

SB2419



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB2419

Introduced 1/18/2006, by Sen. James F. Clayborne, Jr.

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 energy facilities.

LRB094 18745 MKM 54123 b

A BILL FOR

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 (\$0.0006) 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.)