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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549**

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

**May 23, 2007**

Date of Report (Date of earliest event reported)

<u>Commission File Number</u>	<u>Exact Name of Registrant as Specified in Its Charter; State of Incorporation; Address of Principal Executive Offices; and Telephone Number</u>	<u>IRS Employer Identification Number</u>
1-16169	EXELON CORPORATION (a Pennsylvania corporation) 10 South Dearborn Street P.O. Box 805379 Chicago, Illinois 60680-5379 (312) 394-7398	23-2990190
333-85496	EXELON GENERATION COMPANY, LLC (a Pennsylvania limited liability company) 300 Exelon Way Kennett Square, Pennsylvania 19348 (610) 765-5959	23-3064219
1-1839	COMMONWEALTH EDISON COMPANY (an Illinois corporation) 440 South LaSalle Street Chicago, Illinois 60605-1028 (312) 394-4321	36-0938600

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## Section 8 — Other Events

### Item 8.01 Other Events.

In the Current Report on Form 8-K filed on May 24, 2007, Exelon Corporation (Exelon) disclosed that Floor Amendment No. 3 to Senate Bill 1592 was posted in the Illinois House of Representatives (House) and the bill was assigned to the House Electric Utility Oversight Committee. On May 24, 2007, the House Electric Utility Oversight Committee approved the amendment by a vote of 5 to 4, and the bill may go to the House for a vote at any time. The text of the amended bill is attached as Exhibit 99.1 to this Current Report on Form 8-K.

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This combined Form 8-K is being furnished separately by Exelon, Exelon Generation Company, LLC (Generation) and Commonwealth Edison Company (ComEd) (Registrants). Information contained herein relating to any individual registrant has been furnished by such registrant on its own behalf. No registrant makes any representation as to information relating to any other registrant.

This Current Report includes forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, that are subject to risks and uncertainties. The factors that could cause actual results to differ materially from these forward-looking statements include those discussed herein as well as those discussed in (1) Exelon's, Generation's and ComEd's 2006 Annual Report on Form 10-K in (a) ITEM 1A. Risk Factors, (b) ITEM 7. Management's Discussion and Analysis of Financial Condition and Results of Operation and (c) ITEM 8, Financial Statements and Supplementary Data: Note 18; (2) Exelon's First Quarter 2007 Quarterly Report on Form 10-Q in (a) Part II, Other Information, ITEM 1A. Risk Factors and (b) Part I, Financial Information, ITEM 1. Financial Statements: Note 13; and (3) other factors discussed in filings with the SEC by Exelon, Generation and ComEd. Readers are cautioned not to place undue reliance on these forward-looking statements, which apply only as of the date of this Current Report. Exelon, Generation and ComEd do not undertake any obligation to publicly release any revision to its forward-looking statements to reflect events or circumstances after the date of this Current Report.

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**Section 9 — Financial Statements and Exhibits**  
**Item 9.01. Financial Statements and Exhibits.**

(d) *Exhibits.*

<u>Exhibit No.</u>	<u>Description</u>
99.1	Floor Amendment No. 3 to Senate Bill 1592

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, each Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

EXELON CORPORATION  
EXELON GENERATION COMPANY, LLC

/s/ John F. Young

John F. Young

Executive Vice President, Finance and Markets  
and Chief Financial Officer  
Exelon Corporation

COMMONWEALTH EDISON COMPANY

/s/ Robert K. McDonald

Robert K. McDonald

Senior Vice President, Chief Financial Officer,  
Treasurer and Chief Risk Officer  
Commonwealth Edison Company

May 25, 2007

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## EXHIBIT INDEX

Exhibit No.

Description

99.1

Floor Amendment No. 3 to Senate Bill 1592

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1 FLOOR AMENDMENT TO SENATE BILL 1592

2 AMENDMENT NO. 3. Amend Senate Bill 1592 by inserting  
3 immediately above the enacting clause the following:

4 “WHEREAS, This Act shall be known as the Electricity Rate  
5 Relief Act of 2007; therefore,”; and

6 by replacing everything after the enacting clause with the  
7 following:

8 “ARTICLE 1. LEGISLATIVE INTENT

9 Section 1-5. Legislative intent. In the Electric Service  
10 Customer Choice and Rate Relief Law of 1997, the General  
11 Assembly authorized market-based electric rates only if retail  
12 and wholesale competition developed in Illinois and if the  
13 Illinois Commerce Commission declared electric service to be  
14 “competitive”.

15 In 2006, however, the Illinois Commerce Commission

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1 authorized market-based rates for electric service that had  
2 not, and still has not, been declared competitive.

3 As a result, the General Assembly finds it necessary to  
4 take the steps set forth in this amendatory Act to provide  
5 immediate relief to consumers, who have been harmed by the  
6 Illinois Commerce Commission’s approval of market-based rates  
7 in the absence of a competitive declaration.

8 ARTICLE 3. AMENDATORY PROVISIONS

9 Section 3-5. The Public Utilities Act is amended by  
10 changing Sections 16-102, 16-103, 16-111, and 16-113 and by  
11 adding Sections 8-205.5 and 16-135 as follows:

12 (220 ILCS 5/8-205.5 new)

13 Sec. 8-205.5. Termination of utility service prior to March  
14 31, 2008. Notwithstanding any other provision of this Act or  
15 any other law to the contrary, a public utility that, on  
16 December 31, 2005, served at least 100,000 electric customers  
17 in Illinois may not terminate electric service to a residential  
18 customer for nonpayment prior to March 31, 2008.

19 (220 ILCS 5/16-102)

20 Sec. 16-102. Definitions. For the purposes of this Article  
21 the following terms shall be defined as set forth in this  
22 Section.

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1           “Alternative retail electric supplier” means every person,  
2 cooperative, corporation, municipal corporation, company,  
3 association, joint stock company or association, firm,  
4 partnership, individual, or other entity, their lessees,  
5 trustees, or receivers appointed by any court whatsoever, that  
6 offers electric power or energy for sale, lease or in exchange  
7 for other value received to one or more retail customers, or  
8 that engages in the delivery or furnishing of electric power or  
9 energy to such retail customers, and shall include, without  
10 limitation, resellers, aggregators and power marketers, but  
11 shall not include (i) electric utilities (or any agent of the  
12 electric utility to the extent the electric utility provides  
13 tariffed services to retail customers through that agent), (ii)  
14 any electric cooperative or municipal system as defined in  
15 Section 17-100 to the extent that the electric cooperative or  
16 municipal system is serving retail customers within any area in  
17 which it is or would be entitled to provide service under the  
18 law in effect immediately prior to the effective date of this  
19 amendatory Act of 1997, (iii) a public utility that is owned  
20 and operated by any public institution of higher education of  
21 this State, or a public utility that is owned by such public  
22 institution of higher education and operated by any of its  
23 lessees or operating agents, within any area in which it is or  
24 would be entitled to provide service under the law in effect  
25 immediately prior to the effective date of this amendatory Act  
26 of 1997, (iv) a retail customer to the extent that customer

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1 obtains its electric power and energy from that customer's own  
2 cogeneration or self-generation facilities, (v) an entity that  
3 owns, operates, sells, or arranges for the installation of a  
4 customer's own cogeneration or self-generation facilities, but  
5 only to the extent the entity is engaged in owning, selling or  
6 arranging for the installation of such facility, or operating  
7 the facility on behalf of such customer, provided however that  
8 any such third party owner or operator of a facility built  
9 after January 1, 1999, complies with the labor provisions of  
10 Section 16-128(a) as though such third party were an  
11 alternative retail electric supplier, or (vi) an industrial or  
12 manufacturing customer that owns its own distribution  
13 facilities, to the extent that the customer provides service  
14 from that distribution system to a third-party contractor  
15 located on the customer's premises that is integrally and  
16 predominantly engaged in the customer's industrial or  
17 manufacturing process; provided, that if the industrial or  
18 manufacturing customer has elected delivery services, the  
19 customer shall pay transition charges applicable to the  
20 electric power and energy consumed by the third-party  
21 contractor unless such charges are otherwise paid by the third  
22 party contractor, which shall be calculated based on the usage  
23 of, and the base rates or the contract rates applicable to, the  
24 third-party contractor in accordance with Section 16-102.

25 "Base rates" means the rates for those tariffed services  
26 that the electric utility is required to offer pursuant to

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1 subsection (a) of Section 16-103 and that were identified in a  
2 rate order for collection of the electric utility's base rate  
3 revenue requirement, excluding (i) separate automatic rate  
4 adjustment riders then in effect, (ii) special or negotiated  
5 contract rates, (iii) delivery services tariffs filed pursuant  
6 to Section 16-108, (iv) real-time pricing, or (v) tariffs that  
7 were in effect prior to October 1, 1996 and that based charges  
8 for services on an index or average of other utilities'  
9 charges, but including (vi) any subsequent redesign of such  
10 rates for tariffed services that is authorized by the  
11 Commission after notice and hearing.

12 "Competitive service" includes (i) any service that has  
13 been declared to be competitive pursuant to Section 16-113 of  
14 this Act, (ii) contract service, and (iii) services, other than  
15 tariffed services, that are related to, but not necessary for,  
16 the provision of electric power and energy or delivery  
17 services.

18 "Contract service" means (1) services, including the  
19 provision of electric power and energy or other services, that  
20 are provided by mutual agreement between an electric utility  
21 and a retail customer that is located in the electric utility's  
22 service area, provided that, delivery services shall not be a  
23 contract service until such services are declared competitive  
24 pursuant to Section 16-113; and also means (2) the provision of  
25 electric power and energy by an electric utility to retail  
26 customers outside the electric utility's service area pursuant

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1 to Section 16-116. Provided, however, contract service does not  
2 include electric utility services provided pursuant to (i)  
3 contracts that retail customers are required to execute as a  
4 condition of receiving tariffed services, or (ii) special or  
5 negotiated rate contracts for electric utility services that  
6 were entered into between an electric utility and a retail  
7 customer prior to the effective date of this amendatory Act of  
8 1997 and filed with the Commission.

9 “Delivery services” means those services provided by the  
10 electric utility that are necessary in order for the  
11 transmission and distribution systems to function so that  
12 retail customers located in the electric utility’s service area  
13 can receive electric power and energy from suppliers other than  
14 the electric utility, and shall include, without limitation,  
15 standard metering and billing services.

16 “Electric utility” means a public utility, as defined in  
17 Section 3-105 of this Act, that has a franchise, license,  
18 permit or right to furnish or sell electricity to retail  
19 customers within a service area.

20 “Mandatory transition period” means the period from the  
21 effective date of Public Act 90-561 ~~this amendatory Act of 1997~~  
22 through January 1, 2007 and from the effective date of this  
23 amendatory Act of the 95th General Assembly through the date on  
24 which the Commission has approved declarations of competitive  
25 service, pursuant to Section 16-113, for all classes of service  
26 offered in the service areas of all electric utilities that, on

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1 December 31, 2005, served at least 100,000 residential  
2 customers.

3 “Municipal system” shall have the meaning set forth in  
4 Section 17-100.

5 “Real-time pricing” means tariffed retail charges for  
6 delivered electric power and energy that vary hour-to-hour and  
7 are determined from wholesale market prices using a methodology  
8 approved by the Illinois Commerce Commission.

9 “Residential customer” means those retail customers of an  
10 electric utility that receive (i) electric utility service for  
11 household purposes distributed to a dwelling of 2 or fewer  
12 units that is billed under a residential rate or (ii) electric  
13 utility service for household purposes distributed to a  
14 dwelling unit or units that is billed under a residential rate  
15 and is registered by a separate meter for each dwelling unit.

16 “Retail customer” means a single entity using electric  
17 power or energy at a single premises and that (A) either (i) is  
18 receiving or is eligible to receive tariffed services from an  
19 electric utility, or (ii) that is served by a municipal system  
20 or electric cooperative within any area in which the municipal  
21 system or electric cooperative is or would be entitled to  
22 provide service under the law in effect immediately prior to  
23 the effective date of this amendatory Act of 1997, or (B) an  
24 entity which on the effective date of this Act was receiving  
25 electric service from a public utility and (i) was engaged in  
26 the practice of resale and redistribution of such electricity

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1 within a building prior to January 2, 1957, or (ii) was  
2 providing lighting services to tenants in a multi-occupancy  
3 building, but only to the extent such resale, redistribution or  
4 lighting service is authorized by the electric utility's  
5 tariffs that were on file with the Commission on the effective  
6 date of this Act.

7 "Service area" means (i) the geographic area within which  
8 an electric utility was lawfully entitled to provide electric  
9 power and energy to retail customers as of the effective date  
10 of this amendatory Act of 1997, and includes (ii) the location  
11 of any retail customer to which the electric utility was  
12 lawfully providing electric utility services on such effective  
13 date.

14 "Small commercial retail customer" means those  
15 nonresidential retail customers of an electric utility  
16 consuming 15,000 kilowatt-hours or less of electricity  
17 annually in its service area.

18 "Tariffed service" means services provided to retail  
19 customers by an electric utility as defined by its rates on  
20 file with the Commission pursuant to the provisions of Article  
21 IX of this Act, but shall not include competitive services.

22 "Transition charge" means a charge expressed in cents per  
23 kilowatt-hour that is calculated for a customer or class of  
24 customers as follows for each year in which an electric utility  
25 is entitled to recover transition charges as provided in  
26 Section 16-108:

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1 (1) the amount of revenue that an electric utility  
2 would receive from the retail customer or customers if it  
3 were serving such customers' electric power and energy  
4 requirements as a tariffed service based on (A) all of the  
5 customers' actual usage during the 3 years ending 90 days  
6 prior to the date on which such customers were first  
7 eligible for delivery services pursuant to Section 16-104,  
8 and (B) on (i) the base rates in effect on October 1, 1996  
9 (adjusted for the reductions required by subsection (b) of  
10 Section 16-111, for any reduction resulting from a rate  
11 decrease under Section 16-101(b), for any restatement of  
12 base rates made in conjunction with an elimination of the  
13 fuel adjustment clause pursuant to subsection (b), (d), or  
14 (f) of Section 9-220 and for any removal of decommissioning  
15 costs from base rates pursuant to Section 16-114) and any  
16 separate automatic rate adjustment riders (other than a  
17 decommissioning rate as defined in Section 16-114) under  
18 which the customers were receiving or, had they been  
19 customers, would have received electric power and energy  
20 from the electric utility during the year immediately  
21 preceding the date on which such customers were first  
22 eligible for delivery service pursuant to Section 16-104,  
23 or (ii) to the extent applicable, any contract rates,  
24 including contracts or rates for consolidated or  
25 aggregated billing, under which such customers were  
26 receiving electric power and energy from the electric

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1 utility during such year;

2 (2) less the amount of revenue, other than revenue from  
3 transition charges and decommissioning rates, that the  
4 electric utility would receive from such retail customers  
5 for delivery services provided by the electric utility,  
6 assuming such customers were taking delivery services for  
7 all of their usage, based on the delivery services tariffs  
8 in effect during the year for which the transition charge  
9 is being calculated and on the usage identified in  
10 paragraph (1);

11 (3) less the market value for the electric power and  
12 energy that the electric utility would have used to supply  
13 all of such customers' electric power and energy  
14 requirements, as a tariffed service, based on the usage  
15 identified in paragraph (1), with such market value  
16 determined in accordance with Section 16-112 of this Act;

17 (4) less the following amount which represents the  
18 amount to be attributed to new revenue sources and cost  
19 reductions by the electric utility through the end of the  
20 period for which transition costs are recovered pursuant to  
21 Section 16-108, referred to in this Article XVI as a  
22 "mitigation factor":

23 (A) for nonresidential retail customers, an amount  
24 equal to the greater of (i) 0.5 cents per kilowatt-hour  
25 during the period October 1, 1999 through December 31,  
26 2004, 0.6 cents per kilowatt-hour in calendar year

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1 2005, and 0.9 cents per kilowatt-hour in calendar year  
2 2006, multiplied in each year by the usage identified  
3 in paragraph (1), or (ii) an amount equal to the  
4 following percentages of the amount produced by  
5 applying the applicable base rates (adjusted as  
6 described in subparagraph (1)(B)) or contract rate to  
7 the usage identified in paragraph (1): 8% for the  
8 period October 1, 1999 through December 31, 2002, 10%  
9 in calendar years 2003 and 2004, 11% in calendar year  
10 2005 and 12% in calendar year 2006; and

11 (B) for residential retail customers, an amount  
12 equal to the following percentages of the amount  
13 produced by applying the base rates in effect on  
14 October 1, 1996 (adjusted as described in subparagraph  
15 (1) (B)) to the usage identified in paragraph (1): (i)  
16 6% from May 1, 2002 through December 31, 2002, (ii) 7%  
17 in calendar years 2003 and 2004, (iii) 8% in calendar  
18 year 2005, and (iv) 10% in calendar year 2006;

19 (5) divided by the usage of such customers identified  
20 in paragraph (1),

21 provided that the transition charge shall never be less than  
22 zero.

23 “Unbundled service” means a component or constituent part  
24 of a tariffed service which the electric utility subsequently  
25 offers separately to its customers.

26 (Source: P.A. 94-977, eff. 6-30-06.)

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1 (220 ILCS 5/16-103)

2 Sec. 16-103. Service obligations of electric utilities.

3 (a) An electric utility shall continue offering to retail  
4 customers each tariffed service that it offered as a distinct  
5 and identifiable service on the effective date of this  
6 amendatory Act of 1997 until the service is (i) declared  
7 competitive pursuant to Section 16-113, or (ii) abandoned  
8 pursuant to Section 8-508. Nothing in this subsection shall be  
9 construed as limiting an electric utility's right to propose,  
10 or the Commission's power to approve, allow or order  
11 modifications in the rates, terms and conditions for such  
12 services pursuant to Article IX or Section 16-111 of this Act.

13 (b) An electric utility shall also offer, as tariffed  
14 services, delivery services in accordance with this Article,  
15 the power purchase options described in Section 16-110 and  
16 real-time pricing as provided in Section 16-107.

17 (c) Notwithstanding any other provision of this Article,  
18 each electric utility shall continue offering to all  
19 residential customers and to all small commercial retail  
20 customers in its service area, as a tariffed service, bundled  
21 electric power and energy delivered to the customer's premises  
22 consistent with the bundled utility service provided by the  
23 electric utility on the effective date of this amendatory Act  
24 of 1997. Upon declaration of the provision of electric power  
25 and energy as competitive, the electric utility shall continue

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1 to offer to such customers, as a tariffed service, bundled  
2 service options at rates which reflect recovery of all cost  
3 components for providing the service. For those components of  
4 the service which have been declared competitive, cost shall be  
5 the market based prices. Market based prices as referred to  
6 herein shall mean, for electric power and energy, either (i)  
7 those prices for electric power and energy determined as  
8 provided in Section 16-112, or (ii) the electric utility's cost  
9 of obtaining the electric power and energy at wholesale through  
10 a competitive bidding or other arms-length acquisition  
11 process.

12 (c-1) Electric utilities that serve at least 1,000,000  
13 customers must provide tariffed service to Unit Owners'  
14 Associations, as defined by Section 2 of the Condominium  
15 Property Act, for condominium properties that are not  
16 restricted to nonresidential use at rates that do not exceed  
17 the rates offered to residential customers. Within 10 days  
18 after the effective date of this amendatory Act of the 95th  
19 General Assembly, each electric utility shall provide the  
20 tariffed service to Unit Owners' Associations required by this  
21 subsection and shall reinstate any all-electric discount  
22 applicable to any Unit Owners' Association that received such a  
23 discount on December 31, 2006.

24 (d) Any residential or small commercial retail customer  
25 which elects delivery services is entitled to return to the  
26 electric utility's bundled utility tariffed service offering

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1 provided in accordance with subsection (c) of this Section upon  
2 payment of a reasonable administrative fee which shall be set  
3 forth in the tariff, provided, however, that the electric  
4 utility shall be entitled to impose the condition that such  
5 customer may not elect delivery services for up to 24 months  
6 thereafter.

7 ~~(e) (Blank). The Commission shall not require an electric~~  
8 ~~utility to offer any tariffed service other than the services~~  
9 ~~required by this Section, and shall not require an electric~~  
10 ~~utility to offer any competitive service.~~

11 (Source: P.A. 90-561, eff. 12-16-97.)

12 (220 ILCS 5/16-111)

13 Sec. 16-111. Rates and restructuring transactions during  
14 mandatory transition period.

15 (a) During the mandatory transition period,  
16 notwithstanding any provision of Article IX of this Act, and  
17 except as provided in subsections (b) , (d) , (e) , and (f) of  
18 this Section, the Commission shall order each electric utility  
19 that, on December 31, 2005, served at least 100,000 customers  
20 in this State to file and implement tariffs: (A) to reinstate,  
21 within 10 days after the effective date of this amendatory Act  
22 of the 95th General Assembly, all rates charged to the electric  
23 utility's customers on December 31, 2006, except that the  
24 utility may charge any rate under any delivery services tariff  
25 of the utility that became effective on or after January 2,

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1 2007; and (B) to refund to the utility's customers any amounts  
2 charged to those customers, from January 2, 2007 until 10 days  
3 after the effective date of this amendatory Act of the 95th  
4 General Assembly, that exceed the rates charged to the electric  
5 utility's customers on December 31, 2006, not including any  
6 rate charged under any delivery services tariff of the utility  
7 that became effective on or after January 2, 2007. This refund:

8 (1) must be issued no later than December 1, 2007;

9 (2) must be made by a negotiable check of the utility  
10 to be paid to the order of the customer;

11 (3) must include interest on the full amount of the  
12 refund, beginning January 2, 2007, at the same interest  
13 rate the Commission requires utilities to pay on customer  
14 deposits; and

15 (4) must be accompanied by a notice that states, in at  
16 least 14-point bold type, "THIS REFUND IS MADE IN  
17 ACCORDANCE WITH A MANDATE OF THE GENERAL ASSEMBLY OF THE  
18 STATE OF ILLINOIS." No other communication may be contained  
19 in the envelope with the refund check and no other  
20 communication concerning the refund may be contained on the  
21 notice, check, or envelope.

22 After electric rates are reinstated in accordance with this  
23 subsection (a), the Commission shall not, prior to July 1,  
24 2008, (i) initiate, authorize or order any change by way of  
25 increase to those components of the reinstated rates that  
26 reflect the cost of electric energy (other than in connection

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1 with a request for rate increase which was filed after  
2 September 1, 1997 but prior to October 15, 1997, by an electric  
3 utility serving less than 12,500 customers in this State) or  
4 ~~(ii), (ii) initiate or, unless requested by the electric~~  
5 ~~utility, authorize or order any change by way of decrease,~~  
6 ~~restructuring or unbundling (except as provided in Section~~  
7 ~~16-109A), in the rates of any electric utility that were in~~  
8 ~~effect on October 1, 1996, or (iii) in any order approving any~~  
9 application for a merger pursuant to Section 7-204 that was  
10 pending as of May 16, 1997, impose any condition requiring any  
11 filing for an increase, decrease, or change in, or other review  
12 of, an electric utility's rates or enforce any such condition  
13 of any such order. ~~However,; provided, however, that~~ this  
14 subsection shall not prohibit the Commission from:

15 (1) ~~(blank); approving the application of an electric~~  
16 ~~utility to implement an alternative to rate of return~~  
17 ~~regulation or a regulatory mechanism that rewards or~~  
18 ~~penalizes the electric utility through adjustment of rates~~  
19 ~~based on utility performance, pursuant to Section 9-244;~~

20 (2) authorizing an electric utility to eliminate its  
21 fuel adjustment clause and adjust its base rate tariffs in  
22 accordance with subsection (b), (d), or (f) of Section  
23 9-220 of this Act, to fix its fuel adjustment factor in  
24 accordance with subsection (c) of Section 9-220 of this  
25 Act, or to eliminate its fuel adjustment clause in  
26 accordance with subsection (e) of Section 9-220 of this

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1 Act;

2 (3) ordering into effect tariffs for delivery services  
3 and transition charges in accordance with Sections 16-104  
4 and 16-108, for real-time pricing in accordance with  
5 Section 16-107, or the options required by Section 16-110  
6 and subsection (n) of 16-112, allowing a billing experiment  
7 in accordance with Section 16-106, or modifying delivery  
8 services tariffs in accordance with Section 16-109; or

9 (4) ordering or allowing into effect any tariff to  
10 recover charges pursuant to Sections 9-201.5, 9-220.1,  
11 9-221, 9-222 (except as provided in Section 9-222.1),  
12 16-108, and 16-114 of this Act, Section 5-5 of the  
13 Electricity Infrastructure Maintenance Fee Law, Section  
14 6-5 of the Renewable Energy, Energy Efficiency, and Coal  
15 Resources Development Law of 1997, and Section 13 of the  
16 Energy Assistance Act.

17 After December 31, 2004, the provisions of this subsection  
18 (a) shall not apply to an electric utility whose average  
19 residential retail rate was less than or equal to 90% of the  
20 average residential retail rate for the "Midwest Utilities", as  
21 that term is defined in subsection (b) of this Section, based  
22 on data reported on Form 1 to the Federal Energy Regulatory  
23 Commission for calendar year 1995, and which served between  
24 150,000 and 250,000 retail customers in this State on January  
25 1, 1995 unless the electric utility or its holding company has  
26 been acquired by or merged with an affiliate of another

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1 electric utility subsequent to January 1, 2002. This exemption  
2 shall be limited to this subsection (a) and shall not extend to  
3 any other provisions of this Act.

4 (a-5) During the remainder of the mandatory transition  
5 period, if any, the Commission may modify rates only in  
6 accordance with Article IX of this Act.

7 (b) Notwithstanding the provisions of subsection (a), each  
8 Illinois electric utility serving more than 12,500 customers in  
9 Illinois shall file tariffs (i) reducing, effective August 1,  
10 1998, each component of its base rates to residential retail  
11 customers by 15% from the base rates in effect immediately  
12 prior to January 1, 1998 and (ii) if the public utility  
13 provides electric service to (A) more than 500,000 customers  
14 but less than 1,000,000 customers in this State on January 1,  
15 1999, reducing, effective May 1, 2002, each component of its  
16 base rates to residential retail customers by an additional 5%  
17 from the base rates in effect immediately prior to January 1,  
18 1998, or (B) at least 1,000,000 customers in this State on  
19 January 1, 1999, reducing, effective October 1, 2001, each  
20 component of its base rates to residential retail customers by  
21 an additional 5% from the base rates in effect immediately  
22 prior to January 1, 1998. Provided, however, that (A) if an  
23 electric utility's average residential retail rate is less than  
24 or equal to the average residential retail rate for a group of  
25 Midwest Utilities (consisting of all investor-owned electric  
26 utilities with annual system peaks in excess of 1000 megawatts

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1 in the States of Illinois, Indiana, Iowa, Kentucky, Michigan,  
2 Missouri, Ohio, and Wisconsin), based on data reported on Form  
3 1 to the Federal Energy Regulatory Commission for calendar year  
4 1995, then it shall only be required to file tariffs (i)  
5 reducing, effective August 1, 1998, each component of its base  
6 rates to residential retail customers by 5% from the base rates  
7 in effect immediately prior to January 1, 1998, (ii) reducing,  
8 effective October 1, 2000, each component of its base rates to  
9 residential retail customers by the lesser of 5% of the base  
10 rates in effect immediately prior to January 1, 1998 or the  
11 percentage by which the electric utility's average residential  
12 retail rate exceeds the average residential retail rate of the  
13 Midwest Utilities, based on data reported on Form 1 to the  
14 Federal Energy Regulatory Commission for calendar year 1999,  
15 and (iii) reducing, effective October 1, 2002, each component  
16 of its base rates to residential retail customers by an  
17 additional amount equal to the lesser of 5% of the base rates  
18 in effect immediately prior to January 1, 1998 or the  
19 percentage by which the electric utility's average residential  
20 retail rate exceeds the average residential retail rate of the  
21 Midwest Utilities, based on data reported on Form 1 to the  
22 Federal Energy Regulatory Commission for calendar year 2001;  
23 and (B) if the average residential retail rate of an electric  
24 utility serving between 150,000 and 250,000 retail customers in  
25 this State on January 1, 1995 is less than or equal to 90% of  
26 the average residential retail rate for the Midwest Utilities,

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1 based on data reported on Form 1 to the Federal Energy  
2 Regulatory Commission for calendar year 1995, then it shall  
3 only be required to file tariffs (i) reducing, effective August  
4 1, 1998, each component of its base rates to residential retail  
5 customers by 2% from the base rates in effect immediately prior  
6 to January 1, 1998; (ii) reducing, effective October 1, 2000,  
7 each component of its base rates to residential retail  
8 customers by 2% from the base rate in effect immediately prior  
9 to January 1, 1998; and (iii) reducing, effective October 1,  
10 2002, each component of its base rates to residential retail  
11 customers by 1% from the base rates in effect immediately prior  
12 to January 1, 1998. Provided, further, that any electric  
13 utility for which a decrease in base rates has been or is  
14 placed into effect between October 1, 1996 and the dates  
15 specified in the preceding sentences of this subsection, other  
16 than pursuant to the requirements of this subsection, shall be  
17 entitled to reduce the amount of any reduction or reductions in  
18 its base rates required by this subsection by the amount of  
19 such other decrease. The tariffs required under this subsection  
20 shall be filed 45 days in advance of the effective date.  
21 Notwithstanding anything to the contrary in Section 9-220 of  
22 this Act, no restatement of base rates in conjunction with the  
23 elimination of a fuel adjustment clause under that Section  
24 shall result in a lesser decrease in base rates than customers  
25 would otherwise receive under this subsection had the electric  
26 utility's fuel adjustment clause not been eliminated.

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1 (c) Any utility reducing its base rates by 15% on August 1,  
2 1998 pursuant to subsection (b) shall include the following  
3 statement on its bills for residential customers from August 1  
4 through December 31, 1998: "Effective August 1, 1998, your  
5 rates have been reduced by 15% by the Electric Service Customer  
6 Choice and Rate Relief Law of 1997 passed by the Illinois  
7 General Assembly." Any utility reducing its base rates by 5%  
8 on August 1, 1998, pursuant to subsection (b) shall include the  
9 following statement on its bills for residential customers from  
10 August 1 through December 31, 1998: "Effective August 1, 1998,  
11 your rates have been reduced by 5% by the Electric Service  
12 Customer Choice and Rate Relief Law of 1997 passed by the  
13 Illinois General Assembly."

14 Any utility reducing its base rates by 2% on August 1, 1998  
15 pursuant to subsection (b) shall include the following  
16 statement on its bills for residential customers from August 1  
17 through December 31, 1998: "Effective August 1, 1998, your  
18 rates have been reduced by 2% by the Electric Service Customer  
19 Choice and Rate Relief Law of 1997 passed by the Illinois  
20 General Assembly."

21 (d) ~~(Blank). During the mandatory transition period, but~~  
22 ~~not before January 1, 2000, and notwithstanding the provisions~~  
23 ~~of subsection (a), an electric utility may request an increase~~  
24 ~~in its base rates if the electric utility demonstrates that the~~  
25 ~~2-year average of its earned rate of return on common equity,~~  
26 ~~calculated as its net income applicable to common stock divided~~

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1 by the average of its beginning and ending balances of common  
2 equity using data reported in the electric utility's Form 1  
3 report to the Federal Energy Regulatory Commission but adjusted  
4 to remove the effects of accelerated depreciation or  
5 amortization or other transition or mitigation measures  
6 implemented by the electric utility pursuant to subsection (g)  
7 of this Section and the effect of any refund paid pursuant to  
8 subsection (e) of this Section, is below the 2 year average for  
9 the same 2 years of the monthly average yields of 30 year U.S.  
10 Treasury bonds published by the Board of Governors of the  
11 Federal Reserve System in its weekly H.15 Statistical Release  
12 or successor publication. The Commission shall review the  
13 electric utility's request, and may review the justness and  
14 reasonableness of all rates for tariffed services, in  
15 accordance with the provisions of Article IX of this Act,  
16 provided that the Commission shall consider any special or  
17 negotiated adjustments to the revenue requirement agreed to  
18 between the electric utility and the other parties to the  
19 proceeding. In setting rates under this Section, the Commission  
20 shall exclude the costs and revenues that are associated with  
21 competitive services and any billing or pricing experiments  
22 conducted under Section 16-106.

23 (e) (Blank). For the purposes of this subsection (e) all  
24 calculations and comparisons shall be performed for the  
25 Illinois operations of multijurisdictional utilities. During  
26 the mandatory transition period, notwithstanding the

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1 provisions of subsection (a), if the 2 year average of an  
2 electric utility's earned rate of return on common equity,  
3 calculated as its net income applicable to common stock divided  
4 by the average of its beginning and ending balances of common  
5 equity using data reported in the electric utility's Form 1  
6 report to the Federal Energy Regulatory Commission but adjusted  
7 to remove the effect of any refund paid under this subsection  
8 (e), and further adjusted to include the annual amortization of  
9 any difference between the consideration received by an  
10 affiliated interest of the electric utility in the sale of an  
11 asset which had been sold or transferred by the electric  
12 utility to the affiliated interest subsequent to the effective  
13 date of this amendatory Act of 1997 and the consideration for  
14 which such asset had been sold or transferred to the affiliated  
15 interest, with such difference to be amortized ratably from the  
16 date of the sale by the affiliated interest to December 31,  
17 2006, exceeds the 2 year average of the Index for the same 2  
18 years by 1.5 or more percentage points, the electric utility  
19 shall make refunds to customers beginning the first billing day  
20 of April in the following year in the manner described in  
21 paragraph (3) of this subsection. For purposes of this  
22 subsection (e), the "Index" shall be the sum of (A) the average  
23 for the 12 months ended September 30 of the monthly average  
24 yields of 30 year U.S. Treasury bonds published by the Board of  
25 Governors of the Federal Reserve System in its weekly H.15  
26 Statistical Release or successor publication for each year 1998

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1 through 2006, and (B) (i) 4.00 percentage points for each of  
2 the 12-month periods ending September 30, 1998 through  
3 September 30, 1999 or 8.00 percentage points if the electric  
4 utility's average residential retail rate is less than or equal  
5 to 90% of the average residential retail rate for the "Midwest  
6 Utilities", as that term is defined in subsection (b) of this  
7 Section, based on data reported on Form 1 to the Federal Energy  
8 Regulatory Commission for calendar year 1995, and the electric  
9 utility served between 150,000 and 250,000 retail customers on  
10 January 1, 1995, (ii) 7.00 percentage points for each of the  
11 12-month periods ending September 30, 2000 through September  
12 30, 2006 if the electric utility was providing service to at  
13 least 1,000,000 customers in this State on January 1, 1999, or  
14 9.00 percentage points if the electric utility's average  
15 residential retail rate is less than or equal to 90% of the  
16 average residential retail rate for the "Midwest Utilities", as  
17 that term is defined in subsection (b) of this Section, based  
18 on data reported on Form 1 to the Federal Energy Regulatory  
19 Commission for calendar year 1995 and the electric utility  
20 served between 150,000 and 250,000 retail customers in this  
21 State on January 1, 1995, (iii) 11.00 percentage points for  
22 each of the 12-month periods ending September 30, 2000 through  
23 September 30, 2006, but only if the electric utility's average  
24 residential retail rate is less than or equal to 90% of the  
25 average residential retail rate for the "Midwest Utilities", as  
26 that term is defined in subsection (b) of this Section, based

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1 on data reported on Form 1 to the Federal Energy Regulatory  
2 Commission for calendar year 1995, the electric utility served  
3 between 150,000 and 250,000 retail customers in this State on  
4 January 1, 1995, and the electric utility offers delivery  
5 services on or before June 1, 2000 to retail customers whose  
6 annual electric energy use comprises 33% of the kilowatt hour  
7 sales to that group of retail customers that are classified  
8 under Division D, Groups 20 through 39 of the Standard  
9 Industrial Classifications set forth in the Standard  
10 Industrial Classification Manual published by the United  
11 States Office of Management and Budget, excluding the kilowatt  
12 hour sales to those customers that are eligible for delivery  
13 services pursuant to Section 16-104(a)(1)(i), and offers  
14 delivery services to its remaining retail customers classified  
15 under Division D, Groups 20 through 39 on or before October 1,  
16 2000, and, provided further, that the electric utility commits  
17 not to petition pursuant to Section 16-108(f) for entry of an  
18 order by the Commission authorizing the electric utility to  
19 implement transition charges for an additional period after  
20 December 31, 2006, or (iv) 5.00 percentage points for each of  
21 the 12-month periods ending September 30, 2000 through  
22 September 30, 2006 for all other electric utilities or 7.00  
23 percentage points for such utilities for each of the 12-month  
24 periods ending September 30, 2000 through September 30, 2006  
25 for any such utility that commits not to petition pursuant to  
26 Section 16-108(f) for entry of an order by the Commission

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1 authorizing the electric utility to implement transition  
2 charges for an additional period after December 31, 2006 or  
3 11.00 percentage points for each of the 12 month periods ending  
4 September 30, 2005 and September 30, 2006 for each electric  
5 utility providing service to fewer than 6,500, or between  
6 75,000 and 150,000, electric retail customers in this State on  
7 January 1, 1995 if such utility commits not to petition  
8 pursuant to Section 16-108(f) for entry of an order by the  
9 Commission authorizing the electric utility to implement  
10 transition charges for an additional period after December 31,  
11 2006.

12 (1) For purposes of this subsection (c), "excess  
13 earnings" means the difference between (A) the 2 year  
14 average of the electric utility's earned rate of return on  
15 common equity, less (B) the 2 year average of the sum of  
16 (i) the Index applicable to each of the 2 years and (ii)  
17 1.5 percentage points; provided, that "excess earnings"  
18 shall never be less than zero.

19 (2) On or before March 31 of each year 2000 through  
20 2007 each electric utility shall file a report with the  
21 Commission showing its earned rate of return on common  
22 equity, calculated in accordance with this subsection, for  
23 the preceding calendar year and the average for the  
24 preceding 2 calendar years.

25 (3) If an electric utility has excess earnings,  
26 determined in accordance with paragraphs (1) and (2) of

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1 this subsection, the refunds which the electric utility  
2 shall pay to its customers beginning the first billing day  
3 of April in the following year shall be calculated and  
4 applied as follows:

5 (i) The electric utility's excess earnings shall  
6 be multiplied by the average of the beginning and  
7 ending balances of the electric utility's common  
8 equity for the 2 year period in which excess earnings  
9 occurred.

10 (ii) The result of the calculation in (i) shall be  
11 multiplied by 0.50 and then divided by a number equal  
12 to 1 minus the electric utility's composite federal and  
13 State income tax rate.

14 (iii) The result of the calculation in (ii) shall  
15 be divided by the sum of the electric utility's  
16 projected total kilowatt hour sales to retail  
17 customers plus projected kilowatt hours to be  
18 delivered to delivery services customers over a one  
19 year period beginning with the first billing date in  
20 April in the succeeding year to determine a cents per  
21 kilowatt hour refund factor.

22 (iv) The cents per kilowatt hour refund factor  
23 calculated in (iii) shall be credited to the electric  
24 utility's customers by applying the factor on the  
25 customer's monthly bills to each kilowatt hour sold or  
26 delivered until the total amount calculated in (ii) has

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1           ~~been paid to customers.~~

2           (f) During the mandatory transition period, an electric  
3 utility may file revised tariffs reducing the price of any  
4 tariffed service offered by the electric utility for all  
5 customers taking that tariffed service, which shall be  
6 effective 7 days after filing.

7           (g) During the mandatory transition period, an electric  
8 utility may, without obtaining any approval of the Commission  
9 other than that provided for in this subsection and  
10 notwithstanding any other provision of this Act or any rule or  
11 regulation of the Commission that would require such approval:

12           (1) implement a reorganization, other than a merger of  
13 2 or more public utilities as defined in Section 3-105 or  
14 their holding companies;

15           (2) retire generating plants from service;

16           (3) sell, assign, lease or otherwise transfer assets to  
17 an affiliated or unaffiliated entity and as part of such  
18 transaction enter into service agreements, power purchase  
19 agreements, or other agreements with the transferee;  
20 provided, however, that the prices, terms and conditions of  
21 any power purchase agreement must be approved or allowed  
22 into effect by the Federal Energy Regulatory Commission; or

23           (4) use any accelerated cost recovery method including  
24 accelerated depreciation, accelerated amortization or  
25 other capital recovery methods, or record reductions to the  
26 original cost of its assets.

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1 In order to implement a reorganization, retire generating  
2 plants from service, or sell, assign, lease or otherwise  
3 transfer assets pursuant to this Section, the electric utility  
4 shall comply with subsections (c) and (d) of Section 16-128, if  
5 applicable, and subsection (k) of this Section, if applicable,  
6 and provide the Commission with at least 30 days notice of the  
7 proposed reorganization or transaction, which notice shall  
8 include the following information:

9 (i) a complete statement of the entries that the  
10 electric utility will make on its books and records of  
11 account to implement the proposed reorganization or  
12 transaction together with a certification from an  
13 independent certified public accountant that such  
14 entries are in accord with generally accepted  
15 accounting principles and, if the Commission has  
16 previously approved guidelines for cost allocations  
17 between the utility and its affiliates, a  
18 certification from the chief accounting officer of the  
19 utility that such entries are in accord with those cost  
20 allocation guidelines;

21 (ii) a description of how the electric utility will  
22 use proceeds of any sale, assignment, lease or transfer  
23 to retire debt or otherwise reduce or recover the costs  
24 of services provided by such electric utility;

25 (iii) a list of all federal approvals or approvals  
26 required from departments and agencies of this State,

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1 other than the Commission, that the electric utility  
2 has or will obtain before implementing the  
3 reorganization or transaction;

4 (iv) an irrevocable commitment by the electric  
5 utility that it will not, as a result of the  
6 transaction, impose any stranded cost charges that it  
7 might otherwise be allowed to charge retail customers  
8 under federal law or increase the transition charges  
9 that it is otherwise entitled to collect under this  
10 Article XVI; and

11 (v) if the electric utility proposes to sell,  
12 assign, lease or otherwise transfer a generating plant  
13 that brings the amount of net dependable generating  
14 capacity transferred pursuant to this subsection to an  
15 amount equal to or greater than 15% of the electric  
16 utility's net dependable capacity as of the effective  
17 date of this amendatory Act of 1997, and enters into a  
18 power purchase agreement with the entity to which such  
19 generating plant is sold, assigned, leased, or  
20 otherwise transferred, the electric utility also  
21 agrees, if its fuel adjustment clause has not already  
22 been eliminated, to eliminate its fuel adjustment  
23 clause in accordance with subsection (b) of Section  
24 9-220 for a period of time equal to the length of any  
25 such power purchase agreement or successor agreement,  
26 or until January 1, 2005, whichever is longer; if the

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1 capacity of the generating plant so transferred and  
2 related power purchase agreement does not result in the  
3 elimination of the fuel adjustment clause under this  
4 subsection, and the fuel adjustment clause has not  
5 already been eliminated, the electric utility shall  
6 agree that the costs associated with the transferred  
7 plant that are included in the calculation of the rate  
8 per kilowatt-hour to be applied pursuant to the  
9 electric utility's fuel adjustment clause during such  
10 period shall not exceed the per kilowatt-hour cost  
11 associated with such generating plant included in the  
12 electric utility's fuel adjustment clause during the  
13 full calendar year preceding the transfer, with such  
14 limit to be adjusted each year thereafter by the Gross  
15 Domestic Product Implicit Price Deflator.

16 (vi) In addition, if the electric utility proposes  
17 to sell, assign, or lease, (A) either (1) an amount of  
18 generating plant that brings the amount of net  
19 dependable generating capacity transferred pursuant to  
20 this subsection to an amount equal to or greater than  
21 15% of its net dependable capacity on the effective  
22 date of this amendatory Act of 1997, or (2) one or more  
23 generating plants with a total net dependable capacity  
24 of 1100 megawatts, or (B) transmission and  
25 distribution facilities that either (1) bring the  
26 amount of transmission and distribution facilities

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1 transferred pursuant to this subsection to an amount  
2 equal to or greater than 15% of the electric utility's  
3 total depreciated original cost investment in such  
4 facilities, or (2) represent an investment of  
5 \$25,000,000 in terms of total depreciated original  
6 cost, the electric utility shall provide, in addition  
7 to the information listed in subparagraphs (i) through  
8 (v) , the following information: (A) a description of  
9 how the electric utility will meet its service  
10 obligations under this Act in a safe and reliable  
11 manner and (B) the electric utility's projected earned  
12 rate of return on common equity, calculated in  
13 accordance with subsection (d) of this Section, for  
14 each year from the date of the notice through December  
15 31, 2006 both with and without the proposed  
16 transaction. If the Commission has not issued an order  
17 initiating a hearing on the proposed transaction  
18 within 30 days after the date the electric utility's  
19 notice is filed, the transaction shall be deemed  
20 approved. The Commission may, after notice and  
21 hearing, prohibit the proposed transaction if it makes  
22 either or both of the following findings: (1) that the  
23 proposed transaction will render the electric utility  
24 unable to provide its tariffed services in a safe and  
25 reliable manner, or (2) that there is a strong  
26 likelihood that consummation of the proposed

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1 transaction will result in the electric utility being  
2 entitled to request an increase in its base rates  
3 during the mandatory transition period pursuant to  
4 subsection (d) of this Section. Any hearing initiated  
5 by the Commission into the proposed transaction shall  
6 be completed, and the Commission's final order  
7 approving or prohibiting the proposed transaction  
8 shall be entered, within 90 days after the date the  
9 electric utility's notice was filed. Provided,  
10 however, that a sale, assignment, or lease of  
11 transmission facilities to an independent system  
12 operator that meets the requirements of Section 16-126  
13 shall not be subject to Commission approval under this  
14 Section.

15 In any proceeding conducted by the Commission  
16 pursuant to this subparagraph (vi), intervention shall  
17 be limited to parties with a direct interest in the  
18 transaction which is the subject of the hearing and any  
19 statutory consumer protection agency as defined in  
20 subsection (d) of Section 9-102.1. Notwithstanding the  
21 provisions of Section 10-113 of this Act, any  
22 application seeking rehearing of an order issued under  
23 this subparagraph (vi), whether filed by the electric  
24 utility or by an intervening party, shall be filed  
25 within 10 days after service of the order.

26 The Commission shall not in any subsequent proceeding or

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1 otherwise, review such a reorganization or other transaction  
2 authorized by this Section, but shall retain the authority to  
3 allocate costs as stated in Section 16-111 (i). An entity to  
4 which an electric utility sells, assigns, leases or transfers  
5 assets pursuant to this subsection (g) shall not, as a result  
6 of the transactions specified in this subsection (g) , be deemed  
7 a public utility as defined in Section 3-105. Nothing in this  
8 subsection (g) shall change any requirement under the  
9 jurisdiction of the Illinois Department of Nuclear Safety  
10 including, but not limited to, the payment of fees. Nothing in  
11 this subsection (g) shall exempt a utility from obtaining a  
12 certificate pursuant to Section 8-406 of this Act for the  
13 construction of a new electric generating facility. Nothing in  
14 this subsection (g) is intended to exempt the transactions  
15 hereunder from the operation of the federal or State antitrust  
16 laws. Nothing in this subsection (g) shall require an electric  
17 utility to use the procedures specified in this subsection for  
18 any of the transactions specified herein. Any other procedure  
19 available under this Act may, at the electric utility's  
20 election, be used for any such transaction.

21 (h) During the mandatory transition period, the Commission  
22 shall not establish or use any rates of depreciation, which for  
23 purposes of this subsection shall include amortization, for any  
24 electric utility other than those established pursuant to  
25 subsection (c) of Section 5-104 of this Act or utilized  
26 pursuant to subsection (g) of this Section. Provided, however,

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1 that in any proceeding to review an electric utility's rates  
2 for tariffed services pursuant to Section 9-201, 9-202, 9-250  
3 or 16-111 (d) of this Act, the Commission may establish new  
4 rates of depreciation for the electric utility in the same  
5 manner provided in subsection (d) of Section 5-104 of this Act.  
6 An electric utility implementing an accelerated cost recovery  
7 method including accelerated depreciation, accelerated  
8 amortization or other capital recovery methods, or recording  
9 reductions to the original cost of its assets, pursuant to  
10 subsection (g) of this Section, shall file a statement with the  
11 Commission describing the accelerated cost recovery method to  
12 be implemented or the reduction in the original cost of its  
13 assets to be recorded. Upon the filing of such statement, the  
14 accelerated cost recovery method or the reduction in the  
15 original cost of assets shall be deemed to be approved by the  
16 Commission as though an order had been entered by the  
17 Commission.

18 (i) Subsequent to the mandatory transition period, the  
19 Commission, in any proceeding to establish rates and charges  
20 for tariffed services offered by an electric utility, ~~may shall~~  
21 consider, among other factors, ~~only~~ (1) the then current or  
22 projected revenues, costs, investments and cost of capital  
23 directly or indirectly associated with the provision of such  
24 tariffed services; (2) collection of transition charges in  
25 accordance with Sections 16-102 and 16-108 of this Act; (3)  
26 recovery of any employee transition costs as described in

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1 Section 16-128 which the electric utility is continuing to  
2 incur, including recovery of any unamortized portion of such  
3 costs previously incurred or committed, with such costs to be  
4 equitably allocated among bundled services, delivery services,  
5 and contracts with alternative retail electric suppliers; and  
6 (4) recovery of the costs associated with the electric  
7 utility's compliance with decommissioning funding  
8 requirements; and shall not consider any other revenues, costs,  
9 investments or cost of capital of either the electric utility  
10 or of any affiliate of the electric utility that are not  
11 associated with the provision of tariffed services. In setting  
12 rates for tariffed services, the Commission shall equitably  
13 allocate joint and common costs and investments between the  
14 electric utility's competitive and tariffed services. In  
15 determining the justness and reasonableness of the electric  
16 power and energy component of an electric utility's rates for  
17 tariffed services subsequent to the mandatory transition  
18 period and prior to the time that the provision of such  
19 electric power and energy is declared competitive, the  
20 Commission shall consider the extent to which the electric  
21 utility's tariffed rates for such component for each customer  
22 class exceed the market value determined pursuant to Section  
23 16-112, and, if the electric power and energy component of such  
24 tariffed rate exceeds the market value by more than 10% for any  
25 customer class, may establish such electric power and energy  
26 component at a rate equal to the market value plus 10%. In any

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1 such case, the Commission may also elect to extend the  
2 provisions of Section 16-111(e) for any period in which the  
3 electric utility is collecting transition charges, using  
4 information applicable to such period.

5 (j) During the mandatory transition period, an electric  
6 utility may elect to transfer to a non-operating income account  
7 under the Commission's Uniform System of Accounts either or  
8 both of (i) an amount of unamortized investment tax credit that  
9 is in addition to the ratable amount which is credited to the  
10 electric utility's operating income account for the year in  
11 accordance with Section 46(f)(2) of the federal Internal  
12 Revenue Code of 1986, as in effect prior to P.L. 101-508, or  
13 (ii) "excess tax reserves", as that term is defined in Section  
14 203(e)(2)(A) of the federal Tax Reform Act of 1986, provided  
15 that (A) the amount transferred may not exceed the amount of  
16 the electric utility's assets that were created pursuant to  
17 Statement of Financial Accounting Standards No. 71 which the  
18 electric utility has written off during the mandatory  
19 transition period, and (B) the transfer shall not be effective  
20 until approved by the Internal Revenue Service. An electric  
21 utility electing to make such a transfer shall file a statement  
22 with the Commission stating the amount and timing of the  
23 transfer for which it intends to request approval of the  
24 Internal Revenue Service, along with a copy of its proposed  
25 request to the Internal Revenue Service for a ruling. The  
26 Commission shall issue an order within 14 days after the

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1 electric utility's filing approving, subject to receipt of  
2 approval from the Internal Revenue Service, the proposed  
3 transfer.

4 (k) If an electric utility is selling or transferring to a  
5 single buyer 5 or more generating plants located in this State  
6 with a total net dependable capacity of 5000 megawatts or more  
7 pursuant to subsection (g) of this Section and has obtained a  
8 sale price or consideration that exceeds 200% of the book value  
9 of such plants, the electric utility must provide to the  
10 Governor, the President of the Illinois Senate, the Minority  
11 Leader of the Illinois Senate, the Speaker of the Illinois  
12 House of Representatives, and the Minority Leader of the  
13 Illinois House of Representatives no later than 15 days after  
14 filing its notice under subsection (g) of this Section or 5  
15 days after the date on which this subsection (k) becomes law,  
16 whichever is later, a written commitment in which such electric  
17 utility agrees to expend \$2 billion outside the corporate  
18 limits of any municipality with 1,000,000 or more inhabitants  
19 within such electric utility's service area, over a 6-year  
20 period beginning with the calendar year in which the notice is  
21 filed, on projects, programs, and improvements within its  
22 service area relating to transmission and distribution  
23 including, without limitation, infrastructure expansion,  
24 repair and replacement, capital investments, operations and  
25 maintenance, and vegetation management.

26 (l) The provisions of this amendatory Act of the 95th

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1 General Assembly relating to (i) the reinstatement of rates and  
2 (ii) refunds to customers are separate issues and severable. If  
3 either of those provisions or its application to any person or  
4 circumstance is held invalid, then the invalidity of that  
5 provision or application does not affect the other provision or  
6 its application. This subsection (1) does not in any way limit  
7 the general severability clause of Section 99-97 of this  
8 amendatory Act of the 95th General Assembly.

9 (Source: P.A. 91-50, eff. 6-30-99; 92-537, eff. 6-6-02; 92-690,  
10 eff. 7-18-02; revised 9-10-02.)

11 (220 ILCS 5/16-113)

12 Sec. 16-113. Declaration of service as a competitive  
13 service.

14 (a) An electric utility may, by petition, request the  
15 Commission to declare a tariffed service provided by the  
16 electric utility to be a competitive service. The electric  
17 utility shall give notice of its petition to the public in the  
18 same manner that public notice is provided for proposed general  
19 increases in rates for tariffed services, in accordance with  
20 rules and regulations prescribed by the Commission. The  
21 Commission shall hold a hearing ~~and on the petition if a~~  
22 ~~hearing is deemed necessary by the Commission. The Commission~~  
23 shall declare the class of tariffed service to be a competitive  
24 service ~~for some identifiable customer segment or group of~~  
25 ~~customers, or some clearly defined geographical area within the~~

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1 electric utility's service area, only after the electric  
2 utility demonstrates that at least 33% of the customers in the  
3 electric utility's service area that are eligible to take the  
4 class of tariffed service instead take service from alternative  
5 retail electric suppliers, as defined in Section 16-102, and  
6 that at least 3 alternative retail electric suppliers provide  
7 service that is comparable to the class of tariffed service to  
8 those customers in the utility's service area that do not take  
9 service from the electric utility; if the service or a  
10 reasonably equivalent substitute service is reasonably  
11 available to the customer segment or group or in the defined  
12 geographical area at a comparable price from one or more  
13 providers other than the electric utility or an affiliate of  
14 the electric utility, and the electric utility has lost or  
15 there is a reasonable likelihood that the electric utility will  
16 lose business for the service to the other provider or  
17 providers; provided, that the Commission may not declare the  
18 provision of electric power and energy to be competitive  
19 pursuant to this subsection with respect to (i) any retail  
20 customer or group of retail customers that is not eligible  
21 pursuant to Section 16-104 to take delivery services provided  
22 by the electric utility and (ii) any residential and small  
23 commercial retail customers prior to the last date on which  
24 such customers are required to pay transition charges. In  
25 determining whether to grant or deny a petition to declare the  
26 provision of electric power and energy competitive, the

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1 Commission shall consider, in applying the above criteria,  
2 whether there is adequate transmission capacity into the  
3 service area of the petitioning electric utility to make  
4 electric power and energy reasonably available to the customer  
5 segment or group or in the defined geographical area from one  
6 or more providers other than the electric utility or an  
7 affiliate of the electric utility, in accordance with this  
8 subsection. The Commission shall make its determination and  
9 issue its final order declaring or refusing to declare the  
10 service to be a competitive service within 180 ~~120~~ days  
11 following the date that the petition is filed, ~~or otherwise the~~  
12 ~~petition shall be deemed to be granted; provided, that if the~~  
13 ~~petition is deemed to be granted by operation of law, the~~  
14 ~~Commission shall not thereby be precluded from finding and~~  
15 ~~ordering, in a subsequent proceeding initiated by the~~  
16 ~~Commission, and after notice and hearing, that the service is~~  
17 ~~not competitive based on the criteria set forth in this~~  
18 ~~subsection.~~

19 (b) Any customer except a customer identified in subsection  
20 (c) of Section 16-103 who is taking a tariffed service that is  
21 declared to be a competitive service pursuant to subsection (a)  
22 of this Section shall be entitled to continue to take the  
23 service from the electric utility on a tariffed basis for a  
24 period of 3 years following the date that the service is  
25 declared competitive, or such other period as is stated in the  
26 electric utility's tariff pursuant to Section 16-110. This

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1 subsection shall not require the electric utility to offer or  
2 provide on a tariffed basis any service to any customer (except  
3 those customers identified in subsection (c) of Section 16-103)  
4 that was not taking such service on a tariffed basis on the  
5 date the service was declared to be competitive.

6 (c) If the Commission denies a petition to declare a  
7 service to be a competitive service, or determines in a  
8 separate proceeding that a service is not competitive based on  
9 the criteria set forth in subsection (a), the electric utility  
10 may file a new petition no earlier than 6 months following the  
11 date of the Commission's order, requesting, on the basis of  
12 additional or different facts and circumstances, that the  
13 service be declared to be a competitive service.

14 (d) The Commission shall not deny a petition to declare a  
15 service to be a competitive service, and shall not find that a  
16 service is not a competitive service, on the grounds that it  
17 has previously denied the petition of another electric utility  
18 to declare the same or a similar service to be a competitive  
19 service or has previously determined that the same or a similar  
20 service provided by another electric utility is not a  
21 competitive service.

22 (e) An electric utility may declare a service, other than  
23 delivery services or the provision of electric power or energy,  
24 to be competitive by filing with the Commission at least 14  
25 days prior to the date on which the service is to become  
26 competitive a notice describing the service that is being

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1 declared competitive and the date on which it will become  
2 competitive; provided, that any customer who is taking a  
3 tariffed service that is declared to be a competitive service  
4 pursuant to this subsection (e) shall be entitled to continue  
5 to take the service from the electric utility on a tariffed  
6 basis until the electric utility files, and the Commission  
7 grants, a petition to declare the service competitive in  
8 accordance with subsection (a) of this Section. The Commission  
9 shall be authorized to find and order, after notice and hearing  
10 in a subsequent proceeding initiated by the Commission, that  
11 any service declared to be competitive pursuant to this  
12 subsection (e) is not competitive in accordance with the  
13 criteria set forth in subsection (a) of this Section.

14 (Source: P.A. 90-561, eff. 12-16-97.)

15 (220 ILCS 5/16-135 new)

16 Sec. 16-135. The Consumers Overbilled and Reimbursed for  
17 Electricity Fund.

18 (a) The Consumers Overbilled and Reimbursed for  
19 Electricity Fund is created as a special fund in the State  
20 treasury. Subject to appropriation, moneys in the Fund shall be  
21 distributed and paid or credited as provided in this Section.  
22 Income earned on amounts in the Fund shall be deposited into  
23 the Fund.

24 (b) In January 2008, or as soon thereafter as practical,  
25 the Department of Revenue shall make payments from the Fund to

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1 each utility that has made refunds under item (B) in subsection  
2 (a) of Section 16-111 in the amount of those refunds made by  
3 the utility together with interest that is reasonably incurred  
4 from the date that the refunds were made to the date of payment  
5 to the utility under this subsection.

6 (c) Beginning 10 days after the effective date of this  
7 amendatory Act of the 95th General Assembly and through the end  
8 of the calendar month in which that date occurs constitutes the  
9 first rate-reduction month. Thereafter, each calendar month  
10 constitutes a rate-reduction month.

11 (d) For each rate-reduction month, the Department of  
12 Revenue shall make a payment from the Fund to each utility that  
13 is subject to subsection (a) of Section 16-111. Payments shall  
14 be made each calendar month beginning February 2008. The  
15 payment to each such utility for a rate-reduction month shall  
16 be in an amount equal to (i) the number of total kilowatt hours  
17 used by the utility's customers during the billing periods  
18 ending in the rate-reduction month, multiplied by (ii) a rate  
19 determined by subtracting the rate charged to the utility's  
20 customers on December 31, 2006 from the rate charged to the  
21 utility's customers on January 2, 2007 for each rate-reduction  
22 month through the rate-reduction month of December 2008; 90% of  
23 that amount for each rate-reduction month in 2009; 80% of that  
24 amount for each rate-reduction month in 2010; 70% of that  
25 amount for each rate-reduction month in 2011; 60% of that  
26 amount for each rate-reduction month in 2012; and 50% of that

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1 amount for each rate-reduction month beginning on or after  
2 January 1, 2013. For the purpose of calculating the payment  
3 under this subsection, the rate charged to the utility's  
4 customers on January 2, 2007 does not include the portion of  
5 the rate charged under any delivery services tariff of the  
6 utility that became effective on January 2, 2007.

7 Payments under this subsection (d) shall include interest  
8 that is reasonably incurred; interest shall be calculated on  
9 the remaining balance beginning 10 days after the end of the  
10 rate-reduction month through the date of payment. If there is  
11 not a sufficient balance in the Fund to make the payment  
12 required under this subsection (d), then the Department of  
13 Revenue shall pay each utility a pro-rata share of the balance  
14 of the Fund (less any amount necessary to make refunds under  
15 Section 5-65 of the Electricity Generator Tax Act) based on the  
16 amount of the payment owing to that utility compared to the  
17 total of payments owing to all such utilities. Payments shall  
18 be made first with respect to the earliest rate-reduction month  
19 for which payment has not been made in full.

20 (e) For each rate-reduction month through and including  
21 June 2008, if, during the entire rate-reduction month, the  
22 utility charged its customers the same rates charged to its  
23 customers on December 31, 2006 (plus any rate charged under any  
24 of the utility's delivery services tariffs that became  
25 effective on or after January 2, 2007), then the amount paid to  
26 the utility for that rate-reduction month shall be retained by

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1 the utility. Otherwise, the amount paid to the utility for that  
2 rate-reduction month shall immediately be credited to the  
3 customers of the utility prorated based on the total kilowatt  
4 hours used by the customer during the rate-reduction month as  
5 compared to the total kilowatt hours used by all customers of  
6 that utility during the rate-reduction month. The utility must  
7 identify the credit on the bill as a STATE FUNDED CREDIT and  
8 must insert a separate notice with the bill to the customer  
9 showing the credit. That notice must state the following in at  
10 least 14-point bold type:

11 THE "STATE FUNDED CREDIT" SHOWN ON THIS BILL WAS FUNDED IN  
12 ACCORDANCE WITH A MANDATE OF THE GENERAL ASSEMBLY OF THE  
13 STATE OF ILLINOIS.

14 No other communication concerning the credit may be contained  
15 on the notice or the bill or any other material sent with the  
16 bill.

17 (f) All information necessary to implement and administer  
18 this Section must be provided by each utility to the Commission  
19 within 10 days after the end of each calendar month. The  
20 Commission shall then verify the information and make  
21 certifications to the Department of Revenue necessary for the  
22 Department to make payments under this Section.

23 If a utility, without good cause shown, does not provide  
24 accurate information within the 10-day period and the payment  
25 based on that information is required to be credited to its  
26 customers under subsection (e), then the utility must

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1 additionally credit its customers with interest, at the  
2 utility's expense, for the period during which the application  
3 of the credit is delayed. The interest shall be at the same  
4 rate that the Commission requires the utility to pay on  
5 customer deposits.

6 The Commission must, and has all powers necessary to, (i)  
7 fully enforce this Section and (ii) examine and audit the books  
8 and records of utilities to ensure compliance with this  
9 Section.

10 For the public interest, safety, and welfare, in order to  
11 initially implement this Section, the Commission is authorized  
12 to adopt emergency rules under Section 5-45 of the Illinois  
13 Administrative Procedure Act.

14 Section 3-10. The State Finance Act is amended by changing  
15 Section 8h and by adding Section 5.675 as follows:

16 (30 ILCS 105/5.675 new)

17 Sec. 5.675. The Consumers Overbilled and Reimbursed for  
18 Electricity Fund.

19 (30 ILCS 105/8h)

20 Sec. 8h. Transfers to General Revenue Fund.

21 (a) Except as otherwise provided in this Section and  
22 Section 8n of this Act, and ~~(e), (d), or (c)~~, notwithstanding  
23 any other State law to the contrary, the Governor may, through

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1 June 30, 2007, from time to time direct the State Treasurer and  
2 Comptroller to transfer a specified sum from any fund held by  
3 the State Treasurer to the General Revenue Fund in order to  
4 help defray the State's operating costs for the fiscal year.  
5 The total transfer under this Section from any fund in any  
6 fiscal year shall not exceed the lesser of (i) 8% of the  
7 revenues to be deposited into the fund during that fiscal year  
8 or (ii) an amount that leaves a remaining fund balance of 25%  
9 of the July 1 fund balance of that fiscal year. In fiscal year  
10 2005 only, prior to calculating the July 1, 2004 final  
11 balances, the Governor may calculate and direct the State  
12 Treasurer with the Comptroller to transfer additional amounts  
13 determined by applying the formula authorized in Public Act  
14 93-839 to the funds balances on July 1, 2003. No transfer may  
15 be made from a fund under this Section that would have the  
16 effect of reducing the available balance in the fund to an  
17 amount less than the amount remaining unexpended and unreserved  
18 from the total appropriation from that fund estimated to be  
19 expended for that fiscal year. This Section does not apply to  
20 any funds that are restricted by federal law to a specific use,  
21 to any funds in the Motor Fuel Tax Fund, the Intercity  
22 Passenger Rail Fund, the Hospital Provider Fund, the Medicaid  
23 Provider Relief Fund, the Teacher Health Insurance Security  
24 Fund, the Reviewing Court Alternative Dispute Resolution Fund,  
25 the Voters' Guide Fund, the Foreign Language Interpreter Fund,  
26 the Lawyers' Assistance Program Fund, the Supreme Court Federal

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1 Projects Fund, the Supreme Court Special State Projects Fund,  
2 the Supplemental Low-Income Energy Assistance Fund, the Good  
3 Samaritan Energy Trust Fund, the Low-Level Radioactive Waste  
4 Facility Development and Operation Fund, the Horse Racing  
5 Equity Trust Fund, or the Hospital Basic Services Preservation  
6 Fund, or to any funds to which subsection (f) of Section 20-40  
7 of the Nursing and Advanced Practice Nursing Act applies. No  
8 transfers may be made under this Section from the Pet  
9 Population Control Fund. Notwithstanding any other provision  
10 of this Section, for fiscal year 2004, the total transfer under  
11 this Section from the Road Fund or the State Construction  
12 Account Fund shall not exceed the lesser of (i) 5% of the  
13 revenues to be deposited into the fund during that fiscal year  
14 or (ii) 25% of the beginning balance in the fund. For fiscal  
15 year 2005 through fiscal year 2007, no amounts may be  
16 transferred under this Section from the Road Fund, the State  
17 Construction Account Fund, the Criminal Justice Information  
18 Systems Trust Fund, the Wireless Service Emergency Fund, or the  
19 Mandatory Arbitration Fund.

20 In determining the available balance in a fund, the  
21 Governor may include receipts, transfers into the fund, and  
22 other resources anticipated to be available in the fund in that  
23 fiscal year.

24 The State Treasurer and Comptroller shall transfer the  
25 amounts designated under this Section as soon as may be  
26 practicable after receiving the direction to transfer from the

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1 Governor.

2 (a-5) Transfers directed to be made under this Section on  
3 or before February 28, 2006 that are still pending on May 19,  
4 2006 (the effective date of Public Act 94-774) ~~this amendatory~~  
5 ~~Act of the 94th General Assembly~~ shall be redirected as  
6 provided in Section 8n of this Act.

7 (b) This Section does not apply to: (i) the Ticket For The  
8 Cure Fund; (ii) any fund established under the Community Senior  
9 Services and Resources Act; or (iii) on or after January 1,  
10 2006 (the effective date of Public Act 94-511), the Child Labor  
11 and Day and Temporary Labor Enforcement Fund.

12 (c) This Section does not apply to the Demutualization  
13 Trust Fund established under the Uniform Disposition of  
14 Unclaimed Property Act.

15 (d) This Section does not apply to moneys set aside in the  
16 Illinois State Podiatric Disciplinary Fund for podiatric  
17 scholarships and residency programs under the Podiatric  
18 Scholarship and Residency Act.

19 (e) Subsection (a) does not apply to, and no transfer may  
20 be made under this Section from, the Pension Stabilization  
21 Fund.

22 (f) This Section does not apply to the Consumers Overbilled  
23 and Reimbursed for Electricity Fund.

24 (Source: P.A. 93-32, eff. 6-20-03; 93-659, eff. 2-3-04; 93-674,  
25 eff. 6-10-04; 93-714, eff. 7-12-04; 93-801, eff. 7-22-04;  
26 93-839, eff. 7-30-04; 93-1054, eff. 11-18-04; 93-1067, eff.

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1 1-15-05; 94-91, eff. 7-1-05; 94-120, eff. 7-6-05; 94-511, eff.  
2 1-1-06; 94-535, eff. 8-10-05; 94-639, eff. 8-22-05; 94-645,  
3 eff. 8-22-05; 94-648, eff. 1-1-06; 94-686, eff. 11-2-05;  
4 94-691, eff. 11-2-05; 94-726, eff. 1-20-06; 94-773, eff.  
5 5-18-06; 94-774, eff. 5-19-06; 94-804, eff. 5-26-06; 94-839,  
6 eff. 6-6-06; revised 6-19-06.)

7 Section 3-15. "An Act in relation to the competitive  
8 provision of utility services, amending named Acts", Public Act  
9 90-561, approved December 16, 1997, is amended by changing  
10 Section 15 of Article I as follows:

11 (P.A. 90-561, Art. I, Sec. 15)

12 Sec. 15.

13 (a) If any provision added by this amendatory Act of 1997  
14 is held invalid, this entire amendatory Act of 1997 shall be  
15 deemed invalid, and the provisions of Section 1.31,  
16 "Severability", of the Statute on Statutes are hereby expressly  
17 declared not applicable to this amendatory Act of 1997;  
18 provided, however (i) that any contracts entered into and  
19 performed, transactions completed, orders issued, services  
20 provided, billings rendered, or payments made in accordance  
21 with the provisions of this amendatory Act of 1997, other than  
22 as provided in clause (ii) below, prior to the date of the  
23 determination of such invalidity, shall not thereby be rendered  
24 invalid; (ii) that no presumption as to the validity or

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1     invalidity of any contracts, transactions, orders, billings,  
2     or payments pursuant to Article XVIII of the Public Utilities  
3     Act shall result from a determination of invalidity of this  
4     amendatory Act of 1997; and (iii) that the provisions of  
5     proviso (i) shall not be deemed to preserve the validity of any  
6     executory contracts or transactions, of any actions to be taken  
7     pursuant to orders issued, or of any services to be performed,  
8     billings to be rendered, or payments to be made, pursuant to  
9     provisions of this amendatory Act of 1997 subsequent to the  
10    date of determination of such invalidity.

11        (b) This Section applies only to Public Act 90-561; this  
12        Section does not apply to any Public Act (i) with an effective  
13        date after the effective date of Public Act 90-561 and (ii)  
14        that amends, adds to, or otherwise affects the provisions added  
15        by Public Act 90-561.

16        (Source: P.A. 90-561.)

17                   ARTICLE 5. ELECTRICITY GENERATOR TAX ACT

18        Section 5-1. Short title. This Act may be cited as the  
19        Electricity Generator Tax Act.

20        Section 5-3. Definitions. As used in this Act:

21            “Department” means the Department of Revenue.

22            “Generating unit” means a nuclear reactor, coal-fired  
23        boiler, coal-fired combustion turbine, or natural gas-fired

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1 turbine that produces electricity.

2 “Nameplate capacity” means the maximum rated output of a  
3 generating unit under specific conditions, as designated by the  
4 manufacturer on a nameplate that is physically attached to the  
5 generating unit.

6 “Taxable year” means a calendar year. For 2007, however,  
7 taxable year means the effective date of this Act through and  
8 including December 31, 2007.

9 “Taxpayer” means a person who operates a generating unit in  
10 this State at any time during the taxable year.

11 “Vertically integrated utility” means a public utility  
12 that owns generating units, a transmission system, and  
13 distribution lines to provide all aspects of electric service  
14 in the utility’s service territory.

15 Section 5-5. Tax imposed.

16 (a) A tax is imposed on the privilege of operating, at any  
17 time during the taxable year, a generating unit within this  
18 State.

19 (b) The tax imposed under this Act applies to taxable years  
20 beginning on or after the effective date of this Act.

21 (c) No tax under this Act is imposed on any of the  
22 following:

23 (1) a generating unit owned by a municipality or an  
24 electric cooperative;

25 (2) a generating unit that generates electricity from a

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1 renewable energy resource, as defined in the Renewable  
2 Energy, Energy Efficiency, and Coal Resources Development  
3 Law of 1997;

4 (3) a generating unit designed to produce both heat and  
5 electricity from a single heat source;

6 (4) a generating unit that has a nameplate capacity of  
7 less than 100 megawatts;

8 (5) a generating unit operated fewer than 876 hours  
9 during the taxable year (or fewer than 438 hours during  
10 taxable year 2007); or

11 (6) any portion of the nameplate capacity of a  
12 generating unit that is owned by a vertically integrated  
13 utility.

14 Section 5-10. Rate. For each generating unit that is not  
15 exempt under subsection (c) of Section 5-5, the tax under this  
16 Act is imposed annually in the amount equal to \$70,000 per  
17 megawatt of nameplate capacity of the generating unit.

18 Section 5-15. Returns and notices.

19 (a) Each taxpayer subject to the tax imposed under this Act  
20 shall make a return under this Act for that taxable year.

21 (b) Each taxpayer shall keep any record, render any  
22 statement, make any return and notice, and comply with any rule  
23 that the Department may, from time to time, adopt. If, in the  
24 judgment of the Director of Revenue it is necessary, he or she

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1 may require any person, by notice served upon that person or by  
2 rule, to make any return and notice, render any statement, or  
3 keep any record that the Director deems sufficient to show  
4 whether or not that person is liable for tax under this Act.

5 Section 5-20. Time and place for filing returns.

6 (a) Returns required by this Act must be filed at the place  
7 that the Department may require by rule.

8 (b) A return due under this Act for any taxable year must  
9 be filed on or before the 15th day of the third month following  
10 the close of the taxable year.

11 (c) The fact that an individual's name is signed to a  
12 return or notice is prima facie evidence for all purposes that  
13 the document was actually signed by that individual. If a  
14 return is prepared by an income tax return preparer for a  
15 taxpayer, then that preparer shall sign the return as the  
16 preparer of that return. If a return is transmitted to the  
17 Department electronically, then the Department may presume  
18 that the electronic return originator has obtained and is  
19 transmitting a valid signature document pursuant to the rules  
20 adopted by the Department for the electronic filing of tax  
21 returns, or the Department may authorize electronic return  
22 originators to maintain the signature documents and associated  
23 documentation, subject to the Department's right of inspection  
24 at any time without notice, rather than transmitting those  
25 documents to the Department, and the Department may process the

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1 return.

2 A return or notice required of a corporation must be signed  
3 by the president, vice-president, treasurer, or any other  
4 officer duly authorized so to act or, in the case of a limited  
5 liability company, by a manager or member. In the case of a  
6 return or notice made for a corporation by a fiduciary, the  
7 fiduciary shall sign the document. The fact that an  
8 individual's name is signed to a return or notice is prima  
9 facie evidence that the individual is authorized to sign the  
10 document on behalf of the taxpayer.

11 A return or notice of a partnership must be signed by any  
12 one of the partners or, in the case of a limited liability  
13 company, by a manager or member. The fact that a person's name  
14 is signed to a return or notice is prima facie evidence that  
15 the individual is authorized to sign the document on behalf of  
16 the partnership or limited liability company.

17 (d) If a taxpayer fails to sign a return within 30 days  
18 after proper notice and demand for signature by the Department,  
19 the return is considered valid, and any amount shown to be due  
20 on the return is deemed assessed. Any overpayment of tax shown  
21 on the face of an unsigned return is considered forfeited if,  
22 after notice and demand for signature by the Department, the  
23 taxpayer fails to provide a signature and 3 years have passed  
24 from the date the return was filed.

25 (e) Each return required to be filed under this Act must  
26 contain or be verified by a written declaration that it is made

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1 under the penalties of perjury. A taxpayer's signing a  
2 fraudulent return under this Act is perjury, as defined in  
3 Section 32-2 of the Criminal Code of 1961.

4 (f) The Department may require electronic filing of any  
5 return due under this Act.

6 Section 5-25. Payment on due date of return.

7 (a) Each taxpayer required to file a return under this Act  
8 shall, without assessment, notice, or demand, pay any tax due  
9 thereon to the Department at the place fixed by rules adopted  
10 by the Department for filing on or before the date fixed for  
11 filing the return (determined without regard to any extension  
12 of time for filing the return). In making payment as provided  
13 in this Section, there remains payable only the balance of the  
14 tax remaining due after giving effect to payments of estimated  
15 tax made by the taxpayer under Section 5-30 of this Act for the  
16 taxable year and to tentative payments under subsection (b) of  
17 this Section for the taxable year.

18 (b) The taxpayer shall file a tentative tax return and pay,  
19 on or before the date required by law for the filing of the  
20 return the amount properly estimated as his or her tax for the  
21 taxable year.

22 (c) Interest and penalty on any amount of tax due and  
23 unpaid for the period of any extension is payable as provided  
24 by the Uniform Penalty and Interest Act.

25 (d) The Department may, by rule, require any taxpayer to

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1 make payments due under this Act by electronic funds transfer.

2 Section 5-30. Payment of estimated tax.

3 (a) Beginning July 1, 2007, each taxpayer is required to  
4 pay estimated tax for the taxable year in the form and manner  
5 that the Department requires by rule. Each installment of  
6 estimated tax must be paid on or before the 10th day of each  
7 calendar month.

8 (b) The amount of each required installment is an amount  
9 equal to:

10 (1) the total amount of the tax that is estimated to be  
11 due for the taxable year under Section 5-10 less the amount  
12 of all estimated payments previously paid by the taxpayer  
13 for that taxable year; divided by

14 (2) the number of calendar months remaining in the  
15 taxable year, including the current calendar month.

16 (c) In case of any underpayment of estimated tax by a  
17 taxpayer, the taxpayer is liable to a penalty in an amount  
18 determined at the rate set forth under Section 3-3 of the  
19 Uniform Penalty and Interest Act upon the amount of the  
20 underpayment, determined under subsection (b), for each  
21 required installment. For the purposes of this subsection (c),  
22 the amount of the underpayment is the excess of:

23 (1) the amount of the installment that would be  
24 required to be paid under subsection (b) ; less

25 (2) the amount, if any, of the installment paid on or

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1 before the last date prescribed for payment.

2 Section 5-35. Collection authority. The Department shall  
3 collect the taxes imposed by this Act and shall deposit the  
4 amounts collected under this Act into the Consumers Overbilled  
5 and Reimbursed for Electricity Fund in the State treasury.

6 Section 5-40. Notice and demand.

7 (a) Except as provided in subsection (b), the Director of  
8 Revenue shall, as soon as practical after an amount payable  
9 under this Act is deemed assessed (as provided in Section 5-45  
10 of this Act), give notice to each person liable for any unpaid  
11 portion of that assessment, stating the amount unpaid and  
12 demanding payment thereof. In the case of tax deemed assessed  
13 with the filing of a return, the Director shall give notice no  
14 later than 3 years after the date the return was filed. Upon  
15 receipt of any notice and demand, there must be paid, at the  
16 place and time stated in the notice, the amount stated in the  
17 notice. The notice must be left at the dwelling or usual place  
18 of business of the person or shall be sent by mail to the  
19 person's last known address.

20 (b) In the case of a deficiency deemed assessed under  
21 Section 5-45 of this Act, after the filing of a protest, notice  
22 and demand may not be made with respect to the assessment until  
23 all proceedings in court for the review of the assessment have  
24 terminated or the time for the taking thereof has expired

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1 without the proceedings being instituted.

2 (c) The Department may bring an action in any court of  
3 competent jurisdiction within or without this State in the name  
4 of the people of this State to recover the amount of any taxes,  
5 penalties, and interest due and unpaid under this Act. In that  
6 action, the certificate of the Department showing the amount of  
7 the delinquency is prima facie evidence of the correctness of  
8 the amount, its assessment, and of the compliance by the  
9 Department with all the provisions of this Act.

10 Section 5-45. Assessment.

11 (a) The amount of tax that is shown to be due on the return  
12 is deemed to be assessed on the date of filing of the return  
13 (including any amended returns showing an increase of tax). If  
14 the amount of tax is understated on the taxpayer's return due  
15 to a mathematical error, the Department shall notify the  
16 taxpayer that the amount of tax in excess of that shown on the  
17 return is due and has been assessed. The notice of additional  
18 tax due must be issued no later than 3 years after the date the  
19 return was filed. The notice of additional tax due is not  
20 considered to be a notice of deficiency nor does the taxpayer  
21 have any right of protest. In the case of a return properly  
22 filed without the computation of the tax, the tax computed by  
23 the Department is deemed to be assessed on the date when  
24 payment is due.

25 (b) If a notice of deficiency has been issued, the amount

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1 of the deficiency is deemed assessed on the date provided in  
2 Section 5-50 if no protest is filed or, if a protest is filed,  
3 then upon the date when the decision of the Department becomes  
4 final.

5 (c) Any amount paid as tax or in respect of tax paid under  
6 this Act, other than amounts paid as estimated tax under  
7 Section 5-30, are deemed to be assessed upon the date of  
8 receipt of payment, notwithstanding any other provisions of  
9 this Act.

10 (d) No deficiency may be assessed with respect to a taxable  
11 year for which a return was filed unless a notice of deficiency  
12 for that year was issued not later than the date prescribed in  
13 Section 5-55.

14 Section 5-50. Deficiencies and overpayments.

15 (a) As soon as practical after a return is filed, the  
16 Department shall examine it to determine the correct amount of  
17 tax. If the Department finds that the amount of tax shown on  
18 the return is less than the correct amount, it shall issue a  
19 notice of deficiency to the taxpayer that sets forth the amount  
20 of tax and penalties proposed to be assessed. If the Department  
21 finds that the tax paid is more than the correct amount, it  
22 shall credit or refund the overpayment as provided by Section  
23 5-65. The findings of the Department under this subsection are  
24 prima facie correct and are prima facie evidence of the  
25 correctness of the amount of tax and penalties due.

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1 (b) If the taxpayer fails to file a tax return, the  
2 Department shall determine the amount of tax due according to  
3 its best judgment and information, and the amount so fixed by  
4 the Department is prima facie correct and is prima facie  
5 evidence of the correctness of the amount of tax due. The  
6 Department shall issue a notice of deficiency to the taxpayer  
7 that sets forth the amount of tax and penalties proposed to be  
8 assessed.

9 (c) A notice of deficiency issued under this Act must set  
10 forth the adjustments giving rise to the proposed assessment  
11 and the reasons therefor.

12 (d) Assessment when no protest. Upon the expiration of 60  
13 days after the date on which it was issued, a notice of  
14 deficiency constitutes an assessment of the amount of tax and  
15 penalties specified therein, except only for such amounts as to  
16 which the taxpayer has filed a protest with the Department.

17 Section 5-55. Limitations on notices of deficiency and  
18 assessments.

19 (a) A notice of deficiency must be issued not later than 3  
20 years after the date that the return was filed. No deficiency  
21 may be assessed or collected with respect to the year for which  
22 the return was filed unless the notice is issued within that  
23 period.

24 (b) If no return is filed or a false and fraudulent return  
25 is filed with intent to evade the tax imposed by this Act, a

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1 notice of deficiency may be issued at any time.

2 (c) In any case in which there has been an erroneous refund  
3 of tax payable under this Act, a notice of deficiency may be  
4 issued at any time within 2 years from the making of the  
5 refund, or within 5 years from the making of the refund if it  
6 appears that any part of the refund was induced by fraud or the  
7 misrepresentation of a material fact, but the amount of any  
8 proposed assessment set forth in the notice is limited to the  
9 amount of the erroneous refund.

10 (d) If a protest has been filed with respect to a notice of  
11 deficiency issued by the Department with respect to a taxable  
12 year and the decision of the Department on the protest has  
13 become final, the Department is barred from issuing a further  
14 or additional notice of deficiency for that taxable year,  
15 except in the case of fraud, mathematical error, or a return  
16 that is not considered processable, as the term is defined in  
17 Section 3-2 of the Uniform Penalty and Interest Act.

18 (e) The taxpayer at any time, whether or not a notice of  
19 deficiency has been issued, has the right to waive the  
20 restrictions on assessment and collection of the whole or any  
21 part of any proposed assessment under this Act by a signed  
22 notice in writing filed with the Department in the form and  
23 manner that the Department may provide by rule.

24 Section 5-60. Procedure on protest.

25 (a) Within 60 days after the issuance of a notice of

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1 deficiency, the taxpayer may file with the Department of  
2 Revenue a written protest against the proposed assessment, in  
3 the form and manner that the Department may provide by rule,  
4 setting forth the grounds on which the protest is based. If a  
5 protest is filed, the Department shall reconsider the proposed  
6 assessment and, if the taxpayer has so requested, shall grant  
7 the taxpayer or his or her authorized representative a hearing.

8 (b) As soon as practical after the reconsideration and  
9 hearing, if any, the Department shall issue a notice of  
10 decision by mailing the notice by certified or registered mail.  
11 The notice must set forth briefly the Department's findings of  
12 fact and the basis of decision in each case decided in whole or  
13 in part adversely to the taxpayer.

14 (c) Within 30 days after the mailing of a notice of  
15 decision, the taxpayer may file with a Department a written  
16 request for rehearing in the form and manner that the  
17 Department may provide by rule, setting forth the grounds on  
18 which the rehearing is requested. In any such case, the  
19 Department shall, in its discretion, grant either a rehearing  
20 or Departmental review unless, within 10 days after receipt of  
21 the request, it issues a denial of the request by mailing the  
22 denial to the taxpayer by certified or registered mail. If  
23 rehearing or Departmental review is granted, as soon as  
24 practical after the rehearing or Departmental review, the  
25 Department shall issue a notice of final decision as provided  
26 in subsection (b).

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1 (d) The action of the Department on the taxpayer's protest  
2 becomes final:

3 (1) 30 days after the issuance of a notice of decision  
4 as provided in subsection (b); or

5 (2) if a timely request for rehearing was made, upon  
6 the issuance of a denial of the request or the issuance of  
7 a notice of final decision, as provided in subsection (c) .

8 Section 5-65. Credits and refunds.

9 (a) In the case of any overpayment, the Department of  
10 Revenue may credit the amount of the overpayment, including any  
11 interest allowed thereon, against any liability in respect of  
12 the tax imposed by this Act or any other act administered by  
13 the Department or against any liability of the taxpayer  
14 collectible by the Department, regardless of whether other  
15 collection remedies are closed to the Department on the part of  
16 the person who made the overpayment and shall refund any  
17 balance to that person.

18 (b) The Department may adopt rules providing for the  
19 crediting against the estimated tax for any taxable year of the  
20 amount determined by the taxpayer or the Department to be an  
21 overpayment of the tax imposed by this Act for a preceding  
22 taxable year.

23 (c) Interest is allowed and paid at the rate and in the  
24 manner set forth under Section 3-2 of the Uniform Penalty and  
25 Interest Act upon any overpayment in respect of the tax imposed

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1 by this Act. For purposes of this subsection, no amount of tax,  
2 for any taxable year, may be treated as having been paid before  
3 the date on which the tax return for that year was due under  
4 Section 5-20.

5 (d) Every claim for refund must be filed with the  
6 Department in writing in the form and manner that the  
7 Department may provide by rule, and must state the specific  
8 grounds upon which it is founded.

9 (e) As soon as practical after a claim for refund is filed,  
10 the Department shall examine it and either issue a notice of  
11 refund, abatement, or credit to the claimant or issue a notice  
12 of denial. If the Department has failed to approve or deny the  
13 claim before the expiration of 6 months after the date the  
14 claim was filed, then the claimant may nevertheless thereafter  
15 file with the Department a written protest in the form and  
16 manner that the Department may provide by rule. If a protest is  
17 filed, the Department shall consider the claim and, if the  
18 taxpayer has so requested, shall grant the taxpayer or the  
19 taxpayer's authorized representative a hearing within 6 months  
20 after the date the request is filed.

21 A denial of a claim for refund becomes final 60 days after  
22 the date of issuance of the notice of the denial except for  
23 those amounts denied as to which the claimant has filed a  
24 protest with the Department under Section 5-70.

25 (f) An overpayment of tax shown on the face of an unsigned  
26 return is considered forfeited to the State if, after notice

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1 and demand for signature by the Department, the taxpayer fails  
2 to provide a signature and 3 years have passed after the date  
3 the return was filed. An overpayment of tax refunded to a  
4 taxpayer whose return was filed electronically is considered an  
5 erroneous refund if, after proper notice and demand by the  
6 Department, the taxpayer fails to provide a required signature  
7 document. A notice and demand for signature in the case of a  
8 return reflecting an overpayment may be made by first class  
9 mail.

10 (g) The Department shall pay refunds from the Consumers  
11 Overbilled and Reimbursed for Electricity Fund.

12 Section 5-70. Procedure on denial of claim for refund.

13 (a) Within 60 days after the denial of the claim, the  
14 claimant may file with the Department a written protest against  
15 the denial in the form and manner that the Department may  
16 provide by rule, setting forth the grounds on which the protest  
17 is based. If a protest is filed, the Department shall  
18 reconsider the denial and, if the taxpayer has so requested,  
19 shall grant the taxpayer or the taxpayer's authorized  
20 representative a hearing.

21 (b) As soon as practical after the reconsideration and  
22 hearing, if any, the Department shall issue a notice of  
23 decision by mailing the notice by certified or registered mail.  
24 The notice must set forth briefly the Department's findings of  
25 fact and the basis of decision in each case decided in whole or

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1 in part adversely to the claimant.

2 (c) Within 30 days after the mailing of a notice of  
3 decision, the claimant may file with the Department a written  
4 request for rehearing in the form and manner that the  
5 Department may provide by rule, setting forth the grounds on  
6 which rehearing is requested. In any such case, the Department  
7 shall, in its discretion, grant either a rehearing or  
8 Departmental review unless, within 10 days after the receipt of  
9 the request, it issues a denial of the request by mailing the  
10 denial to the claimant by certified or registered mail. If  
11 rehearing or Departmental review is granted, as soon as  
12 practical after the rehearing or Departmental review, the  
13 Department shall issue a notice of final decision as provided  
14 in subsection (b).

15 (d) The action of the Department on the claimant's protest  
16 becomes final:

17 (1) 30 days after issuance of a notice of decision as  
18 provided in subsection (b) ; or

19 (2) if a timely request for rehearing was made, upon  
20 the issuance of a denial of the request or the issuance of  
21 a notice of final decision as provided in subsection (c) .

22 Section 5-75. Limitations on claims for refund.

23 (a) A claim for refund must be filed no later than 3 years  
24 after the date that the return was filed or one year after the  
25 date that the tax was paid, whichever is the later. No credit

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1 or refund is allowed or made with respect to the year for which  
2 the claim was filed unless the claim is filed within that  
3 period.

4 (b) If the claim was filed by the claimant during the  
5 3-year period set forth in subsection (a), then the amount of  
6 the credit or refund may not exceed the portion of the tax paid  
7 within the period, immediately preceding the filing of the  
8 claim, equal to 3 years plus the period of any extension of  
9 time for filing the return. If the claim was not filed within  
10 that 3-year period, then the amount of the credit or refund may  
11 not exceed the portion of the tax paid during the one year  
12 immediately preceding the filing of the claim.

13 Section 5-80. Recovery of erroneous refund. An erroneous  
14 refund is considered to be a deficiency of tax on the date made  
15 and is deemed to be assessed and must be collected as provided  
16 in Sections 5-45 and 5-50.

17 Section 5-85. Lien for tax.

18 (a) If any taxpayer neglects or refuses to pay the tax due  
19 under this Act after demand, then the amount (including any  
20 interest, additional amount, addition to tax, or assessable  
21 penalty, together with any costs that may accrue in addition  
22 thereto) is a lien in favor of the State of Illinois upon all  
23 property and rights to property, whether real or personal,  
24 belonging to that person.

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1 (b) Unless another date is specifically fixed by law, the  
2 lien imposed by subsection (a) of this Section arises at the  
3 time the assessment is made and continues until the liability  
4 for the amount so assessed (or a judgment against the taxpayer  
5 arising out of such liability) is satisfied or becomes  
6 unenforceable by reason of lapse of time.

7 (c) If the lien arises from an assessment pursuant to a  
8 notice of deficiency, then the lien does not attach and the  
9 notice referred to in this Section may not be filed until all  
10 proceedings in court for review of the assessment have  
11 terminated or the time for the taking thereof has expired  
12 without the proceedings being instituted.

13 (d) Notice of lien. The lien created by assessment  
14 terminates unless a notice of lien is filed, as provided in  
15 Section 5-95, within 3 years after the date all proceedings in  
16 court for the review of the assessment have terminated or the  
17 time for the taking thereof has expired without the proceedings  
18 being instituted. If the lien results from the filing of a  
19 return without payment of the tax or penalty shown therein to  
20 be due, then the lien terminates unless a notice of lien is  
21 filed within 3 years after the date the return was filed with  
22 the Department. For the purposes of this subsection (c) , a tax  
23 return filed before the last day prescribed by law, including  
24 any extension thereof, is deemed to have been filed on that  
25 last day.

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1 Section 5-90. Jeopardy assessment and lien.

2 (a) Assessment. If the Department finds that a taxpayer is  
3 about to conceal property or to do any other act tending to  
4 prejudice or to render wholly or partly ineffectual proceedings  
5 to collect any amount of tax or penalties imposed under this  
6 Act unless court proceedings are brought without delay or if  
7 the Department finds that the collection of that amount will be  
8 jeopardized by delay, the Department shall give the taxpayer  
9 notice of those findings and shall make demand for immediate  
10 return and payment of that amount, whereupon that amount is  
11 deemed to be assessed and becomes immediately due and payable.

12 (b) If the taxpayer, within 5 days after the notice under  
13 subsection (a) does not comply with the notice or show to the  
14 Department that the findings in such notice are erroneous, then  
15 the Department may file a notice of jeopardy assessment lien in  
16 the office of the recorder of the county in which any property  
17 of the taxpayer may be located and shall notify the taxpayer of  
18 the filing. The jeopardy assessment lien has the same scope and  
19 effect as a statutory lien under this Act. The taxpayer is  
20 liable for the filing fee incurred by the Department for filing  
21 the lien and the filing fee incurred by the Department to file  
22 the release of that lien. The filing fees must be paid to the  
23 Department in addition to payment of the tax, penalty, and  
24 interest included in the amount of the lien.

25 (c) In the case of a tax for a current taxable year, the  
26 Director shall declare the taxable period of the taxpayer

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1 immediately terminated and his or her notice and demand for a  
2 return and immediate payment of the tax relates to the period  
3 declared terminated.

4 (d) If the taxpayer believes that he or she does not owe  
5 some or all of the amount for which the jeopardy assessment  
6 lien against him or her has been filed or that no jeopardy to  
7 the revenue in fact exists, he or she may protest within 20  
8 days after being notified by the Department of the filing of  
9 the jeopardy assessment lien and request a hearing, whereupon  
10 the Department shall hold a hearing in conformity with the  
11 provisions of Section 5-120 and, pursuant thereto, shall notify  
12 the taxpayer of its decision as to whether the jeopardy  
13 assessment lien will be released.

14 Section 5-95. Filing and priority of liens.

15 (a) Nothing in this Act may be construed to give the  
16 Department a preference over the rights of any bona fide  
17 purchaser, holder of a security interest, mechanics lienor,  
18 mortgagee, or judgment lien creditor arising prior to the  
19 filing of a regular notice of lien or a notice of jeopardy  
20 assessment lien in the office of the recorder in the county in  
21 which the property subject to the lien is located. For purposes  
22 of this Section, the term "bona fide" does not include any  
23 mortgage of real or personal property or any other credit  
24 transaction that results in the mortgagee or the holder of the  
25 security acting as trustee for unsecured creditors of the

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1 taxpayer mentioned in the notice of lien who executed the  
2 chattel or real property mortgage or the document evidencing  
3 the credit transaction. The lien is inferior to the lien of  
4 general taxes, special assessments, and special taxes  
5 heretofore or hereafter levied by any political subdivision of  
6 this State.

7 (b) If title to land to be affected by the notice of lien  
8 or notice of jeopardy assessment lien is registered under the  
9 provisions of the Registered Titles (Torrens) Act, then the  
10 notice must be filed in the office of the registrar of titles  
11 of the county within which the property subject to the lien is  
12 situated and must be entered upon the register of titles as a  
13 memorial of charge upon each folium of the register of titles  
14 affected by such notice, and the Department does not have a  
15 preference over the rights of any bona fide purchaser,  
16 mortgagee, judgment creditor, or other lien holder arising  
17 prior to the registration of the notice.

18 (c) The recorder of each county shall procure a file  
19 labeled "State Tax Lien Notices" and an index book labeled  
20 "State Tax Lien Index". When notice of any lien or jeopardy  
21 assessment lien is presented to him or her for filing, he or  
22 she shall file it in numerical order in the file and shall  
23 enter it alphabetically in the index. The entry must show the  
24 name and last known address of the person named in the notice,  
25 the serial number of the notice, the date and hour of filing,  
26 whether it is a regular lien or a jeopardy assessment lien, and

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1 the amount of tax and penalty due and unpaid, plus the amount  
2 of interest due at the time when the notice of lien or jeopardy  
3 assessment is filed.

4 (d) No recorder or registrar of titles of any county may  
5 require that the Department pay any costs or fees in connection  
6 with recordation of any notice or other document filed by the  
7 Department under this Act at the time the notice or other  
8 document is presented for recordation. The recorder or  
9 registrar of each county, in order to receive payment for fees  
10 or costs incurred by the Department, may present the Department  
11 with monthly statements indicating the amount of fees and costs  
12 incurred by the Department and for which no payment has been  
13 received.

14 (e) The taxpayer is liable for the filing fee incurred by  
15 the Department for filing the lien and the filing fee incurred  
16 by the Department to file the release of that lien. The filing  
17 fees must be paid to the Department in addition to payment of  
18 the tax, penalty, and interest included in the amount of the  
19 lien.

20 Section 5-100. Duration of lien. The lien provided under  
21 this Act continues for 20 years from the date of filing the  
22 notice of lien under the provisions of Section 5-95 unless  
23 sooner released or otherwise discharged.

24 Section 5-105. Release of liens.

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1 (a) In general. Upon payment by the taxpayer to the  
2 Department in cash or by guaranteed remittance of an amount  
3 representing the filing fees and charges for the lien and the  
4 filing fees and charges for the release of that lien, the  
5 Department shall release all or any portion of the property  
6 subject to any lien provided for in this Act and file that  
7 complete or partial release of lien with the recorder of the  
8 county where that lien was filed if it determines that the  
9 release will not endanger or jeopardize the collection of the  
10 amount secured thereby.

11 (b) If, on judicial review, the final judgment of the court  
12 is that the taxpayer does not owe some or all of the amount  
13 secured by the lien against him or her, or that no jeopardy to  
14 the revenue exists, then the Department shall release its lien  
15 to the extent of that finding of nonliability or to the extent  
16 of that finding of no jeopardy to the revenue. The taxpayer is,  
17 however, liable for the filing fee paid by the Department to  
18 file the lien and the filing fee required to file a release of  
19 the lien. The filing fees must be paid to the Department.

20 (c) The Department shall also release its jeopardy  
21 assessment lien against the taxpayer if the tax and penalty  
22 covered by the lien, plus any interest that may be due and an  
23 amount representing the filing fee to file the lien and the  
24 filing fee required to file a release of that lien, are paid by  
25 the taxpayer to the Department in cash or by guaranteed  
26 remittance.

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1 (d) The Department shall issue a certificate of complete or  
2 partial release of the lien upon payment by the taxpayer to the  
3 Department in cash or by guaranteed remittance of an amount  
4 representing the filing fee paid by the Department to file the  
5 lien and the filing fee required to file the release of that  
6 lien:

7 (1) to the extent that the fair market value of any  
8 property subject to the lien exceeds the amount of the lien  
9 plus the amount of all prior liens upon the property;

10 (2) to the extent that the lien becomes unenforceable;

11 (3) to the extent that the amount of the lien is paid  
12 by the person whose property is subject to the lien,  
13 together with any interest and penalty which may become due  
14 under this Act between the date when the notice of lien is  
15 filed and the date when the amount of the lien is paid;

16 (4) to the extent that there is furnished to the  
17 Department, on a form to be approved and with a surety or  
18 sureties satisfactory to the Department, a bond that is  
19 conditioned upon the payment of the amount of the lien,  
20 together with any interest which may become due under this  
21 Act after the notice of lien is filed, but before the  
22 amount thereof is fully paid; and

23 (5) to the extent and under the circumstances specified  
24 in this Section.

25 A certificate of complete or partial release of any lien is  
26 held to be conclusive that the lien upon the property covered

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1 by the certificate is extinguished to the extent indicated by  
2 the certificate. The release of lien must be issued to the  
3 person, or his or her agent, against whom the lien was obtained  
4 and must contain in legible letters a statement as follows:

5 FOR THE PROTECTION OF THE OWNER, THIS RELEASE SHALL BE  
6 FILED WITH THE RECORDER OR THE REGISTRAR OF TITLES IN WHOSE  
7 OFFICE THE LIEN WAS FILED.

8 (e) If a certificate of complete or partial release of lien  
9 issued by the Department is presented for filing in the office  
10 of the recorder or registrar of titles where a notice of lien  
11 or notice of jeopardy assessment lien was filed, then:

12 (1) the recorder, in the case of nonregistered  
13 property, shall permanently attach the certificate of  
14 release to the notice of lien or notice of jeopardy  
15 assessment lien and shall enter the certificate of release  
16 and the date in the "State Tax Lien Index" on the line  
17 where the notice of lien or notice of jeopardy assessment  
18 lien is entered; and

19 (2) in the case of registered property, the registrar  
20 of titles shall file and enter upon each folium of the  
21 register of titles affected thereby a memorial of the  
22 certificate of release, which when so entered, acts as a  
23 release pro tanto of any memorial of the notice of lien or  
24 notice of jeopardy assessment lien previously filed and  
25 registered.

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1 Section 5-110. Nonliability for costs of legal  
2 proceedings. The Department is not be required to furnish any  
3 bond nor to make a deposit for or pay any costs or fees of any  
4 court or officer thereof in any legal proceedings pursuant to  
5 the provisions of this Act.

6 Section 5-115. Claim to property. If any process issued  
7 from any court for the enforcement or collection of any  
8 liability created by this Act is levied by any sheriff or other  
9 authorized person upon any personal property and the property  
10 is claimed by any person other than the defendant as exempt  
11 from enforcement of a judgment thereon by virtue of the  
12 exemption laws of this State, then it is the duty of the person  
13 making the claim to give notice in writing of his or her claim  
14 and of his or her intention to prosecute the same to the  
15 sheriff or other person within 10 days after the making of the  
16 levy. On receiving such a notice, the sheriff or other person  
17 shall proceed in accordance with the provisions of Part 2 of  
18 Article XII of the Code of Civil Procedure. The giving of the  
19 notice within the 10-day period is a condition precedent to any  
20 judicial action against the sheriff or other authorized person  
21 for wrongfully levying, seizing, or selling the property and  
22 any such person who fails to give notice within the time is  
23 forever barred from bringing any judicial action against the  
24 sheriff or other person for injury or damages to or conversion  
25 of the property.

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1 Section 5-120. Foreclosure on real property. In addition to  
2 any other remedy provided for by the laws of this State, and  
3 provided that no hearing or proceedings for review provided by  
4 this Act is pending and the time for the taking thereof has  
5 expired, the Department may foreclose in the circuit court any  
6 lien on real property for any tax or penalty imposed by this  
7 Act to the same extent and in the same manner as in the  
8 enforcement of other liens. The proceedings to foreclose may  
9 not be instituted more than 5 years after the filing of the  
10 notice of lien under the provisions of Section 5-95. The  
11 process, practice, and procedure for the foreclosure is the  
12 same as provided in the Civil Practice Law.

13 Section 5-125. Demand and seizure. In addition to any other  
14 remedy provided for by the laws of this State, if the tax  
15 imposed by this Act is not paid within the time required by  
16 this Act, the Department, or some person designated by it, may  
17 cause a demand to be made on the taxpayer for the payment  
18 thereof. If the tax remains unpaid for 10 days after such a  
19 demand has been made and no proceedings have been taken to  
20 review the same, then the Department may issue a warrant  
21 directed to any sheriff or other person authorized to serve  
22 process, commanding the sheriff or other person to levy upon  
23 the property and rights to property (whether real or personal,  
24 tangible or intangible) of the taxpayer, without exemption,

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1 found within his or her jurisdiction, for the payment of the  
2 amount thereof with the added penalties, interest, and the cost  
3 of executing the warrant. The term "levy" includes the power of  
4 distraint and seizure by any means. In any case in which the  
5 warrant to levy has been issued, the sheriff or other person to  
6 whom the warrant was directed may seize and sell the property  
7 or rights to property. The warrant must be returned to the  
8 Department together with the money collected by virtue thereof  
9 within the time therein specified, which may not be less than  
10 20 nor more than 90 days after the date of the warrant. The  
11 sheriff or other person to whom the warrant is directed shall  
12 proceed in the same manner as prescribed by law in respect to  
13 the enforcement against property upon judgments by a court, and  
14 is entitled to the same fees for his or her services in  
15 executing the warrant, to be collected in the same manner. The  
16 Department, or some officer, employee, or agent designated by  
17 it, is hereby authorized to bid for and purchase any property  
18 sold under the provisions of this Section. No proceedings for a  
19 levy under this Section may be commenced more than 20 years  
20 after the latest date for filing of the notice of lien under  
21 the provisions of Section 5-95, without regard to whether the  
22 notice was actually filed.

23 Any officer or employee of the Department designated in  
24 writing by the Director is authorized to serve process under  
25 this Section to levy upon accounts or other intangible assets  
26 of a taxpayer held by a financial organization, as defined in

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1 Section 1501 of the Illinois Income Tax Act. In addition to any  
2 other provisions of this Section, any officer or employee of  
3 the Department designated in writing by the Director may levy  
4 upon the following property and rights to property belonging to  
5 a taxpayer: contractual payments, accounts and notes  
6 receivable and other evidences of debt, and interest on bonds  
7 by serving a notice of levy on the person making the payment.  
8 The levy may not be made until the Department has caused a  
9 demand to be made on the taxpayer in the manner provided in  
10 this Section. A lien obtained hereunder has priority over any  
11 subsequent lien obtained pursuant to Section 12-808 of the Code  
12 of Civil Procedure.

13 Any officer or employee of the Department designated in  
14 writing by the Director is authorized to serve process under  
15 this Section to levy upon accounts or other intangible assets  
16 of a taxpayer held by a financial organization, as defined in  
17 Section 1501 of the Illinois Income Tax Act. In addition to any  
18 other provisions of this Section, any officer or employee of  
19 the Department designated in writing by the Director may levy  
20 upon the following property and rights to property belonging to  
21 a taxpayer: contractual payments, accounts and notes  
22 receivable and other evidences of debt, and interest on bonds  
23 by serving a notice of levy on the person making the payment.  
24 The levy may not be made until the Department has caused a  
25 demand to be made on the taxpayer in the manner provided in  
26 this Section. A lien obtained hereunder has priority over any

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1 subsequent lien obtained pursuant to Section 12-808 of the Code  
2 of Civil Procedure.

3 In any case where property or rights to property have been  
4 seized by an officer of the Department of State Police, or  
5 successor agency thereto, under the authority of a warrant to  
6 levy issued by the Department of Revenue, the Department of  
7 Revenue may take possession of and may sell the property or  
8 rights to property and the Department of Revenue may contract  
9 with third persons to conduct sales of the property or rights  
10 to the property. In the conduct of these sales, the Department  
11 of Revenue shall proceed in the same manner as is prescribed by  
12 law for proceeding against property to enforce judgments that  
13 are entered by a circuit court of this State. If, in the  
14 Department of Revenue's opinion, no offer to purchase at the  
15 sale is acceptable and the State's interest would be better  
16 served by retaining the property for sale at a later date, then  
17 the Department may decline to accept any bid and may retain the  
18 property for sale at a later date.

19 Section 5-130. Redemption by State. The provisions of  
20 Section 5g of the Retailers' Occupation Tax Act (relating to  
21 time for redemption by the State of real estate sold at  
22 judicial or execution sale) apply for purposes of this Act as  
23 if those provisions were set forth in this Act in their  
24 entirety.

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1 Section 5-135. Access to books and records. All books and  
2 records and other papers and documents that are required by  
3 this Act to be kept must, at all times during business hours of  
4 the day, be subject to inspection by the Department or its duly  
5 authorized agents and employees. If, during the course of any  
6 audit, investigation, or hearing, the Department determines  
7 that a taxpayer lacks necessary documentary evidence, the  
8 Department is authorized to notify the taxpayer, in writing, to  
9 produce the evidence. The taxpayer has 60 days, subject to the  
10 right of the Department to extend this period either on request  
11 for good cause shown or on its own motion, after the date the  
12 notice is personally delivered or sent to the taxpayer by  
13 certified or registered mail in which to obtain and produce the  
14 evidence for the Department's inspection. The failure to  
15 provide the requested evidence within the 60-day period  
16 precludes the taxpayer from providing the evidence at a later  
17 date during the audit, investigation, or hearing.

18 Section 5-140. Conduct of investigations and hearings. For  
19 the purpose of administering and enforcing the provisions of  
20 this Act, the Department, or any officer or employee of the  
21 Department designated, in writing, by the Director may hold  
22 investigations and hearings concerning any matters covered by  
23 this Act and may examine any books, papers, records, or  
24 memoranda bearing upon such matters, and may require the  
25 attendance of any person, or any officer or employee of that

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1 person, having knowledge of such matters, and may take  
2 testimony and require proof for its information. In the conduct  
3 of any investigation or hearing, neither the Department nor any  
4 officer or employee thereof is bound by the technical rules of  
5 evidence, and no informality in any proceeding, or in the  
6 manner of taking testimony, invalidates any order, decision,  
7 rule, or regulation made or approved or confirmed by the  
8 Department. The Director, or any officer or employee of the  
9 Department authorized by the Director has power to administer  
10 oaths to those persons. The books, papers, records, and  
11 memoranda of the Department, or parts thereof, may be proved in  
12 any hearing, investigation, or legal proceeding by a reproduced  
13 copy thereof or by a computer print-out of Department records,  
14 under the certificate of the Director. If reproduced copies of  
15 the Department's books, papers, records, or memoranda are  
16 offered as proof, then the Director must certify that those  
17 copies are true and exact copies of the records on file with  
18 the Department. If computer print-outs of records of the  
19 Department are offered as proof, then the Director must certify  
20 that those computer print-outs are true and exact  
21 representations of records properly entered into standard  
22 electronic computing equipment, in the regular course of the  
23 Department's business, at or reasonably near the time of the  
24 occurrence of the facts recorded, from trustworthy and reliable  
25 information. The reproduced copy shall, without further proof,  
26 be admitted into evidence before the Department or in any legal

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1 proceeding.

2 Section 5-145. Immunity of witnesses. No person is excused  
3 from testifying or from producing any books, papers, records,  
4 or memoranda in any investigation or upon any hearing, when  
5 ordered to do so by the Department or any officer or employee  
6 thereof, upon the ground that the testimony or evidence,  
7 documentary or otherwise, may tend to incriminate him or her or  
8 subject him or her to a criminal penalty, but no person may be  
9 prosecuted or subjected to any criminal penalty for, or on  
10 account of, any transaction made or thing concerning which he  
11 or she may testify or produce evidence, documentary or  
12 otherwise, before the Department or an officer or employee  
13 thereof; provided, that the immunity extends only to a natural  
14 person who, in obedience to a subpoena, gives testimony under  
15 oath or produces evidence, documentary or otherwise, under  
16 oath. No person so testifying is exempt from prosecution and  
17 punishment for perjury committed in so testifying.

18 Section 5-150. Production of witnesses and records.

19 (a) The Department or any officer or employee of the  
20 Department designated in writing by the Director, shall at its  
21 or his or her own instance, or on the written request of any  
22 other party to the proceeding, issue subpoenas requiring the  
23 attendance of and the giving of testimony by witnesses, and  
24 subpoenas duces tecum requiring the production of books,

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1 papers, records, or memoranda. All subpoenas and subpoenas  
2 duces tecum issued under this Act may be served by any person  
3 of full age.

4 (b) The fees of witnesses for attendance and travel are the  
5 same as the fees of witnesses before a Circuit Court of this  
6 State, such fees to be paid when the witness is excused from  
7 further attendance. When the witness is subpoenaed at the  
8 instance of the Department or any officer or employee thereof,  
9 the fees must be paid in the same manner as other expenses of  
10 the Department, and when the witness is subpoenaed at the  
11 instance of any other party to any such proceeding, the  
12 Department may require that the cost of service of the subpoena  
13 or subpoenas duces tecum and the fee of the witness be borne by  
14 the party at whose instance the witness is summoned. In such  
15 case, the Department, in its discretion, may require a deposit  
16 to cover the cost of the service and witness fees. A subpoena  
17 or subpoena duces tecum so issued must be served in the same  
18 manner as a subpoena issued out of a court.

19 (c) Any Circuit Court of this State, upon the application  
20 of the Department or any officer or employee thereof, or upon  
21 the application of any other party to the proceeding may, in  
22 its discretion, compel the attendance of witnesses, the  
23 production of books, papers, records, or memoranda and the  
24 giving of testimony before the Department or any officer or  
25 employee thereof conducting an investigation or holding a  
26 hearing authorized by this Act, by an attachment for contempt,

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1 or otherwise, in the same manner as production of evidence may  
2 be compelled before the Court.

3 Section 5-155. Place of hearings. All hearings provided  
4 for in this Act with respect to or concerning a taxpayer having  
5 a residence or its commercial domicile in this State must be  
6 held at the Department of Revenue's office nearest to the  
7 location of that residence or domicile, except that, if the  
8 taxpayer has its commercial domicile in Cook County, the  
9 hearing must be held in Cook County. If the taxpayer does not  
10 have its commercial domicile in this State, the hearing must be  
11 held in Cook County.

12 Section 5-160. Penalties and interest.

13 (a) Penalties and interest imposed by the Uniform Penalty  
14 and Interest Act with respect to the obligations of a taxpayer  
15 under this Act must be paid upon notice and demand and, except  
16 as provided in subsection (b), must be assessed, collected, and  
17 paid in the same manner as the tax imposed by this Act, and any  
18 reference in this Act to the tax imposed by this Act refers  
19 also to interest and penalties imposed by the Uniform Penalty  
20 and Interest Act.

21 (b) Interest is deemed to be assessed upon the assessment  
22 of the tax to which the interest relates. Penalties for late  
23 payment or underpayment are deemed to be assessed upon  
24 assessment of the tax to which the penalty relates.

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1 Section 5-165. Administrative Review Law. The provisions  
2 of the Administrative Review Law, and the rules adopted  
3 pursuant thereto, apply to and govern all proceedings for the  
4 judicial review of final actions of the Department. These final  
5 actions constitute "administrative decisions", as defined in  
6 Section 3-101 of the Code of Civil Procedure.

7 Section 5-170. Venue. The Circuit Court of the county  
8 where the taxpayer has his or her residence or commercial  
9 domicile, or of Cook County in those cases where the taxpayer  
10 does not have his or her residence or commercial domicile in  
11 this State, has the power to review all final administrative  
12 decisions of the Department in administering the provisions of  
13 this Act.

14 Section 5-175. Service, certification, and dismissal.

15 (a) Service upon the Director or the Assistant Director of  
16 Revenue of summons issued in an action to review a final  
17 administrative decision of the Department is service upon the  
18 Department.

19 (b) The Department shall certify the record of its  
20 proceedings if the taxpayer pays to it the sum of \$0.75 per  
21 page of testimony taken before the Department and \$0.25 per  
22 page of all other matters contained in the record, except that  
23 these charges may be waived if the Department is satisfied that

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1 the aggrieved party is a poor person who cannot afford to pay  
2 the charges.

3 (c) If payment for the record is not made by the taxpayer  
4 within 30 days after notice from the Department or the Attorney  
5 General of the cost thereof, the court in which the proceeding  
6 is pending, on motion of the Department, shall dismiss the  
7 complaint and shall enter judgment against the taxpayer and in  
8 favor of the Department in accordance with the final action of  
9 the Department, together with interest on any deficiency to the  
10 date of entry of the judgment, and also for costs.

11 Section 5-180. Crimes.

12 (a) Any person who is subject to the provisions of this Act  
13 and who willfully fails to file a return, who files a  
14 fraudulent return, or who willfully attempts in any other  
15 manner to evade or defeat any tax imposed by this Act or the  
16 payment thereof or any accountant or other agent who knowingly  
17 enters false information on the return of any taxpayer under  
18 this Act, is, in addition to other penalties, guilty of a Class  
19 4 felony for the first offense and a Class 3 felony for each  
20 subsequent offense. Any person who is subject to this Act and  
21 who willfully violates any rule or regulation of the Department  
22 of Revenue for the administration and enforcement of this Act  
23 or who fails to keep books and records as required in this Act  
24 is, in addition to other penalties, guilty of a Class A  
25 misdemeanor.

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1 (b) Any person who accepts money that is due to the  
2 Department under this Act from a taxpayer for the purpose of  
3 acting as the taxpayer's agent to make the payment to the  
4 Department, but who willfully fails to remit that payment to  
5 the Department when due, is guilty of a Class A misdemeanor.  
6 Any such person who purports to make that payment by issuing or  
7 delivering a check or other order upon a real or fictitious  
8 depository for the payment of money, knowing that it will not  
9 be paid by the depository, is guilty of a deceptive practice in  
10 violation of Section 17-1 of the Criminal Code of 1961.

11 (c) Any person whose commercial domicile or whose residence  
12 is in this State and who is charged with a violation under this  
13 Section must be tried in the county where his or her commercial  
14 domicile or his or her residence is located unless he or she  
15 asserts a right to be tried in another venue. A prosecution for  
16 any act or omission in violation of this Section may be  
17 commenced at any time within 5 years after the commission of  
18 that act or failure to act.

19 Section 5-185. Adoption of rules. The Department is  
20 authorized to make, adopt, and enforce such reasonable rules  
21 and regulations, and to prescribe such forms, relating to the  
22 administration and enforcement of the provisions of this Act,  
23 as it may deem appropriate.

24 Section 5-190. Notice. If notice is required by this Act,

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1 then the notice must, if not otherwise provided, be given or  
2 issued by mailing it by registered or certified mail addressed  
3 to the person concerned at his or her last known address.

4 Section 5-195. Amounts less than \$1.

5 (a) Payments, refunds, etc. The Department may by rule  
6 provide that, if a total amount of less than \$1 is payable,  
7 refundable, or creditable, then the amount may be disregarded  
8 or, alternatively, is disregarded if it is less than \$0.50 and  
9 is increased to \$1 if it is \$0.50 or more.

10 (b) The Department may by rule provide that any amount that  
11 is required to be shown or reported on any return or other  
12 document under this Act is, if that amount is not a  
13 whole-dollar amount, increased to the nearest whole-dollar  
14 amount in any case where the fractional part of a dollar is  
15 \$0.50 or more and decreased to the nearest whole-dollar amount  
16 when the fractional part of a dollar is less than \$0.50.

17 Section 5-200. Administrative Procedure Act; application.

18 (a) The Illinois Administrative Procedure Act is hereby  
19 expressly adopted and applies to all administrative rules and  
20 procedures of the Department under this Act, except that: (1)  
21 paragraph (b) of Section 5-10 of the Illinois Administrative  
22 Procedure Act does not apply to final orders, decisions, and  
23 opinions of the Department; (2) subparagraph (a) (2) of Section  
24 5-10 of the Illinois Administrative Procedure Act does not

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1 apply to forms established by the Department for use under this  
2 Act; and (3) the provisions of Section 10-45 of the Illinois  
3 Administrative Procedure Act regarding proposals for decision  
4 are excluded and not applicable to the Department under this  
5 Act.

6 (b) For the public interest, safety, and welfare, in order  
7 to initially implement this Act, the Department is authorized  
8 to adopt emergency rules under Section 5-45 of the Illinois  
9 Administrative Procedure Act.

10 ARTICLE 99. SEVERABILITY; EFFECTIVE DATE

11 Section 99-97. Severability. The provisions of this Act are  
12 severable under Section 1.31 of the Statute on Statutes.

13 Section 99-99. Effective date. This Act takes effect upon  
14 becoming law.”.