

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.  
24 Payments received by the Department of Revenue shall be  
25 deposited into the Municipal Economic Development Fund, a  
26 trust fund created outside the State treasury. The State  
27 Treasurer may invest the moneys in the Fund in any investment  
28 authorized by the Public Funds Investment Act, and investment  
29 income shall be deposited into and become part of the Fund.  
30 Moneys in the Fund shall be used by the State Treasurer as  
31 provided in subsection (j). The obligation of a qualified  
32 solid waste energy facility to make payments into the  
33 Municipal Economic Development Fund shall terminate upon  
34 either: (1) expiration or termination of a facility's

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

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

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

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

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

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

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

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

1 operation prior to January 1, 1998. Total distributions in  
2 the aggregate to all qualified cities, villages, and  
3 incorporated towns in the 4 quarters beginning with the April  
4 distribution and ending with the January distribution shall  
5 not exceed \$500,000. The amount of each distribution shall  
6 be determined pro rata based on the population of the city,  
7 village, or incorporated town compared to the total  
8 population of all cities, villages, and incorporated towns  
9 eligible to receive a distribution. Distributions received by  
10 a city, village, or incorporated town must be held in a  
11 separate account and may be used only to promote and enhance  
12 industrial, commercial, residential, service, transportation,  
13 and recreational activities and facilities within its  
14 boundaries, thereby enhancing the employment opportunities,  
15 public health and general welfare, and economic development  
16 within the community, including administrative expenditures  
17 exclusively to further these activities. These funds,  
18 however, shall not be used by the city, village, or  
19 incorporated town, directly or indirectly, to purchase,  
20 lease, operate, or in any way subsidize the operation of any  
21 incinerator, and these funds shall not be paid, directly or  
22 indirectly, by the city, village, or incorporated town to the  
23 owner, operator, lessee, shareholder, or bondholder of any  
24 incinerator. Moreover, these funds shall not be used to pay  
25 attorneys fees in any litigation relating to the validity of  
26 Public Act 89-448. Nothing in this Section prevents a city,  
27 village, or incorporated town from using other corporate  
28 funds for any legitimate purpose. For purposes of this  
29 subsection, the term "municipal waste" has the meaning  
30 ascribed to it in Section 3.290 of the Environmental  
31 Protection Act.

32 (k) If maximum aggregate distributions of \$500,000 under  
33 subsection (j) have been made after the January distribution  
34 from the Municipal Economic Development Fund, then the

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

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

28 (Source: P.A. 91-901, eff. 1-1-01; 92-435, eff. 8-17-01;  
29 92-574, eff. 6-26-02.)