

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 (\$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).

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.