

1 AN ACT concerning public utilities.

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

4 Section 5. The Public Utilities Act is amended by
5 changing Section 8-403.1 as follows:

6 (220 ILCS 5/8-403.1) (from Ch. 111 2/3, par. 8-403.1)

7 Sec. 8-403.1. Electricity purchased from qualified solid
8 waste energy facility; tax credit; distributions for economic
9 development.

10 (a) It is hereby declared to be the policy of this State
11 to encourage the development of alternate energy production
12 facilities in order to conserve our energy resources and to
13 provide for their most efficient use.

14 (b) For the purpose of this Section and Section 9-215.1,
15 "qualified solid waste energy facility" means a facility
16 determined by the Illinois Commerce Commission to qualify as
17 such under the Local Solid Waste Disposal Act, to use methane
18 gas generated from landfills as its primary fuel, and to
19 possess characteristics that would enable it to qualify as a
20 cogeneration or small power production facility under federal
21 law.

22 (c) In furtherance of the policy declared in this
23 Section, the Illinois Commerce Commission shall require
24 electric utilities to enter into long-term contracts to
25 purchase electricity from qualified solid waste energy
26 facilities located in the electric utility's service area,
27 for a period beginning on the date that the facility begins
28 generating electricity and having a duration of not less than
29 10 years in the case of facilities fueled by
30 landfill-generated methane, or 20 years in the case of
31 facilities fueled by methane generated from a landfill owned

1 by a forest preserve district. The purchase rate contained
2 in such contracts shall be equal to the average amount per
3 kilowatt-hour paid from time to time by the unit or units of
4 local government in which the electricity generating
5 facilities are located, excluding amounts paid for street
6 lighting and pumping service.

7 (d) Whenever a public utility is required to purchase
8 electricity pursuant to subsection (c) above, it shall be
9 entitled to credits in respect of its obligations to remit to
10 the State taxes it has collected under the Electricity Excise
11 Tax Law equal to the amounts, if any, by which payments for
12 such electricity exceed (i) the then current rate at which
13 the utility must purchase the output of qualified facilities
14 pursuant to the federal Public Utility Regulatory Policies
15 Act of 1978, less (ii) any costs, expenses, losses, damages
16 or other amounts incurred by the utility, or for which it
17 becomes liable, arising out of its failure to obtain such
18 electricity from such other sources. The amount of any such
19 credit shall, in the first instance, be determined by the
20 utility, which shall make a monthly report of such credits to
21 the Illinois Commerce Commission and, on its monthly tax
22 return, to the Illinois Department of Revenue. Under no
23 circumstances shall a utility be required to purchase
24 electricity from a qualified solid waste energy facility at
25 the rate prescribed in subsection (c) of this Section if such
26 purchase would result in estimated tax credits that exceed,
27 on a monthly basis, the utility's estimated obligation to
28 remit to the State taxes it has collected under the
29 Electricity Excise Tax Law. The owner or operator shall
30 negotiate facility operating conditions with the purchasing
31 utility in accordance with that utility's posted standard
32 terms and conditions for small power producers. If the
33 Department of Revenue disputes the amount of any such credit,
34 such dispute shall be decided by the Illinois Commerce

1 Commission. Whenever a qualified solid waste energy facility
2 has paid or otherwise satisfied in full the capital costs or
3 indebtedness incurred in developing and implementing the
4 qualified facility, the qualified facility shall reimburse
5 the Public Utility Fund and the General Revenue Fund in the
6 State treasury for the actual reduction in payments to those
7 Funds caused by this subsection (d) in a manner to be
8 determined by the Illinois Commerce Commission and based on
9 the manner in which revenues for those Funds were reduced.

10 (e) The Illinois Commerce Commission shall not require
11 an electric utility to purchase electricity from any
12 qualified solid waste energy facility which is owned or
13 operated by an entity that is primarily engaged in the
14 business of producing or selling electricity, gas, or useful
15 thermal energy from a source other than one or more qualified
16 solid waste energy facilities.

17 (f) This Section does not require an electric utility to
18 construct additional facilities unless those facilities are
19 paid for by the owner or operator of the affected qualified
20 solid waste energy facility.

21 (g) The Illinois Commerce Commission shall require that:
22 (1) electric utilities use the electricity purchased from a
23 qualified solid waste energy facility to displace electricity
24 generated from nuclear power or coal mined and purchased
25 outside the boundaries of the State of Illinois before
26 displacing electricity generated from coal mined and
27 purchased within the State of Illinois, to the extent
28 possible, and (2) electric utilities report annually to the
29 Commission on the extent of such displacements.

30 (h) Nothing in this Section is intended to cause an
31 electric utility that is required to purchase power hereunder
32 to incur any economic loss as a result of its purchase. All
33 amounts paid for power which a utility is required to
34 purchase pursuant to subparagraph (c) shall be deemed to be

1 costs prudently incurred for purposes of computing charges
2 under rates authorized by Section 9-220 of this Act. Tax
3 credits provided for herein shall be reflected in charges
4 made pursuant to rates so authorized to the extent such
5 credits are based upon a cost which is also reflected in such
6 charges.

7 (i) Beginning in February 1999 and through January 2009,
8 each qualified solid waste energy facility that sells
9 electricity to an electric utility at the purchase rate
10 described in subsection (c) shall file with the Department of
11 Revenue on or before the 15th of each month a form,
12 prescribed by the Department of Revenue, that states the
13 number of kilowatt hours of electricity for which payment was
14 received at that purchase rate from electric utilities in
15 Illinois during the immediately preceding month. This form
16 shall be accompanied by a payment from the qualified solid
17 waste energy facility in an amount equal to six-tenths of a
18 mill (\$0.0006) per kilowatt hour of electricity stated on the
19 form. Beginning on the effective date of this amendatory Act
20 of the 92nd General Assembly, a qualified solid waste energy
21 facility must file the form required under this subsection
22 (i) before the 15th of each month regardless of whether the
23 facility received any payment in the previous month. Payments
24 received by the Department of Revenue shall be deposited into
25 the Municipal Economic Development Fund, a trust fund created
26 outside the State treasury. The State Treasurer may invest
27 the moneys in the Fund in any investment authorized by the
28 Public Funds Investment Act, and investment income shall be
29 deposited into and become part of the Fund. Moneys in the
30 Fund shall be used by the State Treasurer as provided in
31 subsection (j). The obligation of a qualified solid waste
32 energy facility to make payments into the Municipal Economic
33 Development Fund shall terminate upon either: (1) expiration
34 or termination of a facility's contract to sell electricity

1 to an electric utility at the purchase rate described in
2 subsection (c); or (2) entry of an enforceable, final, and
3 non-appealable order by a court of competent jurisdiction
4 that Public Act 89-448 is invalid. Payments by a qualified
5 solid waste energy facility into the Municipal Economic
6 Development Fund do not relieve the qualified solid waste
7 energy facility of its obligation to reimburse the Public
8 Utility Fund and the General Revenue Fund for the actual
9 reduction in payments to those Funds as a result of credits
10 received by electric utilities under subsection (d).

11 A qualified solid waste energy facility that fails to
12 timely file the requisite form and payment as required by
13 this subsection (i) shall be subject to penalties and
14 interest in conformance with the provisions of the Illinois
15 Uniform Penalty and Interest Act.

16 Every qualified solid waste energy facility subject to
17 the provisions of this subsection (i) shall keep and maintain
18 records and books of its sales pursuant to subsection (c),
19 including payments received from those sales and the
20 corresponding tax payments made in accordance with this
21 subsection (i), and for purposes of enforcement of this
22 subsection (i) all such books and records shall be subject to
23 inspection by the Department of Revenue or its duly
24 authorized agents or employees.

25 When a qualified solid waste energy facility fails to
26 file the form or make the payment required under this
27 subsection (i), the Department of Revenue, to the extent that
28 it is practical, may enforce the payment obligation in a
29 manner consistent with Section 5 of the Retailers' Occupation
30 Tax Act, and if necessary may impose and enforce a tax lien
31 in a manner consistent with Sections 5a, 5b, 5c, 5d, 5e, 5f,
32 5g, and 5i of the Retailers' Occupation Tax Act. No tax lien
33 may be imposed or enforced, however, unless a qualified solid
34 waste energy facility fails to make the payment required

1 under this subsection (i). Only to the extent necessary and
2 for the purpose of enforcing this subsection (i), the
3 Department of Revenue may secure necessary information from a
4 qualified solid waste energy facility in a manner consistent
5 with Section 10 of the Retailers' Occupation Tax Act.

6 All information received by the Department of Revenue in
7 its administration and enforcement of this subsection (i)
8 shall be confidential in a manner consistent with Section 11
9 of the Retailers' Occupation Tax Act. The Department of
10 Revenue may adopt rules to implement the provisions of this
11 subsection (i).

12 For purposes of implementing the maximum aggregate
13 distribution provisions in subsections (j) and (k), when a
14 qualified solid waste energy facility makes a late payment to
15 the Department of Revenue for deposit into the Municipal
16 Economic Development Fund, that payment and deposit shall be
17 attributed to the month and corresponding quarter in which
18 the payment should have been made, and the Treasurer shall
19 make retroactive distributions or refunds, as the case may
20 be, whenever such late payments so require.

21 (j) The State Treasurer, without appropriation, must
22 make distributions immediately after January 15, April 15,
23 July 15, and October 15 of each year, up to maximum aggregate
24 distributions of \$500,000 for the distributions made in the 4
25 quarters beginning with the April distribution and ending
26 with the January distribution, from the Municipal Economic
27 Development Fund to each city, village, or incorporated town
28 that has within its boundaries an incinerator that: (1) uses
29 or, on the effective date of Public Act 90-813, used
30 municipal waste as its primary fuel to generate electricity;
31 (2) was determined by the Illinois Commerce Commission to
32 qualify as a qualified solid waste energy facility prior to
33 the effective date of Public Act 89-448; and (3) commenced
34 operation prior to January 1, 1998. Total distributions in

1 the aggregate to all qualified cities, villages, and
2 incorporated towns in the 4 quarters beginning with the April
3 distribution and ending with the January distribution shall
4 not exceed \$500,000. The amount of each distribution shall
5 be determined pro rata based on the population of the city,
6 village, or incorporated town compared to the total
7 population of all cities, villages, and incorporated towns
8 eligible to receive a distribution. Distributions received by
9 a city, village, or incorporated town must be held in a
10 separate account and may be used only to promote and enhance
11 industrial, commercial, residential, service, transportation,
12 and recreational activities and facilities within its
13 boundaries, thereby enhancing the employment opportunities,
14 public health and general welfare, and economic development
15 within the community, including administrative expenditures
16 exclusively to further these activities. These funds,
17 however, shall not be used by the city, village, or
18 incorporated town, directly or indirectly, to purchase,
19 lease, operate, or in any way subsidize the operation of any
20 incinerator, and these funds shall not be paid, directly or
21 indirectly, by the city, village, or incorporated town to the
22 owner, operator, lessee, shareholder, or bondholder of any
23 incinerator. Moreover, these funds shall not be used to pay
24 attorneys fees in any litigation relating to the validity of
25 Public Act 89-448. Nothing in this Section prevents a city,
26 village, or incorporated town from using other corporate
27 funds for any legitimate purpose. For purposes of this
28 subsection, the term "municipal waste" has the meaning
29 ascribed to it in Section 3.21 of the Environmental
30 Protection Act.

31 (k) If maximum aggregate distributions of \$500,000 under
32 subsection (j) have been made after the January distribution
33 from the Municipal Economic Development Fund, then the
34 balance in the Fund shall be refunded to the qualified solid

1 waste energy facilities that made payments that were
2 deposited into the Fund during the previous 12-month period.
3 The refunds shall be prorated based upon the facility's
4 payments in relation to total payments for that 12-month
5 period.

6 (1) Beginning January 1, 2000, and each January 1
7 thereafter, each city, village, or incorporated town that
8 received distributions from the Municipal Economic
9 Development Fund, continued to hold any of those
10 distributions, or made expenditures from those distributions
11 during the immediately preceding year shall submit to a
12 financial and compliance and program audit of those
13 distributions performed by the Auditor General at no cost to
14 the city, village, or incorporated town that received the
15 distributions. The audit should be completed by June 30 or
16 as soon thereafter as possible. The audit shall be submitted
17 to the State Treasurer and those officers enumerated in
18 Section 3-14 of the Illinois State Auditing Act. If the
19 Auditor General finds that distributions have been expended
20 in violation of this Section, the Auditor General shall refer
21 the matter to the Attorney General. The Attorney General may
22 recover, in a civil action, 3 times the amount of any
23 distributions illegally expended. For purposes of this
24 subsection, the terms "financial audit," "compliance audit",
25 and "program audit" have the meanings ascribed to them in
26 Sections 1-13 and 1-15 of the Illinois State Auditing Act.
27 (Source: P.A. 91-901, eff. 1-1-01; 92-435, eff. 8-17-01.)