invested, and expended exclusively by the governing commission of the program for whose purposes it was created. Under no circumstance shall the guarantee fund be used by any person or persons, governmental body, or public or private agency or concern other than the governing commission of the program for whose purposes it was created. Under no circumstances shall the guarantee fund be commingled with other funds or investments.

(e-1) No commissioner or family member of a commissioner, or employee or family member of an employee, may receive any financial benefit, either directly or indirectly, from the guarantee fund. Nothing in this subsection (e-1) shall be construed to prohibit payment of expenses to a commissioner in accordance with Section 4 or payment of salaries or expenses to an employee in accordance with this Section.

As used in this subsection (e-1), "family member" means a spouse, child, stepchild, parent, brother, or sister of a commissioner or a child, stepchild, parent, brother, or sister of a commissioner's spouse.

(f) An independent audit of the guarantee fund and the management of the program shall be conducted annually and made available to the public through any office of the governing commission or a public facility such as a local public library located within the territory of the program.

(Source: P.A. 91-492, eff. 1-1-00.)

Section 10. The Residential Mortgage License Act of 1987 is amended by changing Section 4-10 and by adding Sections 4-15, 4-16, 5-6, 5-7, 5-8, 5-9, 5-10, 5-11, 5-12, 5-14, 5-15, 5-16, and 5-17 as follows:

(205 ILCS 635/4-10) (from Ch. 17, par. 2324-10)

Sec. 4-10. Rules and Regulations of the Commissioner.

(a) In addition to such powers as may be prescribed by this Act, the Commissioner is hereby authorized and empowered to promulgate regulations consistent with the purposes of this Act, including but not limited to:

(1) Such rules and regulations in connection with the activities of licensees as may be necessary and appropriate for the protection of consumers in this State;

(2) Such rules and regulations as may be necessary and appropriate to define improper or fraudulent business practices in connection with the activities of licensees in making mortgage loans;

(3) Such rules and regulations as may define the terms used in this Act and as may be

necessary and appropriate to interpret and implement the provisions of this Act; and

(4) Such rules and regulations as may be necessary for the enforcement of this Act.

(b) The Commissioner is hereby authorized and empowered to make such specific rulings, demands and findings as he or she may deem necessary for the proper conduct of the mortgage lending industry.

(c) A person or entity may make a written application to the Department for a written interpretation of this Act. The Department may then, in its sole discretion, choose to issue a written interpretation. To be valid, a written interpretation must be signed by the Secretary, or his or her designated Director of Financial and Professional Regulation, and the Department's General Counsel. A written interpretation expires 2 years after the date that it was issued.

(d) No provision in this Act that imposes liability or establishes violations shall apply to any act taken by a person or entity in conformity with a written interpretation of this Act that is in effect at the time the act is taken, notwithstanding whether the written interpretation is later amended, rescinded, or determined by judicial or other authority to by invalid for any reason.

(Source: P.A. 85-735.)

(205 ILCS 635/4-15 new)

Sec. 4-15. Enforcement and reporting provisions. The Attorney General may enforce any violation of Section 5-6, 5-7, 5-8, 5-9, 5-10, 5-11, 5-12, 5-14, or 5-15 of this Act as an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act.

(205 ILCS 635/4-16 new)

Sec. 4-16. Private right of action. A borrower injured by a violation of the standards, duties, prohibitions, or requirements of Sections 5-6, 5-7, 5-8, 5-9, 5-10, 5-11, 5-12, 5-14, 5-15, and 5-16 of this Act shall have a private right of action.

(a) A licensee is not liable for a violation of this Act if:

(1) within 30 days of the loan closing and prior to receiving any notice from the borrower of the violation, the licensee has made appropriate restitution to the borrower and appropriate adjustments are made to the loan; or

(2) the violation was not intentional and resulted from a bona fide error in fact, notwithstanding the maintenance of procedures reasonably adopted to avoid such errors, and within 60 days of the discovery of the violation and prior to receiving any notice from the borrower of the violation, the borrower is notified of the violation, appropriate restitution is made to the borrower, and appropriate adjustments are made to the loan.

(b) The remedies and rights provided for in this Act are not exclusive, but cumulative, and all other applicable claims are specifically preserved.

(205 ILCS 635/5-6 new)

Sec. 5-6. Verification of borrower's ability to repay.

(a) No licensee may make, provide, or arrange for a residential mortgage loan without verifying the borrower's reasonable ability to pay the principal and interest on the loan, real estate taxes, homeowner's insurance, assessments, and mortgage insurance premiums, if applicable.

For residential mortgage loans in which the interest rate may vary, the reasonable ability to pay the principal and interest on the loan shall be determined based on a fully indexed rate, which rate shall be calculated by using the index rate prevailing at the time of origination of the loan plus the margin that will apply when calculating the adjustable rate under the terms of the loan, assuming a fully amortizing repayment schedule based on the term of the loan.

For loans that allow for negative amortization, the principal amount of the loan shall be calculated by including the maximum amount the principal balance may increase due to negative amortization under the terms of the loan.

(b) For all residential mortgage loans made by a licensee, the borrower's income and financial resources must be verified by tax returns, payroll receipts, bank records, or other reasonably reliable methods, based upon the circumstances of the proposed loan. Nothing in this Section shall be construed to limit a licensee's ability to rely on criteria other than the borrower's income and financial resources to establish the borrower's reasonable ability to repay a residential mortgage loan; however, such other criteria must be verified through reasonably reliable methods and documentation. A statement by the borrower to the licensee of the borrower's income and resources is not sufficient to establish the existence of the income or resources when verifying the reasonable ability to pay. Stated income should be accepted only if there are mitigating factors that clearly minimize the need for direct verification of ability to repay.

(205 ILCS 635/5-7 new)

Sec. 5-7. Broker agency relationship.

(a) A mortgage broker shall be considered to have created an agency relationship with the borrower in

all cases and shall comply with the following duties:

(1) A mortgage broker shall act in the borrower's best interest and in good faith toward the borrower. A mortgage broker shall not accept, give, or charge any undisclosed compensation or realize any undisclosed remuneration, either through direct or indirect means, that inures to the benefit of the mortgage broker on an expenditure made for the borrower;

(2) mortgage brokers shall carry out all lawful instructions given by borrowers;

(3) mortgage brokers shall disclose to borrowers all material facts of which the mortgage broker has knowledge which might reasonably affect the borrower's rights, interests, or ability to receive the borrower's intended benefit from the residential mortgage loan, but not facts which are reasonably susceptible to the knowledge of the borrower;

(4) mortgage brokers shall use reasonable care in performing duties; and

(5) mortgage brokers shall account to a borrower for all the borrower's money and property received as agent.

(b) Nothing in this Section prohibits a mortgage broker from contracting for or collecting a fee for services rendered and which had been disclosed to the borrower in advance of the provision of those services.

(c) Nothing in this Section requires a mortgage broker to obtain a loan containing terms or conditions not available to the mortgage broker in the mortgage broker's usual course of business, or to obtain a loan for the borrower from a mortgage lender with whom the mortgage broker does not have a business relationship.

(205 ILCS 635/5-8 new)

Sec. 5-8. Prepayment penalties.

(a) No licensee may make, provide, or arrange a mortgage loan with a prepayment penalty unless the licensee offers the borrower a loan without a prepayment penalty, the offer is in writing, and the borrower initials the offer to indicate that the borrower has declined the offer. In addition, the licensee must disclose the discount in rate received in consideration for a mortgage loan with the prepayment penalty.

(b) If a borrower declines an offer required under subsection (a) of this Section, the licensee may include a prepayment penalty that extends no longer than three years or the first change date or rate adjustment of a variable rate mortgage, whichever comes earlier, provided that, if a prepayment is made during the fixed rate period, the licensee shall receive an amount that is no more than:

(1) 3% of the total loan amount if the prepayment is made within the first 12 month period following the date the loan was made;

(2) 2% of the total loan amount if the prepayment is made within the second 12-month period following the date the loan was made; or

(3) 1% of the total loan amount if the prepayment is made within the third 12- month period following the date the loan was made, if the fixed rate period extends 3 years.

(c) Notwithstanding any provision in this Section, prepayment penalties are prohibited in connection with the sale or destruction of a dwelling secured by a residential mortgage loan.

(d) This Section applies to loans made, refinanced, renewed, extended, or modified on or after the effective date of this amendatory Act of the 95th General Assembly.

(205 ILCS 635/5-9 new)

Sec. 5-9. Notice of change in loan terms.

(a) No licensee may fail to do either of the following:

(1) Provide timely notice to the borrower of any material change in the terms of the residential mortgage loan prior to the closing of the loan. For purposes of this Section, a "material change means" any of the following:

(A) A change in the type of loan being offered, such as a fixed or variable rate loan or a loan with a balloon payment.

(B) A change in the term of the loan, as reflected in the number of monthly payments due before a final payment is scheduled to be made.

(C) An increase in the interest rate of more than 0.15%, or an equivalent increase in the amount of discount points charged.

(D) An increase in the regular monthly payment of principal and interest of more than 5%.

(E) A change regarding the requirement or amount of escrow of taxes or insurance.

(F) A change regarding the requirement or payment, or both, of private mortgage insurance.

(2) Timely inform the borrower if any fees payable by the borrower to the licensee increase by more than 10% or $100, whichever is greater.

(b) The disclosures required by this Section shall be deemed timely if the licensee provides the

borrower with the revised information not later than 3 days after learning of the change or 24 hours before the residential mortgage loan is closed, whichever is earlier. If the licensee discloses a material change more than the 3 days after learning of the change but still 24 hours before the residential mortgage loan is closed, it will not be liable for penalties or forfeitures if the licensee cures in time for the borrower to avoid any damage.

(c) If an increase in the total amount of the fee to be paid by the borrower to the broker is not disclosed in accordance with this Section, the broker shall refund to the borrower the amount by which the fee was increased. If the fee is financed into the residential mortgage loan, the broker shall also refund to the borrower the interest charged to finance the fee.

(d) Licensees limited to soliciting residential mortgage loan applications as approved by the Director under Title 38, Section 1050.2115(c)(1) of the Illinois Administrative Code are not required to provide the disclosures under this Section as long as the solicitor does not discuss the terms and conditions with the potential borrower.

(205 ILCS 635/5-10 new)

Sec. 5-10. Comparable monthly payment quotes. When comparing different loans, the licensee must not state or imply that monthly loan payments, if they include amounts escrowed for payment of property taxes and homeowner's insurance, are comparable with monthly loan payments that do not include these amounts.

(205 ILCS 635/5-11 new)

Sec. 5-11. Requirement to provide borrower with a copy of all appraisals. Licensees must provide to the borrower a complete copy of any appraisal, including any appraisal generated using the Automated Valuation Model, obtained by the lender for use in underwriting the residential mortgage loan within 3 business days of receipt by the licensee, but in no event less than 24 hours prior to the day of closing. The appraisal may be sent via first class mail, commercial carrier, by facsimile or by e-mail, if the borrower has supplied an email address.

(205 ILCS 635/5-12 new)

Sec. 5-12. Disclosure of refinancing options. If the subject of a future loan is discussed by a licensee making, providing, or arranging a mortgage loan, the licensee shall disclose the circumstances under which a new loan could be considered. Such disclosure shall clearly state that it is not a contract and that the licensee is not representing or promising that a new loan could or would be made at any time in the future.

(205 ILCS 635/5-14 new)

Sec. 5-14. Prohibition on equity stripping and loan flipping. No licensee may engage in equity stripping or loan flipping, as those terms are defined in the Illinois Fairness in Lending Act.

(205 ILCS 635/5-15 new)

Sec. 5-15. Prohibition on financing certain insurance premiums. No licensee may make, provide, or arrange for a residential mortgage loan that finances, directly or indirectly, any credit life, credit disability, or credit unemployment insurance; however, insurance premiums calculated and paid on a monthly basis shall not be considered to be financed by the lender.

(205 ILCS 635/5-16 new)

Sec. 5-16. Prohibition on encouraging default. A licensee may not recommend or encourage default or the failure to make timely payments on an existing residential mortgage loan or other debt prior to and in connection with the closing or planned closing of a residential mortgage loan that refinances all or any portion of the existing loan or debt.

(205 ILCS 635/5-17 new)

Sec. 5-17. Severability. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity of that provision or application does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application.

Section 15. The Residential Real Property Disclosure Act is amended by changing Sections 70, 72, and 74 and adding Sections 73 and 78 as follows:

(765 ILCS 77/70)

Sec. 70. Predatory lending database ~~pilot~~ program.

(a) As used in this Article:

"Adjustable rate mortgage" or "ARM" means a closed end mortgage transaction that allows adjustments of the loan interest rate during the first 3 years of the loan term.

"Borrower" means a person seeking a mortgage loan.

"Broker" means a "broker" or "loan broker", as defined in subsection (p) of Section 1-4 of the Residential Mortgage License Act of 1987.

"Closing agent" means an individual assigned by a title insurance company or a broker or originator to ensure that the execution of documents related to the closing of a real estate sale or the refinancing of a real estate loan and the disbursement of closing funds are in conformity with the instructions of the entity financing the transaction.

"Counseling" means in-person counseling provided by a counselor employed by a HUD-certified counseling agency to all borrowers, or documented telephone counseling where a hardship would be imposed on one or more borrowers. A hardship shall exist in instances in which the borrower is confined to his or her home due to medical conditions, as verified in writing by a physician, or the borrower resides 50 miles or more from the nearest participating HUD-certified housing counseling agency. In instances of telephone counseling, the borrower must supply all necessary documents to the counselor at least 72 hours prior to the scheduled telephone counseling session.

"Counselor" means a counselor employed by a HUD-certified housing counseling agency.

"Credit score" means a credit risk score as defined by the Fair Isaac Corporation, or its successor, and reported under such names as "BEACON", "EMPIRICA", and "FAIR ISAAC RISK SCORE" by one or more of the following credit reporting agencies or their successors: Equifax, Inc., Experian Information Solutions, Inc., and TransUnion LLC. If the borrower's credit report contains credit scores from 2 reporting agencies, then the broker or loan originator shall report the lower score. If the borrower's credit report contains credit scores from 3 reporting agencies, then the broker or loan originator shall report the middle score.

"Department" means the Department of Financial and Professional Regulation.

"Exempt person" means that term as it is defined in subsections (d)(1) and (d)(1.5) of Section 1-4 of the Residential Mortgage License Act of 1987.

"First-time homebuyer" means a borrower who has not held an ownership interest in residential property.

"HUD-certified counseling" or "counseling" means counseling given to a borrower by a counselor employed by a HUD-certified housing counseling agency.

"Interest only" means a closed-end loan that permits one or more payments of interest without any reduction of the principal balance of the loan, other than the first payment on the loan.

"Lender" means that term as it is defined in subsection (g) of Section 1-4 of the Residential Mortgage License Act.

"Licensee" means that term as it is defined in subsection (e) of Section 1-4 of the Residential Mortgage License Act of 1987.

"Mortgage loan" means that term as it is defined in subsection (f) of Section 1-4 of the Residential Mortgage License Act of 1987.

"Negative amortization" means an amortization method under which the outstanding balance may increase at any time over the course of the loan because the regular periodic payment does not cover the full amount of interest due.

"Originator" means a "loan originator" as defined in subsection (hh) of Section 1-4 of the Residential Mortgage License Act of 1987, except an exempt person.

~~"Pilot program area" means all areas within Cook County designated as such by the Department due to the high rate of foreclosure on residential home mortgages that is primarily the result of predatory lending practices. The Department shall designate the pilot program area within 30 days after the effective date of this amendatory Act of the 94th General Assembly.~~

"Points and fees" has the meaning ascribed to that term in Section 10 of the High Risk Home Loan Act.

"Prepayment penalty" means a charge imposed by a lender under a mortgage note or rider when the loan is paid before the expiration of the term of the loan.

"Refinancing" means a loan secured by the borrower's or borrowers' primary residence where the proceeds are not used as purchase money for the residence.

"Title insurance company" means any domestic company organized under the laws of this State for the purpose of conducting the business of guaranteeing or insuring titles to real estate and any title insurance company organized under the laws of another State, the District of Columbia, or a foreign government and authorized to transact the business of guaranteeing or insuring titles to real estate in this State.

(a-5) A predatory lending database program shall be established within Cook County. The program shall be administered in accordance with this Article. The inception date of the program shall be July 1, 2008. ~~Inception date. The Secretary of Financial and Professional Regulation shall declare in writing the date of inception of the pilot program. The inception date shall be no later than September 1, 2006, and shall be at least 30 days after the date the Secretary issues a declaration establishing that date. The~~

~~Secretary's declaration shall be posted on the Department's website, and the Department shall communicate the declaration to affected licensees of the Department.~~ Until the inception date, none of the duties, obligations, contingencies, or consequences of or from the ~~pilot~~ program shall be imposed. The ~~pilot~~ program shall apply to all mortgage applications that are governed by this Article and that are made or taken on or after the inception of the ~~pilot~~ program.

(b) ~~A predatory lending database pilot program is established within the pilot program area, effective upon the inception date established by the Secretary of the Department. The pilot program shall be in effect and operational for a total of 4 years and shall be administered in accordance with Article 3 of this Act.~~ The database created under this program shall be maintained and administered by the Department. The database shall be designed to allow brokers, originators, ~~credit~~ counselors, title insurance companies, and closing agents to submit information to the database online. The database shall not be designed to allow those entities to retrieve information from the database, except as otherwise provided in this Article. Information submitted by the broker or originator to the Department may be used to populate the online form submitted by a ~~credit~~ counselor, title insurance company, or closing agent.

(c) Within 10 days after taking a mortgage application, the broker or originator for any mortgage on residential property within the ~~pilot~~ program area must submit to the predatory lending database all of the information required under Section 72 and any other information required by the Department by rule. Within 7 days after receipt of the information, the Department shall compare that information to the housing ~~credit~~ counseling standards in Section 73 ~~developed by the Department by rule~~ and issue to the borrower and the broker or originator a determination of whether ~~credit~~ counseling is recommended for the borrower. The borrower may not waive ~~credit~~ counseling. If at any time after submitting the information required under Section 72 the broker or originator (i) changes the terms of the loan or (ii) issues a new commitment to the borrower, then, within 5 days thereafter, the broker or originator shall re-submit all of the information required under Section 72 and, within 4 days after receipt of the information re-submitted by the broker or originator, the Department shall compare that information to the housing ~~credit~~ counseling standards in Section 73 ~~developed by the Department by rule~~ and shall issue to the borrower and the broker or originator a new determination of whether re-counseling ~~credit counseling~~ is recommended for the borrower based on the information re-submitted by the broker or originator. The Department shall require re-counseling if the loan terms have been modified to meet another counseling standard in Section 73, or if the broker has increased the interest rate by more than 200 basis points.

(d) If the Department recommends ~~credit~~ counseling for the borrower under subsection (c), then the Department shall notify the borrower of all participating HUD-certified counseling agencies located within the State and direct the borrower to interview with a counselor associated with one of those agencies. Within 10 days after receipt of the notice of HUD-certified counseling agencies, the borrower shall select one of those agencies and shall engage in an interview with a counselor associated with that agency. Within 7 days after interviewing the borrower, the ~~credit~~ counselor must submit to the predatory lending database all of the information required under Section 74 and any other information required by the Department by rule. Reasonable and customary costs not to exceed $300 ~~Any costs~~ associated with ~~credit~~ counseling provided under the ~~pilot~~ program shall be paid by the broker or originator. The Department shall annually calculate to the nearest dollar an adjusted rate for inflation. A counselor shall not recommend or suggest that a borrower contact any specific mortgage origination company, financial institution, or entity that deals in mortgage finance to obtain a loan, another quote, or for any other reason related to the specific mortgage transaction; however, a counselor may suggest that the borrower seek an opinion or a quote from another mortgage origination company, financial institution, or entity that deals in mortgage finance. A ~~credit~~ counselor or housing counseling agency that ~~who~~ in good faith provides counseling ~~services~~ shall not be liable to a broker or originator or borrower for civil damages, except for willful or wanton misconduct on the part of the counselor in providing the counseling ~~services~~.

(e) The broker or originator and the borrower may not take any legally binding action concerning the loan transaction until the later of the following:

(1) the Department issues a determination not to recommend HUD-certified ~~credit~~ counseling for the borrower

in accordance with subsection (c); or

(2) the Department issues a determination that HUD-certified ~~credit~~ counseling is recommended for the

borrower and the ~~credit~~ counselor submits all required information to the database in accordance with subsection (d).

(f) Within 10 days after closing, the title insurance company or closing agent must submit to the

predatory lending database all of the information required under Section 76 and any other information required by the Department by rule.

(g) The title insurance company or closing agent shall attach to the mortgage a certificate of compliance with the requirements of this Article, as generated by the database. If the title insurance company or closing agent fails to attach the certificate of compliance, then the mortgage is not recordable. In addition, if any lis pendens for a residential mortgage foreclosure is recorded on the property within the ~~pilot~~ program area, a certificate of service must be simultaneously recorded that affirms that a copy of the lis pendens was filed with the Department. If the certificate of service is not recorded, then the lis pendens pertaining to the residential mortgage foreclosure in question is not recordable and is of no force and effect.

(h) All information provided to the predatory lending database under the program is confidential and is not subject to disclosure under the Freedom of Information Act, except as otherwise provided in this Article. Information or documents obtained by employees of the Department in the course of maintaining and administering the predatory lending database are deemed confidential. Employees are prohibited from making disclosure of such confidential information or documents. Any request for production of information from the predatory lending database, whether by subpoena, notice, or any other source, shall be referred to the Department of Financial and Professional Regulation. Any borrower may authorize in writing the release of database information. The Department may use the information in the database without the consent of the borrower: (i) for the purposes of administering and enforcing the ~~pilot~~ program; (ii) to provide relevant information to a ~~credit~~ counselor providing ~~credit~~ counseling to a borrower under the ~~pilot~~ program; or (iii) to the appropriate law enforcement agency or the applicable administrative agency if the database information demonstrates criminal, fraudulent, or otherwise illegal activity.

(i) Nothing in this Article is intended to prevent a borrower from making his or her own decision as to whether to proceed with a transaction.

(j) Any person who violates any provision of this Article commits an unlawful practice within the meaning of the Consumer Fraud and Deceptive Business Practices Act.

(k) During the existence of the program, the Department shall submit semi-annual reports to the Governor and to the General Assembly by May 1 and November 1 of each year detailing its findings regarding the program. The report shall include at least the following information for each reporting period:

(1) the number of loans registered with the program;

(2) the number of borrowers receiving counseling;

(3) the number of loans closed;

(4) the number of loans requiring counseling for each of the standards set forth in Section 73;

(5) the number of loans requiring counseling where the mortgage originator changed the loan terms subsequent to counseling.

~~Not later than one year after the Department designates the pilot program area and annually thereafter during the existence of the pilot program, the Department shall report to the Governor and to the General Assembly concerning its administration and the effectiveness of the pilot program.~~

(Source: P.A. 94-280, eff. 1-1-06; 94-1029, eff. 7-14-06.)

(765 ILCS 77/72)

Sec. 72. Originator; required information. As part of the predatory lending database ~~pilot~~ program, the broker or originator must submit all of the following information for inclusion in the predatory lending database for each loan for which the originator takes an application:

(1) The borrower's name, address, social security number or taxpayer identification number, date of birth, and income and expense information contained in the mortgage application.

(2) The address, permanent index number, and a description of the collateral and information about the loan or loans being applied for and the loan terms, including the amount of the loan, the rate and whether the rate is fixed or adjustable, amortization or loan period terms, and any other material terms.

(3) The borrower's credit score at the time of application.

(4) Information about the originator and the company the originator works for, including the originator's license number and address, fees being charged, whether the fees are being charged as points up front, the yield spread premium payable outside closing, and other charges made or remuneration required by the broker or originator or its affiliates or the broker's or originator's employer or its affiliates for the mortgage loans.

(5) Information about affiliated or third party service providers, including the names and addresses of appraisers, title insurance companies, closing agents, attorneys, and realtors who are

involved with the transaction and the broker or originator and any moneys received from the broker or originator in connection with the transaction.

(6) All information indicated on the Good Faith Estimate and Truth in Lending statement disclosures given to the borrower by the broker or originator.

(7) Annual real estate taxes for the property, together with any assessments payable in connection with the property to be secured by the collateral and the proposed monthly principal and interest charge of all loans to be taken by the borrower and secured by the property of the borrower.

(8) Information concerning how the broker or originator obtained the client and the name of its referral source, if any.

(9) Information concerning the notices provided by the broker or originator to the borrower as required by law and the date those notices were given.

(10) Information concerning whether a sale and leaseback is contemplated and the names of the lessor and lessee, seller, and purchaser.

(11) Any and all financing by the borrower for the subject property within 12 months prior to the date of application.

(12) Loan information, including interest rate, term, purchase price, down payment, and closing costs.

(13) Whether the buyer is a first-time homebuyer or refinancing a primary residence.

(14) Whether the loan permits interest only payments.

(15) Whether the loan may result in negative amortization.

(16) Whether the total points and fees payable by the borrowers at or before closing will exceed 5%.

(17) Whether the loan includes a prepayment penalty, and, if so, the terms of the penalty.

(18) Whether the loan is an ARM.

(Source: P.A. 94-280, eff. 1-1-06.)

(765 ILCS 77/73 new)

Sec. 73. Standards for counseling. A borrower or borrowers subject to this Article shall be recommended for counseling if, after reviewing the information in the predatory lending database submitted under Section 72, the Department finds the borrower or borrowers are all first-time homebuyers or refinancing a primary residence and the loan is a mortgage that includes one or more of the following:

(1) the loan permits interest only payments;

(2) the loan may result in negative amortization;

(3) the total points and fees payable by the borrower at or before closing will exceed 5%;

(4) the loan includes a prepayment penalty; or

(5) the loan is an ARM.

(765 ILCS 77/74)

Sec. 74. Counselor ~~Credit counselor~~; required information. As part of the predatory lending database ~~pilot~~ program, a ~~credit~~ counselor must submit all of the following information for inclusion in the predatory lending database:

(1) The information called for in items (1), (6), (9), (11), (12), (13), (14), (15), (16), (17), and (18) Section 72.

(2) Any information from the borrower that confirms or contradicts the information called for under item (1) of this Section.

(3) The name ~~and address~~ of the ~~credit~~ counselor and address of the HUD-certifed housing counseling agency that employs the counselor.

(4) Information pertaining to the borrower's monthly expenses that assists the ~~credit~~ counselor in determining whether the borrower can afford the loans or loans for which the borrower is applying.

(5) A list of the disclosures furnished to the borrower, as seen and reviewed by the ~~credit~~ counselor, and a comparison of that list to all disclosures required by law.

(6) Whether the borrower provided tax returns to the broker or originator or to the ~~credit~~ counselor, and, if so, who prepared the tax returns.

~~(7) The date the loan commitment expires and whether a written commitment has been given, together with the proposed date of closing.~~

(7) ~~(8)~~ A statement of the recommendations of the ~~credit~~ counselor that indicates the counselor's response to each of the following statements:

(A) The loan should not be approved due to indicia of fraud.

(B) The loan should be approved; no material problems noted.

(C) The borrower cannot afford the loan.
(D) The borrower does not understand the transaction.
(E) The borrower does not understand the costs associated with the transaction.
(F) The borrower's monthly income and expenses have been reviewed and disclosed.
(G) The rate of the loan is above market rate.
(H) The borrower should seek a competitive bid from another broker or originator.
(I) There are discrepancies between the borrower's verbal understanding and the originator's completed form.
(J) The borrower is precipitously close to not being able to afford the loan.
(K) The borrower understands the true cost of debt consolidation and the need for credit card discipline.
(L) The information that the borrower provided the originator has been amended by the originator.

(Source: P.A. 94-280, eff. 1-1-06.)

(765 ILCS 77/78 new)

Sec. 78. Exemption. Borrowers applying for reverse mortgage financing of residential real estate including under programs regulated by the Federal Housing Authority (FHA) that require HUD-certified counseling are exempt from the program and may submit a HUD counseling certificate to comply with the program.

Section 20. The Mortgage Rescue Fraud Act is amended by changing Section 5 as follows:

(765 ILCS 940/5)

Sec. 5. Definitions. As used in this Act:

"Distressed property" means residential real property consisting of one to 6 family dwelling units that is in foreclosure or at risk of loss due to nonpayment of taxes, or whose owner is more than 90 days delinquent on any loan that is secured by the property.

"Distressed property consultant" means any person who, directly or indirectly, for compensation from the owner, makes any solicitation, representation, or offer to perform or who, for compensation from the owner, performs any service that the person represents will in any manner do any of the following:

(1) stop or postpone the foreclosure sale or the loss of the home due to nonpayment of taxes;
(2) obtain any forbearance from any beneficiary or mortgagee, or relief with respect to a tax sale of the property;
(3) assist the owner to exercise any right of reinstatement or right of redemption;
(4) obtain any extension of the period within which the owner may reinstate the owner's rights with respect to the property;
(5) obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a distressed property or contained in the mortgage;
(6) assist the owner in foreclosure, loan default, or post-tax sale redemption period to obtain a loan or advance of funds;
(7) avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale or tax sale; or
(8) save the owner's residence from foreclosure or loss of home due to nonpayment of taxes.

A "distressed property consultant" does not include any of the following:

(1) a person or the person's authorized agent acting under the express authority or written approval of the Department of Housing and Urban Development;
(2) a person who holds or is owed an obligation secured by a lien on any distressed property, or a person acting under the express authorization or written approval of such person, when the person performs services in connection with the obligation or lien, if the obligation or lien did not arise as the result of or as part of a proposed distressed property conveyance;
(3) banks, savings banks, savings and loan associations, credit unions, and insurance companies organized, chartered, or holding a certificate of authority to do business under the laws of this State or any other state or under the laws of the United States;
(4) licensed attorneys engaged in the practice of law;
(5) a Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of these persons or entities, and any agent or employee of these persons or entities, while engaged in the business of these persons or entities;
(6) a 501(c)(3) nonprofit agency or organization, doing business for no less than 5

years, that offers counseling or advice to an owner of a distressed property, if they do not contract for services with for-profit lenders or distressed property purchasers, or any person who structures or plans such a transaction;

(7) licensees of the Residential Mortgage License Act of 1987;

(8) licensees of the Consumer Installment Loan Act who are authorized to make loans secured by real property; or

(9) licensees of the Real Estate License Act of 2000 when providing licensed activities.

"Distressed property purchaser" means any person who acquires any interest in fee in a distressed property or a beneficial interest in a trust holding title to a distressed property while allowing the owner to possess, occupy, or retain any present or future interest in fee in the property, or any person who participates in a joint venture or joint enterprise involving a distressed property conveyance. "Distressed property purchaser" does not mean any person who acquires distressed property at a short sale or any person acting in participation with any person who acquires distressed property at a short sale, if that person does not promise to convey an interest in fee back to the owner or does not give the owner an option to purchase the property at a later date.

"Distressed property conveyance" means a transaction in which an owner of a distressed property transfers an interest in fee in the distressed property or in which the holder of all or some part of the beneficial interest in a trust holding title to a distressed property transfers that interest; the acquirer of the property allows the owner of the distressed property to occupy the property; and the acquirer of the property or a person acting in participation with the acquirer of the property conveys or promises to convey an interest in fee back to the owner or gives the owner an option to purchase the property at a later date.

"Person" means any individual, partnership, corporation, limited liability company, association, or other group or entity, however organized.

"Service" means, without limitation, any of the following:

(1) debt, budget, or financial counseling of any type;

(2) receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a distressed property;

(3) contacting creditors on behalf of an owner of a residence that is distressed property;

(4) arranging or attempting to arrange for an extension of the period within which the owner of a distressed property may cure the owner's default and reinstate his or her obligation;

(5) arranging or attempting to arrange for any delay or postponement of the time of sale of the distressed property;

(6) advising the filing of any document or assisting in any manner in the preparation of any document for filing with any court; or

(7) giving any advice, explanation, or instruction to an owner of a distressed property that in any manner relates to the cure of a default or forfeiture or to the postponement or avoidance of sale of the distressed property.

(Source: P.A. 94-822, eff. 1-1-07.)

Section 25. The Interest Act is amended by changing Section 4.1a as follows:

(815 ILCS 205/4.1a) (from Ch. 17, par. 6406)

Sec. 4.1a. Charges for and cost of the following items paid or incurred by any lender in connection with any loan shall not be deemed to be charges for or in connection with any loan of money referred to in Section 6 of this Act, or charges by the lender as a consideration for the loan referred to in this Section:

(a) hazard, mortgage or life insurance premiums, survey, credit report, title insurance, abstract and attorneys' fees, recording charges, escrow and appraisal fees, and similar charges.

(b) in the case of construction loans, in addition to the matters referred to in clause (a) above, the actual cost incurred by the lender for services for making physical inspections, processing payouts, examining and reviewing contractors' and subcontractors' sworn statements and waivers of lien and the like.

(c) in the case of any loan made pursuant to the provisions of the Emergency Home Purchase Assistance Act of 1974 (Section 313 of the National Housing Act, Chapter B of Title 12 of the United States Code), in addition to the matters referred to in paragraphs (a) and (b) of this Section all charges required or allowed by the Government National Mortgage Association, whether designated as processing fees, commitment fees, loss reserve and marketing fees, discounts,

origination fees or otherwise designated.

(d) in the case of a single payment loan, made for a period of 6 months or less, a regulated financial institution or licensed lender may contract for and receive a maximum charge of $15 in lieu of interest. Such charge may be collected when the loan is made, but only one such charge may be contracted for, received, or collected for any such loan, including any extension or renewal thereof.

(e) if the agreement governing the loan so provides, a charge not to exceed the rate permitted under Section 3-806 of the Uniform Commercial Code-Commercial Paper for any check, draft or order for the payment of money submitted in accordance with said agreement which is unpaid or not honored by a bank or other depository institution.

(f) if the agreement governing the loan so provides, for each loan installment in default for a period of not less than 10 days, a charge in an amount not in excess of 5% of such loan installment. Only one delinquency charge may be collected on any such loan installment regardless of the period during which it remains in default. Payments timely received by the lender under a written extension or deferral agreement shall not be subject to any delinquency charge.

Notwithstanding items (k) and (l) of subsection (1) of Section 4 of this Act, the lender, in the case of any nonexempt residential mortgage loan, as defined in Section 1-4 of the Residential Mortgage License Act of 1987, shall have the right to include a prepayment penalty that extends no longer than the fixed rate period of a variable rate mortgage provided that, if a prepayment is made during the fixed rate period and not in connection with the sale or destruction of the dwelling securing the loan, the lender shall receive an amount that is no more than:

(1) 3% of the total loan amount if the prepayment is made within the first 12 month period following the date the loan was made;

(2) 2% of the total loan amount if the prepayment is made within the second 12-month period following the date the loan was made; or

(3) 1% of the total loan amount if the prepayment is made within the third 12- month period following the date the loan was made, if the fixed rate period extends 3 years.

This Section applies to loans made, refinanced, renewed, extended, or modified on or after the effective date of this amendatory Act of the 95th General Assembly.

Where there is a charge in addition to the stated rate of interest payable directly or indirectly by the borrower and imposed directly or indirectly by the lender as a consideration for the loan, or for or in connection with the loan of money, whether paid or payable by the borrower, the seller, or any other person on behalf of the borrower to the lender or to a third party, or for or in connection with the loan of money, other than as hereinabove in this Section provided, whether denominated "points," "service charge," "discount," "commission," or otherwise, and without regard to declining balances of principal which would result from any required or optional amortization of the principal of the loan, the rate of interest shall be calculated in the following manner:

The percentage of the principal amount of the loan represented by all of such charges shall first be computed, which in the case of a loan with an interest rate in excess of 8% per annum secured by residential real estate, other than loans described in paragraphs (e) and (f) of Section 4, shall not exceed 3% of such principal amount. Said percentage shall then be divided by the number of years and fractions thereof of the period of the loan according to its stated maturity. The percentage thus obtained shall then be added to the percentage of the stated annual rate of interest.

~~The borrower in the case of nonexempt loan shall have the right to prepay the loan in whole or in part at any time, but, except as may otherwise be provided by Section 4, the lender may require payment of not more than 6 months' advance interest on that part of the aggregate amount of all prepayments on a loan in one year, which exceeds 20% of the original principal amount of the loan.~~

(Source: P.A. 87-496.)

Section 970. Severability. If any provision of this amendatory Act of the 95th General Assembly or its application to any person or circumstance is held invalid, the invalidity of that provision or application does not affect other provisions or applications of this amendatory Act that can be given effect without the invalid provision or application.".

Under the rules, the foregoing **Senate Bill No. 1167**, with House Amendment No. 1, was referred to the Secretary's Desk.

A message from the House by

Mr. Mahoney, Clerk:

Mr. President -- I am directed to inform the Senate that the House of Representatives has concurred with the Senate in the adoption of their amendments to a bill of the following title, to-wit:

HOUSE BILL 1519

A bill for AN ACT concerning local government.

Which amendments are as follows:

Senate Amendment No. 1 to HOUSE BILL NO. 1519
Senate Amendment No. 2 to HOUSE BILL NO. 1519
Senate Amendment No. 3 to HOUSE BILL NO. 1519

Concurred in by the House, July 26, 2007.

MARK MAHONEY, Clerk of the House

JOINT ACTION MOTIONS FILED

The following Joint Action Motions to the Senate Bills listed below have been filed with the Secretary and referred to the Committee on Rules:

Motion to Concur in House Amendments 6, 7 and 8 to Senate Bill 509
Motion to Concur in House Amendment 1 to Senate Bill 1167

MESSAGE FROM THE PRESIDENT

OFFICE OF THE SENATE PRESIDENT
STATE OF ILLINOIS

EMIL JONES, JR.
SENATE PRESIDENT

327 STATE CAPITOL
Springfield, Illinois 62706

July 26, 2007

Ms. Deborah Shipley
Secretary of the Senate
403 State House
Springfield, IL 62706

Dear Madam Secretary:

Pursuant to Rule 3-5(c), I hereby appoint Senator James Clayborne to replace Senator Rickey Hendon as a member of the Rules Committee. This appointment is effective immediately.

Very truly yours,
s/Emil Jones, Jr.
Senate President

cc: Senate Minority Leader Frank Watson

READING BILL FROM THE HOUSE OF REPRESENTATIVES A SECOND TIME

On motion of Senator Demuzio, **House Bill No. 3388** having been printed, was taken up and read by title a second time.

The following amendment was offered in the Committee on Environment and Energy, adopted and ordered printed:

AMENDMENT NO. 1 TO HOUSE BILL 3388

AMENDMENT NO. 1. Amend House Bill 3388 by replacing everything after the enacting clause

with the following:

"Section 5. The Public Utilities Act is amended by adding Article XXIII as follows:

(220 ILCS 5/Art. XXIII heading new)

ARTICLE XXIII. CLEAN COAL DEVELOPMENT PROGRAM LAW

(220 ILCS 5/23-101 new)

Sec. 23-101. Short title. This Article may be cited as the Clean Coal Development Program Law.

(220 ILCS 5/23-105 new)

Sec. 23-105. Findings. The General Assembly finds that:

(a) Growth of the State's population and economic base has created a need for new baseload electric generation capacity in Illinois.

(b) Illinois has considerable natural resources that are currently underutilized and could support development of new baseload electric power at an affordable price.

(c) The development of new baseload electric generating capacity is needed if the State is to continue to be successful in attracting new businesses and jobs.

(d) Certain regions of the State, such as central and southern Illinois, could benefit greatly from new employment opportunities created by development of baseload electric generating plants utilizing the plentiful supply of Illinois Basin coal.

(e) Technology can be deployed that allows high sulfur Illinois Basin coal to be burned efficiently while meeting strict State and federal air quality limitations. Specifically, the State shall encourage the use of advanced clean coal technology, such as Integrated Gasification Combined Cycle (IGCC) technology.

(f) The development of new baseload electric generating plants, as contemplated in the Clean Coal Development Program Law, will create benefits to all consumers of electricity in the State by reducing market energy prices and electric capacity prices through increased supply. Such benefits will include lower and more stable prices for electricity.

(220 ILCS 5/23-110 new)

Sec. 23-110. Definitions. For the purposes of this Article, the following terms shall be defined as set forth in this Section.

The terms defined in Section 16-102 of the Public Utilities Act have the meanings ascribed to them in that Act.

"Actual total capital costs" means, as more specifically set forth in the service agreement or agreements for a clean coal project, the total initial capital costs recoverable by such clean coal project pursuant to its wholesale sales tariff upon completion of such clean coal project.

"CCN" means a certificate of convenience and necessity.

"Clean coal project" means any existing or planned electric generating project that has a wholesale tariff pursuant to the Federal Power Act and that is designed (1) to have a nameplate capacity of no less than 400 megawatts gross, (2) to be directly interconnected with a participating electric utility, (3) to utilize integrated gasification combined cycle technology, and (4) to utilize as its primary fuel or feedstock coal having high volatile bituminous rank and greater than 1.7 pounds of sulfur per million Btu content and for which a final air permit, whether or not subject to a petition for review before the Environmental Appeals Board, has been issued that describes the project as having a designed nameplate capacity of no less than 400 megawatts gross. When warranted by the usage, "clean coal project" shall mean the owner, operator, or lessee of a clean coal project.

"Core plant construction cost ceiling" means, as more specifically set forth in the service agreement or agreements for a given clean coal project, $2,500 per kilowatt of net design capacity (excluding for this purpose any power required for carbon capture) of a clean coal project expressed in January 2007 nominal dollars, adjusted for inflation using the producer price index published by the U.S. Bureau of Labor Statistics to the date upon that the core plant construction cost quote for such clean coal project is expressed.

"Core plant construction cost quote" means, as more specifically set forth for a clean coal project in the applicable service agreement or agreements, a price quote or estimate prepared by a reputable engineering and construction services firm (or group of firms) for the costs payable to one or more contractors or suppliers for the engineering, procurement, and construction of the core plant facilities comprising a clean coal project. Such core plant facilities shall include all civil, structural, mechanical, electrical, control, and safety systems associated with the following major core plant functional areas: air separation, coal grinding and slurry preparation, gasification and high temperature synthesis gas cooling, low temperature synthesis gas cooling, acid gas removal, sulfur recovery, tail gas treatment, combined

cycle power block, coal fines and slag handling, and water and wastewater treatment at the plant site. The quote or estimate shall be based on detailed design work sufficient to permit quantification of major categories of materials, commodities, and labor man hours, and receipt of quotes from vendors of major equipment packages. The costs shall be expressed in nominal dollars as of the date of the estimate and shall be exclusive of construction financing costs, taxes, insurance, and an escalation in materials and labor beyond the date as of which the core plant construction cost quote is expressed, costs associated with non-core plant interconnection facilities for electric transmission, natural gas supply, water supply and coal delivery, and other non-core plant costs. For purposes of Section 23-145, the core plant construction cost quote shall be expressed in nominal dollars per kilowatt of net design capacity of the clean coal project by dividing the core plant construction cost quote by the net design capacity of the clean coal project, excluding for this purpose any power required for carbon capture.

"FERC" means the Federal Energy Regulatory Commission, an independent regulatory commission within the Department of Energy established by Section 401 of the Department of Energy Organization Act, or any agency succeeding to the powers thereof under Section 205 of the Federal Power Act.

"Final air permit" means a Prevention of Significant Deterioration of Air Quality (PSD) Construction Permit issued on or before December 31, 2010.

"Formula rate" means a formula used to calculate a cost-based rate for the sale of electric capacity and associated energy from a clean coal project set forth in the applicable wholesale sales tariff.

"FutureGen demonstration project" means a 10-year demonstration project sponsored by the United States to create a zero-emissions electricity and hydrogen power plant that:

(1) is not otherwise eligible to participate in the Clean Coal Development Program;

(2) is designed to include all of the following:

(A) have a nameplate capacity of not greater than 300 megawatts gross;

(B) be directly interconnected with a participating electric utility; and

(C) utilize as its primary fuel or feedstock coal having high volatile bituminous rank and greater than 1.7 pounds of sulfur per million Btu content; and

(3) has a planned construction start date not later than December 31, 2010.

"Participating electric utility" means any Illinois electric utility as defined in the Public Utilities Act that as of the effective date of this Act provides delivery services to more than 100,000 electric customers in Illinois.

"Service agreement" means a service agreement for the sale of electric capacity and associated energy from a clean coal project substantively identical to the pro forma service agreement contained in the applicable wholesale sales tariff.

"Total capital cost target" means the net design output of the clean coal project (excluding for this purpose any power requirements for carbon capture), expressed in kilowatts times $3,850, as adjusted in accordance with the following:

(1) such amount shall be increased by any reasonably estimated increase in any total capital costs per kilowatt that results from the core plant construction cost quote, as approved by the Commission in accordance with item (3) of Section 23-145 of this Article, being higher than the core plant construction cost ceiling;

(2) such amount shall be decreased or increased, as the case may be, by the amount, if any, by which actual total capital costs per kilowatt are decreased or increased due to positive or negative price escalation provided for under the applicable contract or contracts for the core plant construction, with any escalation in commodity prices being based on published indices;

(3) such amount shall be increased by the amount of any additional capital costs per kilowatt that are justly and reasonably incurred due to a change in law or regulation enacted after the date the applicable service agreement is executed by the participating electric utility; and

(4) such amount shall be increased by any increase in total capitalized financing costs per kilowatt resulting from a clean coal project not receiving Illinois moral obligation bond financing or tax exempt finance volume cap allocation in the amounts preliminarily approved for such clean coal project by the Illinois Finance Authority or not receiving state grants equal to at least 15% of the total capital cost target.

"Wholesale sales tariff" means a schedule of rates, terms, and conditions for the sale of electric capacity and associated energy from a clean coal project filed with FERC by the owner, lessee, or operator of that clean coal project and allowed by FERC to become effective pursuant to Section 205 of the Federal Power Act and Part 35 of FERC's regulations.

(220 ILCS 5/23-115 new)

Sec. 23-115. Clean coal development program.

(a) Each participating electric utility shall purchase electric capacity and associated energy from the

owners, lessees, or operators of clean coal projects pursuant to service agreements in accordance with the provisions of Section 23-115 of this Article.

(b) Upon receipt of an offer from a clean coal project to sell capacity and associated energy pursuant to a wholesale sales tariff, the participating electric utility shall, within 30 days after receipt of the pro forma service agreement contained in the wholesale sales tariff, execute the service agreement and file the executed service agreement for informational purposes with the Commission, provided that no participating electric utility shall enter into a service agreement if the amount of capacity to be purchased under such service agreement, together with the aggregate amount of all capacity purchased under other service agreements executed previously or contemporaneously by the participating electric utility from all clean coal projects other than a FutureGen demonstration project, exceeds 5% of the participating electric utility's coincident peak delivery services load, expressed in kilowatts, for the calendar year immediately preceding the effective date of this Article.

(220 ILCS 5/23-120 new)

Sec. 23-120. Characteristics of the wholesale sales tariff. Subject to the jurisdiction of FERC with respect to the wholesale sales tariff, in order to fulfill the purposes of the Clean Coal Development Program, it is desirable that the formula rate and service agreement have characteristics that are adequate and appropriate to support the long-term investments necessary for the construction and operation of clean coal projects. It is the intent of the General Assembly that:

(1) With respect to the formula rate, the following characteristics are adequate and appropriate:

(A) the use of a cost of service methodology employing a level capital recovery component;

(B) the use of a hypothetical capital structure, as such structure is used by FERC pursuant to Sections 205 and 206 of the Federal Power Act, that assumes a capital structure for a clean coal project of 45% equity and 55% debt;

(C) (i) with respect to the first clean coal project that has a wholesale sales tariff made effective pursuant to Section 205 of the Federal Power Act and part 35 of FERC's regulations, the use of a return on equity that is fixed for the term of the service agreement at a rate equal to 11.5%; and (ii) with respect to any subsequent clean coal projects, the use of a return on equity that is fixed for the term of the service agreement at a rate equal to a rate of between 9% and 11% (with a single fixed rate being set forth in the service agreement); and

(D) the use of an incentive or penalty mechanism such that (i) if the actual total capital costs of a given clean coal project exceeds the total capital cost target, then the return on equity applicable to the portion of the actual total capital costs in excess of the total capital cost target (a) shall be reduced by 300 basis points (with there being 100 basis points in each percent of return on equity) for the first $80 per kilowatt of such excess total capital costs, (b) shall be reduced by 600 basis points for the next $80 per kilowatt of such excess total capital costs, and (c) shall be reduced to zero for any excess capital costs over $160 per kilowatt, and (ii) if the actual total capital costs of a given clean coal project are less than the total capital cost target, then the return on equity for an amount equal to the amount that the total capital cost is less than the total capital cost target shall be increased by 300 basis points.

(2) With respect to the service agreement, the following characteristics are adequate and appropriate:

(A) a provision setting forth a term of 30 to 40 years commencing on the date upon which the clean coal project achieves commercial operation;

(B) a provision incorporating the duties and obligations of the clean coal project and the participating electric utility with respect to the notice and termination mechanism set forth in Section 23-145 of this Article;

(C) a provision to the effect that a change in law, regulation or market conditions is not a basis for termination or reduction in payments by the purchaser;

(D) provisions for a plant availability target of 85% from and after the third full calendar year of operation and an incentive structure for meeting such target, provided that the total bonus in any year for exceeding the target in any year shall not exceed an amount equivalent to 10% of the total return on equity for such year and the total penalty for falling short of such target in any year shall not exceed an amount equal to 15% of the total return on equity for such year; and

(E) a provision pursuant to which at the end of the stated contract term the clean coal project will, upon the request of the Commission or other agency of the State of Illinois authorized to make such request, be transferred for the benefit of ratepayers to a trust or other entity nominated by the Commission or other agency in return for no consideration other than the assumption of the obligation to retire the clean coal project and remediate the site when the clean coal project reaches the end of its useful economic life.

(3) With respect to the standard of review under the Federal Power Act of the wholesale sales tariff,

it is adequate and appropriate that absent mutual written consent of the participating electric utility and the owner, operator, or lessee of a clean coal project any proposed changes under Sections 205 and 206 of the Federal Power Act to the wholesale sales tariff, including without limitation the formula rate and service agreement, are subject to the "public interest" standard of review as such standard of review is applied by FERC pursuant to sections 205 and 206 of the Federal Power Act.

To the extent, if any, that a wholesale sales tariff as allowed to be effective by FERC has characteristics in addition to, or different from, those set forth in this Section, such additional or different characteristics shall not alter a participating electric utility's obligation to purchase capacity and associated energy pursuant to wholesale sales tariffs as set forth in this Article.

Nothing in this Article shall be deemed to limit the participation of the State, or any agency or political subdivision thereof, or any elected or appointed official of the State of Illinois or any agency or political subdivision thereof, in any FERC proceeding related to a wholesale sales tariff.

(220 ILCS 5/23-125 new)

Sec. 23-125. Disposition of capacity and energy.

(a) Each participating electric utility that executes a service agreement pursuant to the Clean Coal Development Program Law shall resell the capacity and associated energy purchased from a clean coal project to wholesale purchasers in the wholesale capacity and energy markets available to the participating electric utility. The participating electric utility shall use its best efforts to obtain the highest prices for the capacity and associated energy sold pursuant to this Section so as to minimize the costs passed through to the participating electric utility's delivery service customers pursuant to Section 23-130.

(b) The participating electric utility shall be in compliance with this Section if:

(1) the prices obtained by the participating electric utility are no less than the prices available for the capacity and associated energy if sold into the day-ahead and real time capacity and energy markets administered by a regional transmission organization to which the applicable qualified clean coal project is interconnected; or

(2) the participating electric utility otherwise sells the capacity and associated energy pursuant to a plan set forth in a tariff approved by the Commission pursuant to Article IX of the Public Utilities Act.

(220 ILCS 5/23-130 new)

Sec. 23-130. Pass-through of clean coal development benefits and costs.

(a) Because a participating electric utility is required to accept an offer from a clean coal project to sell capacity and associated energy pursuant to a wholesale sales tariff as provided in Section 23-115 of this Article, the participating electric utility is entitled to recover the costs less benefits from its purchases pursuant to the wholesale sales tariff in its retail rates. Each participating electric utility shall pass-through to its delivery services customers the benefits and costs of the Clean Coal Development Program without mark-up as set forth in this Section.

(b) Within 60 days after the effective date of this Article, each participating electric utility shall file with the Commission a rider to such utility's tariff that complies with this Section. Such tariff riders shall be subject to Article IX of the Public Utilities Act; provided, however, that the period of suspension of such rider shall not extend more than 75 days beyond the time when such rider would otherwise go into effect and such period of suspension shall not be extended by the Commission. Any proceeding initiated pursuant to Article IX with respect to such rider shall be limited to making a determination that, as a matter of law, the tariff rider complies with the requirements of this section and any such proceeding may not exceed 120 days in length.

(c) In order to comply with this Section, a tariff rider shall:

(1) apply to all customers to which the participating electric utility provides bundled retail services or retail distribution service;

(2) be incorporated onto the participating electric utility's customer bills in the same manner in which the participating electric utility, as of the effective date of this Article, incorporates charges pursuant to Section 6-5 of the Renewable Energy, Energy Efficiency and Coal Resources Development Law of 1997; and

(3) use an automatic rate adjustment methodology, as such methodology understood pursuant to the Public Utilities Act, having the following characteristics:

(A) a "CCDP factor" defined as the factor calculated as set forth in this subsection (c) to represent the net benefit or cost of the Clean Coal Development Program;

(B) a "determination period" defined as the calendar month for which a CCDP Factor is determined for the participating electric utility's delivery services customers;

(C) an "effective period" defined as the monthly billing period occurring 2 months after the determination period, during which the CCDP factor is applied to kilowatt-hours of energy delivered by

the participating electric utility to its delivery services customers;

(D) "accrued CCDP expenses" defined as the sum of accrued expenses incurred by the participating electric utility during the determination period pursuant to executed service agreements with clean coal projects;

(E) "accrued CCDP revenues" defined as the sum of accrued revenues recorded by the participating electric utility during the determination period associated with the sale of capacity and associated energy by the participating electric utility pursuant to Section 125 of this Article;

(F) "automatic CCDP balancing factor" defined as the cumulative debit or credit balance, if any, resulting from the application of the CCDP factor from the effective date of the tariff rider through the determination period;

(G) "forecast usage" (expressed in kilowatt-hours) defined as the forecast by the participating electric utility of the total energy that the participating electric utility expects to deliver to its delivery services customers during the effective period; and

(H) a formula for the determination of the CCDP factor that divides the sum of the CCDP accrued revenues, CCDP accrued expenses, and automatic CCDP balancing factor by the forecast usage.

(d) Each participating electric utility shall submit its CCDP factor to the Commission in an informational filing at least 3 business days prior to the start of each effective period during which it is to be applied. In addition, each participating electric utility that is purchasing capacity and associated energy pursuant to a service agreement during a calendar year shall prepare and submit to the Commission an annual report for each calendar year during which such purchases are made, containing the details of the calculation of its CCDP factor on or before the last business day of April of the following calendar year.

(220 ILCS 5/23-135 new)

Sec. 23-135. Affiliate transactions. Notwithstanding any other provision of this Article, if an electric utility or an affiliate of an electric utility has an ownership interest in any eligible facility, Article VII of this Act shall apply.

(220 ILCS 5/23-140 new)

Sec. 23-140. Certificates of convenience and necessity.

(a) If a CCN is required from the Commission for the construction of transmission or pipeline facilities necessary to support interconnection or supplemental fuel supply of a clean coal project, the Commission's order shall be entered (1) within 180 days after the date on which an application for such a CCN has been filed pursuant to Section 8-406 of this Act without a request for an order pursuant to Section 8-503 of this Act; or (2) within 270 days in the case of an application with a request for an order pursuant to Section 8-503 of this Act.

(b) In any proceeding conducted by the Commission with respect to a CCN filed pursuant to this Section, intervention shall be limited to parties with a direct interest in the requested CCN and any statutory consumer protection agency as defined in subsection (d) of Section 9-102.1 of this Act. Parties with a direct interest shall include each owner of record of the land that would be crossed by the proposed transmission or pipeline facilities unless the Commission determines that such owner has acquired the land solely for the purpose of becoming a party to the CCN proceeding, and all utilities and railroads whose lines will be crossed by the proposed transmission or pipeline facilities or whose lines will be paralleled within 200 feet by such proposed facilities. Any application seeking rehearing of an order issued in response to an application for a CCN filed pursuant to the Section shall be filed within 10 days after service of the order.

(c) The construction of transmission and pipeline facilities necessary to support interconnection or supplemental fuel supply of a clean coal project is in the public interest, and in determining whether to issue an order granting a CCN for construction of such facilities, the Commission shall liberally construe the provisions of this Section in favor of granting a CCN for construction of such facilities.

(220 ILCS 5/23-145 new)

Sec. 23-145. Termination mechanism. Because (i) the core plant construction cost quote will not likely be known at the time when the applicable service agreement is executed by the participating electric utility and (ii) the clean coal project will likely incur significant costs related to the engineering and design services performed to obtain the core plant construction cost quote, and in order to provide a mechanism for the Commission to review and approve any increase in the anticipated core plant construction costs quote, the following termination mechanism shall apply to all clean coal projects participating in the Clean Coal Development Program:

(1) Upon completion of the core plant construction cost quote for a given clean coal project, the clean coal project shall compare its core plant construction cost quote to the inflation-adjusted core plant construction cost ceiling and determine whether its core plant construction cost quote is in excess of the

inflation-adjusted core plant construction cost ceiling.

(2) If a clean coal project determines that its core plant construction cost quote is in excess of the inflation-adjusted core plant construction cost ceiling, then the clean coal project shall file with the Commission a pleading summarizing its determination that its core plant construction cost quote is in excess of the inflation-adjusted core plant construction cost ceiling and any calculations and work papers related to such determination.

(3) Upon receipt of a filing pursuant to Section 23-145 of this Article, the Commission shall promptly commence an investigation pursuant to Article X of this Act to determine whether it is in the public interest for the clean coal project to be constructed given the determination that the core plant construction cost quote is in excess of the inflation-adjusted core plant construction cost ceiling. The Commission shall make such public interest determination after hearing evidence limited to the issue of whether the purposes of the Clean Coal Development Program, as set forth in Section 23-105 of this Article, shall be frustrated by the fact that the core plant construction cost quote for the applicable clean coal project is in excess of the inflation-adjusted core plant construction cost ceiling. Any proceeding initiated by the Commission pursuant to this Section may not exceed 120 days in length.

(4) If, and only if, the Commission determines that the purposes of the Clean Coal Development Program will be frustrated by the fact that the core plant construction cost quote for a given clean coal project is in excess of the inflation-adjusted core plant construction cost ceiling, then each participating electric utility that executed a service agreement with such clean coal project shall enforce its right to terminate such service agreement and reimburse the clean coal project as a termination fee the amounts paid by the clean coal project to unrelated third parties to obtain the core plant construction cost quote. In the event that more than one participating electric utility has executed a service agreement with such clean coal project, then the termination fee applicable to each service agreement shall be allocated in proportion to the amount of capacity contracted for relative to the total capacity contracted for pursuant to all service agreements applicable to such clean coal project. The aggregate of termination fees paid by participating electric utilities to a clean coal project pursuant to this Section shall not exceed $8,000,000.

(5) If a participating electric utility terminates a service agreement as contemplated in Section 23-145 of this Article, the participating electric utility shall treat the termination fee paid to the clean coal project as an accrued CCDP expense and recover such termination fee pursuant to the tariff rider set forth in Section 23-130 of this Article.

(220 ILCS 5/23-150 new)

Sec. 23-150. Participation by a FutureGen demonstration project. A FutureGen demonstration project may elect to be deemed a clean coal project and participate in the Clean Coal Development Program as set forth in this Article and as modified by this Section. A FutureGen demonstration project shall be deemed to have made such election on the date that the FutureGen demonstration project files its wholesale sales tariff at FERC pursuant to Section 205 of the Federal Power Act.

No participating electric utility shall enter into a service agreement with a FutureGen demonstration project if the amount of capacity to be purchased under such service agreement, together with the aggregate amount of all capacity purchased under other service agreements executed previously or contemporaneously by the participating electric utility with any FutureGen demonstration project, exceeds 1% of the participating electric utility's coincident peak delivery services load, expressed in kilowatts, for the calendar year immediately preceding the effective date of this Article.

Subsections 23-120(1) (other than Subsection 23-120(1)(D)) and 23-120(2) shall not apply to the wholesale sales tariff of a FutureGen demonstration project that elects to be deemed a clean coal project. Subsection 23-120(1)(D) and Section 145 shall apply to a FutureGen demonstration project. With respect to a FutureGen demonstration project that elects to be deemed a clean coal project, it is the intent of the General Assembly that the wholesale sales tariff of a FutureGen demonstration project recognize that (i) the FutureGen demonstration project may be operated based on objectives different from a baseload generating plant, and (ii) a FutureGen demonstration project is likely to be funded by government appropriations and contributions from non-profit organizations for which traditional ratemaking concepts such as return on invested capital are not appropriate.

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.

CONSIDERATION OF HOUSE AMENDMENTS TO SENATE BILLS ON SECRETARY'S DESK

[July 26, 2007]

On motion of Senator Demuzio, **Senate Bill No. 128**, with House Amendments numbered 1 and 2 on the Secretary's Desk, was taken up for immediate consideration.

Senator Demuzio moved that the Senate concur with the House in the adoption of their amendments to said bill.

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	Forby	Lauzen	Righter
Bomke	Frerichs	Lightford	Risinger
Bond	Garrett	Link	Ronen
Burzynski	Haine	Maloney	Sandoval
Clayborne	Halvorson	Martinez	Schoenberg
Collins	Harmon	Meeks	Silverstein
Cronin	Hendon	Millner	Sullivan
Crotty	Holmes	Munoz	Trotter
Cullerton	Hultgren	Murphy	Viverito
Dahl	Hunter	Noland	Watson
DeLeo	Jacobs	Pankau	Wilhelmi
Delgado	Jones, J.	Peterson	Mr. President
Demuzio	Koehler	Radogno	
Dillard	Kotowski	Raoul	

The motion prevailed.

And the Senate concurred with the House in the adoption of their Amendments numbered 1 and 2 to **Senate Bill No. 128**, by a three-fifths vote.

Ordered that the Secretary inform the House of Representatives thereof.

On motion of Senator Haine, **Senate Bill No. 363**, with House Amendment No. 1 on the Secretary's Desk, was taken up for immediate consideration.

Senator Haine moved that the Senate concur with the House in the adoption of their amendment to said bill.

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	Dillard	Kotowski	Righter
Bomke	Forby	Lauzen	Risinger
Bond	Frerichs	Lightford	Ronen
Brady	Garrett	Link	Schoenberg
Burzynski	Haine	Maloney	Silverstein
Clayborne	Halvorson	Martinez	Sullivan
Collins	Harmon	Meeks	Trotter
Cronin	Hendon	Millner	Viverito
Crotty	Holmes	Munoz	Watson
Cullerton	Hultgren	Murphy	Wilhelmi
Dahl	Hunter	Noland	Mr. President
DeLeo	Jacobs	Pankau	
Delgado	Jones, J.	Peterson	
Demuzio	Koehler	Radogno	

The following voted present:

Raoul

The motion prevailed.

And the Senate concurred with the House in the adoption of their Amendment No. 1 to **Senate Bill No. 363**.

Ordered that the Secretary inform the House of Representatives thereof.

On motion of Senator Cullerton, **Senate Bill No. 1023**, with House Amendment No. 1 on the Secretary's Desk, was taken up for immediate consideration.

Senator Cullerton moved that the Senate concur with the House in the adoption of their amendment to said bill.

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

Yeas 53; Nays None.

The following voted in the affirmative:

Althoff	Forby	Lauzen	Risinger
Bomke	Frerichs	Lightford	Ronen
Bond	Garrett	Link	Sandoval
Brady	Haine	Maloney	Schoenberg
Burzynski	Halvorson	Martinez	Silverstein
Clayborne	Harmon	Meeks	Sullivan
Collins	Hendon	Millner	Trotter
Cronin	Holmes	Munoz	Viverito
Crotty	Hultgren	Murphy	Watson
Cullerton	Hunter	Noland	Wilhelmi
Dahl	Jacobs	Pankau	Mr. President
Delgado	Jones, J.	Peterson	
Demuzio	Koehler	Raoul	
Dillard	Kotowski	Righter	

The motion prevailed.

And the Senate concurred with the House in the adoption of their Amendment No. 1 to **Senate Bill No. 1023**, by a three-fifths vote.

Ordered that the Secretary inform the House of Representatives thereof.

At the hour of 1:50 o'clock p.m., Senator Hendon presiding.

REPORT FROM RULES COMMITTEE

Senator Halvorson, Chairperson of the Committee on Rules, during its July 26, 2007 meeting, reported the following Legislative Measures have been assigned to the indicated Standing Committees of the Senate:

Appropriations II: **Senate Floor Amendments numbered 1 and 3 to Senate Bill 1110**.

Executive: **Senate Floor Amendment No. 3 to Senate Bill 2**.

Revenue: **Senate Floor Amendment No. 3 to House Bill 556**.

State Government and Veterans Affairs: **Senate Floor Amendment No. 1 to Senate Joint Resolution 54; Senate Committee Amendment No. 1 to Senate Resolution 256**.

POSTING NOTICES WAIVED

Senator Demuzio moved to waive the six-day posting requirement on **Senate Resolutions numbered 242, 256, 275, 293, 298 and 299; House Joint Resolutions numbered 22, 28, 31, 48, 49, 51, 64, 65, 66, 69 and 70; and Senate Joint Resolutions numbered 64 and 65** so that the resolutions may be heard in the Committee on State Government and Veterans Affairs that is scheduled to meet July 26, 2007.

The motion prevailed.

COMMITTEE MEETING ANNOUNCEMENTS

The Chair announced the following committees will meet this afternoon:

Executive, Room 212, 3:00 o'clock p.m.

Revenue, Room 400, 3:00 o'clock p.m.

State Government & Veterans Affairs, Room 409, 3:00 o'clock p.m.

Appropriations II, Room 212, 3:30 o'clock p.m.

CONSIDERATION OF HOUSE AMENDMENTS TO SENATE BILL ON SECRETARY'S DESK

On motion of Senator Forby, **Senate Bill No. 1704**, with House Amendments numbered 1 and 2 on the Secretary's Desk, was taken up for immediate consideration.

Senator Forby moved that the Senate concur with the House in the adoption of their amendments to said bill.

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

Yeas 54; Nays 1.

The following voted in the affirmative:

Althoff	Dillard	Kotowski	Raoul
Bomke	Forby	Lauzen	Righter
Bond	Frerichs	Lightford	Risinger
Brady	Garrett	Link	Ronen
Burzynski	Haine	Maloney	Schoenberg
Clayborne	Halvorson	Martinez	Silverstein
Collins	Harmon	Meeks	Sullivan
Cronin	Hendon	Millner	Trotter
Crotty	Holmes	Munoz	Viverito
Cullerton	Hultgren	Murphy	Watson
Dahl	Hunter	Noland	Wilhelmi
DeLeo	Jacobs	Pankau	Mr. President
Delgado	Jones, J.	Peterson	
Demuzio	Koehler	Radogno	

The following voted in the negative:

Sandoval

The motion prevailed.

And the Senate concurred with the House in the adoption of their Amendments numbered 1 and 2 to **Senate Bill No. 1704**, by a three-fifths vote.

Ordered that the Secretary inform the House of Representatives thereof.

CONSIDERATION OF SENATE AMENDMENT TO HOUSE BILL ON SECRETARY'S DESK

On motion of Senator Clayborne, **House Bill No. 654**, with Senate Amendment No. 1 on the Secretary's Desk, was taken up for immediate consideration.

Senator Clayborne moved that the Senate recede from its Amendment No. 1 to **House Bill No. 654**.

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

Yeas 37; Nays 17; Present 1.

The following voted in the affirmative:

Bond	Haine	Link	Schoenberg
Clayborne	Halvorson	Maloney	Silverstein
Collins	Harmon	Martinez	Sullivan
Cullerton	Hendon	Meeks	Trotter
DeLeo	Holmes	Munoz	Viverito
Delgado	Hunter	Noland	Wilhelmi
Demuzio	Jacobs	Raoul	Mr. President
Forby	Koehler	Risinger	
Frerichs	Kotowski	Ronen	
Garrett	Lightford	Sandoval	

The following voted in the negative:

Althoff	Dillard	Murphy	Syverson
Brady	Hultgren	Pankau	Watson
Burzynski	Jones, J.	Peterson	
Cronin	Lauzen	Radogno	
Dahl	Millner	Righter	

The following voted present:

Bomke

The motion prevailed.

And the Senate receded from their Amendment No. 1 to **House Bill No. 654**.

Ordered that the Secretary inform the House of Representatives thereof.

Senator Righter asked and obtained unanimous consent for a Republican caucus to begin immediately upon recess.

At the hour of 2:09 o'clock p.m., the Chair announced that the Senate stand at recess subject to the call of the Chair.

AFTER RECESS

At the hour of 5:42 o'clock p.m., the Senate resumed consideration of business.

Senator Hendon, presiding.

REPORTS FROM STANDING COMMITTEES

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

Senate Floor Amendment No. 3 to Senate Bill 2
Senate Floor Amendment No. 3 to Senate Bill 770
Senate Floor Amendment No. 1 to Senate Bill 1084

Under the rules, the foregoing floor amendments are eligible for consideration on second reading.

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

Senate Floor Amendment No. 3 to House Bill 556

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

Senator Demuzio, Chairperson of the Committee on State Government and Veterans Affairs, to which was referred **Senate Resolutions numbered 242, 293, 298 and 299,** reported the same back with the recommendation that the resolutions be adopted.

Under the rules, **Senate Resolutions numbered 242, 293, 298 and 299** were placed on the Secretary's Desk.

Senator Demuzio, Chairperson of the Committee on State Government and Veterans Affairs, to which was referred **Senate Resolution No. 256,** reported the same back with amendments having been adopted thereto, with the recommendation that the resolution, as amended, be adopted.

Under the rules, **Senate Resolution No. 256** was placed on the Secretary's Desk.

Senator Demuzio, Chairperson of the Committee on State Government and Veterans Affairs, to which was referred **Senate Joint Resolutions numbered 64 and 65,** reported the same back with the recommendation that the resolutions be adopted.

Under the rules, **Senate Joint Resolutions numbered 64 and 65** were placed on the Secretary's Desk.

Senator Demuzio, Chairperson of the Committee on State Government and Veterans Affairs, to which was referred **House Joint Resolutions numbered 22, 28, 31, 48, 49, 51, 64, 65, 66, 69 and 70,** reported the same back with the recommendation that the resolutions be adopted.

Under the rules, **House Joint Resolutions numbered 22, 28, 31, 48, 49, 51, 64, 65, 66, 69 and 70** were placed on the Secretary's Desk.

Senator Demuzio, Chairperson of the Committee on State Government and Veterans Affairs, to which was referred the following Senate floor amendments, reported that the Committee recommends do adopt:

Senate Floor Amendment Nos. 1 and 2 to Senate Joint Resolution 54

Under the rules, the foregoing floor amendments are eligible for consideration on second reading.

Senator Demuzio, Chairperson of the Committee on State Government and Veterans Affairs, to which was referred the Motion to Concur with House Amendment to the following Senate Bill, reported that the Committee recommends do adopt:

Motion to Concur in House Amendments 1 and 2 to Senate Joint Resolution 9

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

Senator Schoenberg, Chairperson of the Committee on Appropriations II, to which was referred **Senate Bills Numbered 1109, 1114 and 1134,** reported the same back with the recommendation that the bills do pass.

Under the rules, the bills were ordered to a second reading.

Senator Schoenberg, Chairperson of the Committee on Appropriations II, to which was referred the following Senate floor amendments, reported that the Committee recommends do adopt:

Senate Floor Amendment Nos. 1 and 3 to Senate Bill 1110

Under the rules, the foregoing floor amendments are eligible for consideration on second reading.

MESSAGES FROM THE HOUSE

A message from the House by
Mr. Mahoney, Clerk:
Mr. President -- I am directed to inform the Senate that the House of Representatives has concurred with the Senate in the passage of a bill of the following title, to-wit:
SENATE BILL NO. 1592
A bill for AN ACT concerning regulation.
Together with the following amendments which are attached, in the adoption of which I am instructed to ask the concurrence of the Senate, to-wit:
House Amendment No. 5 to SENATE BILL NO. 1592
House Amendment No. 6 to SENATE BILL NO. 1592
Passed the House, as amended, July 26, 2007.

MARK MAHONEY, Clerk of the House

AMENDMENT NO. 5 TO SENATE BILL 1592

AMENDMENT NO. 5. Amend Senate Bill 1592 by replacing everything after the enacting clause with the following:

"ARTICLE 1

Section 1-1. Short title. This Article may be cited as the Illinois Power Agency Act. References in this Article to "this Act" mean this Article.

Section 1-5. Legislative declarations and findings. The General Assembly finds and declares:

(1) The health, welfare, and prosperity of all Illinois citizens require the provision of adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability.

(2) The transition to retail competition is not complete. Some customers, especially residential and small commercial customers, have failed to benefit from lower electricity costs from retail and wholesale competition.

(3) Escalating prices for electricity in Illinois pose a serious threat to the economic well-being, health, and safety of the residents of and the commerce and industry of the State.

(4) To protect against this threat to economic well-being, health, and safety it is necessary to improve the process of procuring electricity to serve Illinois residents, to promote investment in energy efficiency and demand-response measures, and to support development of clean coal technologies and renewable resources.

(5) Procuring a diverse electricity supply portfolio will ensure the lowest total cost over time for adequate, reliable, efficient, and environmentally sustainable electric service.

(6) Including cost-effective renewable resources in that portfolio will reduce long-term direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure.

(7) Energy efficiency, demand-response measures, and renewable energy are resources currently underused in Illinois.

The General Assembly therefore finds that it is necessary to create the Illinois Power Agency and that the goals and objectives of that Agency are to accomplish each of the following:

(A) 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. The procurement plan shall be updated on an annual basis and shall include renewable energy resources sufficient to achieve the standards specified in this Act.

(B) Conduct competitive procurement processes to procure the supply resources identified in the procurement plan.

(C) 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.

(D) 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.

Section 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.

"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 and improvements in connection therewith and equipment 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 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 placing that project in operation.

"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.

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

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

"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.

"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, crops and untreated and unadulterated organic waste biomass, trees and tree trimmings, 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, burning, or heating of tires, garbage, general household, institutional, and commercial waste, industrial lunchroom or office waste, landscape waste other than trees and tree trimmings, railroad crossties, utility poles, and 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.

"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, 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.

Section 1-15. Illinois Power Agency.

(a) For the purpose of effectuating the policy declared in Section 1-5 of this Act, a State agency known as the Illinois Power Agency is created. The Agency shall exercise governmental and public powers, be perpetual in duration, and have the powers and duties enumerated in this Act, together with such others conferred upon it by law.

(b) The Agency is not created or organized, and its operations shall not be conducted, for the purpose of making a profit. No part of the revenues or assets of the Agency shall inure to the benefit of or be distributable to any of its employees or any other private persons, except as provided in this Act for actual services rendered.

Section 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. 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.

(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.

Section 1-21. Eminent domain. The Agency may take and acquire possession by eminent domain of any property or interest in property that the Agency is authorized to acquire under this Act for the construction, maintenance, or operation of a facility with the consent in writing of the Governor, after following the provisions of Section 1-85(a) of this Act, to acquire by private purchase, or by condemnation in the manner provided for the exercise of the power of eminent domain under the Eminent Domain Act. The power of condemnation shall be exercised, however, solely for the purposes of one or more of the following: siting, rights of way, and easements appurtenant. The Agency shall not exercise its powers of condemnation until it has used reasonable good faith efforts to acquire the property before filing a petition for condemnation and may thereafter use those powers when it determines that the condemnation of the property rights is necessary to avoid unreasonable delay or economic hardship to the progress of activities carried out in the exercise of powers granted under this Act. Before use of the power of condemnation for projects, the Agency shall hold a public hearing to receive comments on the exercise of the power of condemnation. The Agency shall use the information received at the hearing in making its final decision on the exercise of the power of condemnation. The hearing shall be held in a location reasonably accessible to the public interested in the decision. The Agency shall promulgate guidelines for the conduct of the hearing. The Agency shall conduct a feasibility study showing that the taking is necessary to accomplish the purposes of this Act and that is adequate to meet the environmental standards set forth by the State and the federal governments. The Agency may not exercise the authority provided in Article 20 of the Eminent Domain Act (quick-take procedure) providing for immediate possession in those proceedings. The Agency does not have the power to exercise eminent domain over the property of any public utility or any person owning an electric generating plant.

Section 1-22. Authority of the Illinois Commerce Commission. Nothing in this Act infringes upon the authority granted to the Commission.

Section 1-25. Agency subject to other laws. Unless otherwise stated, the Agency is subject to the provisions of all applicable laws, including but not limited to, each of the following:

(1) The State Records Act.

(2) The Illinois Procurement Code.

(3) The Freedom of Information Act.

(4) The State Property Control Act.

(5) The Personnel Code.

(6) The State Officials and Employees Ethics Act.

Section 1-30.1. Administrative Procedure Act applies. The provisions of the Illinois Administrative Procedure Act are expressly adopted and incorporated into this Act, and apply to all administrative rules and procedures of the Agency.

Section 1-30.2. Administrative Review Law applies. Any final administrative decision of the Agency, or of the Director of the Agency, that is not subject to review by the Commission, is subject to review under the provisions of the Administrative Review Law.

Section 1-30.3. Illinois State Auditing Act applies. For purposes of the Illinois State Auditing Act, the Agency is a "State agency" within the meaning of the Act and is subject to the jurisdiction of the Auditor General.

Section 1-35. Agency rules. The Agency shall adopt rules as may be necessary and appropriate for the operation of the Agency. In addition to other rules relevant to the operation of the Agency, the Agency shall adopt rules that accomplish each of the following:

(1) Establish procedures for monitoring the administration of any contract administered directly or indirectly by the Agency; except that the procedures shall not extend to executed contracts between electric utilities and their suppliers.

(2) Establish procedures for the recovery of costs incurred in connection with the development and construction of a facility should the Agency cancel a project, provided that no such costs shall be passed on to public utilities or their customers or paid from the Illinois Power Agency Operations Fund.

(3) Implement accounting rules and a system of accounts, in accordance with State law, permitting all reporting (i) required by the State, (ii) required under this Act, (iii) required by the Authority, or (iv) required under the Public Utilities Act.

The Agency shall not adopt any rules that infringe upon the authority granted to the Commission.

Section 1-40. Illinois Power Agency Operations Fund.

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

(b) The Illinois Power Agency Operations Fund shall be administered by the Agency for the Agency's operations as specified in this Section.

(c) All moneys used by the Agency from the Illinois Power Agency Operations Fund are subject to appropriation by the General Assembly.

(d) All disbursements from the Illinois Power Agency Operations Fund shall be made only upon warrants of the State Comptroller drawn upon the State 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 State Treasurer shall accept all warrants so signed and shall be released from liability for all payments made on those warrants.

Section 1-45. Illinois Power Agency Facilities Fund.

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

(b) The Illinois Power Agency Facilities Fund shall be administered by the Agency for costs incurred in connection with the development and construction of a facility by the Agency as well as costs incurred in connection with the operation and maintenance of an Agency facility.

(c) All moneys used by the Agency from the Illinois Power Agency Facilities Fund are subject to appropriation by the General Assembly.

(d) All disbursements from the Illinois Power Agency Facilities Fund shall be made only upon warrants of the State Comptroller drawn upon the State 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 State Treasurer shall accept all warrants so signed and shall be released from liability for all payments made on those warrants.

Section 1-50. Illinois Power Agency Debt Service Fund.

(a) The Illinois Power Agency Debt Service Fund is created as a special fund in the State treasury.

(b) The Illinois Power Agency Debt Service Fund shall be administered by the Agency for retirement of revenue bonds issued for any Agency facility.

Section 1-55. Operations Funding. The Agency shall adopt rules regarding charges and fees it is expressly authorized to collect in order to fund the operations of the Agency. These charges and fees shall be deposited into the Illinois Power Agency Operations Fund.

Section 1-57. Facility financing.

(a) The Agency shall have the power (1) to borrow from the Authority, through one or more Agency loan agreements, the net proceeds of revenue bonds for costs incurred in connection with the development and construction of a facility, provided that the stated maturity date of any of those revenue bonds shall not exceed 40 years from their respective issuance dates, (2) to accept prepayments from purchasers of electric energy from a project and to apply the same to costs incurred in connection with the development and construction of a facility, subject to any obligation to refund the same under the circumstances specified in the purchasers' contract for the purchase and sale of electric energy from that

project, (3) to enter into leases or similar arrangements to finance the property constituting a part of a project and associated costs incurred in connection with the development and construction of a facility, provided that the term of any such lease or similar arrangement shall not exceed 40 years from its inception, and (4) to enter into agreements for the sale of revenue bonds that bear interest at a rate or rates not exceeding the maximum rate permitted by the Bond Authorization Act. All Agency loan agreements shall include terms making the obligations thereunder subject to redemption before maturity.

(b) The Agency may from time to time engage the services of the Authority, attorneys, appraisers, architects, engineers, accountants, credit analysts, bond underwriters, bond trustees, credit enhancement providers, and other financial professionals and consultants, if the Agency deems it advisable.

(c) The Agency may pledge, as security for the payment of its revenue bonds in respect of a project, (1) revenues derived from the operation of the project in part or whole, (2) the real and personal property, machinery, equipment, structures, fixtures, and inventories directly associated with the project, (3) grants or other revenues or taxes expected to be received by the Agency directly linked to the project, (4) payments to be made by another governmental unit or other entity pursuant to a service, user, or other similar agreement with that governmental unit or other entity that is a result of the project, (5) any other revenues or moneys deposited or to be deposited directly linked to the project, (6) all design, engineering, procurement, construction, installation, management, and operation agreements associated with the project, (7) any reserve or debt service funds created under the agreements governing the indebtedness, (8) the Illinois Power Agency Facilities Fund or the Illinois Power Agency Debt Service Fund, or (9) any combination thereof. Any such pledge shall be authorized in a writing, signed by the Director of the Agency, and then signed by the Governor of Illinois. At no time shall the funds contained in the Illinois Power Agency Trust Fund be pledged or used in any way to pay for the indebtedness of the Agency. The Director shall not authorize the issuance or grant of any pledge until he or she has certified that any associated project is in full compliance with Sections 1-85 and 1-86 of this Act. The certification shall be duly attached or referenced in the agreements reflecting the pledge. Any such pledge made by the Agency shall be valid and binding from the time the pledge is made. The revenues, property, or funds that are pledged and thereafter received by the Agency shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act; and, subject only to the provisions of prior liens, the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Agency irrespective of whether the parties have notice thereof. All bonds issued on behalf of the Agency must be issued by the Authority and must be revenue bonds. These revenue bonds may be taxable or tax-exempt.

(d) All indebtedness issued by or on behalf of the Agency, including, without limitation, any revenue bonds issued by the Authority on behalf of the Agency, shall not be a debt of the State, the Authority, any political subdivision thereof (other than the Agency to the extent provided in agreements governing the indebtedness), any local government, any governmental aggregator as defined in the this Act, or any local government, and none of the State, the Authority, any political subdivision thereof (other than the Agency to the extent provided in agreements governing the indebtedness), any local government, or any government aggregator shall be liable thereon. Neither the Authority nor the Agency shall have the power to pledge the credit, the revenues, or the taxing power of the State, any political subdivision thereof (other than the Agency), any governmental aggregator, or of any local government, and neither the credit, the revenues, nor the taxing power of the State, any political subdivision thereof (other than the Agency), any governmental aggregator, or any local government shall be, or shall be deemed to be, pledged to the payment of any revenue bonds, notes, or other obligations of the Agency. In addition, the agreements governing any issue of indebtedness shall provide that all holders of that indebtedness, by virtue of their acquisition thereof, have agreed to waive and release all claims and causes of action against the State of Illinois in respect of the indebtedness or any project associated therewith based on any theory of law. However, the waiver shall not prohibit the holders of indebtedness issued on behalf of the Agency from filing any cause of action against or recovering damages from the Agency, recovering from any property or funds pledged to secure the indebtedness, or recovering from any property or funds to which the Agency holds title, provided the property or funds are directly associated with the project for which the indebtedness was specifically issued. Each evidence of indebtedness of the Agency, including the revenue bonds issued by the Authority on behalf of the Agency, shall contain a clear and explicit statement of the provisions of this Section.

(e) The Agency may from time to time enter into an agreement or agreements to defease indebtedness issued on its behalf or to refund, at maturity, at a redemption date or in advance of either, any indebtedness issued on its behalf or pursuant to redemption provisions or at any time before maturity. All such refunding indebtedness shall be subject to the requirements set forth in subsections (a), (c), and (d) of this Section. No revenue bonds issued to refund or advance refund revenue bonds issued under this

Section may mature later than the longest maturity date of the series of bonds being refunded. After the aggregate original principal amount of revenue bonds authorized in this Section has been issued, the payment of any principal amount of those revenue bonds does not authorize the issuance of additional revenue bonds (except refunding revenue bonds).

(f) If the Agency fails to pay the principal of, interest, or premium, if any, on any indebtedness as the same becomes due, a civil action to compel payment may be instituted in the appropriate circuit court by the holder or holders of the indebtedness on which the default of payment exists or by any administrative agent, collateral agent, or indenture trustee acting on behalf of those holders. Delivery of a summons and a copy of the complaint to the Director of the Agency shall constitute sufficient service to give the circuit court jurisdiction over the subject matter of the suit and jurisdiction over the Agency and its officers named as defendants for the purpose of compelling that payment. Any case, controversy, or cause of action concerning the validity of this Act shall relate to the revenue of the Agency. Any such claims and related proceedings are subject in all respects to the provisions of subsection (d) of this Section. The State of Illinois shall not be liable or in any other way financially responsible for any indebtedness issued by or on behalf of the Agency or the performance or non-performance of any covenants associated with any such indebtedness. The foregoing statement shall not prohibit the holders of any indebtedness issued on behalf of the Agency from filing any cause of action against or recovering damages from the Agency recovering from any property pledged to secure that indebtedness or recovering from any property or funds to which the Agency holds title provided such property or funds are directly associated with the project for which the indebtedness is specifically issued.

(g) Upon each delivery of the revenue bonds authorized to be issued by the Authority under this Act, the Agency shall compute and certify to the State Comptroller the total amount of principal of and interest on the Agency loan agreement supporting the revenue bonds issued that will be payable in order to retire those revenue bonds and the amount of principal of and interest on the Agency loan agreement that will be payable on each payment date during the then current and each succeeding fiscal year. As soon as possible after the first day of each month, beginning on the date set forth in the Agency loan agreement where that date specifies when the Agency shall begin setting aside revenues and other moneys for repayment of the revenue bonds per the agreed to schedule, the Agency shall certify to the Comptroller and the Comptroller shall order transferred and the Treasurer shall transfer from the Illinois Power Agency Facilities Fund to the Illinois Power Agency Debt Service Fund for each month remaining in the State fiscal year a sum of money, appropriated for that purpose, equal to the result of the amount of principal of and interest on those revenue bonds payable on the next payment date divided by the number of full calendar months between the date of those revenue bonds, and the first such payment date, and thereafter divided by the number of months between each succeeding payment date after the first. The Comptroller is authorized and directed to draw warrants on the State Treasurer from the Illinois Power Agency Facilities Fund and the Illinois Power Agency Debt Service Fund for the amount of all payments of principal and interest on the Agency loan agreement relating to the Authority revenue bonds issued under this Act. The State Treasurer or the State Comptroller shall deposit or cause to be deposited any amount of grants or other revenues expected to be received by the Agency that the Agency has pledged to the payment of revenue bonds directly into the Illinois Power Agency Debt Service Fund.

Section 1-60. Moneys made available by private or public entities.

(a) The Agency may apply for, receive, expend, allocate, or disburse funds and moneys made available by public or private entities, including, but not limited to, contracts, private or public financial gifts, bequests, grants, or donations from individuals, corporations, foundations, or public or private institutions of higher learning. All funds received by the Agency from these sources shall be deposited:

(1) into the Illinois Power Agency Operations Fund, if for general Agency operations, to be held by the State Treasurer as ex officio custodian, and subject to the Comptroller-Treasurer, voucher-warrant system; or

(2) into the Illinois Power Agency Facilities Fund, if for costs incurred in connection with the development and construction of a facility by the Agency, to be held by the State Treasurer as ex officio custodian, and subject to the Comptroller-Treasurer, voucher-warrant system.

Any funds received, expended, allocated, or disbursed shall be expended by the Agency for the purposes as indicated by the grantor, donor, or, in the case of funds or moneys given or donated for no specific purposes, for any purpose deemed appropriate by the Director in administering the responsibilities of the Agency as set forth in this Act.

Section 1-65. Appropriations for operations.

(a) The General Assembly may appropriate moneys from the General Revenue Fund for the operation of the Illinois Power Agency in Fiscal Year 2008 not to exceed $1,250,000 and in Fiscal Year 2009 not to exceed $1,500,000. These appropriated funds shall constitute an advance that the Agency shall repay without interest to the State in Fiscal Year 2010 and in Fiscal Year 2011. Beginning with Fiscal Year 2010, the operation of the Agency shall be funded solely from moneys in the Illinois Power Agency Operations Fund with no liability or obligation imposed on the State by those operations.

Section 1-70. Agency officials.

(a) The Agency shall have a Director who meets the qualifications specified in Section 5-222 of the Civil Administrative Code of Illinois (20 ILCS 5/5-222).

(b) Within the Illinois Power Agency, the Agency shall establish a Planning and Procurement Bureau and a Resource Development Bureau. Each Bureau shall report to the Director.

(c) The Chief of the Planning and Procurement Bureau shall be appointed by the Director and (i) shall have at least 10 years of direct experience in electricity supply planning and procurement and (ii) shall also hold an advanced degree in risk management, law, business, or a related field.

(d) The Chief of the Resource Development Bureau shall be appointed by the Director and (i) shall have at least 10 years of direct experience in electric generating project development and (ii) shall also hold an advanced degree in economics, engineering, law, business, or a related field.

(e) The Director shall receive an annual salary of $100,000 or as set by the Compensation Review Board, whichever is higher. The Bureau Chiefs shall each receive an annual salary of $85,000 or as set by the Compensation Review Board, whichever is higher.

(f) The Director and Bureau Chiefs shall not, for 2 years prior to appointment or for 2 years after he or she leaves his or her position, be employed by an electric utility, independent power producer, power marketer, or alternative retail electric supplier regulated by the Commission or the Federal Energy Regulatory Commission.

(g) The Director and Bureau Chiefs are prohibited from: (i) owning, directly or indirectly, 5% or more of the voting capital stock of an electric utility, independent power producer, power marketer, or alternative retail electric supplier; (ii) being in any chain of successive ownership of 5% or more of the voting capital stock of any electric utility, independent power producer, power marketer, or alternative retail electric supplier; (iii) receiving any form of compensation, fee, payment, or other consideration from an electric utility, independent power producer, power marketer, or alternative retail electric supplier, including legal fees, consulting fees, bonuses, or other sums. These limitations do not apply to any compensation received pursuant to a defined benefit plan or other form of deferred compensation, provided that the individual has otherwise severed all ties to the utility, power producer, power marketer, or alternative retail electric supplier.

Section 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. 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.

(b) The experts or expert consulting firms retained by the Agency 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.

(c) Renewable portfolio standard.

(1) The procurement plans 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. 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. For purposes of this Section, "cost-effective" means that the costs of procuring renewable energy resources do not cause the limit stated in paragraph (2) of this subsection (c) to be exceeded.

(2) For purposes of this subsection (c), the required procurement of cost-effective renewable energy resources 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. For purposes of this subsection (c), the amount 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 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.

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) 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.

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

(e) 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.

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

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

Section 1-80. Resource Development Bureau. The Resource Development Bureau has the following duties and responsibilities:

(a) At the Agency's discretion, conduct feasibility studies on the construction of any facility. Funding for a study shall come from either:

(i) fees assessed by the Agency on municipal electric systems, governmental aggregators, unit or units of local government, or rural electric cooperatives requesting the feasibility study; or

(ii) an appropriation from the General Assembly.

(b) If the Agency undertakes the construction of a facility, moneys generated from the sale of revenue bonds by the Authority for the facility shall be used to reimburse the source of the money used for the facility's feasibility study.

(c) The Agency may develop, finance, construct, or operate electric generation and co-generation facilities that use indigenous coal or renewable resources, or both, financed with bonds issued by the Authority on behalf of the Agency. Preference shall be given to technologies that enable carbon capture and sites in locations where the geology is suitable for carbon sequestration.

(1) The Agency may enter into contractual arrangements with private and public entities, including but not limited to municipal electric systems, governmental aggregators, and rural electric cooperatives, to plan, site, construct, improve, rehabilitate, and operate those electric generation and co-generation facilities. No contract shall be entered into by the Agency that would jeopardize the tax-exempt status of any bond issued in connection with a project for which the Agency entered into the contract.

(2) The Agency shall hold at least one public hearing before entering into any such contractual arrangements. At least 30-days' notice of the hearing shall be given by publication once in each week during that period in 6 newspapers within the State, at least one of which has a circulation area that includes the location of the proposed facility.

(3) The first facility that the Agency develops, finances, or constructs shall be a facility that uses coal produced in Illinois. The Agency may, however, also develop, finance, or construct renewable energy facilities after work on the first facility has commenced.

(4) The Agency may not develop, finance, or construct a nuclear power plant.

(5) The Agency shall assess fees to applicants seeking to partner with the Agency on projects.

(d) Use of electricity generated by the Agency's facilities. The Agency may supply electricity produced by the Agency's facilities to municipal electric systems, governmental aggregators, or rural electric cooperatives in Illinois. The electricity shall be supplied at cost.

(1) Contracts to supply power and energy from the Agency's facilities shall provide for the effectuation of the policies set forth in this Act.

(2) The contracts shall also provide that, notwithstanding any provision in the Public Utilities Act, entities supplied with power and energy from an Agency facility shall supply the power and energy to retail customers at the same price paid to purchase power and energy from the Agency.

(e) Electric utilities shall not be required to purchase electricity directly or indirectly from facilities developed or sponsored by the Agency.

(f) The Agency may sell excess capacity and excess energy into the wholesale electric market at prevailing market rates; provided, however, the Agency may not sell excess capacity or excess energy through the procurement process described in Section 16-111.5 of the Public Utilities Act.

(g) The Agency shall not directly sell electric power and energy to retail customers. Nothing in this paragraph shall be construed to prohibit sales to municipal electric systems, governmental aggregators, or rural electric cooperatives.

Section 1-85. Construction of facilities. The Agency may begin construction of a facility costing the Agency more than $100,000,000 only if the Agency demonstrates each of the following:

(a) After conducting a study, that the construction and operation of the facility is feasible.

(b) That the project does not materially adversely affect overall real property taxes in the taxing jurisdictions where the facility is to be located.

(c) That the Agency has received all required federal, State, and local government licenses, permits, or approval for the facility.

(d) That the Agency has obtained binding written commitments from municipal electric systems, governmental aggregators, or rural electric cooperatives constituting agreements to purchase, in the aggregate, at least 75% of the anticipated output of the facility for a time period long enough to ensure recovery of:

(1) all costs, including interest, amortization charges, and reserve charges, sufficient to retire revenue bonds issued for costs incurred in connection with the development and construction of a facility; and

(2) all operating, capital, administrative, and general expenses for the continued operation of the facility, including fiscal reserves, and any depreciation charges or costs.

(e) That the Agency has a reasonable plan to sell the remaining anticipated output of the facility to municipal electric systems, governmental aggregators, or rural electric cooperatives.

Section 1-86. General Assembly approval. For projects costing the Agency $1,000,000,000 or more, in addition to the provisions of Section 1-85, the General Assembly must adopt a joint resolution of the House of Representatives and the Senate approving the construction of the facility.

Section 1-87. Management and operating agreements. For projects costing the Agency $1,000,000,000 or more, the Agency shall enter into management and operating agreements for the relevant facility or facilities. Solicitation for any such management and operating agreement shall be pursuant to a request for proposals. The agreements must comply with the Internal Revenue Code and its regulations and shall not jeopardize the tax-exempt status of any bond issued in connection with a project for which the Agency entered into the agreement.

Section 1-90. Distribution and transmission facilities. The Agency shall not own or acquire distribution or transmission facilities except as necessary to connect an Agency facility to an electric transmission or distribution system.

Section 1-95. Insurance. Upon the Authority's issuance of revenue bonds for an Agency facility, the Agency shall purchase an insurance policy to cover those construction and operation costs associated with the facility. The policy shall remain in effect for the time period under which the Agency may accrue any liabilities associated with the facility.

Section 1-100. Timely payment to Agency. Any party receiving electricity shall make timely payment on all bills rendered by the Agency. Any violation of contractual terms by a party receiving electricity from an Agency facility is grounds for cancellation and termination of the contract.

Section 1-105. Deposit of revenue. All revenue from contracts described in Section 1-80(d) shall be deposited into the Illinois Power Agency Facilities Fund.

Section 1-110. State Police reimbursement. The Agency shall reimburse the Department of State Police for any expenses associated with security at facilities from the Illinois Power Agency Facilities Fund.

Section 1-115. Revenue from real estate. All revenue from any sale, conveyance, lease, exchange, transfer, abandonment, or other disposition of real property shall be deposited into the Illinois Power Agency Facilities Fund.

Section 1-120. Protection of confidential and proprietary information. The Agency shall provide adequate protection for confidential and proprietary information furnished, delivered, or filed by any person, corporation, or other entity.

Section 1-125. Agency annual reports. The Agency shall report annually to the Governor and the General Assembly on the operations and transactions of the Agency. The annual report shall include, but not be limited to, each of the following:

(1) The quantity, price, and term of all contracts for electricity procured under the procurement plans for electric utilities.

(2) The quantity, price, and rate impact of all renewable resources purchased under the electricity procurement plans for electric utilities.

(3) The quantity, price, and rate impact of all energy efficiency and demand response measures purchased for electric utilities.

(4) The amount of power and energy produced by each Agency facility.

(5) The quantity of electricity supplied by each Agency facility to municipal electric systems, governmental aggregators, or rural electric cooperatives in Illinois.

(6) The revenues as allocated by the Agency to each facility.

(7) The costs as allocated by the Agency to each facility.

(8) The accumulated depreciation for each facility.

(9) The status of any projects under development.

(10) Basic financial and operating information specifically detailed for the reporting year and including, but not limited to, income and expense statements, balance sheets, and changes in financial position, all in accordance with generally accepted accounting principles, debt structure, and a summary of funds on a cash basis.

Section 1-130. Home rule preemption.

(a) The authorization to impose any new taxes or fees specifically related to the generation of electricity by, the capacity to generate electricity by, or the emissions into the atmosphere by electric generating facilities after the effective date of this Act is an exclusive power and function of the State. A home rule unit may not levy any new taxes or fees specifically related to the generation of electricity by, the capacity to generate electricity by, or the emissions into the atmosphere by electric generating facilities after the effective date of this Act. This Section is a denial and limitation on home rule powers and functions under subsection (g) of Section 6 of Article VII of the Illinois Constitution.

(b) This Section is repealed on January 1, 2019.

ARTICLE 5

Section 5-900. The Freedom of Information Act is amended by changing Section 7 as follows:

(5 ILCS 140/7) (from Ch. 116, par. 207)

Sec. 7. Exemptions.

(1) The following shall be exempt from inspection and copying:

(a) Information specifically prohibited from disclosure by federal or State law or rules and regulations adopted under federal or State law.

(b) Information that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy. Information exempted under this subsection (b) shall include but is not limited to:

(i) files and personal information maintained with respect to clients, patients, residents, students or other individuals receiving social, medical, educational, vocational, financial, supervisory or custodial care or services directly or indirectly from federal agencies or public bodies;

(ii) personnel files and personal information maintained with respect to employees, appointees or elected officials of any public body or applicants for those positions;

(iii) files and personal information maintained with respect to any applicant, registrant or licensee by any public body cooperating with or engaged in professional or occupational registration, licensure or discipline;

(iv) information required of any taxpayer in connection with the assessment or collection of any tax unless disclosure is otherwise required by State statute;

(v) information revealing the identity of persons who file complaints with or provide information to administrative, investigative, law enforcement or penal agencies; provided,

however, that identification of witnesses to traffic accidents, traffic accident reports, and rescue reports may be provided by agencies of local government, except in a case for which a criminal investigation is ongoing, without constituting a clearly unwarranted per se invasion of personal privacy under this subsection; and

(vi) the names, addresses, or other personal information of participants and registrants in park district, forest preserve district, and conservation district programs.

(c) Records compiled by any public body for administrative enforcement proceedings and any law enforcement or correctional agency for law enforcement purposes or for internal matters of a public body, but only to the extent that disclosure would:

(i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency;

(ii) interfere with pending administrative enforcement proceedings conducted by any public body;

(iii) deprive a person of a fair trial or an impartial hearing;

(iv) unavoidably disclose the identity of a confidential source or confidential information furnished only by the confidential source;

(v) disclose unique or specialized investigative techniques other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct;

(vi) constitute an invasion of personal privacy under subsection (b) of this Section;

(vii) endanger the life or physical safety of law enforcement personnel or any other person; or

(viii) obstruct an ongoing criminal investigation.

(d) Criminal history record information maintained by State or local criminal justice agencies, except the following which shall be open for public inspection and copying:

(i) chronologically maintained arrest information, such as traditional arrest logs or blotters;

(ii) the name of a person in the custody of a law enforcement agency and the charges for which that person is being held;

(iii) court records that are public;

(iv) records that are otherwise available under State or local law; or

(v) records in which the requesting party is the individual identified, except as provided under part (vii) of paragraph (c) of subsection (1) of this Section.

"Criminal history record information" means data identifiable to an individual and consisting of descriptions or notations of arrests, detentions, indictments, informations, pre-trial proceedings, trials, or other formal events in the criminal justice system or descriptions or notations of criminal charges (including criminal violations of local municipal ordinances) and the nature of any disposition arising therefrom, including sentencing, court or correctional supervision, rehabilitation and release. The term does not apply to statistical records and reports in which individuals are not identified and from which their identities are not ascertainable, or to information that is for criminal investigative or intelligence purposes.

(e) Records that relate to or affect the security of correctional institutions and detention facilities.

(f) Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body. The exemption provided in this paragraph (f) extends to all those records of officers and agencies of the General Assembly that pertain to the preparation of legislative documents.

(g) Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or information are proprietary, privileged or confidential, or where disclosure of the trade secrets or information may cause competitive harm, including:

(i) All information determined to be confidential under Section 4002 of the Technology Advancement and Development Act.

(ii) All trade secrets and commercial or financial information obtained by a public body, including a public pension fund, from a private equity fund or a privately held company within the investment portfolio of a private equity fund as a result of either investing or evaluating a potential investment of public funds in a private equity fund. The exemption contained in this item does not apply to the aggregate financial performance information of a private equity fund, nor to

the identity of the fund's managers or general partners. The exemption contained in this item does not apply to the identity of a privately held company within the investment portfolio of a private equity fund, unless the disclosure of the identity of a privately held company may cause competitive harm.

Nothing contained in this paragraph (g) shall be construed to prevent a person or business from consenting to disclosure.

(h) Proposals and bids for any contract, grant, or agreement, including information which if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contractor agreement with the body, until an award or final selection is made. Information prepared by or for the body in preparation of a bid solicitation shall be exempt until an award or final selection is made.

(i) Valuable formulae, computer geographic systems, designs, drawings and research data obtained or produced by any public body when disclosure could reasonably be expected to produce private gain or public loss. The exemption for "computer geographic systems" provided in this paragraph (i) does not extend to requests made by news media as defined in Section 2 of this Act when the requested information is not otherwise exempt and the only purpose of the request is to access and disseminate information regarding the health, safety, welfare, or legal rights of the general public.

(j) Test questions, scoring keys and other examination data used to administer an academic examination or determined the qualifications of an applicant for a license or employment.

(k) Architects' plans, engineers' technical submissions, and other construction related technical documents for projects not constructed or developed in whole or in part with public funds and the same for projects constructed or developed with public funds, but only to the extent that disclosure would compromise security, including but not limited to water treatment facilities, airport facilities, sport stadiums, convention centers, and all government owned, operated, or occupied buildings.

(l) Library circulation and order records identifying library users with specific materials.

(m) Minutes of meetings of public bodies closed to the public as provided in the Open Meetings Act until the public body makes the minutes available to the public under Section 2.06 of the Open Meetings Act.

(n) Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies.

(o) Information received by a primary or secondary school, college or university under its procedures for the evaluation of faculty members by their academic peers.

(p) Administrative or technical information associated with automated data processing operations, including but not limited to software, operating protocols, computer program abstracts, file layouts, source listings, object modules, load modules, user guides, documentation pertaining to all logical and physical design of computerized systems, employee manuals, and any other information that, if disclosed, would jeopardize the security of the system or its data or the security of materials exempt under this Section.

(q) Documents or materials relating to collective negotiating matters between public bodies and their employees or representatives, except that any final contract or agreement shall be subject to inspection and copying.

(r) Drafts, notes, recommendations and memoranda pertaining to the financing and marketing transactions of the public body. The records of ownership, registration, transfer, and exchange of municipal debt obligations, and of persons to whom payment with respect to these obligations is made.

(s) The records, documents and information relating to real estate purchase negotiations until those negotiations have been completed or otherwise terminated. With regard to a parcel involved in a pending or actually and reasonably contemplated eminent domain proceeding under the Eminent Domain Act, records, documents and information relating to that parcel shall be exempt except as may be allowed under discovery rules adopted by the Illinois Supreme Court. The records, documents and information relating to a real estate sale shall be exempt until a sale is consummated.

(t) Any and all proprietary information and records related to the operation of an intergovernmental risk management association or self-insurance pool or jointly self-administered

health and accident cooperative or pool.

(u) Information concerning a university's adjudication of student or employee grievance or disciplinary cases, to the extent that disclosure would reveal the identity of the student or employee and information concerning any public body's adjudication of student or employee grievances or disciplinary cases, except for the final outcome of the cases.

(v) Course materials or research materials used by faculty members.

(w) Information related solely to the internal personnel rules and practices of a public body.

(x) Information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a public body responsible for the regulation or supervision of financial institutions or insurance companies, unless disclosure is otherwise required by State law.

(y) Information the disclosure of which is restricted under Section 5-108 of the Public Utilities Act.

(z) Manuals or instruction to staff that relate to establishment or collection of liability for any State tax or that relate to investigations by a public body to determine violation of any criminal law.

(aa) Applications, related documents, and medical records received by the Experimental Organ Transplantation Procedures Board and any and all documents or other records prepared by the Experimental Organ Transplantation Procedures Board or its staff relating to applications it has received.

(bb) Insurance or self insurance (including any intergovernmental risk management association or self insurance pool) claims, loss or risk management information, records, data, advice or communications.

(cc) Information and records held by the Department of Public Health and its authorized representatives relating to known or suspected cases of sexually transmissible disease or any information the disclosure of which is restricted under the Illinois Sexually Transmissible Disease Control Act.

(dd) Information the disclosure of which is exempted under Section 30 of the Radon Industry Licensing Act.

(ee) Firm performance evaluations under Section 55 of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act.

(ff) Security portions of system safety program plans, investigation reports, surveys, schedules, lists, data, or information compiled, collected, or prepared by or for the Regional Transportation Authority under Section 2.11 of the Regional Transportation Authority Act or the St. Clair County Transit District under the Bi-State Transit Safety Act.

(gg) Information the disclosure of which is restricted and exempted under Section 50 of the Illinois Prepaid Tuition Act.

(hh) Information the disclosure of which is exempted under the State Officials and Employees Ethics Act.

(ii) Beginning July 1, 1999, information that would disclose or might lead to the disclosure of secret or confidential information, codes, algorithms, programs, or private keys intended to be used to create electronic or digital signatures under the Electronic Commerce Security Act.

(jj) Information contained in a local emergency energy plan submitted to a municipality in accordance with a local emergency energy plan ordinance that is adopted under Section 11-21.5-5 of the Illinois Municipal Code.

(kk) Information and data concerning the distribution of surcharge moneys collected and remitted by wireless carriers under the Wireless Emergency Telephone Safety Act.

(ll) Vulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community's population or systems, facilities, or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community, but only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. Information exempt under this item may include such things as details pertaining to the mobilization or deployment of personnel or equipment, to the operation of communication systems or protocols, or to tactical operations.

(mm) Maps and other records regarding the location or security of ~~a utility's~~ generation, transmission, distribution, storage, gathering, treatment, or switching facilities owned by a utility or by the Illinois Power Agency.

(nn) Law enforcement officer identification information or driver identification

information compiled by a law enforcement agency or the Department of Transportation under Section 11-212 of the Illinois Vehicle Code.

(oo) Records and information provided to a residential health care facility resident sexual assault and death review team or the Executive Council under the Abuse Prevention Review Team Act.

(pp) Information provided to the predatory lending database created pursuant to Article 3 of the Residential Real Property Disclosure Act, except to the extent authorized under that Article.

(qq) Defense budgets and petitions for certification of compensation and expenses for court appointed trial counsel as provided under Sections 10 and 15 of the Capital Crimes Litigation Act. This subsection (qq) shall apply until the conclusion of the trial of the case, even if the prosecution chooses not to pursue the death penalty prior to trial or sentencing.

(rr) Information contained in or related to proposals, bids, or negotiations related to electric power procurement under Section 1-75 of the Illinois Power Agency Act and Section 16-111.5 of the Public Utilities Act that is determined to be confidential and proprietary by the Illinois Power Agency or by the Illinois Commerce Commission.

(2) This Section does not authorize withholding of information or limit the availability of records to the public, except as stated in this Section or otherwise provided in this Act.

(Source: P.A. 93-43, eff. 7-1-03; 93-209, eff. 7-18-03; 93-237, eff. 7-22-03; 93-325, eff. 7-23-03, 93-422, eff. 8-5-03; 93-577, eff. 8-21-03; 93-617, eff. 12-9-03; 94-280, eff. 1-1-06; 94-508, eff. 1-1-06; 94-664, eff. 1-1-06; 94-931, eff. 6-26-06; 94-953, eff. 6-27-06; 94-1055, eff. 1-1-07; revised 8-3-06.)

Section 5-905. The Civil Administrative Code of Illinois is amended by changing Sections 5-15 and 5-20 and by adding Section 5-222 as follows:

(20 ILCS 5/5-15) (was 20 ILCS 5/3)

Sec. 5-15. Departments of State government. The Departments of State government are created as follows:

The Department on Aging.
The Department of Agriculture.
The Department of Central Management Services.
The Department of Children and Family Services.
The Department of Commerce and Economic Opportunity.
The Department of Corrections.
The Department of Employment Security.
The Emergency Management Agency.
The Department of Financial Institutions.
The Department of Healthcare and Family Services.
The Department of Human Rights.
The Department of Human Services.
The Illinois Power Agency.
The Department of Insurance.
The Department of Juvenile Justice.
The Department of Labor.
The Department of the Lottery.
The Department of Natural Resources.
The Department of Professional Regulation.
~~The Department of Public Aid.~~
The Department of Public Health.
The Department of Revenue.
The Department of State Police.
The Department of Transportation.
The Department of Veterans' Affairs.

(Source: P.A. 93-25, eff. 6-20-03; 93-1029, eff. 8-25-04; 94-696, eff. 6-1-06; revised 9-14-06.)

(20 ILCS 5/5-20) (was 20 ILCS 5/4)

Sec. 5-20. Heads of departments. Each department shall have an officer as its head who shall be known as director or secretary and who shall, subject to the provisions of the Civil Administrative Code of Illinois, execute the powers and discharge the duties vested by law in his or her respective department.

The following officers are hereby created:

Director of Aging, for the Department on Aging.

Director of Agriculture, for the Department of Agriculture.

Director of Central Management Services, for the Department of Central Management Services.
Director of Children and Family Services, for the Department of Children and Family Services.
Director of Commerce and Economic Opportunity, for the Department of Commerce and Economic Opportunity.
Director of Corrections, for the Department of Corrections.
Director of Emergency Management Agency, for the Emergency Management Agency.
Director of Employment Security, for the Department of Employment Security.
Director of Financial Institutions, for the Department of Financial Institutions.
Director of Healthcare and Family Services, for the Department of Healthcare and Family Services.
Director of Human Rights, for the Department of Human Rights.
Secretary of Human Services, for the Department of Human Services.
Director of the Illinois Power Agency, for the Illinois Power Agency.
Director of Insurance, for the Department of Insurance.
Director of Juvenile Justice, for the Department of Juvenile Justice.
Director of Labor, for the Department of Labor.
Director of the Lottery, for the Department of the Lottery.
Director of Natural Resources, for the Department of Natural Resources.
Director of Professional Regulation, for the Department of Professional Regulation.
~~Director of Public Aid, for the Department of Public Aid.~~
Director of Public Health, for the Department of Public Health.
Director of Revenue, for the Department of Revenue.
Director of State Police, for the Department of State Police.
Secretary of Transportation, for the Department of Transportation.
Director of Veterans' Affairs, for the Department of Veterans' Affairs.
(Source: P.A. 93-25, eff. 6-20-03; 93-1029, eff. 8-25-04; 94-696, eff. 6-1-06; revised 9-14-06.)

(20 ILCS 5/5-222 new)

Sec. 5-222. Director of the Illinois Power Agency. The Director of the Illinois Power Agency must have at least 15 years of combined experience in the electric industry, electricity policy, or electricity markets and must possess: (i) general knowledge of the responsibilities of being a director, (ii) managerial experience, and (iii) an advanced degree in economics, risk management, law, business, engineering, or a related field.

Section 5-910. The Renewable Energy, Energy Efficiency, and Coal Resources Development Law of 1997 is amended by changing Sections 6-5 and 6-7 as follows:

(20 ILCS 687/6-5)

(Section scheduled to be repealed on December 16, 2007)

Sec. 6-5. Renewable Energy Resources and Coal Technology Development Assistance Charge.

(a) Notwithstanding the provisions of Section 16-111 of the Public Utilities Act but subject to subsection (e) of this Section, each public utility, electric cooperative, as defined in Section 3.4 of the Electric Supplier Act, and municipal utility, as referenced in Section 3-105 of the Public Utilities Act, that is engaged in the delivery of electricity or the distribution of natural gas within the State of Illinois shall, effective January 1, 1998, assess each of its customer accounts a monthly Renewable Energy Resources and Coal Technology Development Assistance Charge. The delivering public utility, municipal electric or gas utility, or electric or gas cooperative for a self-assessing purchaser remains subject to the collection of the fee imposed by this Section. The monthly charge shall be as follows:

(1) $0.05 per month on each account for residential electric service as defined in Section 13 of the Energy Assistance Act;

(2) $0.05 per month on each account for residential gas service as defined in Section 13 of the Energy Assistance Act;

(3) $0.50 per month on each account for nonresidential electric service, as defined in Section 13 of the Energy Assistance Act, which had less than 10 megawatts of peak demand during the previous calendar year;

(4) $0.50 per month on each account for nonresidential gas service, as defined in Section 13 of the Energy Assistance Act, which had distributed to it less than 4,000,000 therms of gas during the previous calendar year;

(5) $37.50 per month on each account for nonresidential electric service, as defined in Section 13 of the Energy Assistance Act, which had 10 megawatts or greater of peak demand during the previous calendar year; and

(6) $37.50 per month on each account for nonresidential gas service, as defined in

Section 13 of the Energy Assistance Act, which had 4,000,000 or more therms of gas distributed to it during the previous calendar year.

(b) The Renewable Energy Resources and Coal Technology Development Assistance Charge assessed by electric and gas public utilities shall be considered a charge for public utility service.

(c) Fifty percent of the moneys collected pursuant to this Section shall be deposited in the Renewable Energy Resources Trust Fund by the Department of Revenue. The remaining 50 percent of the moneys collected pursuant to this Section shall be deposited in the Coal Technology Development Assistance Fund by the Department of Revenue for the exclusive purposes of (1) capturing or sequestering carbon emissions produced by coal combustion; (2) supporting research on the capture and sequestration of carbon emissions produced by coal combustion; and (3) improving coal miner safety ~~use under the Illinois Coal Technology Development Assistance Act~~.

(d) By the 20th day of the month following the month in which the charges imposed by this Section were collected, each utility and alternative retail electric supplier collecting charges pursuant to this Section shall remit to the Department of Revenue for deposit in the Renewable Energy Resources Trust Fund and the Coal Technology Development Assistance Fund all moneys received as payment of the charge provided for in this Section on a return prescribed and furnished by the Department of Revenue showing such information as the Department of Revenue may reasonably require.

(e) The charges imposed by this Section shall only apply to customers of municipal electric or gas utilities and electric or gas cooperatives if the municipal electric or gas utility or electric or gas cooperative makes an affirmative decision to impose the charge. If a municipal electric or gas utility or an electric or gas cooperative makes an affirmative decision to impose the charge provided by this Section, the municipal electric or gas utility or electric or gas cooperative shall inform the Department of Revenue in writing of such decision when it begins to impose the charge. If a municipal electric or gas utility or electric or gas cooperative does not assess this charge, its customers shall not be eligible for the Renewable Energy Resources Program.

(f) The Department of Revenue may establish such rules as it deems necessary to implement this Section.

(Source: P.A. 92-690, eff. 7-18-02.)

(20 ILCS 687/6-7)

(Section scheduled to be repealed on December 16, 2007)

Sec. 6-7. Repeal. The provisions of this Law are repealed on December 12, 2015 ~~10 years after the effective date of this amendatory Act of 1997 unless renewed by act of the General Assembly~~.

(Source: P.A. 90-561, eff. 12-16-97.)

Section 5-915. The Illinois Finance Authority Act is amended by adding Section 825-90 and by changing Sections 801-40 and 845-5 as follows:

(20 ILCS 3501/801-40)

Sec. 801-40. In addition to the powers otherwise authorized by law and in addition to the foregoing general corporate powers, the Authority shall also have the following additional specific powers to be exercised in furtherance of the purposes of this Act.

(a) The Authority shall have power (i) to accept grants, loans or appropriations from the federal government or the State, or any agency or instrumentality thereof, to be used for the operating expenses of the Authority, or for any purposes of the Authority, including the making of direct loans of such funds with respect to projects, and (ii) to enter into any agreement with the federal government or the State, or any agency or instrumentality thereof, in relationship to such grants, loans or appropriations.

(b) The Authority shall have power to procure and enter into contracts for any type of insurance and indemnity agreements covering loss or damage to property from any cause, including loss of use and occupancy, or covering any other insurable risk.

(c) The Authority shall have the continuing power to issue bonds for its corporate purposes. Bonds may be issued by the Authority in one or more series and may provide for the payment of any interest deemed necessary on such bonds, of the costs of issuance of such bonds, of any premium on any insurance, or of the cost of any guarantees, letters of credit or other similar documents, may provide for the funding of the reserves deemed necessary in connection with such bonds, and may provide for the refunding or advance refunding of any bonds or for accounts deemed necessary in connection with any purpose of the Authority. The bonds may bear interest payable at any time or times and at any rate or rates, notwithstanding any other provision of law to the contrary, and such rate or rates may be established by an index or formula which may be implemented or established by persons appointed or retained therefor by the Authority, or may bear no interest or may bear interest payable at maturity or upon redemption prior to maturity, may bear such date or dates, may be payable at such time or times

and at such place or places, may mature at any time or times not later than 40 years from the date of issuance, may be sold at public or private sale at such time or times and at such price or prices, may be secured by such pledges, reserves, guarantees, letters of credit, insurance contracts or other similar credit support or liquidity instruments, may be executed in such manner, may be subject to redemption prior to maturity, may provide for the registration of the bonds, and may be subject to such other terms and conditions all as may be provided by the resolution or indenture authorizing the issuance of such bonds. The holder or holders of any bonds issued by the Authority may bring suits at law or proceedings in equity to compel the performance and observance by any person or by the Authority or any of its agents or employees of any contract or covenant made with the holders of such bonds and to compel such person or the Authority and any of its agents or employees to perform any duties required to be performed for the benefit of the holders of any such bonds by the provision of the resolution authorizing their issuance, and to enjoin such person or the Authority and any of its agents or employees from taking any action in conflict with any such contract or covenant. Notwithstanding the form and tenor of any such bonds and in the absence of any express recital on the face thereof that it is non-negotiable, all such bonds shall be negotiable instruments. Pending the preparation and execution of any such bonds, temporary bonds may be issued as provided by the resolution. The bonds shall be sold by the Authority in such manner as it shall determine. The bonds may be secured as provided in the authorizing resolution by the receipts, revenues, income and other available funds of the Authority and by any amounts derived by the Authority from the loan agreement or lease agreement with respect to the project or projects; and bonds may be issued as general obligations of the Authority payable from such revenues, funds and obligations of the Authority as the bond resolution shall provide, or may be issued as limited obligations with a claim for payment solely from such revenues, funds and obligations as the bond resolution shall provide. The Authority may grant a specific pledge or assignment of and lien on or security interest in such rights, revenues, income, or amounts and may grant a specific pledge or assignment of and lien on or security interest in any reserves, funds or accounts established in the resolution authorizing the issuance of bonds. Any such pledge, assignment, lien or security interest for the benefit of the holders of the Authority's bonds shall be valid and binding from the time the bonds are issued without any physical delivery or further act, and shall be valid and binding as against and prior to the claims of all other parties having claims against the Authority or any other person irrespective of whether the other parties have notice of the pledge, assignment, lien or security interest. As evidence of such pledge, assignment, lien and security interest, the Authority may execute and deliver a mortgage, trust agreement, indenture or security agreement or an assignment thereof. A remedy for any breach or default of the terms of any such agreement by the Authority may be by mandamus proceedings in any court of competent jurisdiction to compel the performance and compliance therewith, but the agreement may prescribe by whom or on whose behalf such action may be instituted. It is expressly understood that the Authority may, but need not, acquire title to any project with respect to which it exercises its authority.

(d) With respect to the powers granted by this Act, the Authority may adopt rules and regulations prescribing the procedures by which persons may apply for assistance under this Act. Nothing herein shall be deemed to preclude the Authority, prior to the filing of any formal application, from conducting preliminary discussions and investigations with respect to the subject matter of any prospective application.

(e) The Authority shall have power to acquire by purchase, lease, gift or otherwise any property or rights therein from any person useful for its purposes, whether improved for the purposes of any prospective project, or unimproved. The Authority may also accept any donation of funds for its purposes from any such source. The Authority shall have no independent power of condemnation but may acquire any property or rights therein obtained upon condemnation by any other authority, governmental entity or unit of local government with such power.

(f) The Authority shall have power to develop, construct and improve either under its own direction, or through collaboration with any approved applicant, or to acquire through purchase or otherwise, any project, using for such purpose the proceeds derived from the sale of its bonds or from governmental loans or grants, and to hold title in the name of the Authority to such projects.

(g) The Authority shall have power to lease pursuant to a lease agreement any project so developed and constructed or acquired to the approved tenant on such terms and conditions as may be appropriate to further the purposes of this Act and to maintain the credit of the Authority. Any such lease may provide for either the Authority or the approved tenant to assume initially, in whole or in part, the costs of maintenance, repair and improvements during the leasehold period. In no case, however, shall the total rentals from any project during any initial leasehold period or the total loan repayments to be made pursuant to any loan agreement, be less than an amount necessary to return over such lease or loan period (1) all costs incurred in connection with the development, construction, acquisition or

improvement of the project and for repair, maintenance and improvements thereto during the period of the lease or loan; provided, however, that the rentals or loan repayments need not include costs met through the use of funds other than those obtained by the Authority through the issuance of its bonds or governmental loans; (2) a reasonable percentage additive to be agreed upon by the Authority and the borrower or tenant to cover a properly allocable portion of the Authority's general expenses, including, but not limited to, administrative expenses, salaries and general insurance, and (3) an amount sufficient to pay when due all principal of, interest and premium, if any on, any bonds issued by the Authority with respect to the project. The portion of total rentals payable under clause (3) of this subsection (g) shall be deposited in such special accounts, including all sinking funds, acquisition or construction funds, debt service and other funds as provided by any resolution, mortgage or trust agreement of the Authority pursuant to which any bond is issued.

(h) The Authority has the power, upon the termination of any leasehold period of any project, to sell or lease for a further term or terms such project on such terms and conditions as the Authority shall deem reasonable and consistent with the purposes of the Act. The net proceeds from all such sales and the revenues or income from such leases shall be used to satisfy any indebtedness of the Authority with respect to such project and any balance may be used to pay any expenses of the Authority or be used for the further development, construction, acquisition or improvement of projects. In the event any project is vacated by a tenant prior to the termination of the initial leasehold period, the Authority shall sell or lease the facilities of the project on the most advantageous terms available. The net proceeds of any such disposition shall be treated in the same manner as the proceeds from sales or the revenues or income from leases subsequent to the termination of any initial leasehold period.

(i) The Authority shall have the power to make loans to persons to finance a project, to enter into loan agreements with respect thereto, and to accept guarantees from persons of its loans or the resultant evidences of obligations of the Authority.

(j) The Authority may fix, determine, charge and collect any premiums, fees, charges, costs and expenses, including, without limitation, any application fees, commitment fees, program fees, financing charges or publication fees from any person in connection with its activities under this Act.

(k) In addition to the funds established as provided herein, the Authority shall have the power to create and establish such reserve funds and accounts as may be necessary or desirable to accomplish its purposes under this Act and to deposit its available monies into the funds and accounts.

(l) At the request of the governing body of any unit of local government, the Authority is authorized to market such local government's revenue bond offerings by preparing bond issues for sale, advertising for sealed bids, receiving bids at its offices, making the award to the bidder that offers the most favorable terms or arranging for negotiated placements or underwritings of such securities. The Authority may, at its discretion, offer for concurrent sale the revenue bonds of several local governments. Sales by the Authority of revenue bonds under this Section shall in no way imply State guarantee of such debt issue. The Authority may require such financial information from participating local governments as it deems necessary in order to carry out the purposes of this subsection (1).

(m) The Authority may make grants to any county to which Division 5-37 of the Counties Code is applicable to assist in the financing of capital development, construction and renovation of new or existing facilities for hospitals and health care facilities under that Act. Such grants may only be made from funds appropriated for such purposes from the Build Illinois Bond Fund.

(n) The Authority may establish an urban development action grant program for the purpose of assisting municipalities in Illinois which are experiencing severe economic distress to help stimulate economic development activities needed to aid in economic recovery. The Authority shall determine the types of activities and projects for which the urban development action grants may be used, provided that such projects and activities are broadly defined to include all reasonable projects and activities the primary objectives of which are the development of viable urban communities, including decent housing and a suitable living environment, and expansion of economic opportunity, principally for persons of low and moderate incomes. The Authority shall enter into grant agreements from monies appropriated for such purposes from the Build Illinois Bond Fund. The Authority shall monitor the use of the grants, and shall provide for audits of the funds as well as recovery by the Authority of any funds determined to have been spent in violation of this subsection (n) or any rule or regulation promulgated hereunder. The Authority shall provide technical assistance with regard to the effective use of the urban development action grants. The Authority shall file an annual report to the General Assembly concerning the progress of the grant program.

(o) The Authority may establish a Housing Partnership Program whereby the Authority provides zero-interest loans to municipalities for the purpose of assisting in the financing of projects for the rehabilitation of affordable multi-family housing for low and moderate income residents. The Authority

may provide such loans only upon a municipality's providing evidence that it has obtained private funding for the rehabilitation project. The Authority shall provide 3 State dollars for every 7 dollars obtained by the municipality from sources other than the State of Illinois. The loans shall be made from monies appropriated for such purpose from the Build Illinois Bond Fund. The total amount of loans available under the Housing Partnership Program shall not exceed $30,000,000. State loan monies under this subsection shall be used only for the acquisition and rehabilitation of existing buildings containing 4 or more dwelling units. The terms of any loan made by the municipality under this subsection shall require repayment of the loan to the municipality upon any sale or other transfer of the project.

(p) The Authority may award grants to universities and research institutions, research consortiums and other not-for-profit entities for the purposes of: remodeling or otherwise physically altering existing laboratory or research facilities, expansion or physical additions to existing laboratory or research facilities, construction of new laboratory or research facilities or acquisition of modern equipment to support laboratory or research operations provided that such grants (i) be used solely in support of project and equipment acquisitions which enhance technology transfer, and (ii) not constitute more than 60 percent of the total project or acquisition cost.

(q) Grants may be awarded by the Authority to units of local government for the purpose of developing the appropriate infrastructure or defraying other costs to the local government in support of laboratory or research facilities provided that such grants may not exceed 40% of the cost to the unit of local government.

(r) The Authority may establish a Direct Loan Program to make loans to individuals, partnerships or corporations for the purpose of an industrial project, as defined in Section 801-10 of this Act. For the purposes of such program and not by way of limitation on any other program of the Authority, the Authority shall have the power to issue bonds, notes, or other evidences of indebtedness including commercial paper for purposes of providing a fund of capital from which it may make such loans. The Authority shall have the power to use any appropriations from the State made especially for the Authority's Direct Loan Program for additional capital to make such loans or for the purposes of reserve funds or pledged funds which secure the Authority's obligations of repayment of any bond, note or other form of indebtedness established for the purpose of providing capital for which it intends to make such loans under the Direct Loan Program. For the purpose of obtaining such capital, the Authority may also enter into agreements with financial institutions and other persons for the purpose of selling loans and developing a secondary market for such loans. Loans made under the Direct Loan Program may be in an amount not to exceed $300,000 and shall be made for a portion of an industrial project which does not exceed 50% of the total project. No loan may be made by the Authority unless approved by the affirmative vote of at least 8 members of the board. The Authority shall establish procedures and publish rules which shall provide for the submission, review, and analysis of each direct loan application and which shall preserve the ability of each board member to reach an individual business judgment regarding the propriety of making each direct loan. The collective discretion of the board to approve or disapprove each loan shall be unencumbered. The Authority may establish and collect such fees and charges, determine and enforce such terms and conditions, and charge such interest rates as it determines to be necessary and appropriate to the successful administration of the Direct Loan Program. The Authority may require such interests in collateral and such guarantees as it determines are necessary to project the Authority's interest in the repayment of the principal and interest of each loan made under the Direct Loan Program.

(s) The Authority may guarantee private loans to third parties up to a specified dollar amount in order to promote economic development in this State.

(t) The Authority may adopt rules and regulations as may be necessary or advisable to implement the powers conferred by this Act.

(u) The Authority shall have the power to issue bonds, notes or other evidences of indebtedness, which may be used to make loans to units of local government which are authorized to enter into loan agreements and other documents and to issue bonds, notes and other evidences of indebtedness for the purpose of financing the protection of storm sewer outfalls, the construction of adequate storm sewer outfalls, and the provision for flood protection of sanitary sewage treatment plans, in counties that have established a stormwater management planning committee in accordance with Section 5-1062 of the Counties Code. Any such loan shall be made by the Authority pursuant to the provisions of Section 820-5 to 820-60 of this Act. The unit of local government shall pay back to the Authority the principal amount of the loan, plus annual interest as determined by the Authority. The Authority shall have the power, subject to appropriations by the General Assembly, to subsidize or buy down a portion of the interest on such loans, up to 4% per annum.

(v) The Authority may accept security interests as provided in Sections 11-3 and 11-3.3 of the Illinois

Public Aid Code.

(w) Moral Obligation. In the event that the Authority determines that monies of the Authority will not be sufficient for the payment of the principal of and interest on its bonds during the next State fiscal year, the Chairperson, as soon as practicable, shall certify to the Governor the amount required by the Authority to enable it to pay such principal of and interest on the bonds. The Governor shall submit the amount so certified to the General Assembly as soon as practicable, but no later than the end of the current State fiscal year. This subsection shall apply only to any bonds or notes as to which the Authority shall have determined, in the resolution authorizing the issuance of the bonds or notes, that this subsection shall apply. Whenever the Authority makes such a determination, that fact shall be plainly stated on the face of the bonds or notes and that fact shall also be reported to the Governor. In the event of a withdrawal of moneys from a reserve fund established with respect to any issue or issues of bonds of the Authority to pay principal or interest on those bonds, the Chairperson of the Authority, as soon as practicable, shall certify to the Governor the amount required to restore the reserve fund to the level required in the resolution or indenture securing those bonds. The Governor shall submit the amount so certified to the General Assembly as soon as practicable, but no later than the end of the current State fiscal year. The Authority shall obtain written approval from the Governor for any bonds and notes to be issued under this Section. In addition to any other bonds authorized to be issued under Sections 825-60, 825-65(e), 830-25 and 845-5, the principal amount of Authority bonds outstanding issued under this Section 801-40(w) or under 20 ILCS 3850/1-80 or 30 ILCS 360/2-6(c), which have been assumed by the Authority, shall not exceed $150,000,000. This subsection (w) shall in no way be applied to any bonds issued by the Authority on behalf of the Illinois Power Agency under Section 825-90 of this Act.

(Source: P.A. 93-205, eff. 1-1-04; 94-91, eff. 7-1-05.)

(20 ILCS 3501/825-90 new)

Sec. 825-90. Illinois Power Agency Bonds.

(a) In this Section:

"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 its revenue bonds issued with respect to a specific Illinois Power Agency project to the Illinois Power Agency upon terms providing for loan repayment installments at least sufficient to pay when due all principal of, interest and premium, if any, on any revenue bonds of the Authority, if any, issued with respect to the Illinois Power Agency project, and providing for maintenance, insurance, and other matters as may be deemed desirable by the Authority.

"Authority" means the Illinois Finance Authority.

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

"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 procures electricity to serve residential retail electrical loads located within its or their jurisdiction.

"Local government" means a unit of local government as defined in Section 1 of Article VII of the Illinois Constitution of 1970.

"Project" means any project as defined in the Illinois Power Agency 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.

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

(b) Powers and duties; Illinois Power Agency Program. The Authority has the power:

(1) To accept from time to time pursuant to an Agency loan agreement any pledge or a pledge agreement by the Agency subject to the requirements and limitations of the Illinois Power Agency Act.

(2) To issue revenue bonds in one or more series pursuant to one or more resolutions of the Authority to loan funds to the Agency pursuant to one or more Agency loan agreements meeting the requirements of the Illinois Power Agency Act and providing for the payment of any interest deemed necessary on those revenue bonds, paying for the cost of issuance of those revenue bonds, providing for the payment of the cost of any guarantees, letters of credit, insurance contracts or other similar credit support or liquidity instruments, or providing for the funding of any reserves deemed necessary in connection with those revenue bonds and refunding or advance refunding of any such revenue bonds and

the interest and any premium thereon, pursuant to this Act. Authority for the agreements shall conform to the requirements of the Illinois Power Agency Act. The Authority may issue up to $4,000,000,000 aggregate principal amount of revenue bonds, the net proceeds of which shall be loaned to the Agency pursuant to one or more Agency loan agreements. No revenue bonds issued to refund or advance refund revenue bonds issued under this Section may mature later than the longest maturity date of the series of bonds being refunded. After the aggregate original principal amount of revenue bonds authorized in this Section has been issued, the payment of any principal amount of those revenue bonds does not authorize the issuance of additional revenue bonds (except refunding revenue bonds). Such revenue bond authorization is in addition to any other bonds authorized in this Act. All bonds issued on behalf of the Agency must be issued by the Authority and must be revenue bonds. These revenue bonds may be taxable or tax-exempt.

(3) To provide for the funding of any reserves or other funds or accounts deemed necessary by the Authority on behalf of the Agency in connection with its issuance of Agency revenue bonds.

(4) To accept the pledge of any Agency revenue, including any payments thereon, and any other property or funds of the Agency or funds made available to the Authority through the applicable Agency loan agreement with the Agency that may be applied to such purpose, as security for any revenue bonds or any guarantees, letters of credit, insurance contracts, or similar credit support or liquidity instruments securing the revenue bonds.

(5) To enter into agreements or contracts with third parties, whether public or private, including without limitation the United States of America, the State, or any department or agency thereof, to obtain any grants, loans, or guarantees that are deemed necessary or desirable by the Authority. Any such guarantee, agreement, or contract may contain terms and provisions necessary or desirable in connection with the program, subject to the requirements established by this Article.

(6) To charge reasonable fees to defray the cost of obtaining letters of credit, insurance contracts, or other similar documents, and to charge such other reasonable fees to defray the cost of trustees, depositories, paying agents, legal counsel, bond registrars, escrow agents, and other administrative expenses. Any such fees shall be payable by the Agency, in such amounts and at such times as the Authority shall determine.

(7) To obtain and maintain guarantees, letters of credit, insurance contracts, or similar credit support or liquidity instruments that are deemed necessary or desirable in connection with any revenue bonds or other obligations of the Authority for any Agency revenue bonds.

(8) To provide technical assistance, at the request of the Agency, with respect to the financing or refinancing for any public purpose.

(9) To sell, transfer, or otherwise defease revenue bonds issued on behalf of the Agency at the request and authorization of the Agency.

(10) To enter into agreements or contracts with any person necessary or appropriate to place the payment obligations of the Agency relating to revenue bonds in whole or in part on any interest rate basis, cash flow basis, or other basis desired by the Authority, including without limitation agreements or contracts commonly known as "interest rate swap agreements", "forward payment conversion agreements", and "futures", or agreements or contracts to exchange cash flows or a series of payments, or agreements or contracts, including without limitation agreements or contracts commonly known as "options", "puts" or "calls", to hedge payment, rate spread, or similar exposure; provided, that any such agreement or contract shall not constitute an obligation for borrowed money, and shall not be taken into account under Section 845-5 of this Act or any other debt limit of the Authority or the State of Illinois.

(11) To make and enter into all other agreements and contracts and execute all instruments necessary or incidental to performance of its duties and the execution of its powers under this Article.

(12) To contract for and finance the costs of audits and to contract for and finance the cost of project monitoring. Any such contract shall be executed only after it has been jointly negotiated by the Authority and the Agency.

(13) To exercise such other powers as are necessary or incidental to the foregoing.

(c) Illinois Power Agency participation. The Agency is authorized to voluntarily participate in this program as described in the Illinois Power Agency Act. The Authority may issue revenue bonds on behalf of the Agency pursuant to an Agency loan agreement entered into by the parties as set forth in the Illinois Power Agency Act. Any proceeds from the sale of those revenue bonds shall be deposited into the Illinois Power Agency Facilities Fund to be used by the Agency for the purposes set forth in the Illinois Power Agency Act.

(d) Pledge of revenues by the Agency. Any pledge of revenues or other moneys made by the Agency shall be binding from the time the pledge is made. Revenues and other moneys so pledged shall be held in the Illinois Power Agency Facilities Fund, Illinois Power Agency Debt Service Fund, or other funds

as directed by the Agency loan agreement. Revenues or other moneys so pledged and thereafter received by the State Treasurer shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be binding against all parties having claims of any kind of tort, contract, or otherwise against the Authority, irrespective of whether the parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded except in the records of the Authority. The State pledges to and agrees with the holders of revenue bonds, and the beneficial owners of the revenue bonds issued on behalf of the Agency, that the State shall not limit or restrict the rights hereby vested in the Authority to purchase, acquire, hold, sell, or defease revenue bonds or other investments or to establish and collect such fees or other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of operation of the Authority, and to fulfill the terms of any agreement made with the holders of the revenue bonds issued by the Authority on behalf of the Agency or in any way impair the rights or remedies of the holders of those revenue bonds or the beneficial owners of the revenue bonds until those revenue bonds are fully paid and discharged or provision for their payment has been made. The revenue bonds shall not be a debt of the State, the Authority, any political subdivision thereof (other than the Agency to the extent provided therein), any governmental aggregator as defined in the Illinois Power Agency Act, or any local government, and neither the State, the Authority, any political subdivision thereof (other than the Agency to the extent provided therein), any governmental aggregator, nor any local government shall be liable thereon. The Authority shall not have the power to pledge the credit, the revenues, or the taxing power of the State, any political subdivision thereof (other than the Agency to the extent provided in the Agency loan agreement relating to the revenue bonds in question), any governmental aggregator, or of any local government, and neither the credit, the revenues, nor the taxing power of the State, any political subdivision thereof (other than the Agency to the extent provided in the Agency loan agreement relating to the revenue bonds in question), any governmental aggregator, or of any local government shall be, or shall be deemed to be, pledged to the payment of any revenue bonds, or obligations of the Agency.

(e) Exemption from taxation. The creation of the Illinois Power Agency is in all respects for the benefit of the people of Illinois and for the improvement of their health, safety, welfare, comfort, and security, and its purposes are public purposes. In consideration thereof, the revenue bonds issued on behalf of the Agency pursuant to this Act and the income from these revenue bonds may be free from all taxation by the State or its political subdivisions, except for estate, transfer, and inheritance taxes. The exemption from taxation provided by the preceding sentence shall apply to the income on any revenue bonds issued on behalf of the Agency only if the Authority with concurrence of the Agency in its sole judgment determines that the exemption enhances the marketability of the revenue bonds or reduces the interest rates that would otherwise be borne by the revenue bonds and that the project for which the revenue bonds will be issued will be owned by the Agency or another governmental entity and that the project is used for public consumption. For purposes of Section 250 of the Illinois Income Tax Act, the exemption of the Agency shall terminate after all of the revenue bonds have been paid. The amount of the income that shall be added and then subtracted on the Illinois income tax return of a taxpayer, subject to Section 203 of the Illinois Income Tax Act, from federal adjusted gross income or federal taxable income in computing Illinois base income shall be the interest net of any bond premium amortization.

(20 ILCS 3501/845-5)

Sec. 845-5. Bond limitations.

(a) The Authority may not have outstanding at any one time bonds for any of its corporate purposes in an aggregate principal amount exceeding $25,200,000,000, excluding bonds issued to refund the bonds of the Authority or bonds of the Predecessor Authorities.

(b) The Authority may not have outstanding at any one time revenue bonds in an aggregate principal amount exceeding $4,000,000,000 on behalf of the Illinois Power Agency as set forth in Section 825-90. Any such revenue bonds issued on behalf of the Illinois Power Agency pursuant to this Act shall not be counted against the bond authorization limit set forth in subsection (a).

(Source: P.A. 93-205, eff. 1-1-04; 93-1101, eff. 3-31-05; 94-1068, eff. 8-1-06.)

Section 5-920. The State Finance Act is amended by adding Sections 5.680, 5.681, 5.682, 5.683, and 6z-75 and by changing Section 8h as follows:

(30 ILCS 105/5.680 new)

Sec. 5.680. The Illinois Power Agency Operations Fund.

(30 ILCS 105/5.681 new)

Sec. 5.681. The Illinois Power Agency Facilities Fund.

(30 ILCS 105/5.682 new)

Sec. 5.682. The Illinois Power Agency Debt Service Fund.

(30 ILCS 105/5.683 new)

Sec. 5.683. The Illinois Power Agency Trust Fund.

(30 ILCS 105/6z-75 new)

Sec. 6z-75. The Illinois Power Agency Trust Fund.

(a) Creation. The Illinois Power Agency Trust Fund is created as a special fund in the State treasury. The State Treasurer shall be the custodian of the Fund. Amounts in the Fund, both principal and interest not appropriated, shall be invested as provided by law.

(b) Funding and investment.

(1) The Illinois Power Agency Trust Fund may accept, receive, and administer any grants, loans, or other funds made available to it by any source. Any such funds received by the Fund shall not be considered income, but shall be added to the principal of the Fund.

(2) The investments of the Fund shall be managed by the Illinois State Board of Investment, for the purpose of obtaining a total return on investments for the long term, as provided for under Article 22A of the Illinois Pension Code.

(c) Investment proceeds. Subject to the provisions of subsection (d) of this Section, the General Assembly may annually appropriate from the Illinois Power Agency Trust Fund to the Illinois Power Agency Operations Fund an amount not to exceed 90% of the annual investment income earned by the Fund to the Illinois Power Agency. Any investment income not appropriated by the General Assembly in a given fiscal year shall be added to the principal of the Fund, and thereafter considered a part thereof and not subject to appropriation as income earned by the Fund.

(d) Expenditures.

(1) During Fiscal Year 2008 and Fiscal Year 2009, the General Assembly shall not appropriate any of the investment income earned by the Illinois Power Agency Trust Fund to the Illinois Power Agency.

(2) During Fiscal Year 2010 and Fiscal Year 2011, the General Assembly shall appropriate a portion of the investment income earned by the Illinois Power Agency Trust Fund to repay to the General Revenue Fund of the State of Illinois those amounts, if any, appropriated from the General Revenue Fund for the operation of the Illinois Power Agency during Fiscal Year 2008 and Fiscal Year 2009, so that at the end of Fiscal Year 2011, the entire amount, if any, appropriated from the General Revenue Fund for the operation of the Illinois Power Agency during Fiscal Year 2008 and Fiscal Year 2009 will be repaid in full to the General Revenue Fund.

(3) In Fiscal Year 2012 and thereafter, the General Assembly shall consider the need to balance its appropriations from the investment income earned by the Fund with the need to provide for the growth of the principal of the Illinois Power Agency Trust Fund in order to ensure that the Fund is able to produce sufficient investment income to fund the operations of the Illinois Power Agency in future years.

(4) If the Illinois Power Agency shall cease operations, then, unless otherwise provided for by law or appropriation, the principal and any investment income earned by the Fund shall be transferred into the Supplemental Low-Income Energy Assistance Program (LIHEAP) Fund under Section 13 of the Energy Assistance Act of 1989.

(e) Implementation. The provisions of this Section shall not be operative until the Illinois Power Agency Trust Fund has accumulated a principal balance of $25,000,000.

(30 ILCS 105/8h)

Sec. 8h. Transfers to General Revenue Fund.

(a) Except as otherwise provided in this Section and Section 8n of this Act, and ~~(c), (d), or (e),~~ notwithstanding any other State law to the contrary, the Governor may, through June 30, 2007, from time to time direct the State Treasurer and Comptroller to transfer a specified sum from any fund held by the State Treasurer to the General Revenue Fund in order to help defray the State's operating costs for the fiscal year. The total transfer under this Section from any fund in any fiscal year shall not exceed the lesser of (i) 8% of the revenues to be deposited into the fund during that fiscal year or (ii) an amount that leaves a remaining fund balance of 25% of the July 1 fund balance of that fiscal year. In fiscal year 2005 only, prior to calculating the July 1, 2004 final balances, the Governor may calculate and direct the State Treasurer with the Comptroller to transfer additional amounts determined by applying the formula authorized in Public Act 93-839 to the funds balances on July 1, 2003. No transfer may be made from a fund under this Section that would have the effect of reducing the available balance in the fund to an amount less than the amount remaining unexpended and unreserved from the total appropriation from that fund estimated to be expended for that fiscal year. This Section does not apply to any funds that are restricted by federal law to a specific use, to any funds in the Motor Fuel Tax Fund, the Intercity Passenger Rail Fund, the Hospital Provider Fund, the Medicaid Provider Relief Fund, the Teacher

Health Insurance Security Fund, the Reviewing Court Alternative Dispute Resolution Fund, the Voters' Guide Fund, the Foreign Language Interpreter Fund, the Lawyers' Assistance Program Fund, the Supreme Court Federal Projects Fund, the Supreme Court Special State Projects Fund, the Supplemental Low-Income Energy Assistance Fund, the Good Samaritan Energy Trust Fund, the Low-Level Radioactive Waste Facility Development and Operation Fund, the Horse Racing Equity Trust Fund, or the Hospital Basic Services Preservation Fund, or to any funds to which subsection (f) of Section 20-40 of the Nursing and Advanced Practice Nursing Act applies. No transfers may be made under this Section from the Pet Population Control Fund. Notwithstanding any other provision of this Section, for fiscal year 2004, the total transfer under this Section from the Road Fund or the State Construction Account Fund shall not exceed the lesser of (i) 5% of the revenues to be deposited into the fund during that fiscal year or (ii) 25% of the beginning balance in the fund. For fiscal year 2005 through fiscal year 2007, no amounts may be transferred under this Section from the Road Fund, the State Construction Account Fund, the Criminal Justice Information Systems Trust Fund, the Wireless Service Emergency Fund, or the Mandatory Arbitration Fund.

In determining the available balance in a fund, the Governor may include receipts, transfers into the fund, and other resources anticipated to be available in the fund in that fiscal year.

The State Treasurer and Comptroller shall transfer the amounts designated under this Section as soon as may be practicable after receiving the direction to transfer from the Governor.

(a-5) Transfers directed to be made under this Section on or before February 28, 2006 that are still pending on May 19, 2006 (the effective date of Public Act 94-774) ~~this amendatory Act of the 94th General Assembly~~ shall be redirected as provided in Section 8n of this Act.

(b) This Section does not apply to: (i) the Ticket For The Cure Fund; (ii) any fund established under the Community Senior Services and Resources Act; or (iii) on or after January 1, 2006 (the effective date of Public Act 94-511), the Child Labor and Day and Temporary Labor Enforcement Fund.

(c) This Section does not apply to the Demutualization Trust Fund established under the Uniform Disposition of Unclaimed Property Act.

(d) This Section does not apply to moneys set aside in the Illinois State Podiatric Disciplinary Fund for podiatric scholarships and residency programs under the Podiatric Scholarship and Residency Act.

(e) Subsection (a) does not apply to, and no transfer may be made under this Section from, the Pension Stabilization Fund.

(f) Subsection (a) does not apply to, and no transfer may be made under this Section from, the Illinois Power Agency Operations Fund, the Illinois Power Agency Facilities Fund, the Illinois Power Agency Debt Service Fund, and the Illinois Power Agency Trust Fund.

(Source: P.A. 93-32, eff. 6-20-03; 93-659, eff. 2-3-04; 93-674, eff. 6-10-04; 93-714, eff. 7-12-04; 93-801, eff. 7-22-04; 93-839, eff. 7-30-04; 93-1054, eff. 11-18-04; 93-1067, eff. 1-15-05; 94-91, eff. 7-1-05; 94-120, eff. 7-6-05; 94-511, eff. 1-1-06; 94-535, eff. 8-10-05; 94-639, eff. 8-22-05; 94-645, eff. 8-22-05; 94-648, eff. 1-1-06; 94-686, eff. 11-2-05; 94-691, eff. 11-2-05; 94-726, eff. 1-20-06; 94-773, eff. 5-18-06; 94-774, eff. 5-19-06; 94-804, eff. 5-26-06; 94-839, eff. 6-6-06; revised 6-19-06.)

Section 5-925. The Illinois Procurement Code is amended by changing Sections 1-10, 1-15.15, 1-15.25, 15-1, 20-10, 30-20, 30-22, 30-25, 35-15, 35-20, 35-25, 35-30, 35-35, 35-40, and 50-70 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.

(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.

(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.

(Source: P.A. 91-627, eff. 8-19-99; 91-904, eff. 7-6-00; 92-797, eff. 8-15-02.)

(30 ILCS 500/1-15.15)

Sec. 1-15.15. Chief Procurement Officer. "Chief Procurement Officer" means:

(1) for procurements for construction and construction-related services committed by law to the jurisdiction or responsibility of the Capital Development Board, the executive director of the Capital Development Board.

(2) for procurements for all construction, construction-related services, operation of any facility, and the provision of any service or activity committed by law to the jurisdiction or responsibility of the Illinois Department of Transportation, including the direct or reimbursable expenditure of all federal funds for which the Department of Transportation is responsible or accountable for the use thereof in accordance with federal law, regulation, or procedure, the Secretary of Transportation.

(3) for all procurements made by a public institution of higher education, a representative designated by the Governor.

(4) for all procurements made by the Illinois Power Agency, the Director of the Illinois Power Agency.

(5) ~~(4)~~ for all other procurements, the Director of the Department of Central Management Services.

(Source: P.A. 90-572, eff. 2-6-98.)

(30 ILCS 500/1-15.25)

Sec. 1-15.25. Construction agency. "Construction agency" means the Capital Development Board for construction or remodeling of State-owned facilities; the Illinois Department of Transportation for construction or maintenance of roads, highways, bridges, and airports; the Illinois Toll Highway Authority for construction or maintenance of toll highways; the Illinois Power Agency for construction, maintenance, and expansion of Agency-owned facilities, as defined in Section 1-10 of the Illinois Power Agency Act; and any other State agency entering into construction contracts as authorized by law or by delegation from the chief procurement officer.

(Source: P.A. 90-572, eff. 2-6-98.)

(30 ILCS 500/15-1)

Sec. 15-1. Publisher. The Department of Central Management Services is the State agency responsible for publishing its volumes of the Illinois Procurement Bulletin. The Capital Development Board is responsible for publishing its volumes of the Illinois Procurement Bulletin. The Department of Transportation is responsible for publishing its volumes of the Illinois Procurement Bulletin. The higher education chief procurement officer is responsible for publishing the higher education volumes of the Illinois Procurement Bulletin. The Illinois Power Agency is the State agency responsible for publishing its volumes of the Illinois Procurement Bulletin.

Each volume of the Illinois Procurement Bulletin shall be available electronically and may be available in print. References in this Code to the publication and distribution of the Illinois Procurement Bulletin include both its print and electronic formats.

(Source: P.A. 90-572, eff. date - See Sec. 99-5.)

(30 ILCS 500/20-10)

Sec. 20-10. Competitive sealed bidding.

(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 Section 1-75(a) of the Illinois Power Agency Act and Section 16-111.5(c) of the Public Utilities 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.

(Source: P.A. 90-572, eff. date - See Sec. 99-5.)

(30 ILCS 500/30-20)

Sec. 30-20. Prequalification.

(a) The Capital Development Board shall promulgate rules for the development of prequalified supplier lists for construction and construction-related professional services and the periodic updating of those lists. Construction and construction-related professional services contracts over $25,000 may be awarded to any qualified suppliers.

(b) The Illinois Power Agency shall promulgate rules for the development of prequalified supplier lists for construction and construction-related professional services and the periodic updating of those lists. Construction and construction related professional services contracts over $25,000 may be awarded to any qualified suppliers, pursuant to a competitive bidding process.

(Source: P.A. 90-572, eff. date - See Sec. 99-5.)

(30 ILCS 500/30-22)

Sec. 30-22. Construction contracts; responsible bidder requirements. To be considered a responsible bidder on a construction contract for purposes of this Code, a bidder must comply with all of the following requirements and must present satisfactory evidence of that compliance to the appropriate construction agency:

(1) The bidder must comply with all applicable laws concerning the bidder's entitlement to conduct business in Illinois.

(2) The bidder must comply with all applicable provisions of the Prevailing Wage Act.

(3) The bidder must comply with Subchapter VI ("Equal Employment Opportunities") of Chapter 21 of Title 42 of the United States Code (42 U.S.C. 2000e and following) and with Federal Executive Order No. 11246 as amended by Executive Order No. 11375.

(4) The bidder must have a valid Federal Employer Identification Number or, if an individual, a valid Social Security Number.

(5) The bidder must have a valid certificate of insurance showing the following

coverages: general liability, professional liability, product liability, workers' compensation, completed operations, hazardous occupation, and automobile.

(6) The bidder and all bidder's subcontractors must participate in applicable apprenticeship and training programs approved by and registered with the United States Department of Labor's Bureau of Apprenticeship and Training.

(7) For contracts with the Illinois Power Agency, the Director of the Illinois Power Agency may establish additional requirements for responsible bidders. These additional requirements, if established, 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.

The provisions of this Section shall not apply to federally funded construction projects if such application would jeopardize the receipt or use of federal funds in support of such a project.

(Source: P.A. 93-642, eff. 6-1-04.)

(30 ILCS 500/30-25)

Sec. 30-25. Retention of a percentage of contract price. Whenever any contract entered into by a construction agency for the repair, remodeling, renovation, or construction of a building or structure, for the construction or maintenance of a highway, as those terms are defined in Article 2 of the Illinois Highway Code, for the construction or maintenance of facilities as that term is defined under Section 1-10 of the Illinois Power Agency Act, or for the reclamation of abandoned lands as those terms are defined in Article I of the Abandoned Mined Lands and Water Reclamation Act provides for the retention of a percentage of the contract price until final completion and acceptance of the work, upon the request of the contractor and with the approval of the construction agency the amount so retained may be deposited under a trust agreement with an Illinois bank or financial institution of the contractor's choice and subject to the approval of the construction agency. The contractor shall receive any interest on the deposited amount. Upon application by the contractor, the trust agreement must contain, at a minimum, the following provisions:

(1) the amount to be deposited subject to the trust;

(2) the terms and conditions of payment in case of default by the contractor;

(3) the termination of the trust agreement upon completion of the contract; and

(4) the contractor shall be responsible for obtaining the written consent of the bank trustee and for any costs or service fees.

The trust agreement may, at the discretion of the construction agency and upon request of the contractor, become effective at the time of the first partial payment in accordance with existing statutes and rules.

(Source: P.A. 90-572, eff. date - See Sec. 99-5.)

(30 ILCS 500/35-15)

Sec. 35-15. Prequalification.

(a) The Director of Central Management Services, the Illinois Power Agency, and the higher education chief procurement officer shall each develop appropriate and reasonable prequalification standards and categories of professional and artistic services.

(b) The prequalifications and categorizations shall be submitted to the Procurement Policy Board and published for public comment prior to their submission to the Joint Committee on Administrative Rules for approval.

(c) The Director of Central Management Services, the Illinois Power Agency, and the higher education chief procurement officer shall each also assemble and maintain a comprehensive list of prequalified and categorized businesses and persons.

(d) Prequalification shall not be used to bar or prevent any qualified business or person for bidding or responding to invitations for bid or proposal.

(Source: P.A. 90-572, eff. date - See Sec. 99-5.)

(30 ILCS 500/35-20)

Sec. 35-20. Uniformity in procurement.

(a) The Director of Central Management Services, the Illinois Power Agency, and the higher education chief procurement officer shall each develop, cause to be printed, and distribute uniform documents for the solicitation, review, and acceptance of all professional and artistic services.

(b) All chief procurement officers, State purchasing officers, and their designees shall use the appropriate uniform procedures and forms specified in this Code for all professional and artistic services.

(c) These forms shall include in detail, in writing, at least:

(1) a description of the goal to be achieved;

(2) the services to be performed;

(3) the need for the service;

(4) the qualifications that are necessary; and

(5) a plan for post-performance review.

(Source: P.A. 90-572, eff. date - See Sec. 99-5.)

(30 ILCS 500/35-25)

Sec. 35-25. Uniformity in contract.

(a) The Director of Central Management Services, the Illinois Power Agency, and the higher education chief procurement officer shall each develop, cause to be printed, and distribute uniform documents for the contracting of professional and artistic services.

(b) All chief procurement officers, State purchasing officers, and their designees shall use the appropriate uniform contracts and forms in contracting for all professional and artistic services.

(c) These contracts and forms shall include in detail, in writing, at least:

(1) the detail listed in subsection (c) of Section 35-20;

(2) the duration of the contract, with a schedule of delivery, when applicable;

(3) the method for charging and measuring cost (hourly, per day, etc.);

(4) the rate of remuneration; and

(5) the maximum price.

(Source: P.A. 90-572, eff. date - See Sec. 99-5.)

(30 ILCS 500/35-30)

Sec. 35-30. Awards.

(a) All State contracts for professional and artistic services, except as provided in this Section, shall be awarded using the competitive request for proposal process outlined in this Section.

(b) For each contract offered, the chief procurement officer, State purchasing officer, or his or her designee shall use the appropriate standard solicitation forms available from the Department of Central Management Services, the Illinois Power Agency, or the higher education chief procurement officer.

(c) Prepared forms shall be submitted to the Department of Central Management Services, the Illinois Power Agency, or the higher education chief procurement officer, whichever is appropriate, for publication in its Illinois Procurement Bulletin and circulation to the Department of Central Management Services' or the higher education chief procurement officer's list of prequalified vendors. Notice of the offer or request for proposal shall appear at least 14 days before the response to the offer is due.

(d) All interested respondents shall return their responses to the Department of Central Management Services, the Illinois Power Agency, or the higher education chief procurement officer, whichever is appropriate, which shall open and record them. The Department or higher education chief procurement officer then shall forward the responses, together with any information it has available about the qualifications and other State work of the respondents.

(e) After evaluation, ranking, and selection, the responsible chief procurement officer, State purchasing officer, or his or her designee shall notify the Department of Central Management Services, the Illinois Power Agency, or the higher education chief procurement officer, whichever is appropriate, of the successful respondent and shall forward a copy of the signed contract for the Department's, Agency's, or higher education chief procurement officer's file. The Department, Agency, or higher education chief procurement officer shall publish the names of the responsible procurement decision-maker, the agency letting the contract, the successful respondent, a contract reference, and value of the let contract in the next appropriate volume of the Illinois Procurement Bulletin.

(f) For all professional and artistic contracts with annualized value that exceeds $25,000, evaluation and ranking by price are required. Any chief procurement officer or State purchasing officer, but not their designees, may select an offeror other than the lowest bidder by price. In any case, when the contract exceeds the $25,000 threshold ~~threshhold~~ and the lowest bidder is not selected, the chief procurement officer or the State purchasing officer shall forward together with the contract notice of who the low bidder was and a written decision as to why another was selected to the Department of Central Management Services , the Illinois Power Agency, or the higher education chief procurement officer, whichever is appropriate. The Department, Agency, or higher education chief procurement officer shall publish as provided in subsection (e) of Section 35-30, but shall include notice of the chief procurement officer's or State purchasing officer's written decision.

(g) The Department of Central Management Services, the Illinois Power Agency, and higher education chief procurement officer may each refine, but not contradict, this Section by promulgating rules for submission to the Procurement Policy Board and then to the Joint Committee on Administrative Rules. Any refinement shall be based on the principles and procedures of the federal Architect-Engineer Selection Law, Public Law 92-582 Brooks Act, and the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act; except that pricing shall be an integral part of the selection process.

(Source: P.A. 90-572, eff. date - See Sec. 99-5; revised 10-19-05.)

(30 ILCS 500/35-35)

Sec. 35-35. Exceptions.

(a) Exceptions to Section 35-30 are allowed for sole source procurements, emergency procurements, and at the discretion of the chief procurement officer or the State purchasing officer, but not their designees, for professional and artistic contracts that are nonrenewable, one year or less in duration, and have a value of less than $20,000.

(b) All exceptions granted under this Article must still be submitted to the Department of Central Management Services, the Illinois Power Agency, or the higher education chief procurement officer, whichever is appropriate, and published as provided for in subsection (f) of Section 35-30, shall name the authorizing chief procurement officer or State purchasing officer, and shall include a brief explanation of the reason for the exception.

(Source: P.A. 90-572, eff. date - See Sec. 99-5.)

(30 ILCS 500/35-40)

Sec. 35-40. Subcontractors.

(a) Any contract granted under this Article shall state whether the services of a subcontractor will be used. The contract shall include the names and addresses of all subcontractors and the expected amount of money each will receive under the contract.

(b) If at any time during the term of a contract, a contractor adds or changes any subcontractors, he or she shall promptly notify, in writing, the Department of Central Management Services, the Illinois Power Agency, or the higher education chief procurement officer, whichever is appropriate, and the responsible chief procurement officer, State purchasing officer, or their designee of the names and addresses and the expected amount of money each new or replaced subcontractor will receive.

(Source: P.A. 90-572, eff. date - See Sec. 99-5.)

(30 ILCS 500/50-70)

Sec. 50-70. Additional provisions. This Code is subject to applicable provisions of the following Acts:

(1) Article 33E of the Criminal Code of 1961;

(2) the Illinois Human Rights Act;

(3) the Discriminatory Club Act;

(4) the Illinois Governmental Ethics Act;

(5) the State Prompt Payment Act;

(6) the Public Officer Prohibited Activities Act; ~~and~~

(7) the Drug Free Workplace Act; and ~~.~~

(8) the Illinois Power Agency Act.

(Source: P.A. 90-572, eff. 2-6-98.)

Section 5-930. The State Property Control Act is amended by changing Section 1.02 as follows:

(30 ILCS 605/1.02) (from Ch. 127, par. 133b3)

Sec. 1.02. "Property" means State owned property and includes all real estate, with the exception of rights of way for State water resource and highway improvements, traffic signs and traffic signals, and with the exception of common school property; and all tangible personal property with the exception of properties specifically exempted by the administrator, provided that any property originally classified as real property which has been detached from its structure shall be classified as personal property.

"Property" does not include property owned by the Illinois Medical District Commission and leased or occupied by others for purposes permitted under the Illinois Medical District Act. "Property" also does not include property owned and held by the Illinois Medical District Commission for redevelopment.

"Property" does not include property described under Section 5 of Public Act 92-371 with respect to depositing the net proceeds from the sale or exchange of the property as provided in Section 10 of that Act.

"Property" does not include that property described under Section 5 of Public Act 94-405 ~~this amendatory Act of the 94th General Assembly~~.

"Property" does not include real property owned or operated by the Illinois Power Agency or any electricity generated on that real property or by the Agency. For purposes of this subsection only, "real property" includes any interest in land, all buildings and improvements located thereon, and all fixtures and equipment used or designed for the production and transmission of electricity located thereon.

(Source: P.A. 94-405, eff. 8-2-05; revised 8-31-05.)

Section 5-935. The Public Utilities Act is amended by changing Sections 3-105, 4-404, 4-502, 8-403, 16-101A, 16-111, and 16-113 and by adding Sections 12-103, 16-103.1, 16-111.5, 16-111.5A, 16-111.6, 16-126.1, and 16-127 as follows:

(220 ILCS 5/3-105) (from Ch. 111 2/3, par. 3-105)

Sec. 3-105. Public utility.

(a) "Public utility" means and includes, except where otherwise expressly provided in this Section, every corporation, company, limited liability company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees, or receivers appointed by any court whatsoever that owns, controls, operates or manages, within this State, directly or indirectly, for public use, any plant, equipment or property used or to be used for or in connection with, or owns or controls any franchise, license, permit or right to engage in:

(1) ~~a.~~ the production, storage, transmission, sale, delivery or furnishing of heat, cold, power, electricity, water, or light, except when used solely for communications purposes;

(2) ~~b.~~ the disposal of sewerage; or

(3) ~~c.~~ the conveyance of oil or gas by pipe line.

(b) "Public utility" does not include, however:

(1) ~~-~~ public utilities that are owned and operated by any political subdivision, public institution of higher education or municipal corporation of this State, or public utilities that are owned by such political subdivision, public institution of higher education, or municipal corporation and operated by any of its lessees or operating agents;

(2) ~~-~~ water companies which are purely mutual concerns, having no rates or charges for services, but paying the operating expenses by assessment upon the members of such a company and no other person;

(3) ~~-~~ electric cooperatives as defined in Section 3-119;

(4) ~~-~~ the following natural gas cooperatives:

(A) residential natural gas cooperatives that are not-for-profit corporations established for the purpose of administering and operating, on a cooperative basis, the furnishing of natural gas to residences for the benefit of their members who are residential consumers of natural gas. For entities qualifying as residential natural gas cooperatives and recognized by the Illinois Commerce Commission as such, the State shall guarantee legally binding contracts entered into by residential natural gas cooperatives for the express purpose of acquiring natural gas supplies for their members. The Illinois Commerce Commission shall establish rules and regulations providing for such guarantees. The total liability of the State in providing all such guarantees shall not at any time exceed $1,000,000, nor shall the State provide such a guarantee to a residential natural gas cooperative for more than 3 consecutive years; and

(B) natural gas cooperatives that are not-for-profit corporations operated for the purpose of administering, on a cooperative basis, the furnishing of natural gas for the benefit of their members and that, prior to 90 days after the effective date of this amendatory Act of the 94th General Assembly, either had acquired or had entered into an asset purchase agreement to acquire all or substantially all of the operating assets of a public utility or natural gas cooperative with the intention of operating those assets as a natural gas cooperative;

(5) ~~-~~ sewage disposal companies which provide sewage disposal services on a mutual basis without establishing rates or charges for services, but paying the operating expenses by assessment upon the members of the company and no others;

(6) ~~-~~ (Blank);

(7) ~~-~~ cogeneration facilities, small power production facilities, and other qualifying facilities, as defined in the Public Utility Regulatory Policies Act and regulations promulgated thereunder, except to the extent State regulatory jurisdiction and action is required or authorized by federal law, regulations, regulatory decisions or the decisions of federal or State courts of competent jurisdiction;

(8) ~~-~~ the ownership or operation of a facility that sells compressed natural gas at retail to the public for use only as a motor vehicle fuel and the selling of compressed natural gas at retail to the public for use only as a motor vehicle fuel; ~~and~~

(9) ~~-~~ alternative retail electric suppliers as defined in Article XVI ; and ~~-~~

(10) the Illinois Power Agency.

(Source: P.A. 94-738, eff. 5-4-06.)

(220 ILCS 5/4-404)

Sec. 4-404. Protection of confidential and proprietary information. The Commission shall provide adequate protection for confidential and proprietary information furnished, delivered or filed by any person, corporation or other entity, including proprietary information provided to the Commission by the Illinois Power Agency.

(Source: P.A. 90-561, eff. 12-16-97.)

(220 ILCS 5/4-502)

Sec. 4-502. Small public utility or telecommunications carrier; acquisition by capable utility; Commission determination; procedure.

(a) The Commission may provide for the acquisition of a small public utility or telecommunications carrier by a capable public utility or telecommunications carrier, if the Commission, after notice and an opportunity to be heard, determines one or more of the following:

(1) the small public utility or telecommunications carrier is failing to provide safe, adequate, or reliable service;

(2) the small public utility or telecommunications carrier no longer possesses sufficient technical, financial, or managerial resources and abilities to provide the service or services for which its certificate was originally granted;

(3) the small public utility or telecommunications carrier has been actually or effectively abandoned by its owners or operators;

(4) the small public utility or telecommunications carrier has defaulted on a bond, note, or loan issued or guaranteed by a department, office, commission, board, authority, or other unit of State government;

(5) the small public utility or telecommunications carrier has wilfully failed to comply with any provision of this Act, any other provision of State or federal law, or any rule, regulation, order, or decision of the Commission; or

(6) the small public utility or telecommunications carrier has wilfully allowed property owned or controlled by it to be used in violation of this Act, any other provision of State or federal law, or any rule, regulation, order, or decision of the Commission.

(b) As used in this Section, "small public utility or telecommunications carrier" means a public utility or telecommunications carrier that regularly provides service to fewer than 7,500 customers.

(c) In making a determination under subsection (a), the Commission shall consider all of the following:

(1) The financial, managerial, and technical ability of the small public utility or telecommunications carrier.

(2) The financial, managerial, and technical ability of all proximate public utilities or telecommunications carriers providing the same type of service.

(3) The expenditures that may be necessary to make improvements to the small public utility or telecommunications carrier to assure compliance with applicable statutory and regulatory standards concerning the adequacy, efficiency, safety, or reasonableness of utility service.

(4) The expansion of the service territory of the acquiring capable public utility or telecommunications carrier to include the service area of the small public utility or telecommunications carrier to be acquired.

(5) Whether the rates charged by the acquiring capable public utility or telecommunications carrier to its acquisition customers will increase unreasonably because of the acquisition.

(6) Any other matter that may be relevant.

(d) For the purposes of this Section, a "capable public utility or telecommunications carrier" means a public utility, as defined under Section 3-105 of this Act, including those entities listed in items (1) through (5) of subsection (b) ~~subsections 1 through 5~~ of Section 3-105, or a telecommunications carrier, as defined under Section 13-202 of this Act, including those entities listed in subsections (a) and (b) of Section 13-202, that:

(1) regularly provides the same type of service as the small public utility or telecommunications carrier, to 7,500 or more customers, and provides safe, adequate, and reliable service to those customers; however, public utility or telecommunications carrier that would otherwise be a capable public utility except for the fact that it has fewer than 7,500 customers may elect to be a capable public utility or telecommunications carrier for the purposes of this Section regardless of the number of its customers and regardless of whether or not it is proximate to the small public utility or telecommunications carrier to be acquired;

(2) is not an affiliated interest of the small public utility or telecommunications carrier;

(3) agrees to acquire the small public utility or telecommunications carrier that is the subject of the proceeding, under the terms and conditions contained in the Commission order approving the acquisition; and

(4) is financially, managerially, and technically capable of acquiring and operating the small public utility or telecommunications carrier in compliance with applicable statutory and

regulatory standards.

(e) The Commission may, on its own motion or upon petition, initiate a proceeding in order to determine whether an order of acquisition should be entered. Upon the establishment of a prima facie case that the acquisition of the small public utility or telecommunications carrier would be in the public interest and in compliance with the provisions of this Section all of the following apply:

(1) The small public utility or telecommunications carrier that is the subject of the acquisition proceedings has the burden of proving its ability to render safe, adequate, and reliable service at just and reasonable rates.

(2) The small public utility or telecommunications carrier that is the subject of the acquisition proceedings may present evidence to demonstrate the practicality and feasibility of the following alternatives to acquisition:

(A) the reorganization of the small public utility or telecommunications carrier under new management;

(B) the entering of a contract with another public utility, telecommunications carrier, or a management or service company to operate the small public utility or telecommunications carrier;

(C) the appointment of a receiver to operate the small public utility or telecommunications carrier, in accordance with the provisions of Section 4-501 of this Act; or

(D) the merger of the small public utility or telecommunications carrier with one or more other public utilities or telecommunications carriers.

(3) A public utility or telecommunications carrier that desires to acquire the small public utility or telecommunications carrier has the burden of proving that it is a capable public utility or telecommunications carrier.

(f) Subject to the determinations and considerations required by subsections (a), (b), (c), (d) and (e) of this Section, the Commission shall issue an order concerning the acquisition of the small public utility or telecommunications carrier by a capable public utility or telecommunications carrier. If the Commission finds that the small public utility or telecommunications carrier should be acquired by the capable public utility or telecommunications carrier, the order shall also provide for the extension of the service area of the acquiring capable public utility or telecommunications carrier.

(g) The price for the acquisition of the small public utility or telecommunications carrier shall be determined by agreement between the small public utility or telecommunications carrier and the acquiring capable public utility or telecommunications carrier subject to a determination by the Commission that the price is reasonable. If the small public utility or telecommunications carrier and the acquiring capable public utility or telecommunications carrier are unable to agree on the acquisition price or the Commission disapproves the acquisition price upon which they have agreed, the Commission shall issue an order directing the acquiring capable public utility or telecommunications carrier to acquire the small public utility or telecommunications carrier by following the procedure prescribed for the exercise of the powers of eminent domain under Section 8-509 of this Act.

(h) The Commission may, in its discretion and for a reasonable period of time after the date of acquisition, allow the acquiring capable public utility or telecommunications carrier to charge and collect rates from the customers of the acquired small public utility or telecommunications carrier under a separate tariff.

(i) A capable public utility or telecommunications carrier ordered by the Commission to acquire a small public utility or telecommunications carrier shall submit to the Commission for approval before the acquisition a plan, including a timetable, for bringing the small public utility or telecommunications carrier into compliance with applicable statutory and regulatory standards.

(Source: P.A. 91-357, eff. 7-29-99.)

(220 ILCS 5/8-403) (from Ch. 111 2/3, par. 8-403)

Sec. 8-403. The Commission shall design and implement policies which encourage the economical utilization of cogeneration and small power production, as these terms are defined in Section 3-105, item (7) of subsection (b) ~~paragraph 7~~, including specifically, but not limited to, the cogeneration or production of heat, steam or electricity by municipal corporations or any other political subdivision of this State. No public utility shall discriminate in any way with respect to the conditions or price for provision of maintenance power, standby power and supplementary power as these terms are defined by current Commission rules, or for any other service. The prices charged by a utility for maintenance power, standby power, supplementary power and all other such services shall be cost-based and just and reasonable.

The Commission shall conduct a study of procedures and policies to encourage the full and economical utilization of cogeneration and small power production including, but not limited to, (1)

requiring utilities to pay full avoided costs, including long-term avoided capacity costs to cogenerators and small power producers and (2) requiring utilities to make available upon request of the State or a unit of local government, transmission and distribution services to transmit electrical energy produced by cogeneration or small power production facilities located in any structure or on any real property of the State or unit of local government to other locations of this State or a unit of local government. The Commission shall report on this study, with recommendation for legislative consideration, to the General Assembly by March 1, 1986.

(Source: P.A. 84-1118.)

(220 ILCS 5/12-103 new)

Sec. 12-103. Energy efficiency and demand-response measures.

(a) It is the policy of the State that electric utilities are required to use cost-effective energy efficiency and demand-response measures to reduce delivery load. Requiring investment in cost-effective energy efficiency and demand-response measures will reduce direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure. It serves the public interest to allow electric utilities to recover costs for reasonably and prudently incurred expenses for energy efficiency and demand-response measures. As used in this Section, "cost-effective" means that the measures satisfy the total resource cost test. The low-income measures described in subsection (f)(4) of this Section shall not be required to meet the total resource cost test. For purposes of this Section, the terms "energy-efficiency", "demand-response", and "total resource cost test" shall have the meanings set forth in the Illinois Power Agency Act. For purposes of this Section, the amount per kilowatthour means the total amount paid for electric service expressed on a per kilowatthour basis. For purposes of this Section, the total amount paid for electric service includes without limitation estimated amounts paid for supply, transmission, distribution, surcharges, and add-on-taxes.

(b) Electric utilities shall implement cost-effective energy efficiency measures to meet the following incremental annual energy savings goals:

(1) 0.2% of energy delivered in the year commencing June 1, 2008;

(2) 0.4% of energy delivered in the year commencing June 1, 2009;

(3) 0.6% of energy delivered in the year commencing June 1, 2010;

(4) 0.8% of energy delivered in the year commencing June 1, 2011;

(5) 1% of energy delivered in the year commencing June 1, 2012;

(6) 1.4% of energy delivered in the year commencing June 1, 2013;

(7) 1.8% of energy delivered in the year commencing June 1, 2014; and

(8) 2% of energy delivered in the year commencing June 1, 2015 and each year thereafter.

(c) Electric utilities shall implement cost-effective demand-response measures to reduce peak demand by 0.1% over the prior year for eligible retail customers, as defined in Section 16-111.5 of this Act. This requirement commences June 1, 2008 and continues for 10 years.

(d) Notwithstanding the requirements of subsections (b) and (c) of this Section, an electric utility shall reduce the amount of energy efficiency and demand-response measures implemented in any single year by an amount necessary to limit the estimated average increase in the amounts paid by retail customers in connection with electric service due to the cost of those measures to:

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

(2) 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;

(3) 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;

(4) 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

(5) thereafter, the amount of energy efficiency and demand-response measures implemented for any single year shall be reduced by an amount necessary to limit the estimated average net increase due to the cost of these measures 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 measures in 2011.

No later than June 30, 2011, the Commission shall review the limitation on the amount of energy

efficiency and demand-response measures implemented pursuant to this Section and report to the General Assembly its findings as to whether that limitation unduly constrains the procurement of energy efficiency and demand-response measures.

(e) Electric utilities shall be responsible for overseeing the design, development, and filing of energy efficiency and demand-response plans with the Commission. Electric utilities shall implement 100% of the demand-response measures in the plans. Electric utilities shall implement 75% of the energy efficiency measures approved by the Commission, and may, as part of that implementation, outsource various aspects of program development and implementation. The remaining 25% of those energy efficiency measures approved by the Commission shall be implemented by the Department of Commerce and Economic Opportunity, and must be designed in conjunction with the utility and the filing process. The Department may outsource development and implementation of energy efficiency measures. A minimum of 10% of the entire portfolio of cost-effective energy efficiency measures shall be procured from units of local government, municipal corporations, school districts, and community college districts. The Department shall coordinate the implementation of these measures.

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

The details of the measures implemented by the Department shall be submitted by the Department to the Commission in connection with the utility's filing regarding the energy efficiency and demand-response measures that the utility implements.

A utility providing approved energy efficiency and demand-response measures in the State shall be permitted to recover costs of those measures through an automatic adjustment clause tariff filed with and approved by the Commission. The tariff shall be established outside the context of a general rate case. Each year the Commission shall initiate a review to reconcile any amounts collected with the actual costs and to determine the required adjustment to the annual tariff factor to match annual expenditures.

Each utility shall include, in its recovery of costs, the costs estimated for both the utility's and the Department's implementation of energy efficiency and demand-response measures. Costs collected by the utility for measures implemented by the Department shall be submitted to the Department pursuant to Section 605-323 of the Civil Administrative Code of Illinois and shall be used by the Department solely for the purpose of implementing these measures. A utility shall not be required to advance any moneys to the Department but only to forward such funds as it has collected. The Department shall report to the Commission on an annual basis regarding the costs actually incurred by the Department in the implementation of the measures. Any changes to the costs of energy efficiency measures as a result of plan modifications shall be appropriately reflected in amounts recovered by the utility and turned over to the Department.

The portfolio of measures, administered by both the utilities and the Department, shall, in combination, be designed to achieve the annual savings targets described in subsections (b) and (c) of this Section, as modified by subsection (d) of this Section.

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

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

If the Department is unable to meet incremental annual performance goals for the portion of the portfolio implemented by the Department, then the utility and the Department shall jointly submit a modified filing to the Commission explaining the performance shortfall and recommending an appropriate course going forward, including any program modifications that may be appropriate in light of the evaluations conducted under item (7) of subsection (f) of this Section. In this case, the utility obligation to collect the Department's costs and turn over those funds to the Department under this subsection (e) shall continue only if the Commission approves the modifications to the plan proposed by the Department.

(f) No later than November 15, 2007, each electric utility shall file an energy efficiency and demand-response plan with the Commission to meet the energy efficiency and demand-response standards for 2008 through 2010. Every 3 years thereafter, each electric utility shall file an energy efficiency and demand-response plan with the Commission. If a utility does not file such a plan, it shall

face a penalty of $100,000 per day until the plan is filed. Each utility's plan shall set forth the utility's proposals to meet the utility's portion of the energy efficiency standards identified in subsection (b) and the demand-response standards identified in subsection (c) of this Section as modified by subsections (d) and (e), taking into account the unique circumstances of the utility's service territory. The Commission shall seek public comment on the utility's plan and shall issue an order approving or disapproving each plan within 3 months after its submission. If the Commission disapproves a plan, the Commission shall, within 30 days, describe in detail the reasons for the disapproval and describe a path by which the utility may file a revised draft of the plan to address the Commission's concerns satisfactorily. If the utility does not refile with the Commission within 60 days, the utility shall be subject to penalties at a rate of $100,000 per day until the plan is filed. This process shall continue, and penalties shall accrue, until the utility has successfully filed a portfolio of energy efficiency and demand-response measures. Penalties shall be deposited into the Energy Efficiency Trust Fund. In submitting proposed energy efficiency and demand-response plans and funding levels to meet the savings goals adopted by this Act the utility shall:

(1) Demonstrate that its proposed energy efficiency and demand-response measures will achieve the requirements that are identified in subsections (b) and (c) of this Section, as modified by subsections (d) and (e).

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

(3) Present estimates of the total amount paid for electric service expressed on a per kilowatthour basis associated with the proposed portfolio of measures designed to meet the requirements that are identified in subsections (b) and (c) of this Section, as modified by subsections (d) and (e).

(4) Coordinate with the Department and the Department of Healthcare and Family Services to present a portfolio of energy efficiency measures targeted to households at or below 150% of the poverty level at a level proportionate to those households' share of total annual utility revenues in Illinois.

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

(6) Include a proposed cost-recovery tariff mechanism to fund the proposed energy efficiency and demand-response measures and to ensure the recovery of the prudently and reasonably incurred costs of Commission-approved programs.

(7) Provide for an annual independent evaluation of the performance of the cost-effectiveness of the utility's portfolio of measures and the Department's portfolio of measures, as well as a full review of the 3-year results of the broader net program impacts and, to the extent practical, for adjustment of the measures on a going-forward basis as a result of the evaluations. The resources dedicated to evaluation shall not exceed 3% of portfolio resources in any given year.

(g) No more than 3% of energy efficiency and demand-response program revenue may be allocated for demonstration of breakthrough equipment and devices.

(h) This Section does not apply to an electric utility that on December 31, 2005 provided electric service to fewer than 100,000 customers in Illinois.

(i) If, after 2 years, an electric utility fails to meet the efficiency standard specified in subsection (b) of this Section, as modified by subsections (d) and (e), it shall make a contribution to the Low-Income Home Energy Assistance Program. The combined total liability for failure to meet the goal shall be $1,000,000, which shall be assessed as follows: a large electric utility shall pay $665,000, and a medium electric utility shall pay $335,000. If, after 3 years, an electric utility fails to meet the efficiency standard specified in subsection (b) of this Section, as modified by subsections (d) and (e), it shall make a contribution to the Low-Income Home Energy Assistance Program. The combined total liability for failure to meet the goal shall be $1,000,000, which shall be assessed as follows: a large electric utility shall pay $665,000, and a medium electric utility shall pay $335,000. In addition, the responsibility for implementing the energy efficiency measures of the utility making the payment shall be transferred to the Illinois Power Agency if, after 3 years, or in any subsequent 3-year period, the utility fails to meet the efficiency standard specified in subsection (b) of this Section, as modified by subsections (d) and (e). The Agency shall implement a competitive procurement program to procure resources necessary to meet the standards specified in this Section as modified by subsections (d) and (e), with costs for those resources to be recovered in the same manner as products purchased through the procurement plan as provided in Section 16-111.5. The Director shall implement this requirement in connection with the procurement plan as provided in Section 16-111.5.

For purposes of this Section, (i) a "large electric utility" is an electric utility that, on December 31, 2005, served more than 2,000,000 electric customers in Illinois; (ii) a "medium electric utility" is an

electric utility that, on December 31, 2005, served 2,000,000 or fewer but more than 100,000 electric customers in Illinois; and (iii) Illinois electric utilities that are affiliated by virtue of a common parent company are considered a single electric utility.

(j) If, after 3 years, or any subsequent 3-year period, the Department fails to implement the Department's share of energy efficiency measures required by the standards in subsection (b), then the Illinois Power Agency may assume responsibility for and control of the Department's share of the required energy efficiency measures. The Agency shall implement a competitive procurement program to procure resources necessary to meet the standards specified in this Section, with the costs of these resources to be recovered in the same manner as provided for the Department in this Section.

(k) No electric utility shall be deemed to have failed to meet the energy efficiency standards to the extent any such failure is due to a failure of the Department or the Agency.

(220 ILCS 5/16-101A)

Sec. 16-101A. Legislative findings.

(a) The citizens and businesses of the State of Illinois have been well-served by a comprehensive electrical utility system which has provided safe, reliable, and affordable service. The electrical utility system in the State of Illinois has historically been subject to State and federal regulation, aimed at assuring the citizens and businesses of the State of safe, reliable, and affordable service, while at the same time assuring the utility system of a return on its investment.

(b) Competitive forces are affecting the market for electricity as a result of recent federal regulatory and statutory changes and the activities of other states. Competition in the electric services market may create opportunities for new products and services for customers and lower costs for users of electricity. Long-standing regulatory relationships need to be altered to accommodate the competition that could fundamentally alter the structure of the electric services market.

(c) With the advent of increasing competition in this industry, the State has a continued interest in assuring that the safety, reliability, and affordability of electrical power is not sacrificed to competitive pressures, and to that end, intends to implement safeguards to assure that the industry continues to operate the electrical system in a manner that will serve the public's interest. Under the existing regulatory framework, the industry has been encouraged to undertake certain investments in its physical plant and personnel to enhance its efficient operation, the cost of which it has been permitted to pass on to consumers. The State has an interest in providing the existing utilities a reasonable opportunity to obtain a return on certain investments on which they depended in undertaking those commitments in the first instance while, at the same time, not permitting new entrants into the industry to take unreasonable advantage of the investments made by the formerly regulated industry.

(d) A competitive wholesale and retail market must benefit all Illinois citizens. The Illinois Commerce Commission should act to promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers. Consumer protections must be in place to ensure that all customers continue to receive safe, reliable, affordable, and environmentally safe electric service.

(e) All consumers must benefit in an equitable and timely fashion from the lower costs for electricity that result from retail and wholesale competition and receive sufficient information to make informed choices among suppliers and services. The use of renewable resources and energy efficiency resources should be encouraged in competitive markets.

(f) The efficiency of electric markets depends both upon the competitiveness of supply and upon the price-responsiveness of the demand for service. Therefore, to ensure the lowest total cost of service and to enhance the reliability of service, all classes of the electricity customers of electric utilities should have access to and be able to voluntarily use real-time pricing and other price-response and demand-response mechanisms.

(g) Including cost-effective renewable resources in a diverse electricity supply portfolio will reduce long-term direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure. It serves the public interest to allow electric utilities to recover costs for reasonably and prudently incurred expenses for electricity generated by renewable resources.

(Source: P.A. 94-977, eff. 6-30-06.)

(220 ILCS 5/16-103.1 new)

Sec. 16-103.1. Tariffed service to Unit Owners' Associations. An electric utility that serves at least 2,000,000 customers must provide tariffed service to Unit Owners' Associations, as defined by Section 2 of the Condominium Property Act, for condominium properties that are not restricted to nonresidential use at rates that do not exceed on average the rates offered to residential customers on an annual basis. Within 10 days after the effective date of this amendatory Act, the electric utility shall provide the tariffed service to Unit Owners' Associations required by this Section and shall reinstate any residential

all-electric discount applicable to any Unit Owners' Association that received such a discount on December 31, 2006. For purposes of this Section, "residential customers" means those retail customers of an electric utility that receive (i) electric utility service for household purposes distributed to a dwelling of 2 or fewer units that is billed under a residential rate or (ii) electric utility service for household purposes distributed to a dwelling unit or units that is billed under a residential rate and is registered by a separate meter for each dwelling unit.

(220 ILCS 5/16-111)

Sec. 16-111. Rates and restructuring transactions during mandatory transition period; restructuring and other transactions.

(a) During the mandatory transition period, notwithstanding any provision of Article IX of this Act, and except as provided in subsections (b), ~~(d), (e),~~ and (f) of this Section, the Commission shall not (i) initiate, authorize or order any change by way of increase (other than in connection with a request for rate increase which was filed after September 1, 1997 but prior to October 15, 1997, by an electric utility serving less than 12,500 customers in this State), (ii) initiate or, unless requested by the electric utility, authorize or order any change by way of decrease, restructuring or unbundling (except as provided in Section 16-109A), in the rates of any electric utility that were in effect on October 1, 1996, or (iii) in any order approving any application for a merger pursuant to Section 7-204 that was pending as of May 16, 1997, impose any condition requiring any filing for an increase, decrease, or change in, or other review of, an electric utility's rates or enforce any such condition of any such order; provided, however, that this subsection shall not prohibit the Commission from:

(1) approving the application of an electric utility to implement an alternative to rate of return regulation or a regulatory mechanism that rewards or penalizes the electric utility through adjustment of rates based on utility performance, pursuant to Section 9-244;

(2) authorizing an electric utility to eliminate its fuel adjustment clause and adjust its base rate tariffs in accordance with subsection (b), (d), or (f) of Section 9-220 of this Act, to fix its fuel adjustment factor in accordance with subsection (c) of Section 9-220 of this Act, or to eliminate its fuel adjustment clause in accordance with subsection (e) of Section 9-220 of this Act;

(3) ordering into effect tariffs for delivery services and transition charges in accordance with Sections 16-104 and 16-108, for real-time pricing in accordance with Section 16-107, or the options required by Section 16-110 and subsection (n) of 16-112, allowing a billing experiment in accordance with Section 16-106, or modifying delivery services tariffs in accordance with Section 16-109; or

(4) ordering or allowing into effect any tariff to recover charges pursuant to Sections 9-201.5, 9-220.1, 9-221, 9-222 (except as provided in Section 9-222.1), 16-108, and 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.

After December 31, 2004, the provisions of this subsection (a) shall not apply to an electric utility whose average residential retail rate was less than or equal to 90% of the average residential retail rate for the "Midwest Utilities", as that term is defined in subsection (b) of this Section, based on data reported on Form 1 to the Federal Energy Regulatory Commission for calendar year 1995, and which served between 150,000 and 250,000 retail customers in this State on January 1, 1995 unless the electric utility or its holding company has been acquired by or merged with an affiliate of another electric utility subsequent to January 1, 2002. This exemption shall be limited to this subsection (a) and shall not extend to any other provisions of this Act.

(b) Notwithstanding the provisions of subsection (a), each Illinois electric utility serving more than 12,500 customers in Illinois shall file tariffs (i) reducing, effective August 1, 1998, each component of its base rates to residential retail customers by 15% from the base rates in effect immediately prior to January 1, 1998 and (ii) if the public utility provides electric service to (A) more than 500,000 customers but less than 1,000,000 customers in this State on January 1, 1999, reducing, effective May 1, 2002, each component of its base rates to residential retail customers by an additional 5% from the base rates in effect immediately prior to January 1, 1998, or (B) at least 1,000,000 customers in this State on January 1, 1999, reducing, effective October 1, 2001, each component of its base rates to residential retail customers by an additional 5% from the base rates in effect immediately prior to January 1, 1998. Provided, however, that (A) if an electric utility's average residential retail rate is less than or equal to the average residential retail rate for a group of Midwest Utilities (consisting of all investor-owned electric utilities with annual system peaks in excess of 1000 megawatts in the States of Illinois, Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio, and Wisconsin), based on data reported on Form 1 to the Federal Energy Regulatory Commission for calendar year 1995, then it shall only be required to file tariffs (i)

reducing, effective August 1, 1998, each component of its base rates to residential retail customers by 5% from the base rates in effect immediately prior to January 1, 1998, (ii) reducing, effective October 1, 2000, each component of its base rates to residential retail customers by the lesser of 5% of the base rates in effect immediately prior to January 1, 1998 or the percentage by which the electric utility's average residential retail rate exceeds the average residential retail rate of the Midwest Utilities, based on data reported on Form 1 to the Federal Energy Regulatory Commission for calendar year 1999, and (iii) reducing, effective October 1, 2002, each component of its base rates to residential retail customers by an additional amount equal to the lesser of 5% of the base rates in effect immediately prior to January 1, 1998 or the percentage by which the electric utility's average residential retail rate exceeds the average residential retail rate of the Midwest Utilities, based on data reported on Form 1 to the Federal Energy Regulatory Commission for calendar year 2001; and (B) if the average residential retail rate of an electric utility serving between 150,000 and 250,000 retail customers in this State on January 1, 1995 is less than or equal to 90% of the average residential retail rate for the Midwest Utilities, based on data reported on Form 1 to the Federal Energy Regulatory Commission for calendar year 1995, then it shall only be required to file tariffs (i) reducing, effective August 1, 1998, each component of its base rates to residential retail customers by 2% from the base rates in effect immediately prior to January 1, 1998; (ii) reducing, effective October 1, 2000, each component of its base rates to residential retail customers by 2% from the base rate in effect immediately prior to January 1, 1998; and (iii) reducing, effective October 1, 2002, each component of its base rates to residential retail customers by 1% from the base rates in effect immediately prior to January 1, 1998. Provided, further, that any electric utility for which a decrease in base rates has been or is placed into effect between October 1, 1996 and the dates specified in the preceding sentences of this subsection, other than pursuant to the requirements of this subsection, shall be entitled to reduce the amount of any reduction or reductions in its base rates required by this subsection by the amount of such other decrease. The tariffs required under this subsection shall be filed 45 days in advance of the effective date. Notwithstanding anything to the contrary in Section 9-220 of this Act, no restatement of base rates in conjunction with the elimination of a fuel adjustment clause under that Section shall result in a lesser decrease in base rates than customers would otherwise receive under this subsection had the electric utility's fuel adjustment clause not been eliminated.

(c) Any utility reducing its base rates by 15% on August 1, 1998 pursuant to subsection (b) shall include the following statement on its bills for residential customers from August 1 through December 31, 1998: "Effective August 1, 1998, your rates have been reduced by 15% by the Electric Service Customer Choice and Rate Relief Law of 1997 passed by the Illinois General Assembly.". Any utility reducing its base rates by 5% on August 1, 1998, pursuant to subsection (b) shall include the following statement on its bills for residential customers from August 1 through December 31, 1998: "Effective August 1, 1998, your rates have been reduced by 5% by the Electric Service Customer Choice and Rate Relief Law of 1997 passed by the Illinois General Assembly.".

Any utility reducing its base rates by 2% on August 1, 1998 pursuant to subsection (b) shall include the following statement on its bills for residential customers from August 1 through December 31, 1998: "Effective August 1, 1998, your rates have been reduced by 2% by the Electric Service Customer Choice and Rate Relief Law of 1997 passed by the Illinois General Assembly.".

(d) (Blank.) ~~During the mandatory transition period, but not before January 1, 2000, and notwithstanding the provisions of subsection (a), an electric utility may request an increase in its base rates if the electric utility demonstrates that the 2 year average of its earned rate of return on common equity, calculated as its net income applicable to common stock divided by the average of its beginning and ending balances of common equity using data reported in the electric utility's Form 1 report to the Federal Energy Regulatory Commission but adjusted to remove the effects of accelerated depreciation or amortization or other transition or mitigation measures implemented by the electric utility pursuant to subsection (g) of this Section and the effect of any refund paid pursuant to subsection (e) of this Section, is below the 2 year average for the same 2 years of the monthly average yields of 30 year U.S. Treasury bonds published by the Board of Governors of the Federal Reserve System in its weekly H.15 Statistical Release or successor publication. The Commission shall review the electric utility's request, and may review the justness and reasonableness of all rates for tariffed services, in accordance with the provisions of Article IX of this Act, provided that the Commission shall consider any special or negotiated adjustments to the revenue requirement agreed to between the electric utility and the other parties to the proceeding. In setting rates under this Section, the Commission shall exclude the costs and revenues that are associated with competitive services and any billing or pricing experiments conducted under Section 16-106.~~

(e) (Blank.) ~~For the purposes of this subsection (e) all calculations and comparisons shall be performed for the Illinois operations of multijurisdictional utilities. During the mandatory transition~~

~~period, notwithstanding the provisions of subsection (a), if the 2 year average of an electric utility's earned rate of return on common equity, calculated as its net income applicable to common stock divided by the average of its beginning and ending balances of common equity using data reported in the electric utility's Form 1 report to the Federal Energy Regulatory Commission but adjusted to remove the effect of any refund paid under this subsection (e), and further adjusted to include the annual amortization of any difference between the consideration received by an affiliated interest of the electric utility in the sale of an asset which had been sold or transferred by the electric utility to the affiliated interest subsequent to the effective date of this amendatory Act of 1997 and the consideration for which such asset had been sold or transferred to the affiliated interest, with such difference to be amortized ratably from the date of the sale by the affiliated interest to December 31, 2006, exceeds the 2 year average of the Index for the same 2 years by 1.5 or more percentage points, the electric utility shall make refunds to customers beginning the first billing day of April in the following year in the manner described in paragraph (3) of this subsection. For purposes of this subsection (e), the "Index" shall be the sum of (A) the average for the 12 months ended September 30 of the monthly average yields of 30 year U.S. Treasury bonds published by the Board of Governors of the Federal Reserve System in its weekly H.15 Statistical Release or successor publication for each year 1998 through 2006, and (B) (i) 4.00 percentage points for each of the 12 month periods ending September 30, 1998 through September 30, 1999 or 8.00 percentage points if the electric utility's average residential retail rate is less than or equal to 90% of the average residential retail rate for the "Midwest Utilities", as that term is defined in subsection (b) of this Section, based on data reported on Form 1 to the Federal Energy Regulatory Commission for calendar year 1995, and the electric utility served between 150,000 and 250,000 retail customers on January 1, 1995, (ii) 7.00 percentage points for each of the 12 month periods ending September 30, 2000 through September 30, 2006 if the electric utility was providing service to at least 1,000,000 customers in this State on January 1, 1999, or 9.00 percentage points if the electric utility's average residential retail rate is less than or equal to 90% of the average residential retail rate for the "Midwest Utilities", as that term is defined in subsection (b) of this Section, based on data reported on Form 1 to the Federal Energy Regulatory Commission for calendar year 1995 and the electric utility served between 150,000 and 250,000 retail customers in this State on January 1, 1995, (iii) 11.00 percentage points for each of the 12-month periods ending September 30, 2000 through September 30, 2006, but only if the electric utility's average residential retail rate is less than or equal to 90% of the average residential retail rate for the "Midwest Utilities", as that term is defined in subsection (b) of this Section, based on data reported on Form 1 to the Federal Energy Regulatory Commission for calendar year 1995, the electric utility served between 150,000 and 250,000 retail customers in this State on January 1, 1995, and the electric utility offers delivery services on or before June 1, 2000 to retail customers whose annual electric energy use comprises 33% of the kilowatt hour sales to that group of retail customers that are classified under Division D, Groups 20 through 39 of the Standard Industrial Classifications set forth in the Standard Industrial Classification Manual published by the United States Office of Management and Budget, excluding the kilowatt hour sales to those customers that are eligible for delivery services pursuant to Section 16-104(a)(1)(i), and offers delivery services to its remaining retail customers classified under Division D, Groups 20 through 39 on or before October 1, 2000, and, provided further, that the electric utility commits not to petition pursuant to Section 16-108(f) for entry of an order by the Commission authorizing the electric utility to implement transition charges for an additional period after December 31, 2006, or (iv) 5.00 percentage points for each of the 12 month periods ending September 30, 2000 through September 30, 2006 for all other electric utilities or 7.00 percentage points for such utilities for each of the 12 month periods ending September 30, 2000 through September 30, 2006 for any such utility that commits not to petition pursuant to Section 16-108(f) for entry of an order by the Commission authorizing the electric utility to implement transition charges for an additional period after December 31, 2006 or 11.00 percentage points for each of the 12 month periods ending September 30, 2005 and September 30, 2006 for each electric utility providing service to fewer than 6,500, or between 75,000 and 150,000, electric retail customers in this State on January 1, 1995 if such utility commits not to petition pursuant to Section 16-108(f) for entry of an order by the Commission authorizing the electric utility to implement transition charges for an additional period after December 31, 2006.~~

~~(1) For purposes of this subsection (e), "excess earnings" means the difference between (A) the 2 year average of the electric utility's earned rate of return on common equity, less (B) the 2 year average of the sum of (i) the Index applicable to each of the 2 years and (ii) 1.5 percentage points; provided, that "excess earnings" shall never be less than zero.~~

~~(2) On or before March 31 of each year 2000 through 2007 each electric utility shall file a report with the Commission showing its earned rate of return on common equity, calculated in accordance with this subsection, for the preceding calendar year and the average for the preceding 2 calendar years.~~

~~(3) If an electric utility has excess earnings, determined in accordance with paragraphs (1) and (2) of this subsection, the refunds which the electric utility shall pay to its customers beginning the first billing day of April in the following year shall be calculated and applied as follows:~~

~~(i) The electric utility's excess earnings shall be multiplied by the average of the beginning and ending balances of the electric utility's common equity for the 2 year period in which excess earnings occurred.~~

~~(ii) The result of the calculation in (i) shall be multiplied by 0.50 and then divided by a number equal to 1 minus the electric utility's composite federal and State income tax rate.~~

~~(iii) The result of the calculation in (ii) shall be divided by the sum of the electric utility's projected total kilowatt-hour sales to retail customers plus projected kilowatt-hours to be delivered to delivery services customers over a one year period beginning with the first billing date in April in the succeeding year to determine a cents per kilowatt-hour refund factor.~~

~~(iv) The cents per kilowatt-hour refund factor calculated in (iii) shall be credited to the electric utility's customers by applying the factor on the customer's monthly bills to each kilowatt-hour sold or delivered until the total amount calculated in (ii) has been paid to customers.~~

(f) During the mandatory transition period, an electric utility may file revised tariffs reducing the price of any tariffed service offered by the electric utility for all customers taking that tariffed service, which shall be effective 7 days after filing.

(g) Until all classes of tariffed services are declared competitive ~~During the mandatory transition period~~, an electric utility may, without obtaining any approval of the Commission other than that provided for in this subsection and notwithstanding any other provision of this Act or any rule or regulation of the Commission that would require such approval:

(1) implement a reorganization, other than a merger of 2 or more public utilities as defined in Section 3-105 or their holding companies;

(2) retire generating plants from service;

(3) sell, assign, lease or otherwise transfer assets to an affiliated or unaffiliated entity and as part of such transaction enter into service agreements, power purchase agreements, or other agreements with the transferee; provided, however, that the prices, terms and conditions of any power purchase agreement must be approved or allowed into effect by the Federal Energy Regulatory Commission; or

(4) use any accelerated cost recovery method including accelerated depreciation, accelerated amortization or other capital recovery methods, or record reductions to the original cost of its assets.

In order to implement a reorganization, retire generating plants from service, or sell, assign, lease or otherwise transfer assets pursuant to this Section, the electric utility shall comply with subsections (c) and (d) of Section 16-128, if applicable, and subsection (k) of this Section, if applicable, and provide the Commission with at least 30 days notice of the proposed reorganization or transaction, which notice shall include the following information:

(i) a complete statement of the entries that the electric utility will make on its books and records of account to implement the proposed reorganization or transaction together with a certification from an independent certified public accountant that such entries are in accord with generally accepted accounting principles and, if the Commission has previously approved guidelines for cost allocations between the utility and its affiliates, a certification from the chief accounting officer of the utility that such entries are in accord with those cost allocation guidelines;

(ii) a description of how the electric utility will use proceeds of any sale, assignment, lease or transfer to retire debt or otherwise reduce or recover the costs of services provided by such electric utility;

(iii) a list of all federal approvals or approvals required from departments and agencies of this State, other than the Commission, that the electric utility has or will obtain before implementing the reorganization or transaction;

(iv) an irrevocable commitment by the electric utility that it will not, as a result of the transaction, impose any stranded cost charges that it might otherwise be allowed to charge retail customers under federal law or increase the transition charges that it is otherwise entitled to collect under this Article XVI; and

(v) if the electric utility proposes to sell, assign, lease or otherwise transfer a generating plant that brings the amount of net dependable generating capacity transferred pursuant to this subsection to an amount equal to or greater than 15% of the electric utility's net dependable capacity as of the effective date of this amendatory Act of 1997, and enters into a power purchase agreement with the entity to which such generating plant is sold, assigned, leased, or otherwise

transferred, the electric utility also agrees, if its fuel adjustment clause has not already been eliminated, to eliminate its fuel adjustment clause in accordance with subsection (b) of Section 9-220 for a period of time equal to the length of any such power purchase agreement or successor agreement, or until January 1, 2005, whichever is longer; if the capacity of the generating plant so transferred and related power purchase agreement does not result in the elimination of the fuel adjustment clause under this subsection, and the fuel adjustment clause has not already been eliminated, the electric utility shall agree that the costs associated with the transferred plant that are included in the calculation of the rate per kilowatt-hour to be applied pursuant to the electric utility's fuel adjustment clause during such period shall not exceed the per kilowatt-hour cost associated with such generating plant included in the electric utility's fuel adjustment clause during the full calendar year preceding the transfer, with such limit to be adjusted each year thereafter by the Gross Domestic Product Implicit Price Deflator.

(vi) In addition, if the electric utility proposes to sell, assign, or lease, (A) either (1) an amount of generating plant that brings the amount of net dependable generating capacity transferred pursuant to this subsection to an amount equal to or greater than 15% of its net dependable capacity on the effective date of this amendatory Act of 1997, or (2) one or more generating plants with a total net dependable capacity of 1100 megawatts, or (B) transmission and distribution facilities that either (1) bring the amount of transmission and distribution facilities transferred pursuant to this subsection to an amount equal to or greater than 15% of the electric utility's total depreciated original cost investment in such facilities, or (2) represent an investment of $25,000,000 in terms of total depreciated original cost, the electric utility shall provide, in addition to the information listed in subparagraphs (i) through (v), the following information: (A) a description of how the electric utility will meet its service obligations under this Act in a safe and reliable manner and (B) the electric utility's projected earned rate of return on common equity~~, calculated in accordance with subsection (d) of this Section,~~ for each year from the date of the notice through December 31, 2006 both with and without the proposed transaction. If the Commission has not issued an order initiating a hearing on the proposed transaction within 30 days after the date the electric utility's notice is filed, the transaction shall be deemed approved. The Commission may, after notice and hearing, prohibit the proposed transaction if it makes either or both of the following findings: (1) that the proposed transaction will render the electric utility unable to provide its tariffed services in a safe and reliable manner, or (2) that there is a strong likelihood that consummation of the proposed transaction will result in the electric utility being entitled to request an increase in its base rates ~~during the mandatory transition period pursuant to subsection (d) of this Section~~. Any hearing initiated by the Commission into the proposed transaction shall be completed, and the Commission's final order approving or prohibiting the proposed transaction shall be entered, within 90 days after the date the electric utility's notice was filed. Provided, however, that a sale, assignment, or lease of transmission facilities to an independent system operator that meets the requirements of Section 16-126 shall not be subject to Commission approval under this Section.

In any proceeding conducted by the Commission pursuant to this subparagraph (vi), intervention shall be limited to parties with a direct interest in the transaction which is the subject of the hearing and any statutory consumer protection agency as defined in subsection (d) of Section 9-102.1. Notwithstanding the provisions of Section 10-113 of this Act, any application seeking rehearing of an order issued under this subparagraph (vi), whether filed by the electric utility or by an intervening party, shall be filed within 10 days after service of the order.

The Commission shall not in any subsequent proceeding or otherwise, review such a reorganization or other transaction authorized by this Section, but shall retain the authority to allocate costs as stated in Section 16-111(i). An entity to which an electric utility sells, assigns, leases or transfers assets pursuant to this subsection (g) shall not, as a result of the transactions specified in this subsection (g), be deemed a public utility as defined in Section 3-105. Nothing in this subsection (g) shall change any requirement under the jurisdiction of the Illinois Department of Nuclear Safety including, but not limited to, the payment of fees. Nothing in this subsection (g) shall exempt a utility from obtaining a certificate pursuant to Section 8-406 of this Act for the construction of a new electric generating facility. Nothing in this subsection (g) is intended to exempt the transactions hereunder from the operation of the federal or State antitrust laws. Nothing in this subsection (g) shall require an electric utility to use the procedures specified in this subsection for any of the transactions specified herein. Any other procedure available under this Act may, at the electric utility's election, be used for any such transaction.

(h) During the mandatory transition period, the Commission shall not establish or use any rates of depreciation, which for purposes of this subsection shall include amortization, for any electric utility

other than those established pursuant to subsection (c) of Section 5-104 of this Act or utilized pursuant to subsection (g) of this Section. Provided, however, that in any proceeding to review an electric utility's rates for tariffed services pursuant to Section 9-201, 9-202, 9-250 or 16-111(d) of this Act, the Commission may establish new rates of depreciation for the electric utility in the same manner provided in subsection (d) of Section 5-104 of this Act. An electric utility implementing an accelerated cost recovery method including accelerated depreciation, accelerated amortization or other capital recovery methods, or recording reductions to the original cost of its assets, pursuant to subsection (g) of this Section, shall file a statement with the Commission describing the accelerated cost recovery method to be implemented or the reduction in the original cost of its assets to be recorded. Upon the filing of such statement, the accelerated cost recovery method or the reduction in the original cost of assets shall be deemed to be approved by the Commission as though an order had been entered by the Commission.

(i) Subsequent to the mandatory transition period, the Commission, in any proceeding to establish rates and charges for tariffed services offered by an electric utility, shall consider only (1) the then current or projected revenues, costs, investments and cost of capital directly or indirectly associated with the provision of such tariffed services; (2) collection of transition charges in accordance with Sections 16-102 and 16-108 of this Act; (3) recovery of any employee transition costs as described in Section 16-128 which the electric utility is continuing to incur, including recovery of any unamortized portion of such costs previously incurred or committed, with such costs to be equitably allocated among bundled services, delivery services, and contracts with alternative retail electric suppliers; and (4) recovery of the costs associated with the electric utility's compliance with decommissioning funding requirements; and shall not consider any other revenues, costs, investments or cost of capital of either the electric utility or of any affiliate of the electric utility that are not associated with the provision of tariffed services. In setting rates for tariffed services, the Commission shall equitably allocate joint and common costs and investments between the electric utility's competitive and tariffed services. In determining the justness and reasonableness of the electric power and energy component of an electric utility's rates for tariffed services subsequent to the mandatory transition period and prior to the time that the provision of such electric power and energy is declared competitive, the Commission shall consider the extent to which the electric utility's tariffed rates for such component for each customer class exceed the market value determined pursuant to Section 16-112, and, if the electric power and energy component of such tariffed rate exceeds the market value by more than 10% for any customer class, may establish such electric power and energy component at a rate equal to the market value plus 10%. ~~In any such case, the Commission may also elect to extend the provisions of Section 16-111(e) for any period in which the electric utility is collecting transition charges, using information applicable to such period.~~

(j) During the mandatory transition period, an electric utility may elect to transfer to a non-operating income account under the Commission's Uniform System of Accounts either or both of (i) an amount of unamortized investment tax credit that is in addition to the ratable amount which is credited to the electric utility's operating income account for the year in accordance with Section 46(f)(2) of the federal Internal Revenue Code of 1986, as in effect prior to P.L. 101-508, or (ii) "excess tax reserves", as that term is defined in Section 203(e)(2)(A) of the federal Tax Reform Act of 1986, provided that (A) the amount transferred may not exceed the amount of the electric utility's assets that were created pursuant to Statement of Financial Accounting Standards No. 71 which the electric utility has written off during the mandatory transition period, and (B) the transfer shall not be effective until approved by the Internal Revenue Service. An electric utility electing to make such a transfer shall file a statement with the Commission stating the amount and timing of the transfer for which it intends to request approval of the Internal Revenue Service, along with a copy of its proposed request to the Internal Revenue Service for a ruling. The Commission shall issue an order within 14 days after the electric utility's filing approving, subject to receipt of approval from the Internal Revenue Service, the proposed transfer.

(k) If an electric utility is selling or transferring to a single buyer 5 or more generating plants located in this State with a total net dependable capacity of 5000 megawatts or more pursuant to subsection (g) of this Section and has obtained a sale price or consideration that exceeds 200% of the book value of such plants, the electric utility must provide to the Governor, the President of the Illinois Senate, the Minority Leader of the Illinois Senate, the Speaker of the Illinois House of Representatives, and the Minority Leader of the Illinois House of Representatives no later than 15 days after filing its notice under subsection (g) of this Section or 5 days after the date on which this subsection (k) becomes law, whichever is later, a written commitment in which such electric utility agrees to expend $2 billion outside the corporate limits of any municipality with 1,000,000 or more inhabitants within such electric utility's service area, over a 6-year period beginning with the calendar year in which the notice is filed, on projects, programs, and improvements within its service area relating to transmission and distribution including, without limitation, infrastructure expansion, repair and replacement, capital investments,

operations and maintenance, and vegetation management.

(l) Notwithstanding any other provision of this Act or any rule, regulation, or prior order of the Commission, a public utility providing electric and gas service may do any one or more of the following: transfer assets to, reorganize with, or merge with one or more public utilities under common holding company ownership or control in the manner prescribed in subsection (g) of this Section. No merger transaction costs, such as fees paid to attorneys, investment bankers, and other consultants, incurred in connection with a merger pursuant to this subsection (l) shall be recoverable in any subsequent rate proceeding. Approval of a merger pursuant to this subsection (l) shall not constitute approval of, or otherwise require, rate recovery of other costs incurred in connection with, or to implement the merger, such as the cost of restructuring, combining, or integrating debt, assets, or systems. Such other costs may be recovered only to the extent that the surviving utility can demonstrate that the cost savings produced by such restructuring, combination, or integration exceed the associated costs. Nothing in this subsection (l) shall impair the terms or conditions of employment or the collective bargaining rights of any employees of the utilities that are transferring assets, reorganizing, or merging.

(m) If an electric utility that on December 31, 2005 provided electric service to at least 100,000 customers in Illinois transfers assets, reorganizes, or merges under this Section, then the same provisions apply that applied during the mandatory transition period under Section 16-128.

(Source: P.A. 91-50, eff. 6-30-99; 92-537, eff. 6-6-02; 92-690, eff. 7-18-02; revised 9-10-02.)

(220 ILCS 5/16-111.5 new)

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 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. "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. Those customers that are excluded from the definition of "eligible retail customers" shall not be included in the procurement plan load requirements, and the utility shall procure any supply requirements, including capacity, ancillary services, 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. 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, both current and projected;

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

(iii) the impact of energy efficiency programs, both current and projected.

(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 retail customer classes for which supply is being purchased;

(ii) monthly forecasted system supply requirements, including expected minimum, maximum, and average values for the planning period;

(iii) 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;

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

(v) 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;

(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. 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 power and energy products to be procured. 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, the utility shall immediately notify the Illinois Power Agency that a request for proposals must be issued to procure replacement power, 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 power and energy from the applicable regional transmission organization market, including ancillary services, capacity, 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. 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 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 of procuring power and energy 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.

(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 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.

(220 ILCS 5/16-111.5A new)

Sec. 16-111.5A. Provisions relating to electric rate relief.

(a) The General Assembly finds that action must be taken in order to mitigate the 2007 electric rate increases approved for residential and certain nonresidential customers served by the State's largest electric utilities in 2007. The General Assembly further finds that although various means of providing rate relief have been proposed, including imposition of a rate freeze on the electric utilities or a tax on generation within the State, the establishment of voluntary rate relief programs provides the most immediate and certain means of providing that rate relief. Accordingly, if the residential customer electric service rates that were charged to residential customers beginning January 2, 2007 by an electric utility that on December 31, 2005 provided electric service to at least 100,000 customers in Illinois resulted in an annual increase of more than 20% in an electric utility's average rate charged to residential customers for bundled electric service, those electric utilities and their holding companies or other affiliates, and any other company owning generation in this State or its affiliates, may, notwithstanding any other provisions of this Act, and without obtaining any approvals from the Commission or any other agency, regardless of whether any such approval would otherwise be required, establish and make payments to provide funds that can be used to provide rate relief beginning on the effective date of this amendatory Act of the 95th General Assembly through July 31, 2011.

(b) For purposes of this Section, the "Ameren Utilities" means Illinois Power Company, Central Illinois Public Service Company, and Central Illinois Light Company.

(c) For purposes of this Section, the "Generators" means Exelon Generation Company, LLC; Ameren Energy Resources Generating Company; Ameren Energy Marketing Company; Ameren Energy Generating Company; MidAmerican Energy Company; Midwest Generation, LLC; and Dynegy Holdings Inc.; and may include non-utility affiliates of the entities named in this subsection.

(d) For purposes of this Section, "Rate Relief Agreements" means the 2 Rate Relief Funding Agreements, the Escrow Funding Agreement, and the Illinois Power Agency Funding Agreement that Commonwealth Edison Company, the Ameren Utilities, and Generators have entered into with the Illinois Attorney General on behalf of the People of the State of Illinois for the purpose of providing $1,001,000,000 to be used to fund rate relief programs for customers of Commonwealth Edison Company and the Ameren Utilities and for the Illinois Power Agency Trust Fund and that become effective on the effective date of this amendatory Act of the 95th General Assembly. The Rate Relief Agreements have been filed with the Illinois Secretary of State Index Department and designated as "95-GA-C01" through "95-GA-C04" inclusive. The Illinois Attorney General has the right to enforce the provisions of all of the Rate Relief Agreements on behalf of the People of the State of Illinois or the Illinois Power Agency, or both, as appropriate.

(e) Subject to the terms, conditions, and contingencies of the Rate Relief Agreements, Commonwealth Edison Company will apply a total of $488,000,000 in rate relief to residential and certain nonresidential customers from 2007 through 2010. Commonwealth Edison Company will apply bill credits for all of its residential customers in its service territory in the following amounts: $250,000,000 in 2007, $125,500,000 in 2008, and $36,000,000 in 2009. Any undisbursed rate relief funds shall be applied to the targeted programs. Commonwealth Edison Company will provide rate relief for residential and certain nonresidential customers through targeted programs in the following amounts: $33,000,000 in 2007, $18,000,000 in 2008, $15,500,000 in 2009, and $10,000,000 in 2010. Subject to the terms, conditions, and contingencies of the Rate Relief Agreements, the targeted programs for 2007 consist of the following, some of which are already underway and, in the aggregate, therefore total more than $33,000,000:

(1) an electric space heating customer relief program costing approximately $8,000,000 designed to lower the average percentage increase of residential electric space heating customers to rate increases similar to other residential customers;

(2) a summer assistance program costing approximately $10,300,000 for working families and low-income customers, including low-income seniors;

(3) a residential rate relief program costing approximately $5,500,000 for working families and low-income customers, including low-income seniors, with higher than average rate increases (over 30%);

(4) a residential special hardship program costing approximately $5,000,000 to address special circumstances and hardships;

(5) a nonresidential special hardship program costing approximately $1,500,000 to address special circumstances and hardships;

(6) a relief program for the common area accounts of apartment building owners and condominium associations costing approximately $4,500,000 designed to reduce rate increases for these customers to rate increases similar to those for residential customers and to mitigate the impact of their rate increase;

(7) a weatherization assistance program for electric space heating low-income customers costing approximately $3,900,000 designed to provide energy efficiency assistance; and

(8) energy efficiency, environmental, education, and assistance programs costing approximately $5,000,000 designed to promote the use of energy efficiency programs and services by residential customers, maintenance and upgrades of a website that allows those customers to analyze their energy usage and provides incentives for the purchase of energy efficient products, the provision of energy efficient light bulbs to residential customers at a discount, and free efficient light bulbs and other assistance to low-income customers.

Based on the outcome of these targeted programs, Commonwealth Edison Company will design and implement, subject to the terms, conditions, and contingencies of the Rate Relief Agreements, targeted programs for working families, seniors, and other customers in need in 2008, 2009, and 2010.

(f) Subject to the terms, conditions, and contingencies of the Rate Relief Agreements, the Ameren Utilities will apply a total of $488,000,000 in rate relief to residential and certain nonresidential customers from 2007 through 2010. The Ameren Utilities will apply bill credits for all of their residential customers in their service territories in the following aggregate amounts: $213,000,000 in 2007, $109,000,000 in 2008, and $78,000,000 in 2009. The Ameren Utilities will apply bill credits to

certain nonresidential customers in the following aggregate amounts: $26,000,000 in 2007, $11,000,000 in 2008, and $11,000,000 in 2009. Any undisbursed rate relief funds shall be applied to the targeted programs. The Ameren Utilities will provide rate relief for residential and certain nonresidential customers through targeted programs in the following amounts: $13,500,000 in 2007, $13,500,000 in 2008, $7,500,000 in 2009, and $5,500,000 in 2010. Subject to the terms, conditions and contingencies of the Rate Relief Agreements, the targeted programs consist of the following for 2007:

(1) a cooling assistance program costing approximately $2,000,000 to provide donations to the Low Income Home Energy Assistance Program;

(2) a bill payment assistance program costing approximately $2,000,000 for working families and low-income customers, including low-income seniors;

(3) a residential special hardship program costing approximately $2,000,000 to address special circumstances and hardships;

(4) a nonresidential special hardship program costing approximately $2,000,000 to address special circumstances and hardships;

(5) a percent-of-income payment program pilot costing approximately $2,500,000 that will be designed to determine for low-income electric space heating customers if paying a percentage of income for their electricity will make electricity more affordable and promote regular paying habits;

(6) a weatherization assistance program for all electric space heating low-income customers costing approximately $1,000,000 designed to provide energy efficiency assistance;

(7) a compact fluorescent light bulb distribution program costing approximately $1,000,000 designed to provide energy efficient light bulbs to residential customers at a discount; and

(8) a municipal street lighting conversion program costing approximately $1,000,000 to convert existing street lights to more efficient lights at a discount.

Based on the outcome of these targeted programs, the Ameren Utilities will design and implement, subject to the terms, conditions, and contingencies of the Rate Relief Agreements, targeted programs for working families, seniors, and other customers in need in 2008, 2009, and 2010.

In addition, the Ameren Utilities voluntarily agree to waive outstanding late payment charges associated with unpaid electric bills for usage on and after January 2, 2007, through the September 2007 billing period.

(g) Programs that use funds that are provided by electric utilities and their holding companies or other affiliates, and any other company owning generation in this State or its affiliates, to reduce utility bills, or to otherwise offset costs incurred by the utilities in mitigating rate increases for certain customer groups, may be implemented through tariffs that are filed with and reviewed by the Commission. If a utility elects to file tariffs with the Commission to implement all or a portion of the programs, those tariffs shall, regardless of the date actually filed, be deemed accepted and approved, and shall become effective, on the effective date of this amendatory Act of the 95th General Assembly. The electric utilities whose customers benefit from the funds that are disbursed as contemplated in this Section shall file annual reports documenting the disbursement of those funds with the Commission and the Illinois Attorney General. The Commission has the authority to audit disbursement of the funds to ensure they were disbursed consistently with this Section.

(h) Nothing in this Section shall be interpreted to limit the Commission's general authority over ratemaking.

(i) Subject to the terms, conditions, and contingencies of the Rate Relief Agreements, the Generators are providing a total of $25,000,000 to the Illinois Power Agency Trust Fund.

(j) None of the contributions by Commonwealth Edison Company or the Ameren Utilities pursuant to this Section may be recovered in rates.

(k) Nothing in this Section shall be interpreted to limit the authority or right of the Illinois Attorney General, under the terms of the Rate Relief Agreements, to review or audit documents, make demands, or file suit or to take other action to enforce the provisions of the Rate Relief Agreements.

(220 ILCS 5/16-111.6 new)

Sec. 16-111.6. Termination of utility service to electric space-heating customers. Notwithstanding any other provision of this Act or any other law to the contrary, a public utility that, on December 31, 2005, served more than 100,000 electric customers in Illinois may not, prior to September 1, 2007, terminate electric service to a residential electric space-heating customer for non-payment. For 2007 and every year thereafter, such an electric utility shall not terminate electric service to a residential space-heating customer for non-payment from December 1 through March 31.

(220 ILCS 5/16-113)

Sec. 16-113. Declaration of service as a competitive service.

(a) An electric utility may, by petition, request the Commission to declare a tariffed service that is

provided by the electric utility, and that has not otherwise been declared to be competitive, to be a competitive service. The electric utility shall give notice of its petition to the public in the same manner that public notice is provided for proposed general increases in rates for tariffed services, in accordance with rules and regulations prescribed by the Commission. The Commission shall hold a hearing and ~~on the petition if a hearing is deemed necessary by the Commission. The Commission~~ shall declare the class of tariffed service to be a competitive service ~~for some identifiable customer segment or group of customers, or some clearly defined geographical area~~ within the electric utility's service area, only after the electric utility demonstrates that at least 33% of the customers in the electric utility's service area that are eligible to take the class of tariffed service instead take service from alternative retail electric suppliers, as defined in Section 16-102, and that at least 3 alternative retail electric suppliers provide service that is comparable to the class of tariffed service to those customers in the electric utility's service area that do not take service from the electric utility. ~~if the service or a reasonably equivalent substitute service is reasonably available to the customer segment or group or in the defined geographical area at a comparable price from one or more providers other than the electric utility or an affiliate of the electric utility, and the electric utility has lost or there is a reasonable likelihood that the electric utility will lose business for the service to the other provider or providers; provided, that the Commission may not declare the provision of electric power and energy to be competitive pursuant to this subsection with respect to (i) any retail customer or group of retail customers that is not eligible pursuant to Section 16-104 to take delivery services provided by the electric utility and (ii) any residential and small commercial retail customers prior to the last date on which such customers are required to pay transition charges. In determining whether to grant or deny a petition to declare the provision of electric power and energy competitive, the Commission shall consider, in applying the above criteria, whether there is adequate transmission capacity into the service area of the petitioning electric utility to make electric power and energy reasonably available to the customer segment or group or in the defined geographical area from one or more providers other than the electric utility or an affiliate of the electric utility, in accordance with this subsection.~~ The Commission shall make its determination and issue its final order declaring or refusing to declare the service to be a competitive service within 180 ~~120~~ days following the date that the petition is filed~~, or otherwise the petition shall be deemed to be granted; provided, that if the petition is deemed to be granted by operation of law, the Commission shall not thereby be precluded from finding and ordering, in a subsequent proceeding initiated by the Commission, and after notice and hearing, that the service is not competitive based on the criteria set forth in this subsection~~.

(b) Except as otherwise set forth in this Section, any ~~Any~~ customer except a customer identified in subsection (c) of Section 16-103 who is taking a tariffed service that is declared to be a competitive service pursuant to subsection (a) of this Section shall be entitled to continue to take the service from the electric utility on a tariffed basis for a period of 3 years following the date that the service is declared competitive, or such other period as is stated in the electric utility's tariff pursuant to Section 16-110. This subsection shall not require the electric utility to offer or provide on a tariffed basis any service to any customer (except those customers identified in subsection (c) of Section 16-103) that was not taking such service on a tariffed basis on the date the service was declared to be competitive.

Customers of an electric utility that on December 31, 2005 provided electric service to at least 2,000,000 customers in Illinois and (i) whose service is declared to be a competitive service pursuant to subsection (f) of this Section, (ii) that have peak demand of 400 kilowatts and above, and (iii) that were taking that service from the utility on the effective date of this amendatory Act through fixed-price bundled service tariffs, shall be entitled to continue to take the service from the electric utility on a tariffed basis through the end of the May 2008 billing period. Customers of an electric utility that on December 31, 2005 provided electric service to at least 2,000,000 customers in Illinois and (i) whose service is declared to be a competitive service pursuant to subsection (g) of this Section, (ii) that have peak demand of 100 kilowatts and above but less than 400 kilowatts, and (iii) that were taking that service from the utility on the effective date of this amendatory Act through fixed-price bundled service tariffs, shall be entitled to continue to take the service from the electric utility on a tariffed basis through the end of the May 2010 billing period.

Customers of an electric utility that on December 31, 2005 provided electric service to 2,000,000 or fewer customers but more than 100,000 customers in Illinois and (i) whose service is declared to be a competitive service pursuant to subsection (f) of this Section, (ii) that have peak demand of one megawatt and above, and (iii) that were taking that service from the utility on the effective date of this amendatory Act through fixed-price bundled service tariffs, shall be entitled to continue to take the service from the electric utility on a tariffed basis through the end of May 2008. Customers of an electric utility that on December 31, 2005 provided electric service to 2,000,000 or fewer customers but more

than 100,000 customers in the State of Illinois and (i) whose service is declared to be a competitive service pursuant to subsection (f) of this Section, (ii) that have peak demand of 400 kilowatts and above but less than one megawatt, and (iii) that were taking that service from the utility on the effective date of this amendatory Act through fixed-price bundled service tariffs, shall be entitled to continue to take the service from the electric utility on a tariffed basis through the end of May 2010.

(c) If the Commission denies a petition to declare a service to be a competitive service, or determines in a separate proceeding that a service is not competitive based on the criteria set forth in subsection (a), the electric utility may file a new petition no earlier than 6 months following the date of the Commission's order, requesting, on the basis of additional or different facts and circumstances, that the service be declared to be a competitive service.

(d) The Commission shall not deny a petition to declare a service to be a competitive service, and shall not find that a service is not a competitive service, on the grounds that it has previously denied the petition of another electric utility to declare the same or a similar service to be a competitive service or has previously determined that the same or a similar service provided by another electric utility is not a competitive service.

(e) An electric utility may declare a service, other than delivery services or the provision of electric power or energy, to be competitive by filing with the Commission at least 14 days prior to the date on which the service is to become competitive a notice describing the service that is being declared competitive and the date on which it will become competitive; provided, that any customer who is taking a tariffed service that is declared to be a competitive service pursuant to this subsection (e) shall be entitled to continue to take the service from the electric utility on a tariffed basis until the electric utility files, and the Commission grants, a petition to declare the service competitive in accordance with subsection (a) of this Section. The Commission shall be authorized to find and order, after notice and hearing in a subsequent proceeding initiated by the Commission, that any service declared to be competitive pursuant to this subsection (e) is not competitive in accordance with the criteria set forth in subsection (a) of this Section.

(f) As of the effective date of this amendatory Act, the provision of electric power and energy, whether through fixed-price bundled service tariffs or otherwise, to those retail customers with peak demands of 400 kilowatts and above that are served by an electric utility that on December 31, 2005 served more than 100,000 customers in its service territory in Illinois shall be deemed to be, and is declared to be, a competitive service.

(g) An electric utility that provided electric service to at least 100,000 customers in its service territory in Illinois as of December 31, 2005 may seek to declare the provision of electric power and energy, whether through fixed-price bundled service tariffs or otherwise, to those retail customers with peak demand of 100 kilowatts and above but less than 400 kilowatts to be competitive by filing with the Commission at least 60 days prior to the date on which the service is to become competitive a petition with attached analyses demonstrating that at least 33% of those customers in the electric utility's service area that are eligible to take the class of tariffed service instead take service from alternative retail electric suppliers, as defined in Section 16-102, and that at least 3 alternative retail electric suppliers provide service that is comparable to that tariffed service to those customers in the electric utility's service area that do not take service from the electric utility. The electric utility shall give notice of its petition to the public in the same manner that public notice is provided for proposed general increases in rates for tariffed services, in accordance with rules and regulations prescribed by the Commission. Within 14 days following filing of the petition, any person may file a detailed objection with the Commission contesting the analyses submitted by the electric utility with its petition. All objections to the electric utility's petition shall be specific, supported by data or other detailed analyses, and limited to whether the electric utility has met the standard set forth in this subsection (g). The electric utility may file a response to any objections to its petition within 7 days after the deadline for objections. The Commission shall declare the provision of electric power and energy by the electric utility to those retail customers with peak demand of 100 kilowatts and above but less than 400 kilowatts to be a competitive service within 30 days after the filing of the petition if it finds that the electric utility has met the standard set forth in this subsection (g). If, however, the Commission finds that there are material issues of disputed fact, it may require the parties to submit additional information, including through additional filings or as part of an evidentiary hearing. If the Commission has required the parties to submit additional information, it shall issue an order within 60 days after the filing of the petition stating whether the provision of electric power and energy by the utility to those retail customers with peak demand of 100 kilowatts and above but less than 400 kilowatts has been declared to be a competitive service.

(h) Until July 1, 2012, no electric utility that on December 31, 2005 provided electric service to at

least 100,000 customers in its service territory in Illinois may seek to declare the class of tariffed service for residential customers and those non-residential customers with peak demand of less than 100 kilowatts to be a competitive service.

(Source: P.A. 90-561, eff. 12-16-97.)

(220 ILCS 5/16-126.1 new)

Sec. 16-126.1. Regional transmission organization memberships. The State shall not directly or indirectly prohibit an electric utility that on December 31, 2005 provided electric service to at least 100,000 customers in Illinois from membership in a Federal Energy Regulatory Commission approved regional transmission organization of its choosing. Nothing in this Section limits any authority the Commission otherwise has to regulate that electric utility. This Section ceases to be effective on July 1, 2022 unless extended by the General Assembly by law.

(220 ILCS 5/16-127)

Sec. 16-127. Environmental disclosure.

(a) Effective January 1, 1999, every electric utility and alternative retail electric supplier shall provide the following information, to the maximum extent practicable, with its bills to its customers on a quarterly basis:

(i) the known sources of electricity supplied, broken-out by percentages, of biomass power, coal-fired power, hydro power, natural gas-fired power, nuclear power, oil-fired power, solar power, wind power and other resources, respectively; ~~and~~

(ii) a pie-chart that ~~which~~ graphically depicts the percentages of the sources of the electricity supplied as set forth in subparagraph (i) of this subsection; and ~~.~~

(iii) a pie-chart that graphically depicts the quantity of renewable energy resources procured pursuant to Section 1-75 of the Illinois Power Agency Act as a percentage of electricity supplied to serve eligible retail customers as defined in Section 16-111.5(a) of this Act.

(b) In addition, every electric utility and alternative retail electric supplier shall provide, to the maximum extent practicable, with its bills to its customers on a quarterly basis, a standardized chart in a format to be determined by the Commission in a rule following notice and hearings which provides the amounts of carbon dioxide, nitrogen oxides and sulfur dioxide emissions and nuclear waste attributable to the known sources of electricity supplied as set forth in subparagraph (i) of subsection (a) of this Section.

(c) The electric utilities and alternative retail electric suppliers may provide their customers with such other information as they believe relevant to the information required in subsections (a) and (b) of this Section.

(d) For the purposes of subsection (a) of this Section, "biomass" means dedicated crops grown for energy production and organic wastes.

(e) All of the information provided in subsections (a) and (b) of this Section shall be presented to the Commission for inclusion in its World Wide Web Site.

(Source: P.A. 90-561, eff. 12-16-97; 90-624, eff. 7-10-98.)

ARTICLE 99

Section 99-97. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

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

AMENDMENT NO. 6 TO SENATE BILL 1592

AMENDMENT NO. 6. Amend Senate Bill 1592, AS AMENDED, with reference to page and line numbers of House Amendment No. 5, on page 47, below line 3, by inserting the following:

"Section 1-127. Minority, female, and disabled persons businesses; reports.

(a) The Director of the Illinois Power Agency, or his or her designee, when offering bids for professional services, shall conduct outreach to minority owned businesses, female owned businesses, and businesses owned by persons with disabilities. Outreach shall include, but is not limited to, advertisements in periodicals and newspapers, mailings, and other appropriate media.

(b) The Director or his or her designee shall, upon request, provide technical assistance to minority owned businesses, female owned businesses, and businesses owned by persons with disabilities seeking to do business with the Agency.

(c) The Director or his or her designee, upon request, shall conduct post-bid reviews with minority

owned businesses, female owned businesses, and businesses owned by persons with disabilities whose bids were not selected by the Agency. Post-bid reviews shall provide a business with detailed and specific reasons why the bid of that business was rejected and concrete recommendations to improve its bid application on future Agency professional services opportunities.

(d) The Agency shall report annually to the Governor and the General Assembly by July 1. The report shall identify the businesses that have provided bids to offer professional services to the Agency and shall also include, but not be limited to, the following information:

(1) whether or not the businesses are minority owned businesses, female owned businesses, or businesses owned by persons with disabilities;

(2) the percentage of professional service contracts that were awarded to minority owned businesses, female owned businesses, and businesses owned by persons with disabilities as compared to other businesses; and

(3) the actions the Agency has undertaken to increase the use of the minority owned businesses, female owned businesses, and businesses owned by persons with disabilities in professional service contracts.

(e) In this Section, "professional services" means services that use skills that are predominantly mental or intellectual, rather than physical or manual, including, but not limited to, accounting, architecture, consulting, engineering, finance, legal, and marketing. "Professional services" does not include bidders into the competitive procurement process pursuant to Section 16-111.5 of the Public Utilities Act."; and

on page 130, line 18, after ""demand response"," by inserting ""electric utility",".

Under the rules, the foregoing **Senate Bill No. 1592**, with House Amendments numbered 5 and 6, was referred to the Secretary's Desk.

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

Mr. President -- I am directed to inform the Senate that the House of Representatives has concurred with the Senate in the passage of a bill of the following title, to-wit:

SENATE BILL NO. 849

A bill for AN ACT concerning education.

Passed the House, July 26, 2007.

MARK MAHONEY, Clerk of the House

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

Mr. President -- I am directed to inform the Senate that the House of Representatives has concurred with the Senate in the adoption of their amendment to the following joint resolution, to-wit:

HOUSE JOINT RESOLUTION NO. 24

Senate Amendment No. 1

Action taken by the House, July 26, 2007.

MARK MAHONEY, Clerk of the House

JOINT ACTION MOTION FILED

The following Joint Action Motion to the Senate Bill listed below has been filed with the Secretary and referred to the Committee on Rules:

Motion to Concur in House Amendments 5 and 6 to Senate Bill 1592

MESSAGES FROM THE PRESIDENT

OFFICE OF THE SENATE PRESIDENT
STATE OF ILLINOIS

[July 26, 2007]

EMIL JONES, JR.
SENATE PRESIDENT

327 STATE CAPITOL
Springfield, Illinois 62706

July 26, 2007

Ms. Deborah Shipley
Secretary of the Senate
403 State House
Springfield, IL 62706

Dear Madam Secretary:

Pursuant to Rule 3-5(c), I hereby appoint Senator Rickey Hendon to resume his position on the Senate Rules Committee. This appointment is effective immediately.

Sincerely,
s/Emil Jones, Jr.
Senate President

cc: Senate Minority Leader Frank Watson

OFFICE OF THE SENATE PRESIDENT
STATE OF ILLINOIS

EMIL JONES, JR.
SENATE PRESIDENT

327 STATE CAPITOL
Springfield, Illinois 62706

July 26, 2007

Ms. Deborah Shipley
Secretary of the Senate
403 State House
Springfield, IL 62706

Dear Madam Secretary:

Pursuant to Rule 3-2(c), I hereby appoint Senator William Delgado to resume his position on the Senate Public Health Committee. This appointment is effective immediately.

Sincerely,
s/Emil Jones, Jr.
Senate President

cc: Senate Minority Leader Frank Watson

REPORT FROM RULES COMMITTEE

Senator Halvorson, Chairperson of the Committee on Rules, reported that the following Legislative Measure has been approved for consideration:

Motion to Concur with House Amendments 5 and 6 to Senate Bill 1592

The foregoing concurrence was placed on the Secretary's Desk.

CONSIDERATION OF HOUSE AMENDMENTS TO SENATE BILL ON

SECRETARY'S DESK

On motion of Senator Forby, **Senate Bill No. 1592**, with House Amendments numbered 5 and 6 on the Secretary's Desk, was taken up for immediate consideration.

Senator Forby moved that the Senate concur with the House in the adoption of their amendments to said bill.

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

Yeas 40; Nays 13; Present 1.

The following voted in the affirmative:

Bond	Frerichs	Lightford	Ronen
Clayborne	Garrett	Link	Schoenberg
Collins	Haine	Maloney	Silverstein
Cronin	Halvorson	Martinez	Sullivan
Crotty	Harmon	Meeks	Trotter
Cullerton	Hendon	Millner	Wilhelmi
DeLeo	Holmes	Noland	Mr. President
Delgado	Hunter	Pankau	
Demuzio	Jacobs	Peterson	
Dillard	Koehler	Raoul	
Forby	Kotowski	Risinger	

The following voted in the negative:

Althoff	Dahl	Murphy	Watson
Bomke	Hultgren	Righter	
Brady	Jones, J.	Sandoval	
Burzynski	Lauzen	Syverson	

The following voted present:

Munoz

The motion prevailed.

And the Senate concurred with the House in the adoption of their Amendments numbered 5 and 6 to **Senate Bill No. 1592**, by a three-fifths vote.

Ordered that the Secretary inform the House of Representatives thereof.

Senator Radogno asked and obtained unanimous consent for the Journal to reflect her affirmative vote on **Senate Bill No. 1592.**

READING BILLS OF THE SENATE A SECOND TIME

On motion of Senator Trotter, **Senate Bill No. 1109,** having been printed, was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Trotter, **Senate Bill No. 1114,** having been printed, was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Hunter, **Senate Bill No. 1134,** having been printed, was taken up, read by title a second time and ordered to a third reading.

CONSIDERATION OF RESOLUTIONS ON SECRETARY'S DESK

Senator Garrett moved that **Senate Resolution No. 242**, on the Secretary's Desk, be taken up for immediate consideration.

The motion prevailed.
Senator Garrett moved that Senate Resolution No. 242 be adopted.
The motion prevailed.
And the resolution was adopted.

Senator Cullerton moved that Senate **Resolution No. 256**, on the Secretary's Desk, be taken up for immediate consideration.
The motion prevailed.
The following amendment was offered in the Committee on State Government and Veterans Affairs, adopted and ordered printed:

AMENDMENT NO. 1 TO SENATE RESOLUTION 256

AMENDMENT NO. _1__. Amend Senate Resolution 256 by replacing everything after the heading with the following:

"WHEREAS, A large number of diseases and disorders are preventable; and

WHEREAS, Identifiable health risk factors are precursors to a large number of diseases and disorders and to premature death; and

WHEREAS, Various health risks can be improved through public health promotion and disease prevention programs; and

WHEREAS, Health promotion and disease prevention programs can save the State money in health care expenditures and produce a positive return on investment; and

WHEREAS, According to a 2004 study, tobacco use was the leading cause of actual deaths in the U.S., and was responsible for 435,000 deaths, more than 18% of the total deaths in the U.S.; and

WHEREAS, An analysis of 22 peer-reviewed studies showed that for every dollar invested in health promotion, there was an average savings of $5.81 million and an average reduction of health care cost of 26%; and

WHEREAS, Based on 2001 data, if Illinois reduced smoking in the Medicaid population by 10%, the savings would be $16 million; a 25% reduction would result in a savings of $40 million; and a 50% reduction would save Medicaid $81 million; and

WHEREAS, The State of Illinois announced an initiative to help residents to quit smoking; the Illinois Department of Healthcare and Family Services encourages all health care providers to screen patients for tobacco use and to provide counseling, intervention, and treatment and to make referrals to the toll-free Illinois Tobacco Quitline (1-866-QUIT-YES or 1-866-784-8937); the Department also provides instructions for referral to the Illinois Tobacco Quitline and informs providers about over-the-counter and prescription smoking cessation products covered by State health assistance and insurance programs; and

WHEREAS, Increasing awareness of and participation rates in the various elements of the State's smoking cessation initiative should improve public health and substantially reduce the cost of care; therefore, be it

RESOLVED, BY THE SENATE OF THE NINETY-FIFTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, that we urge the Illinois Department of Healthcare and Family Services, in consultation with the Illinois Department of Public Health, to prepare and submit a comprehensive report to the Senate and the Governor, by January 1, 2008, on the results and effectiveness of the State's Smoking Cessation Initiative, together with recommendations that will increase participation, improve public health outcomes, and evaluate the merits of creating an incentive program for Medicaid recipients.".

Senator Cullerton moved that **Senate Resolution No. 256**, as amended, be adopted.
The motion prevailed.
And the resolution was adopted.

Senator Hunter moved that **Senate Resolution No. 298**, on the Secretary's Desk, be taken up for immediate consideration.
The motion prevailed.
Senator Hunter moved that Senate Resolution No. 298 be adopted.
The motion prevailed.
And the resolution was adopted.

Senator Demuzio moved that **Senate Joint Resolution No. 54**, on the Secretary's Desk, be taken up for immediate consideration.
The motion prevailed.
Senator Demuzio offered the following amendment and moved its adoption:

AMENDMENT NO. 1 TO SENATE JOINT RESOLUTION 54

AMENDMENT NO. 1. Amend Senate Joint Resolution 54 by replacing everything after the heading with the following:

"WHEREAS, The provision of a free, appropriate public education for a student with a visual impairment can occur only with the proper concentrated services, equipment, appropriately certified staff, and access to education; and

WHEREAS, Children and youth who are visually impaired face unique and significant barriers related to their instruction that profoundly affect most aspects of the educational process, including the impact of ever changing technology and the world it encompasses; and

WHEREAS, Blindness and visual impairments are often considered secondary disabilities, thus the specialized educational needs of the blind and visually impaired are rarely fully addressed; and

WHEREAS, Children and youth with visual impairments are guaranteed an education in the least restrictive setting, determined on an individual basis, meaning that they are entitled to be integrated as fully as possible into the regular classroom, as appropriate; and

WHEREAS, Full access to education depends upon an educational environment that utilizes the appropriate materials and properly and fully trained staff and provides for direct communication between staff, students, parents, and peers; and

WHEREAS, The Illinois School for the Visually Impaired should become the go-to facility for best teaching practices regarding programs for children with visual impairments and the statewide center for training, technical assistance, outreach, and specialized curriculum development; and

WHEREAS, The Illinois School for the Visually Impaired should include on-going training and technical assistance for itinerant, mainstream, and private school educators; and

WHEREAS, The Illinois School for the Visually Impaired should include specific programming on visual impairments for teaching and rehabilitation professionals from both the State Board of Education and the Department of Human Services; and

WHEREAS, While unemployment in the nation continues to drop, the unemployment rate for people with visual impairments is over 70%; and

WHEREAS, There should be greater access to transitional services for students who are blind or visually impaired entering vocational rehabilitation services and employment; and

WHEREAS, Successful transitional programs may result in better services and jobs, knowledgeable self-advocates, and achievement of competitive outcomes; therefore, be it

RESOLVED, BY THE SENATE OF THE NINETY-FIFTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE HOUSE OF REPRESENTATIVES CONCURRING HEREIN, that there is created the Joint Task Force on Blind and Visually Impaired Educational Options, consisting of the following members, appointed as follows:

(1) the President of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives shall each appoint one member;

(2) the Governor shall appoint a parent representative from the Illinois School for the Visually Impaired and a regional parent representative;

(3) the following entities shall each appoint one member: the State Board of Education, the Department of Human Services, the Illinois Association of Regional Superintendents of Schools, the LightHouse for the Blind and Visually Impaired, the Illinois School for the Visually Impaired Alumni Association, the National Federation of the Blind of Illinois, the Illinois Council of the Blind, Early Intervention, the Illinois Association for Education and Rehabilitation, the Illinois Vision Leadership Council, the Phillip J. Rock Center or the Helen Keller National Center, the Illinois Committee of Blind Vendors, Illinois Parents of the Visually Impaired, the Blind Services Planning Council, the Illinois School for the Visually Impaired's Advisory Board, the Visual Disabilities education program at Northern Illinois University, and the Specialist in Low Vision and Blindness education program at Illinois State University; and be it further

RESOLVED, That all members of the Task Force shall serve without compensation; and be it further

RESOLVED, That the duty of the Task Force is to undertake a comprehensive and thorough review of the education of and services available to the blind and visually impaired children of this State with the intent of making recommendations that would recognize the need for delivering full educational services to a blind or visually impaired student, ensure that schools have the most updated and adequate equipment to provide services to blind and visually impaired students, and recognize the need for teachers trained in the unique needs of blind and visually impaired students; recommending research-based methods and procedures to develop curricula for blind and visually impaired students; and providing a comprehensive review of the needs and operation of all educational entities providing services to students who are blind or visually impaired, including the Illinois School for the Visually Impaired; and be it further

RESOLVED, That the Task Force should look towards states that have successful, independent, and adequate educational models for students with visual impairments, such as the Washington State School for the Blind; and be it further

RESOLVED, That the Task Force may request assistance from any entity necessary or useful for the performance of the Task Force's duties; and be it further

RESOLVED, That the Task Force shall report its recommendations to the General Assembly on or before December 31, 2008; and be it further

RESOLVED, That suitable copies of this resolution be delivered to the Governor, the State Board of Education, the Department of Human Services, the Illinois Association of Regional Superintendents of Schools, the LightHouse for the Blind and Visually Impaired, the Illinois School for the Visually Impaired Alumni Association, the National Federation of the Blind of Illinois, the Illinois Council of the Blind, Early Intervention, the Illinois Association for Education and Rehabilitation, the Illinois Vision Leadership Council, the Phillip J. Rock Center and the Helen Keller National Center, the Illinois Committee of Blind Vendors, Illinois Parents of the Visually Impaired, the Blind Services Planning Council, the Illinois School for the Visually Impaired's Advisory Board, the Visual Disabilities education program at Northern Illinois University, and the Specialist in Low Vision and Blindness education program at Illinois State University.".

The motion prevailed, and the amendment was adopted.

Senator Demuzio offered the following amendment and moved its adoption:

AMENDMENT NO. 2 TO SENATE JOINT RESOLUTION 54

AMENDMENT NO. _2__. Amend Senate Joint Resolution 54, AS AMENDED, by replacing everything after the heading with the following:

"WHEREAS, The provision of a free, appropriate public education for a student with a visual impairment can occur only with the proper concentrated services, equipment, appropriately certified staff, and access to education; and

WHEREAS, Children and youth who are visually impaired face unique and significant barriers related to their instruction that profoundly affect most aspects of the educational process, including the impact of ever changing technology and the world it encompasses; and

WHEREAS, Blindness and visual impairments are often considered secondary disabilities, thus the specialized educational needs of the blind and visually impaired are rarely fully addressed; and

WHEREAS, Children and youth with visual impairments are guaranteed an education in the least restrictive setting, determined on an individual basis, meaning that they are entitled to be integrated as fully as possible into the regular classroom, as appropriate; and

WHEREAS, Full access to education depends upon an educational environment that utilizes the appropriate materials and properly and fully trained staff and provides for direct communication between staff, students, parents, and peers; and

WHEREAS, The Illinois School for the Visually Impaired should become the go-to facility for best teaching practices regarding programs for children with visual impairments and the statewide center for training, technical assistance, outreach, and specialized curriculum development; and

WHEREAS, The Illinois School for the Visually Impaired should include on-going training and technical assistance for itinerant, mainstream, and private school educators; and

WHEREAS, The Illinois School for the Visually Impaired should include specific programming on visual impairments for teaching and rehabilitation professionals from both the State Board of Education and the Department of Human Services; and

WHEREAS, While unemployment in the nation continues to drop, the unemployment rate for people with visual impairments is over 70%; and

WHEREAS, There should be greater access to transitional services for students who are blind or visually impaired entering vocational rehabilitation services and employment; and

WHEREAS, Successful transitional programs may result in better services and jobs, knowledgeable self-advocates, and achievement of competitive outcomes; therefore, be it

RESOLVED, BY THE SENATE OF THE NINETY-FIFTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE HOUSE OF REPRESENTATIVES CONCURRING HEREIN, that there is created the Joint Task Force on Blind and Visually Impaired Educational Options, consisting of the following members, appointed as follows:

(1) the President of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives shall each appoint one member;

(2) the Governor shall appoint a parent representative from the Illinois School for the Visually Impaired and 3 regional parent representatives, one each from northern, central, and southern Illinois;

(3) the following entities shall each appoint one member: the State Board of Education, the Department of Human Services, the Illinois School for the Visually Impaired, the Illinois Association of Regional Superintendents of Schools, the LightHouse for the Blind and

Visually Impaired, the Illinois School for the Visually Impaired Alumni Association, the National Federation of the Blind of Illinois, the Illinois Council of the Blind, Early Intervention, the Illinois Association for Education and Rehabilitation, the Illinois Vision Leadership Council, the Phillip J. Rock Center, the Helen Keller National Center, the Illinois Committee of Blind Vendors, Illinois Parents of the Visually Impaired, the Blind Services Planning Council, the Illinois School for the Visually Impaired's Advisory Board, the Visual Disabilities education program at Northern Illinois University, and the Specialist in Low Vision and Blindness education program at Illinois State University; and be it further

RESOLVED, That the State representative and State senator who represent the districts that are home to the Illinois School for the Visually Impaired shall serve as co-chairpersons of the Task Force; and be it further

RESOLVED, That all members of the Task Force shall serve without compensation; and be it further

RESOLVED, That the duty of the Task Force is to undertake a comprehensive and thorough review of the education of and services available to the blind and visually impaired children of this State with the intent of making recommendations that would recognize the need for delivering full educational services to a blind or visually impaired student, ensure that schools have the most updated and adequate equipment to provide services to blind and visually impaired students, and recognize the need for teachers trained in the unique needs of blind and visually impaired students; recommending research-based methods and procedures to develop curricula for blind and visually impaired students; and providing a comprehensive review of the needs and operation of all educational entities providing services to students who are blind or visually impaired, including the Illinois School for the Visually Impaired; and be it further

RESOLVED, That the Task Force should look towards states that have successful, independent, and adequate educational models for students with visual impairments, such as the Washington State School for the Blind; and be it further

RESOLVED, That the State Board of Education and the Department of Human Services shall together administer and prepare all reports deemed necessary in conjunction with the Task Force's activities; and be it further

RESOLVED, That the Task Force may request assistance from any entity necessary or useful for the performance of the Task Force's duties; and be it further

RESOLVED, That the Task Force shall report its recommendations to the General Assembly on or before December 31, 2008; and be it further

RESOLVED, That suitable copies of this resolution be delivered to the Governor, the State Board of Education, the Department of Human Services, the Illinois School for the Visually Impaired, the Illinois Association of Regional Superintendents of Schools, the LightHouse for the Blind and Visually Impaired, the Illinois School for the Visually Impaired Alumni Association, the National Federation of the Blind of Illinois, the Illinois Council of the Blind, Early Intervention, the Illinois Association for Education and Rehabilitation, the Illinois Vision Leadership Council, the Phillip J. Rock Center, the Helen Keller National Center, the Illinois Committee of Blind Vendors, Illinois Parents of the Visually Impaired, the Blind Services Planning Council, the Illinois School for the Visually Impaired's Advisory Board, the Visual Disabilities education program at Northern Illinois University, and the Specialist in Low Vision and Blindness education program at Illinois State University.".

The motion prevailed, and the amendment was adopted.
Senator Demuzio moved that **Senate Joint Resolution No. 54**, as amended, be adopted.
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	Dillard	Kotowski	Raoul
Bomke	Forby	Lauzen	Risinger
Bond	Frerichs	Lightford	Ronen
Brady	Garrett	Link	Sandoval
Burzynski	Haine	Maloney	Schoenberg
Clayborne	Halvorson	Martinez	Silverstein
Collins	Harmon	Meeks	Sullivan
Cronin	Hendon	Millner	Syverson
Crotty	Holmes	Munoz	Trotter
Cullerton	Hultgren	Murphy	Watson
Dahl	Hunter	Noland	Wilhelmi
DeLeo	Jacobs	Pankau	Mr. President
Delgado	Jones, J.	Peterson	
Demuzio	Koehler	Radogno	

The motion prevailed.

And the resolution, as amended, was adopted.

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

Senator Frerichs moved that **House Joint Resolution No. 22**, on the Secretary's Desk, be taken up for immediate consideration.

The motion prevailed.

Senator Frerichs moved that House Joint Resolution No. 22 be adopted.

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

Yeas 52; Nays None.

The following voted in the affirmative:

Althoff	Forby	Lauzen	Ronen
Bomke	Frerichs	Lightford	Sandoval
Bond	Garrett	Link	Schoenberg
Brady	Haine	Maloney	Silverstein
Clayborne	Halvorson	Martinez	Sullivan
Collins	Harmon	Millner	Syverson
Cronin	Hendon	Munoz	Trotter
Crotty	Holmes	Murphy	Watson
Cullerton	Hultgren	Noland	Wilhelmi
Dahl	Hunter	Pankau	Mr. President
DeLeo	Jacobs	Peterson	
Delgado	Jones, J.	Radogno	
Demuzio	Koehler	Raoul	
Dillard	Kotowski	Risinger	

The motion prevailed.

And the resolution was adopted.

Ordered that the Secretary inform the House of Representatives thereof.

Senator Brady moved that **House Joint Resolution No. 28**, on the Secretary's Desk, be taken up for immediate consideration.

The motion prevailed.

Senator Brady moved that House Joint Resolution No. 28 be adopted.

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

Yeas 55; Nays None.

The following voted in the affirmative:

Althoff	Dillard	Kotowski	Raoul
Bomke	Forby	Lauzen	Righter
Bond	Frerichs	Lightford	Risinger
Brady	Garrett	Link	Ronen
Burzynski	Haine	Maloney	Sandoval
Clayborne	Halvorson	Martinez	Schoenberg
Collins	Harmon	Meeks	Silverstein
Cronin	Hendon	Millner	Sullivan
Crotty	Holmes	Munoz	Syverson
Cullerton	Hultgren	Murphy	Trotter
Dahl	Hunter	Noland	Watson
DeLeo	Jacobs	Pankau	Wilhelmi
Delgado	Jones, J.	Peterson	Mr. President
Demuzio	Koehler	Radogno	

The motion prevailed.
And the resolution was adopted.
Ordered that the Secretary inform the House of Representatives thereof.

Senator Kotowski moved that **House Joint Resolution No. 31**, on the Secretary's Desk, be taken up for immediate consideration.
The motion prevailed.
Senator Kotowski moved that House Joint Resolution No. 31 be adopted.
The motion prevailed.
And the resolution was adopted.
Ordered that the Secretary inform the House of Representatives thereof.

COMMITTEE MEETING ANNOUNCEMENT

Senator Crotty, Chairperson of the Committee on Local Government, announced that the Local Government Committee will meet Friday, July 27, 2007 in Room 409, at 8:30 o'clock a.m.

CONSIDERATION OF RESOLUTIONS ON SECRETARY'S DESK

Senator Forby moved that **House Joint Resolution No. 48**, on the Secretary's Desk, be taken up for immediate consideration.
The motion prevailed.
Senator Forby moved that House Joint Resolution No. 48 be adopted.
And on that motion a call of the roll was had resulting as follows:

Yeas 53; Nays None.

The following voted in the affirmative:

Althoff	Dillard	Kotowski	Risinger
Bomke	Forby	Lightford	Ronen
Bond	Frerichs	Link	Sandoval
Brady	Garrett	Maloney	Schoenberg
Burzynski	Haine	Martinez	Silverstein
Clayborne	Halvorson	Meeks	Sullivan
Collins	Harmon	Millner	Syverson
Cronin	Hendon	Munoz	Trotter
Crotty	Holmes	Murphy	Watson

Cullerton	Hultgren	Noland	Wilhelmi
Dahl	Hunter	Pankau	Mr. President
DeLeo	Jacobs	Peterson	
Delgado	Jones, J.	Radogno	
Demuzio	Koehler	Raoul	

The motion prevailed.
And the resolution was adopted.
Ordered that the Secretary inform the House of Representatives thereof.

Senator Collins moved that **House Joint Resolution No. 51**, on the Secretary's Desk, be taken up for immediate consideration.
The motion prevailed.
Senator Collins moved that House Joint Resolution No. 51 be adopted.
And on that motion a call of the roll was had resulting as follows:

Yeas 51; Nays None.

The following voted in the affirmative:

Althoff	Demuzio	Jones, J.	Radogno
Bomke	Dillard	Koehler	Raoul
Bond	Forby	Kotowski	Risinger
Brady	Frerichs	Lightford	Ronen
Burzynski	Garrett	Link	Sandoval
Clayborne	Haine	Maloney	Schoenberg
Collins	Halvorson	Martinez	Silverstein
Cronin	Harmon	Meeks	Sullivan
Crotty	Hendon	Millner	Trotter
Cullerton	Holmes	Murphy	Watson
Dahl	Hultgren	Noland	Wilhelmi
DeLeo	Hunter	Pankau	Mr. President
Delgado	Jacobs	Peterson	

The motion prevailed.
And the resolution was adopted.
Ordered that the Secretary inform the House of Representatives thereof.

Senator Delgado moved that **House Joint Resolution No. 64**, on the Secretary's Desk, be taken up for immediate consideration.
The motion prevailed.
Senator Delgado moved that House Joint Resolution No. 64 be adopted.
The motion prevailed.
And the resolution was adopted.
Ordered that the Secretary inform the House of Representatives thereof.

Senator J. Jones moved that **House Joint Resolution No. 65**, on the Secretary's Desk, be taken up for immediate consideration.
The motion prevailed.
Senator J. Jones moved that House Joint Resolution No. 65 be adopted.
And on that motion a call of the roll was had resulting as follows:

Yeas 52; Nays None.

The following voted in the affirmative:

Althoff	Forby	Lightford	Ronen
Bomke	Frerichs	Link	Sandoval
Bond	Garrett	Maloney	Schoenberg
Brady	Haine	Martinez	Silverstein
Burzynski	Halvorson	Meeks	Sullivan
Clayborne	Harmon	Millner	Syverson
Cronin	Hendon	Murphy	Trotter
Crotty	Holmes	Noland	Watson
Cullerton	Hultgren	Pankau	Wilhelmi
Dahl	Hunter	Peterson	Mr. President
DeLeo	Jones, J.	Radogno	
Delgado	Koehler	Raoul	
Demuzio	Kotowski	Righter	
Dillard	Lauzen	Risinger	

The motion prevailed.
And the resolution was adopted.
Ordered that the Secretary inform the House of Representatives thereof.

Senator Demuzio moved that **House Joint Resolution No. 66**, on the Secretary's Desk, be taken up for immediate consideration.
The motion prevailed.
Senator Demuzio moved that House Joint Resolution No. 66 be adopted.
And on that motion a call of the roll was had resulting as follows:

Yeas 53; Nays None.

The following voted in the affirmative:

Althoff	Forby	Lauzen	Risinger
Bomke	Frerichs	Lightford	Ronen
Bond	Garrett	Link	Sandoval
Brady	Haine	Maloney	Schoenberg
Clayborne	Halvorson	Martinez	Silverstein
Collins	Harmon	Meeks	Sullivan
Cronin	Hendon	Millner	Syverson
Crotty	Holmes	Murphy	Trotter
Cullerton	Hultgren	Noland	Watson
Dahl	Hunter	Pankau	Wilhelmi
DeLeo	Jacobs	Peterson	Mr. President
Delgado	Jones, J.	Radogno	
Demuzio	Koehler	Raoul	
Dillard	Kotowski	Righter	

The motion prevailed.
And the resolution was adopted.
Ordered that the Secretary inform the House of Representatives thereof.

Senator Maloney moved that **House Joint Resolution No. 69**, on the Secretary's Desk, be taken up for immediate consideration.
The motion prevailed.
Senator Maloney moved that House Joint Resolution No. 69 be adopted.
And on that motion a call of the roll was had resulting as follows:

Yeas 52; Nays None.

The following voted in the affirmative:

Althoff	Dillard	Lauzen	Risinger
Bomke	Forby	Lightford	Ronen
Bond	Frerichs	Link	Sandoval
Brady	Garrett	Maloney	Schoenberg
Burzynski	Haine	Martinez	Silverstein
Clayborne	Halvorson	Meeks	Sullivan
Collins	Harmon	Millner	Syverson
Cronin	Hendon	Murphy	Trotter
Crotty	Holmes	Noland	Wilhelmi
Cullerton	Hultgren	Pankau	Mr. President
Dahl	Jacobs	Peterson	
DeLeo	Jones, J.	Radogno	
Delgado	Koehler	Raoul	
Demuzio	Kotowski	Righter	

The motion prevailed.
And the resolution was adopted.
Ordered that the Secretary inform the House of Representatives thereof.

Senator Millner moved that **House Joint Resolution No. 70**, on the Secretary's Desk, be taken up for immediate consideration.
The motion prevailed.
Senator Millner moved that House Joint Resolution No. 70 be adopted.
And on that motion a call of the roll was had resulting as follows:

Yeas 52; Nays None.

The following voted in the affirmative:

Althoff	Forby	Lauzen	Risinger
Bomke	Frerichs	Lightford	Ronen
Bond	Garrett	Link	Sandoval
Brady	Haine	Maloney	Schoenberg
Clayborne	Halvorson	Martinez	Silverstein
Collins	Harmon	Meeks	Sullivan
Cronin	Hendon	Millner	Trotter
Crotty	Holmes	Murphy	Watson
Cullerton	Hultgren	Noland	Wilhelmi
Dahl	Hunter	Pankau	Mr. President
DeLeo	Jacobs	Peterson	
Delgado	Jones, J.	Radogno	
Demuzio	Koehler	Raoul	
Dillard	Kotowski	Righter	

The motion prevailed.
And the resolution was adopted.
Ordered that the Secretary inform the House of Representatives thereof.

CONSIDERATION OF HOUSE AMENDMENTS TO SENATE RESOLUTION ON SECRETARY'S DESK

On motion of Senator Hunter, **Senate Joint Resolution No. 9**, with House Amendments numbered 1 and 2 on the Secretary's Desk, was taken up for immediate consideration.
Senator Hunter moved that the Senate concur with the House in the adoption of their amendments to said resolution.
And on that motion, a call of the roll was had resulting as follows:

Yeas 52; Nays None.

The following voted in the affirmative:

Althoff	Forby	Lauzen	Risinger
Bomke	Frerichs	Lightford	Ronen
Bond	Garrett	Link	Sandoval
Brady	Haine	Maloney	Schoenberg
Clayborne	Halvorson	Martinez	Silverstein
Collins	Harmon	Meeks	Sullivan
Cronin	Hendon	Millner	Trotter
Crotty	Holmes	Murphy	Watson
Cullerton	Hultgren	Noland	Wilhelmi
Dahl	Hunter	Pankau	Mr. President
DeLeo	Jacobs	Peterson	
Delgado	Jones, J.	Radogno	
Demuzio	Koehler	Raoul	
Dillard	Kotowski	Righter	

The motion prevailed.

And the Senate concurred with the House in the adoption of their Amendments numbered 1 and 2 to **Senate Joint Resolution No. 9**.

Ordered that the Secretary inform the House of Representatives thereof.

POSTING NOTICE WAIVED

Senator Crotty moved to waive the six-day posting requirement on **House Bills numbered 1664 and 2306** so that the bills may be heard in the Committee on Local Government that is scheduled to meet July 27, 2007.

The motion prevailed.

At the hour of 7:09 o'clock p.m., the Chair announced that the Senate stand adjourned until Friday, July 27, 2007, at 10:00 o'clock a.m.