

**AGENDA**  
**LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS COMMITTEE**  
**THURSDAY, DECEMBER 8, 2011 – 8:30 a.m.**  
**McHenry County Government Center – Administration Building**  
**667 Ware Road – County Board Conference Room**  
**Woodstock, IL 60098**

- 1.0 Call to Order
- 2.0 Minute Approval
- 3.0 Public Comment
- 4.0 Presentation
- 5.0 Business
  - 5.05 Ordinance Providing for the Submission to the Electors of the County of McHenry, Illinois, the Question Whether the County Should Have the Authority Under Public Act #096-0176 to Arrange for the Supply of Electricity for its Residential and Small Commercial Retail Customers Who Have Not Opted Out of Such Program
  - 5.10 Draft State Legislative Program for 2012
  - 5.15 Federal Legislative Update
- 6.0 Executive Session (as necessary)
- 7.0 Reports to Committee, as applicable
- 8.0 Adjournment

**LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS COMMITTEE**  
**McHenry County Government Center – Administration Building**  
**667 Ware Road**  
**Woodstock IL 60098**

MINUTES OF THURSDAY NOVEMBER 10, 2011

Chairman Heisler called the meeting to order at 8:35 a.m. The following Committee members were present: James Heisler, Chairman; Ersel Schuster; Marc Munaretto; Pete Merkel; Nick Provenzano; John Jung, Jr. and Kathleen Bergan Schmidt. Also in attendance: Peter Austin, County Administrator; Adam Lehmann, Assistant to the County Administrator; Ken Koehler, County Board Chairman; and Charles Edredge.

James Heisler, Chairman	
John Jung, Jr.	Pete Merkel
Marc Munaretto	Nick Provenzano
Kathleen Bergan Schmidt	Ersel Schuster

MINUTES

Committee members reviewed the committee minutes of October 13, 2011 and October 27, 2011. Mr. Munaretto stated that in the October 13<sup>th</sup> minutes the attendance shows Ms. Bergan Schmidt listed twice. Mr. Jung made a motion, seconded by Ms. Schmidt to approve the minutes as amended. The motion carried with all members present voting aye on a voice vote.

PUBLIC COMMENT

None.

OLD BUSINESS

*Electric Aggregation Update:* Committee members entered into a discussion regarding Electric Aggregation. The RFQ for consultant services has gone out and bids are due by November 21<sup>st</sup>. The bids will be reviewed until the end of December. The County has partnered with McCOG (McHenry County Council of Governments) on the RFQ. They have received some responses to the bid and have had to answer various questions from the consultants.

Staff will work with the State's Attorney's office in order to get the correct referendum question on the March Ballot. McCOG has taken the lead in identifying the municipalities that may want to join this program. All entities have expressed interest in this program and they are waiting to see how this comes together. Everyone may not piggy back onto the county's referendum as it remains an individual policy of each group. It is believed there is some value to collectively work together on aggregation so the information will be easier to get out to the community. So far the communities that have shown interest in joining the County on this issue is the City of McHenry, Village of Barrington Hills, Village of Spring Grove, Village of Huntley, Village of Prairie Grove, Village of Lakewood, City of Marengo, City of Crystal Lake, City of Woodstock, Village of McCullom Lake, Village of Lake in the Hills, Village of Algonquin (though this has not be confirmed) and the City of Genoa.

A committee member stated they attended a meeting where electric aggregation was being discussed and they provided a "board" that listed the percentage of savings that was anticipated by each aggregate group. It was stated it was open ended on how much each individual would actually save.

Committee members were informed that the next Legislative Committee meeting is scheduled for Thanksgiving. If a special meeting is not scheduled the next Legislative Committee meeting will be on December 8<sup>th</sup>. The committee would have to sign off on the wording in the Resolution in order to get this issue to the County Board for consideration. The State's Attorney will be wording the referendum question. The last referendum done in the County was for Valley Hi so that is not an easily transferable model to use for this referendum question.

Mr. Munaretto questioned what the unintended consequences of this may be. Mr. Austin noted that these questions will be asked during the interviews with the chosen aggregators. He stated that a list of questions will be brought forward to ask during the interviews. The County will receive calls on this so we need to have a list of responses ready when asked. The public will need to know who to call when they have issues with their service. There will be a perception that the County is involved with these companies so the County will receive complaints when the power goes out. This already occurs with cable television and solid waste. This will put the county in the mix so the County will receive calls. Ms. Schmidt stated there is definitely a misperception of what this program is. While speaking with a neighbor, the neighbor had stated that this service would improve outages. Ms. Schmidt

questioned if there would be any additional ballot items. She stated if there wasn't, the County Clerk would be required to print a special ballot just for this issue. It is only when they have an issue like this that they are required to print a non-partisan ballot. Committee members stated that there are other entities that are interested in electric aggregation that have not joined in with the County. They would be required to run their own referendum so it is not believed to be an issue. Committee members questioned if the Municipalities and Villages are aware of the deadline to get this on the ballot. They were informed that McCOG is getting the word out on this issue.

Mr. Jung left committee at 8:45 a.m.

Committee members questioned if some of the smaller communities that do not have McCOG involvement have been contacted on this issue. It was suggested that emails or phone calls be made to reach out to these small communities on this issue. It was stated that some of the smaller villages may not understand the requirements for electric aggregation.

Committee members questioned if once a contract is signed if it would be exclusive to those who get a referendum passed now or if others could wait to see what happens. Committee members questioned what the value is by having everyone join in on the contract.

It was stated that they thought that the request for qualification was just an umbrella that any village or municipality could fall under if they wanted. They thought it was to get a single aggregator, to get the message out to the whole County. Committee members were reminded that each individual board would need to take action for each community to join in on the program. Once done, they would also agree to accept the rates that are being offered.

Committee members were reminded that the Aggregator would be chosen before the referendum. Part of their job is to inform the committee of this opportunity. The competitiveness comes in after the referendum when they go out for bids on the rate. It is felt that the higher the number of people that join in on the aggregation program, the lower the rate. Committee members questioned if there would be a better rate if they waited to choose the aggregator.

Chairman Koehler stated that they have to be cautious to make sure we don't choose someone that is also selling the electricity. There are two different types of aggregators, those that provide their own power and those that don't.

Mr. Austin stated that an aggregator won't spend any money if they don't get the contract. Mr. Provenzano stated that should be part of the questions asked. He asked if we should commit to an aggregator before or after the referendum? He stated that he does not think there is much value that the aggregator can take to the voters pre-election. He stated that he feels the County should get permission from the voters first and then to pick an aggregator. If a choice is needed before Christmas there is a short window in order to pick this aggregator, but if after, it gives the County four months to review the contracts.

Ms. Schuster stated that when they spoke about aggregation, they stated that a percentage of the contract would be available to the County. The County has an option on whether they should accept the funds being offered. She questioned if this would be spelled out in the referendum. It was stated that this should be spelled out in the resolution.

Mr. Austin stated that we have an opportunity to include this in the contact with the aggregator. This needs to be spelled out for the public though each government will have differences on how to approach this.

Mr. Provenzano stated that they need to formulate a list of questions that need to be answered before a decision can be made by this committee. They need to spell out direction of this committee for both pre and post referendum. We also need to make clear whether we will be accepting the commission that is being offered. It was stated that if we don't take this commission, this committee needs to understand these funds will go back to the aggregator as profit. He stated that he does not believe this money would go back to the community as an additional savings. He stated he would hate to give up this \$150,000 to \$190,000 a year in order to increase the aggregators bottom line. He stated they would need to prove these funds would go back to the constituents as a savings in order to not take these funds.

Committee members stated that the constituents will want to know what the expected savings are. It was stated that is why it is important when choosing an aggregator it is understood whether this aggregator would be supplying the electricity or would be someone that would "broker" the savings on behalf of the community.

Chairman Heisler stated that he would get with Mr. Austin to get these questions outlined as clear as possible for the next committee meeting. He noted there are a lot of questions that will need to be considered both for the referendum and for the contract. The contract will require to be reviewed by the State's Attorney as well. He requested that the committee members to forward any questions they may have on this issue before December 8<sup>th</sup>. If there are any revisions, these will need to be decided during that same meeting.

Committee members questioned if there will be time to get a Resolution on their desks before County Board approval is needed on December 20<sup>th</sup>. Committee members were informed that the referendum is pretty set on how to ask the question. The Resolution will outline the process. Mr. Provenzano stated he did not think he would be able to vote on a Resolution until all of his questions have been answered and therefore did not feel this would be forwarded to the County Board if there were still some outstanding questions.

Ms. Bergan Schmidt stated that she thinks everyone is thinking too deep on this issue and that the real question is, do we put this on the ballot to save residents money or don't we. It was stated they did not see this much controversy with the Municipalities that got this referendum passed.

Ms. Schuster questioned how the County will handle the incentive funds. She stated that the question needs to be answered and we need to make sure we understand all of the questions that will come forward from our constituents. Committee members were reminded that these questions will be answered during the interview process.

Committee members asked if there were any other companies that pay the County fees. They were informed that yes, the cable companies do and these fees are not tied to any specific project.

*State Veto Session Update:* Committee members were informed that the State Veto session will move into overtime. The legislators have been asked to return on the 21<sup>st</sup> to discuss two issues. One is for the extension of tax cuts for Sears and the gaming bill. They are trying to figure out a way to get the gaming bill passed. It failed by two votes.

Mr. Austin informed committee members that the Regional Office of Education is now being funded through the end of the State Fiscal Year. These payments have been tied to the local personal property replacement tax fund. This is a one year program. They have included a requirement that a task force be formed to look at this issue. The County will now have to hire a Superintendent, which may be difficult since this may only require a six (6) to eight (8) month commitment. They will have to hire someone that has the extensive qualifications for the position that may be interested in doing this for a short term. Committee members suggested some of the retired superintendents be contacted for possible consideration. It was stated that the qualifications are quite extensive and most of these retired persons may not be qualified. Another issue is that the person would be required to run in the next election. Committee members requested they check on this issue. It was stated that the rules state if they serve more than ½ a term, they have to be included in the next election. It was stated that they may be able to appoint someone to a specific term on a temporary basis. It was stated that McHenry County needs to be more active in review of the roles of the ROE. An ROE was needed to get the schools open. If a school has any construction done, this construction requires an inspection by the ROE. Most times these inspections are signed off by the construction engineer and then forwarded to the ROE for signature. District 47 almost had an issue because they did not have all the required paperwork completed to get their schools open. The Lake County ROE was able to help with this issue and get the schools opened on time.

Committee members questioned if we should encourage a group of County organizations to hold workshops to talk about some of these issues to take these issues before this proposed task force. It was stated that each County has different issues and we need to hear the different perspectives of each County. This would give a voice to our issues with the State. It was suggested that we push to get this task force working. Our County is dealing with not having an ROE. We are not sure how this office will look like, come July of next year.

Representative Tryon is working to resolve this issue. He is looking for ideas on this issue. There have been discussions about the possibility of consolidating these offices. Mr. Austin informed committee members that he will work with the Lake County Board to see what a consolidated office would look like.

Mr. Austin informed committee members that he saw Jack Franks Bill 3793 failed. He stated that he watched the debate on this issue on line. He stated they had a very spirited debate. They referenced meetings that were held in McHenry County with the Assessors. He felt this vote would be closer.

Representative Tryon has sponsored a bill that would amend the Statute regarding the Special Prosecutor. The amendment would put the reins on the use of a Special Prosecutor and would put in place the preference to use a local attorney, with itemized costs and billings, for cases that may require the use of a Special Prosecutor. The local entities do not want to see the bills in the newspapers for the costs of the special prosecutors, before they get to trial.

They are currently working through the courts to see what the County will have to pay for the Special Prosecutors. These bills have exceeded what the County expected to pay.

#### NEW BUSINESS

Mr. Lehmann informed committee members of a new electronic feature that will be used by the general assembly. This replaces the paper version previously used by individuals seeking to testify on legislation and or subject matters in House Committees. If you go to the State Website, you can review the hearings and vote for or against an issue and can provide comments that will be a part of the public record on that issue. The site provides an area where they can state whether a specific special interest group is being represented as well. Mr. Lehmann will email the information to the committee members if interested.

*Draft State Legislative Program for 2012:* Committee members reviewed the Draft State Legislative Program for 2012. This program is still a work in progress. It is hopeful that his program will be approved by this committee at its December 8<sup>th</sup> meeting and approved by the County Board at the December 20<sup>th</sup> meeting. Committee members reviewed the initiatives that the County may want to be a sponsor on for the coming year.

The Fox Waterway Public Safety Fee: Committee members were reminded that 40% of the users on the Chain of Lakes are non McHenry/Lake County residents. This means that the residents of these two counties are paying for the costs of safety enforcement while the out of county users are not. Both counties have been working diligently with the State to develop a plan to coordinate on waterway enforcement with the Conservation Police. This has allowed the Sheriff to reduce the Marine Patrols in the Fox Waterway for 2011. Both of these counties still have significant costs to provide public safety service to the waterway each year. The counties would like the authority to institute a public safety fee to support the operating expenses seen by each of the Sheriff's Marine units. Committee members questioned how a fee could be implemented for non-resident use of the waterway and if this was even legal. Committee members were reminded that McHenry County receives no funds for enforcement on the waterways, even though McHenry County provides the public safety for this waterway. Lake County will be pushing further on this issue next year.

On page five (5) they speak about the Regional Superintendent of Schools. They will now modify this area to include the need to convene the task force.

One was one additional item that was discussed during the NERC (Natural and Environmental Resources Committee). They mentioned the idea of implementing a tax on the gravel industry. The Municipalities are able to implement a tax to help with stormwater issues so the committee members asked if the County could do this for the unincorporated areas of the County. Committee members were informed that the County's ability to do that would require legislative action. Ms. Schuster noted that she believes this issue has been brought up in the past and she believes this is how some of the groundwater programs have been funded. Committee members requested Mr. Austin check on this issue for the committee. It was noted that some of the municipalities put these funds into their general fund. Committee members stated they would think there is a way to get a fee for the removal of a natural resource from this County. Chairman Heisler stated he believes this issue has been reviewed a number of times.

The next issue suggested is Flexibility of Prioritizing Local Purchasing. Committee members stated it may be dangerous getting into this issue. They questioned how they would isolate local providers. They stated that this issue needs more review.

Committee members stated that they feel that the prevailing wage issue needs additional review. Ms. Schmidt stated that this could cause an issue with some of the Federal Grants that are received so they need to be cautious when recommending changes. It was stated that if the County uses its own funds for a project, they should be able to say where and how to spend these funds.

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Ms. Schuster asked for the history on the Water Use Act and how it got amended. She stated that she has a problem with Agriculture entities getting dragged into water issues. She stated that Agriculture entities were previously exempt from this requirement and she stated that it is interesting that this issue has gotten this far.

Mr. Austin noted that he would have the information on the ROE Task Force updated in the McHenry County 2012 State Legislative Program.

He requested those interested in being a part of the interview process for the Electric Aggregator's to please let him know.

At the December 8<sup>th</sup> Legislative and Intergovernmental Affairs Committee the committee will have an audience. The Leadership Greater McHenry County group will watch this committee in action during Government Day. After the meeting they will adjourn and reconvene in the County Board Room and continue with a panel discussion with the group.

Chairman Koehler stated there is an issue that needs to be discussed at the Public Health and Human Services Committee meeting. He stated there are talks about charging hospitals with Real Estate Taxes. This could be a real serious issue. DuPage and Will County's have taken a stand on this issue and this is something that should be talked about here as well. The Governor wants all hospitals to pay Real Estate Taxes. This will have an impact to what is considered "Charity Care". Committee members were informed that Centegra is already protesting the taxes being charged on their health care facilities. Chairman Koehler stated that this is a big issue and questioned what the unintended consequences could be if they are taxed. The proposal states that if they don't meet the requirements of charity care, they would be taxed. Chairman Koehler stated that he thought the Public Health and Human Services Committee should have reviewed this issue, but they felt this would be an issue that should be discussed by the Legislative and Intergovernmental Affairs Committee. Chairman Koehler has requested that the full County Board review this issue to see if this County should support the Governor or hospitals on this issue. It was stated that they need to let the definition of charity care be defined. The big question is whether bad debt should be considered charity care. The Chicago Metropolitan Hospital Association would like support for this issue. Committee members were reminded that there is not standard definition of charity care given.

Committee members suggested that staff get a copy of what the Governor is trying to do so they can review this issue further. It was noted that an Attorney General opinion states that hospitals cannot count bad debt as charity care. They questioned if a portion of this bad debt should be used as charity care.

Ms. Schmidt stated that this Resolution was presented to the Public Health and Human Services Committee meeting and her feelings were that it was written by a Public Relations firm. She stated that she went to the Act to review the information being considered. She noted there is a lack of information included there as well. She stated that there could be an argument that not for profits should not be charged real estate taxes, but big enterprises should be taxed. Committee members requested that staff review the position of the local hospitals. Their view may be different from those facilities in Cook County. Committee members stated they would like to know the position of the local entities involved.

Mr. Provenzano left committee at 10:00a.m.

Ms. Schuster questioned what the policy concerning Medicaid Funding for Nursing Homes. She questioned how involved the County was in this issue and where the expertise on this issue is coming from. Mr. Austin reported that we are concerned since the State has delayed payments by six months to public nursing homes. He stated that this is a situation that needs attention. Mr. Annarella is active in professional associations and has gone to Springfield in order to follow this issue.

Committee members questioned the last sentence under the Stormwater Regulations section. It was noted that this addresses the substantial fees that could be charged to the County by the State for permit fees. It was stated that this could be more of a problem in the developed areas.

Committee members were informed that the last two items have been adopted by McCOG as part of their program. Committee members questioned if they thought if the "Exempt Project under \$50,000 from Prevailing Wage Act Requirements" were adopted, if they thought projects would be split up so a company wouldn't meet this \$50,000 threshold. They stated they have a problem with companies try to split projects out in order to alleviate fees or taxes. They were reminded when Valley Hi was being landscaped, they were required to pay a crew \$18 an hour, even though they had people willing to provide this service for much less.

EXECUTIVE SESSION: None.

REPORTS TO COMMITTEE: None

ADJOURNMENT: Noting no further business, Mr. Merkel made a motion, seconded by Ms. Schmidt to adjourn at 10:10a.m. The motion carried with all members present voting aye on a voice vote.

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**RECOMMENDED FOR BOARD/COMMITTEE ACTION:**

:ksf

DRAFT

**ORDINANCE NO. \_\_\_\_\_**

**ORDINANCE PROVIDING FOR THE SUBMISSION TO THE ELECTORS OF THE COUNTY OF McHENRY, ILLINOIS, THE QUESTION WHETHER THE COUNTY SHOULD HAVE THE AUTHORITY UNDER PUBLIC ACT # 096-0176 TO ARRANGE FOR THE SUPPLY OF ELECTRICITY FOR ITS RESIDENTIAL AND SMALL COMMERCIAL RETAIL CUSTOMERS WHO HAVE NOT OPTED OUT OF SUCH PROGRAM**

**WHEREAS**, on January 1, 2010, the Illinois Power Agency Act, Chapter 20, Illinois Compiled Statutes, Act 3855, was amended to include Section 1-92 entitled Aggregation of Electrical Load by Municipalities and Counties (hereinafter referred to as the "Act"); and

**WHEREAS**, under the Act, if the County of McHenry, Illinois ("County") seeks to operate an aggregation program under the Act as an opt-out program for residential and small commercial retail customers, then prior to adoption of an ordinance to establish a program, the County must submit a referendum to its residents to determine whether or not the aggregation program shall operate as an opt-out program for residential and small commercial retail customers. If the majority of the electors voting on the question vote in the affirmative, then the County Board may implement an opt-out aggregation program for residential and small commercial retail customers; and

**WHEREAS**, an aggregation program would give the County the authority to enter into an electric supply power contract on behalf of residents and small businesses in unincorporated McHenry County, Illinois, who have not opted out of said program with the intent to secure a lower rate for electric service, yielding reduced electric bills for its residents and small businesses; and

**WHEREAS**, the McHenry County Board hereby finds that it is in the best interest of the County of McHenry, Illinois, to operate the aggregation program under the Act as an opt-out program and to submit the question to the electors in a referendum pursuant to the Act.

**NOW, THEREFORE BE IT ORDAINED**, by the County Board of McHenry County, Illinois, as follows:

1. The facts and statements in the preamble to this Ordinance are hereby found by the McHenry County Board to be true and correct and are hereby incorporated as a part of this Ordinance; and

2. It is in the best interest of the County of McHenry, Illinois, to operate the aggregation program under the Act as an opt-out program; and

3. The County Clerk is directed to immediately certify and submit the following question to be placed on the ballot for the general election to be held on March 20, 2012, in the following form:

Shall the County of McHenry, Illinois, have the authority to arrange for the supply of electricity for its residential and small commercial retail customers who have not opted out of such program?

YES \_\_\_\_\_ NO \_\_\_\_\_

4. In the event such question is approved by a majority of the electors voting on the question at the regular election on March 20, 2012, the McHenry County Board may implement an opt-out aggregation program and if the Board adopts the program the County shall comply with all the terms and provisions of the Act; and

5. In the event the State of Illinois amends the Act to revise the form of the question to be placed on the ballot, the Chairman of the McHenry County Board is authorized to direct the County Clerk to change the form of the question to conform with the amended Act, if required; and

6. The County will create a Plan of Governance and Execution, coordinating with the Illinois Commerce Commission, Illinois Power Authority, Attorney General's Office, Local Utility (ComEd) and Suppliers both at a local and national level; and

7. This ordinance shall be in full force and effect from and after its passage and approval as required by law.

**DATED** at Woodstock, McHenry County, Illinois, this 20<sup>th</sup> day of December, A.D., 2011.

\_\_\_\_\_  
KENNETH D. KOEHLER, Chairman  
McHenry County Board

ATTEST:

\_\_\_\_\_  
KATHERINE C. SCHULTZ, County Clerk