



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB1888

Introduced 2/23/2007, 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. Provides that if a unit or units of local government in which a qualified solid waste energy facility is located purchases all or a portion of its electricity from a supplier other than the electric utility that purchases electricity generated by the qualified solid waste energy facility, then the calculation of the purchase rate paid by the electric utility to the qualified solid waste energy facility shall be based on the amounts that the unit or units of local government would have paid to the electric utility if the unit or units of local government purchased all of its electricity from the electric utility. Effective immediately.

LRB095 07721 MJR 32067 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 policy of this State to  
11 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 Section,  
23 the Illinois Commerce Commission shall require electric

1 utilities to enter into long-term contracts to purchase  
2 electricity from qualified solid waste energy facilities  
3 located in the electric utility's service area, for a period  
4 beginning on the date that the facility begins generating  
5 electricity and having a duration of not less than 10 years in  
6 the case of facilities fueled by landfill-generated methane, or  
7 20 years in the case of facilities fueled by methane generated  
8 from a landfill owned by a forest preserve district. The  
9 purchase rate contained in such contracts shall be equal to the  
10 average amount per kilowatt-hour paid from time to time by the  
11 unit or units of local government in which the electricity  
12 generating facilities are located, excluding amounts paid for  
13 street lighting and pumping service. If the unit or units of  
14 local government in which a qualified solid waste energy  
15 facility is located purchases all or a portion of its  
16 electricity from a supplier other than the electric utility  
17 that purchases electricity generated by the qualified solid  
18 waste energy facility, then the calculation of the purchase  
19 rate paid by the electric utility to the qualified solid waste  
20 energy facility under this Section shall be based on the  
21 amounts that the unit or units of local government would have  
22 paid to the electric utility if the unit or units of local  
23 government purchased all of its electricity from the electric  
24 utility.

25 (d) Whenever a public utility is required to purchase  
26 electricity pursuant to subsection (c) above, it shall be

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

1 has paid or otherwise satisfied in full the capital costs or  
2 indebtedness incurred in developing and implementing the  
3 qualified solid waste energy facility, whenever the qualified  
4 solid waste energy facility ceases to operate and produce  
5 electricity from methane gas generated from landfills, or at  
6 the end of the contract entered into pursuant to subsection (c)  
7 of this Section, whichever occurs first, the qualified solid  
8 waste energy facility shall reimburse the Public Utility Fund  
9 and the General Revenue Fund in the State treasury for the  
10 actual reduction in payments to those Funds caused by this  
11 subsection (d) in a manner to be determined by the Illinois  
12 Commerce Commission and based on the manner in which revenues  
13 for those Funds were reduced. The payments shall be made to the  
14 Illinois Commerce Commission, which shall determine the  
15 appropriate disbursements to the Public Utility Fund and the  
16 General Revenue Fund based on this subsection (d).

17 (e) The Illinois Commerce Commission shall not require an  
18 electric utility to purchase electricity from any qualified  
19 solid waste energy facility which is owned or operated by an  
20 entity that is primarily engaged in the business of producing  
21 or selling electricity, gas, or useful thermal energy from a  
22 source other than one or more qualified solid waste energy  
23 facilities.

24 (e-5) A qualified solid waste energy facility may receive  
25 the purchase rate provided in subsection (c) of this Section  
26 only for kilowatt-hours generated by the use of methane gas

1 generated from landfills. The purchase rate provided in  
2 subsection (c) of this Section does not apply to electricity  
3 generated by the use of a fuel that is not methane gas  
4 generated from landfills. If the Illinois Commerce Commission  
5 determines that a qualified solid waste energy facility has  
6 violated the requirement regarding the use of methane gas  
7 generated from a landfill as set forth in this subsection  
8 (e-5), then the Commission shall issue an order requiring that  
9 the qualified solid waste energy facility repay the State for  
10 all dollar amounts of electricity sales that are determined by  
11 the Commission to be the result of the violation. As part of  
12 that order, the Commission shall have the authority to revoke  
13 the facility's approval to act as a qualified solid waste  
14 energy facility granted by the Commission under this Section.  
15 If the amount owed by the qualified solid waste energy facility  
16 is not received by the Commission within 90 days after the date  
17 of the Commission's order that requires repayment, then the  
18 Commission shall issue an order that revokes the facility's  
19 approval to act as a qualified solid waste energy facility  
20 granted by the Commission under this Section. The Commission's  
21 action that vacates prior qualified solid waste energy facility  
22 approval does not excuse the repayment to the State treasury  
23 required by subsection (d) of this Section for utility tax  
24 credits accumulated up to the time of the Commission's action.  
25 A qualified solid waste energy facility must receive Commission  
26 approval before it may use any fuel in addition to methane gas

1 generated from a landfill in order to generate electricity. If  
2 a qualified solid waste energy facility petitions the  
3 Commission to use any fuel in addition to methane gas generated  
4 from a landfill to generate electricity, then the Commission  
5 shall have the authority to do the following:

6 (1) establish the methodology for determining the  
7 amount of electricity that is generated by the use of  
8 methane gas generated from a landfill and the amount that  
9 is generated by the use of other fuel;

10 (2) determine all reporting requirements for the  
11 qualified solid waste energy facility that are necessary  
12 for the Commission to determine the amount of electricity  
13 that is generated by the use of methane gas from a landfill  
14 and the amount that is generated by the use of other fuel  
15 and the resulting payments to the qualified solid waste  
16 energy facility; and

17 (3) require that the qualified solid waste energy  
18 facility, at the qualified solid waste energy facility's  
19 expense, install metering equipment that the Commission  
20 determines is necessary to enforce compliance with this  
21 subsection (e-5).

22 A public utility that is required to enter into a long-term  
23 purchase contract with a qualified solid waste energy facility  
24 has no duty to determine whether the electricity being  
25 purchased was generated by the use of methane gas generated  
26 from a landfill or was generated by the use of some other fuel

1 in violation of the requirements of this subsection (e-5).

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

6 (g) The Illinois Commerce Commission shall require that:  
7 (1) electric utilities use the electricity purchased from a  
8 qualified solid waste energy facility to displace electricity  
9 generated from nuclear power or coal mined and purchased  
10 outside the boundaries of the State of Illinois before  
11 displacing electricity generated from coal mined and purchased  
12 within the State of Illinois, to the extent possible, and (2)  
13 electric utilities report annually to the Commission on the  
14 extent of such displacements.

15 (h) Nothing in this Section is intended to cause an  
16 electric utility that is required to purchase power hereunder  
17 to incur any economic loss as a result of its purchase. All  
18 amounts paid for power which a utility is required to purchase  
19 pursuant to subparagraph (c) shall be deemed to be costs  
20 prudently incurred for purposes of computing charges under  
21 rates authorized by Section 9-220 of this Act. Tax credits  
22 provided for herein shall be reflected in charges made pursuant  
23 to rates so authorized to the extent such credits are based  
24 upon a cost which is also reflected in such charges.

25 (i) Beginning in February 1999 and through January 2009,  
26 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).

23 Beginning on July 1, 2006 through January 31, 2009, each  
24 month the State Treasurer shall certify the following to the  
25 State Comptroller:

26 (A) the amount received by the Department of Revenue

1 under this subsection (i) during the immediately preceding  
2 month; and

3 (B) the amount received by the Department of Revenue  
4 under this subsection (i) in the corresponding month in  
5 calendar year 2002.

6 As soon as practicable after receiving the certification from  
7 the State Treasurer, the State Comptroller shall transfer from  
8 the General Revenue Fund to the Municipal Economic Development  
9 Fund in the State treasury an amount equal to the amount by  
10 which the amount calculated under item (B) of this paragraph  
11 exceeds the amount calculated under item (A) of this paragraph,  
12 if any.

13 The obligation of a qualified solid waste energy facility  
14 to make payments into the Municipal Economic Development Fund  
15 shall terminate upon either: (1) expiration or termination of a  
16 facility's contract to sell electricity to an electric utility  
17 at the purchase rate described in subsection (c); or (2) entry  
18 of an enforceable, final, and non-appealable order by a court  
19 of competent jurisdiction that Public Act 89-448 is invalid.  
20 Payments by a qualified solid waste energy facility into the  
21 Municipal Economic Development Fund do not relieve the  
22 qualified solid waste energy facility of its obligation to  
23 reimburse the Public Utility Fund and the General Revenue Fund  
24 for the actual reduction in payments to those Funds as a result  
25 of credits received by electric utilities under subsection (d).

26 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

1 waste energy facility in a manner consistent with Section 10 of  
2 the Retailers' Occupation Tax Act.

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

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

17 (j) The State Treasurer, without appropriation, must make  
18 distributions immediately after January 15, April 15, July 15,  
19 and October 15 of each year, up to maximum aggregate  
20 distributions of \$500,000 for the distributions made in the 4  
21 quarters beginning with the April distribution and ending with  
22 the January distribution, from the Municipal Economic  
23 Development Fund to each city, village, or incorporated town  
24 that has within its boundaries an incinerator that: (1) uses  
25 or, on the effective date of Public Act 90-813, used municipal  
26 waste as its primary fuel to generate electricity; (2) was

1 determined by the Illinois Commerce Commission to qualify as a  
2 qualified solid waste energy facility prior to the effective  
3 date of Public Act 89-448; and (3) commenced operation prior to  
4 January 1, 1998. Total distributions in the aggregate to all  
5 qualified cities, villages, and incorporated towns in the 4  
6 quarters beginning with the April distribution and ending with  
7 the January distribution shall not exceed \$500,000. The amount  
8 of each distribution shall be determined pro rata based on the  
9 population of the city, village, or incorporated town compared  
10 to the total population of all cities, villages, and  
11 incorporated towns eligible to receive a distribution.  
12 Distributions received by a city, village, or incorporated town  
13 must be held in a separate account and may be used only to  
14 promote and enhance industrial, commercial, residential,  
15 service, transportation, and recreational activities and  
16 facilities within its boundaries, thereby enhancing the  
17 employment opportunities, public health and general welfare,  
18 and economic development within the community, including  
19 administrative expenditures exclusively to further these  
20 activities. These funds, however, shall not be used by the  
21 city, village, or incorporated town, directly or indirectly, to  
22 purchase, lease, operate, or in any way subsidize the operation  
23 of any incinerator, and these funds shall not be paid, directly  
24 or indirectly, by the city, village, or incorporated town to  
25 the owner, operator, lessee, shareholder, or bondholder of any  
26 incinerator. Moreover, these funds shall not be used to pay

1 attorneys fees in any litigation relating to the validity of  
2 Public Act 89-448. Nothing in this Section prevents a city,  
3 village, or incorporated town from using other corporate funds  
4 for any legitimate purpose. For purposes of this subsection,  
5 the term "municipal waste" has the meaning ascribed to it in  
6 Section 3.290 of the Environmental Protection Act.

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

15 (l) Beginning January 1, 2000, and each January 1  
16 thereafter, each city, village, or incorporated town that  
17 received distributions from the Municipal Economic Development  
18 Fund, continued to hold any of those distributions, or made  
19 expenditures from those distributions during the immediately  
20 preceding year shall submit to a financial and compliance and  
21 program audit of those distributions performed by the Auditor  
22 General at no cost to the city, village, or incorporated town  
23 that received the distributions. The audit should be completed  
24 by June 30 or as soon thereafter as possible. The audit shall  
25 be submitted to the State Treasurer and those officers  
26 enumerated in Section 3-14 of the Illinois State Auditing Act.

1 If the Auditor General finds that distributions have been  
2 expended in violation of this Section, the Auditor General  
3 shall refer the matter to the Attorney General. The Attorney  
4 General may recover, in a civil action, 3 times the amount of  
5 any distributions illegally expended. For purposes of this  
6 subsection, the terms "financial audit," "compliance audit",  
7 and "program audit" have the meanings ascribed to them in  
8 Sections 1-13 and 1-15 of the Illinois State Auditing Act.

9 (m) On and after the effective date of this amendatory Act  
10 of the 94th General Assembly, beginning on the first date on  
11 which renewable energy certificates or other saleable  
12 representations are sold by a qualified solid waste energy  
13 facility, with or without the electricity generated by the  
14 facility, and utilized by an electric utility or another  
15 electric supplier to comply with a renewable energy portfolio  
16 standard mandated by Illinois law or mandated by order of the  
17 Illinois Commerce Commission, that qualified solid waste  
18 energy facility may not sell electricity pursuant to this  
19 Section and shall be exempt from the requirements of  
20 subsections (a) through (l) of this Section, except that it  
21 shall remain obligated for any reimbursements required under  
22 subsection (d) of this Section. All of the provisions of this  
23 Section shall remain in full force and effect with respect to  
24 any qualified solid waste energy facility that sold electric  
25 energy pursuant to this Section at any time before July 1, 2006  
26 and that does not sell renewable energy certificates or other

1 saleable representations to meet the requirements of a  
2 renewable energy portfolio standard mandated by Illinois law or  
3 mandated by order of the Illinois Commerce Commission.

4 (n) Notwithstanding any other provision of law to the  
5 contrary, beginning on July 1, 2006, the Illinois Commerce  
6 Commission shall not issue any order determining that a  
7 facility is a qualified solid waste energy facility unless the  
8 qualified solid waste energy facility was determined by the  
9 Illinois Commerce Commission to be a qualified solid waste  
10 energy facility before July 1, 2006. As a guide to the intent,  
11 interpretation, and application of this amendatory Act of the  
12 94th General Assembly, it is hereby declared to be the policy  
13 of this State to honor each qualified solid waste energy  
14 facility contract in existence on the effective date of this  
15 amendatory Act of the 94th General Assembly if the qualified  
16 solid waste energy facility continues to meet the requirements  
17 of this Section for the duration of its respective contract  
18 term.

19 (Source: P.A. 94-836, eff. 6-6-06.)

20 Section 99. Effective date. This Act takes effect upon  
21 becoming law.