



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

HB1004

Introduced 2/3/2005, by Rep. Kevin Joyce

#### SYNOPSIS AS INTRODUCED:

220 ILCS 5/8-403.1

from Ch. 111 2/3, par. 8-403.1

Amends the Public Utilities Act. Makes a technical change in a Section concerning tax credits related to qualified solid waste facilities.

LRB094 05870 MKM 35924 b

1 AN ACT concerning regulation.

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 changing  
5 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 ~~the~~ policy of this  
11 State to encourage the development of alternate energy  
12 production facilities in order to conserve our energy resources  
13 and to 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 Section,  
23 the Illinois Commerce Commission shall require electric  
24 utilities to enter into long-term contracts to purchase  
25 electricity from qualified solid waste energy facilities  
26 located in the electric utility's service area, for a period  
27 beginning on the date that the facility begins generating  
28 electricity and having a duration of not less than 10 years in  
29 the case of facilities fueled by landfill-generated methane, or  
30 20 years in the case of facilities fueled by methane generated  
31 from a landfill owned by a forest preserve district. The  
32 purchase rate contained in such contracts shall be equal to the

1 average amount per kilowatt-hour paid from time to time by the  
2 unit or units of local government in which the electricity  
3 generating facilities are located, excluding amounts paid for  
4 street lighting and pumping service.

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

1 treasury for the actual reduction in payments to those Funds  
2 caused by this subsection (d) in a manner to be determined by  
3 the Illinois Commerce Commission and based on the manner in  
4 which revenues for those Funds were reduced.

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

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

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

25 (h) Nothing in this Section is intended to cause an  
26 electric utility that is required to purchase power hereunder  
27 to incur any economic loss as a result of its purchase. All  
28 amounts paid for power which a utility is required to purchase  
29 pursuant to subparagraph (c) shall be deemed to be costs  
30 prudently incurred for purposes of computing charges under  
31 rates authorized by Section 9-220 of this Act. Tax credits  
32 provided for herein shall be reflected in charges made pursuant  
33 to rates so authorized to the extent such credits are based  
34 upon a cost which is also reflected in such charges.

35 (i) Beginning in February 1999 and through January 2009,  
36 each qualified solid waste energy facility that sells

1 electricity to an electric utility at the purchase rate  
2 described in subsection (c) shall file with the Department of  
3 Revenue on or before the 15th of each month a form, prescribed  
4 by the Department of Revenue, that states the number of  
5 kilowatt hours of electricity for which payment was received at  
6 that purchase rate from electric utilities in Illinois during  
7 the immediately preceding month. This form shall be accompanied  
8 by a payment from the qualified solid waste energy facility in  
9 an amount equal to six-tenths of a mill (\$.0006) per kilowatt  
10 hour of electricity stated on the form. Beginning on the  
11 effective date of this amendatory Act of the 92nd General  
12 Assembly, a qualified solid waste energy facility must file the  
13 form required under this subsection (i) before the 15th of each  
14 month regardless of whether the facility received any payment  
15 in the previous month. Payments received by the Department of  
16 Revenue shall be deposited into the Municipal Economic  
17 Development Fund, a trust fund created outside the State  
18 treasury. The State Treasurer may invest the moneys in the Fund  
19 in any investment authorized by the Public Funds Investment  
20 Act, and investment income shall be deposited into and become  
21 part of the Fund. Moneys in the Fund shall be used by the State  
22 Treasurer as provided in subsection (j). The obligation of a  
23 qualified solid waste energy facility to make payments into the  
24 Municipal Economic Development Fund shall terminate upon  
25 either: (1) expiration or termination of a facility's contract  
26 to sell electricity to an electric utility at the purchase rate  
27 described in subsection (c); or (2) entry of an enforceable,  
28 final, and non-appealable order by a court of competent  
29 jurisdiction that Public Act 89-448 is invalid. Payments by a  
30 qualified solid waste energy facility into the Municipal  
31 Economic Development Fund do not relieve the qualified solid  
32 waste energy facility of its obligation to reimburse the Public  
33 Utility Fund and the General Revenue Fund for the actual  
34 reduction in payments to those Funds as a result of credits  
35 received by electric utilities under subsection (d).

36 A qualified solid waste energy facility that fails to

1 timely file the requisite form and payment as required by this  
2 subsection (i) shall be subject to penalties and interest in  
3 conformance with the provisions of the Illinois Uniform Penalty  
4 and Interest Act.

5 Every qualified solid waste energy facility subject to the  
6 provisions of this subsection (i) shall keep and maintain  
7 records and books of its sales pursuant to subsection (c),  
8 including payments received from those sales and the  
9 corresponding tax payments made in accordance with this  
10 subsection (i), and for purposes of enforcement of this  
11 subsection (i) all such books and records shall be subject to  
12 inspection by the Department of Revenue or its duly authorized  
13 agents or employees.

14 When a qualified solid waste energy facility fails to file  
15 the form or make the payment required under this subsection  
16 (i), the Department of Revenue, to the extent that it is  
17 practical, may enforce the payment obligation in a manner  
18 consistent with Section 5 of the Retailers' Occupation Tax Act,  
19 and if necessary may impose and enforce a tax lien in a manner  
20 consistent with Sections 5a, 5b, 5c, 5d, 5e, 5f, 5g, and 5i of  
21 the Retailers' Occupation Tax Act. No tax lien may be imposed  
22 or enforced, however, unless a qualified solid waste energy  
23 facility fails to make the payment required under this  
24 subsection (i). Only to the extent necessary and for the  
25 purpose of enforcing this subsection (i), the Department of  
26 Revenue may secure necessary information from a qualified solid  
27 waste energy facility in a manner consistent with Section 10 of  
28 the Retailers' Occupation Tax Act.

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

34 For purposes of implementing the maximum aggregate  
35 distribution provisions in subsections (j) and (k), when a  
36 qualified solid waste energy facility makes a late payment to

1 the Department of Revenue for deposit into the Municipal  
2 Economic Development Fund, that payment and deposit shall be  
3 attributed to the month and corresponding quarter in which the  
4 payment should have been made, and the Treasurer shall make  
5 retroactive distributions or refunds, as the case may be,  
6 whenever such late payments so require.

7 (j) The State Treasurer, without appropriation, must make  
8 distributions immediately after January 15, April 15, July 15,  
9 and October 15 of each year, up to maximum aggregate  
10 distributions of \$500,000 for the distributions made in the 4  
11 quarters beginning with the April distribution and ending with  
12 the January distribution, from the Municipal Economic  
13 Development Fund to each city, village, or incorporated town  
14 that has within its boundaries an incinerator that: (1) uses  
15 or, on the effective date of Public Act 90-813, used municipal  
16 waste as its primary fuel to generate electricity; (2) was  
17 determined by the Illinois Commerce Commission to qualify as a  
18 qualified solid waste energy facility prior to the effective  
19 date of Public Act 89-448; and (3) commenced operation prior to  
20 January 1, 1998. Total distributions in the aggregate to all  
21 qualified cities, villages, and incorporated towns in the 4  
22 quarters beginning with the April distribution and ending with  
23 the January distribution shall not exceed \$500,000. The amount  
24 of each distribution shall be determined pro rata based on the  
25 population of the city, village, or incorporated town compared  
26 to the total population of all cities, villages, and  
27 incorporated towns eligible to receive a distribution.  
28 Distributions received by a city, village, or incorporated town  
29 must be held in a separate account and may be used only to  
30 promote and enhance industrial, commercial, residential,  
31 service, transportation, and recreational activities and  
32 facilities within its boundaries, thereby enhancing the  
33 employment opportunities, public health and general welfare,  
34 and economic development within the community, including  
35 administrative expenditures exclusively to further these  
36 activities. These funds, however, shall not be used by the

1 city, village, or incorporated town, directly or indirectly, to  
2 purchase, lease, operate, or in any way subsidize the operation  
3 of any incinerator, and these funds shall not be paid, directly  
4 or indirectly, by the city, village, or incorporated town to  
5 the owner, operator, lessee, shareholder, or bondholder of any  
6 incinerator. Moreover, these funds shall not be used to pay  
7 attorneys fees in any litigation relating to the validity of  
8 Public Act 89-448. Nothing in this Section prevents a city,  
9 village, or incorporated town from using other corporate funds  
10 for any legitimate purpose. For purposes of this subsection,  
11 the term "municipal waste" has the meaning ascribed to it in  
12 Section 3.290 of the Environmental Protection Act.

13 (k) If maximum aggregate distributions of \$500,000 under  
14 subsection (j) have been made after the January distribution  
15 from the Municipal Economic Development Fund, then the balance  
16 in the Fund shall be refunded to the qualified solid waste  
17 energy facilities that made payments that were deposited into  
18 the Fund during the previous 12-month period. The refunds shall  
19 be prorated based upon the facility's payments in relation to  
20 total payments for that 12-month period.

21 (l) Beginning January 1, 2000, and each January 1  
22 thereafter, each city, village, or incorporated town that  
23 received distributions from the Municipal Economic Development  
24 Fund, continued to hold any of those distributions, or made  
25 expenditures from those distributions during the immediately  
26 preceding year shall submit to a financial and compliance and  
27 program audit of those distributions performed by the Auditor  
28 General at no cost to the city, village, or incorporated town  
29 that received the distributions. The audit should be completed  
30 by June 30 or as soon thereafter as possible. The audit shall  
31 be submitted to the State Treasurer and those officers  
32 enumerated in Section 3-14 of the Illinois State Auditing Act.  
33 If the Auditor General finds that distributions have been  
34 expended in violation of this Section, the Auditor General  
35 shall refer the matter to the Attorney General. The Attorney  
36 General may recover, in a civil action, 3 times the amount of



1 any distributions illegally expended. For purposes of this  
2 subsection, the terms "financial audit," "compliance audit",  
3 and "program audit" have the meanings ascribed to them in  
4 Sections 1-13 and 1-15 of the Illinois State Auditing Act.  
5 (Source: P.A. 91-901, eff. 1-1-01; 92-435, eff. 8-17-01;  
6 92-574, eff. 6-26-02.)