

# HB1743



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB1743

Introduced 2/18/2009, by Rep. Michael J. Madigan - Barbara Flynn Currie - Robert F. Flider

#### 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.

LRB096 05377 MJR 15443 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

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.

14 (d) Whenever a public utility is required to purchase  
15 electricity pursuant to subsection (c) above, it shall be  
16 entitled to credits in respect of its obligations to remit to  
17 the State taxes it has collected under the Electricity Excise  
18 Tax Law equal to the amounts, if any, by which payments for  
19 such electricity exceed (i) the then current rate at which the  
20 utility must purchase the output of qualified facilities  
21 pursuant to the federal Public Utility Regulatory Policies Act  
22 of 1978, less (ii) any costs, expenses, losses, damages or  
23 other amounts incurred by the utility, or for which it becomes  
24 liable, arising out of its failure to obtain such electricity  
25 from such other sources. The amount of any such credit shall,  
26 in the first instance, be determined by the utility, which

1 shall make a monthly report of such credits to the Illinois  
2 Commerce Commission and, on its monthly tax return, to the  
3 Illinois Department of Revenue. Under no circumstances shall a  
4 utility be required to purchase electricity from a qualified  
5 solid waste energy facility at the rate prescribed in  
6 subsection (c) of this Section if such purchase would result in  
7 estimated tax credits that exceed, on a monthly basis, the  
8 utility's estimated obligation to remit to the State taxes it  
9 has collected under the Electricity Excise Tax Law. The owner  
10 or operator shall negotiate facility operating conditions with  
11 the purchasing utility in accordance with that utility's posted  
12 standard terms and conditions for small power producers. If the  
13 Department of Revenue disputes the amount of any such credit,  
14 such dispute shall be decided by the Illinois Commerce  
15 Commission. Whenever a qualified solid waste energy facility  
16 has paid or otherwise satisfied in full the capital costs or  
17 indebtedness incurred in developing and implementing the  
18 qualified solid waste energy facility, whenever the qualified  
19 solid waste energy facility ceases to operate and produce  
20 electricity from methane gas generated from landfills, or at  
21 the end of the contract entered into pursuant to subsection (c)  
22 of this Section, whichever occurs first, the qualified solid  
23 waste energy facility shall reimburse the Public Utility Fund  
24 and the General Revenue Fund in the State treasury for the  
25 actual reduction in payments to those Funds caused by this  
26 subsection (d) in a manner to be determined by the Illinois

1 Commerce Commission and based on the manner in which revenues  
2 for those Funds were reduced. The payments shall be made to the  
3 Illinois Commerce Commission, which shall determine the  
4 appropriate disbursements to the Public Utility Fund and the  
5 General Revenue Fund based on this subsection (d).

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

13 (e-5) A qualified solid waste energy facility may receive  
14 the purchase rate provided in subsection (c) of this Section  
15 only for kilowatt-hours generated by the use of methane gas  
16 generated from landfills. The purchase rate provided in  
17 subsection (c) of this Section does not apply to electricity  
18 generated by the use of a fuel that is not methane gas  
19 generated from landfills. If the Illinois Commerce Commission  
20 determines that a qualified solid waste energy facility has  
21 violated the requirement regarding the use of methane gas  
22 generated from a landfill as set forth in this subsection  
23 (e-5), then the Commission shall issue an order requiring that  
24 the qualified solid waste energy facility repay the State for  
25 all dollar amounts of electricity sales that are determined by  
26 the Commission to be the result of the violation. As part of

1 that order, the Commission shall have the authority to revoke  
2 the facility's approval to act as a qualified solid waste  
3 energy facility granted by the Commission under this Section.  
4 If the amount owed by the qualified solid waste energy facility  
5 is not received by the Commission within 90 days after the date  
6 of the Commission's order that requires repayment, then the  
7 Commission shall issue an order that revokes the facility's  
8 approval to act as a qualified solid waste energy facility  
9 granted by the Commission under this Section. The Commission's  
10 action that vacates prior qualified solid waste energy facility  
11 approval does not excuse the repayment to the State treasury  
12 required by subsection (d) of this Section for utility tax  
13 credits accumulated up to the time of the Commission's action.  
14 A qualified solid waste energy facility must receive Commission  
15 approval before it may use any fuel in addition to methane gas  
16 generated from a landfill in order to generate electricity. If  
17 a qualified solid waste energy facility petitions the  
18 Commission to use any fuel in addition to methane gas generated  
19 from a landfill to generate electricity, then the Commission  
20 shall have the authority to do the following:

21 (1) establish the methodology for determining the  
22 amount of electricity that is generated by the use of  
23 methane gas generated from a landfill and the amount that  
24 is generated by the use of other fuel;

25 (2) determine all reporting requirements for the  
26 qualified solid waste energy facility that are necessary

1 for the Commission to determine the amount of electricity  
2 that is generated by the use of methane gas from a landfill  
3 and the amount that is generated by the use of other fuel  
4 and the resulting payments to the qualified solid waste  
5 energy facility; and

6 (3) require that the qualified solid waste energy  
7 facility, at the qualified solid waste energy facility's  
8 expense, install metering equipment that the Commission  
9 determines is necessary to enforce compliance with this  
10 subsection (e-5).

11 A public utility that is required to enter into a long-term  
12 purchase contract with a qualified solid waste energy facility  
13 has no duty to determine whether the electricity being  
14 purchased was generated by the use of methane gas generated  
15 from a landfill or was generated by the use of some other fuel  
16 in violation of the requirements of this subsection (e-5).

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 purchased

1 within the State of Illinois, to the extent possible, and (2)  
2 electric utilities report annually to the Commission on the  
3 extent of such displacements.

4 (h) Nothing in this Section is intended to cause an  
5 electric utility that is required to purchase power hereunder  
6 to incur any economic loss as a result of its purchase. All  
7 amounts paid for power which a utility is required to purchase  
8 pursuant to subparagraph (c) shall be deemed to be costs  
9 prudently incurred for purposes of computing charges under  
10 rates authorized by Section 9-220 of this Act. Tax credits  
11 provided for herein shall be reflected in charges made pursuant  
12 to rates so authorized to the extent such credits are based  
13 upon a cost which is also reflected in such charges.

14 (i) Beginning in February 1999 and through January 2009,  
15 each qualified solid waste energy facility that sells  
16 electricity to an electric utility at the purchase rate  
17 described in subsection (c) shall file with the Department of  
18 Revenue on or before the 15th of each month a form, prescribed  
19 by the Department of Revenue, that states the number of  
20 kilowatt hours of electricity for which payment was received at  
21 that purchase rate from electric utilities in Illinois during  
22 the immediately preceding month. This form shall be accompanied  
23 by a payment from the qualified solid waste energy facility in  
24 an amount equal to six-tenths of a mill (\$.0006) per kilowatt  
25 hour of electricity stated on the form. Beginning on the  
26 effective date of this amendatory Act of the 92nd General



1 Assembly, a qualified solid waste energy facility must file the  
2 form required under this subsection (i) before the 15th of each  
3 month regardless of whether the facility received any payment  
4 in the previous month. Payments received by the Department of  
5 Revenue shall be deposited into the Municipal Economic  
6 Development Fund, a trust fund created outside the State  
7 treasury. The State Treasurer may invest the moneys in the Fund  
8 in any investment authorized by the Public Funds Investment  
9 Act, and investment income shall be deposited into and become  
10 part of the Fund. Moneys in the Fund shall be used by the State  
11 Treasurer as provided in subsection (j).

12 Beginning on July 1, 2006 through January 31, 2009, each  
13 month the State Treasurer shall certify the following to the  
14 State Comptroller:

15 (A) the amount received by the Department of Revenue  
16 under this subsection (i) during the immediately preceding  
17 month; and

18 (B) the amount received by the Department of Revenue  
19 under this subsection (i) in the corresponding month in  
20 calendar year 2002.

21 As soon as practicable after receiving the certification from  
22 the State Treasurer, the State Comptroller shall transfer from  
23 the General Revenue Fund to the Municipal Economic Development  
24 Fund in the State treasury an amount equal to the amount by  
25 which the amount calculated under item (B) of this paragraph  
26 exceeds the amount calculated under item (A) of this paragraph,

1 if any.

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

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

20 Every qualified solid waste energy facility subject to the  
21 provisions of this subsection (i) shall keep and maintain  
22 records and books of its sales pursuant to subsection (c),  
23 including payments received from those sales and the  
24 corresponding tax payments made in accordance with this  
25 subsection (i), and for purposes of enforcement of this  
26 subsection (i) all such books and records shall be subject to

1 inspection by the Department of Revenue or its duly authorized  
2 agents or employees.

3 When a qualified solid waste energy facility fails to file  
4 the form or make the payment required under this subsection  
5 (i), the Department of Revenue, to the extent that it is  
6 practical, may enforce the payment obligation in a manner  
7 consistent with Section 5 of the Retailers' Occupation Tax Act,  
8 and if necessary may impose and enforce a tax lien in a manner  
9 consistent with Sections 5a, 5b, 5c, 5d, 5e, 5f, 5g, and 5i of  
10 the Retailers' Occupation Tax Act. No tax lien may be imposed  
11 or enforced, however, unless a qualified solid waste energy  
12 facility fails to make the payment required under this  
13 subsection (i). Only to the extent necessary and for the  
14 purpose of enforcing this subsection (i), the Department of  
15 Revenue may secure necessary information from a qualified solid  
16 waste energy facility in a manner consistent with Section 10 of  
17 the Retailers' Occupation Tax Act.

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

23 For purposes of implementing the maximum aggregate  
24 distribution provisions in subsections (j) and (k), when a  
25 qualified solid waste energy facility makes a late payment to  
26 the Department of Revenue for deposit into the Municipal

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

6 (j) The State Treasurer, without appropriation, must make  
7 distributions immediately after January 15, April 15, July 15,  
8 and October 15 of each year, up to maximum aggregate  
9 distributions of \$500,000 for the distributions made in the 4  
10 quarters beginning with the April distribution and ending with  
11 the January distribution, from the Municipal Economic  
12 Development Fund to each city, village, or incorporated town  
13 that has within its boundaries an incinerator that: (1) uses  
14 or, on the effective date of Public Act 90-813, used municipal  
15 waste as its primary fuel to generate electricity; (2) was  
16 determined by the Illinois Commerce Commission to qualify as a  
17 qualified solid waste energy facility prior to the effective  
18 date of Public Act 89-448; and (3) commenced operation prior to  
19 January 1, 1998. Total distributions in the aggregate to all  
20 qualified cities, villages, and incorporated towns in the 4  
21 quarters beginning with the April distribution and ending with  
22 the January distribution shall not exceed \$500,000. The amount  
23 of each distribution shall be determined pro rata based on the  
24 population of the city, village, or incorporated town compared  
25 to the total population of all cities, villages, and  
26 incorporated towns eligible to receive a distribution.

1 Distributions received by a city, village, or incorporated town  
2 must be held in a separate account and may be used only to  
3 promote and enhance industrial, commercial, residential,  
4 service, transportation, and recreational activities and  
5 facilities within its boundaries, thereby enhancing the  
6 employment opportunities, public health and general welfare,  
7 and economic development within the community, including  
8 administrative expenditures exclusively to further these  
9 activities. These funds, however, shall not be used by the  
10 city, village, or incorporated town, directly or indirectly, to  
11 purchase, lease, operate, or in any way subsidize the operation  
12 of any incinerator, and these funds shall not be paid, directly  
13 or indirectly, by the city, village, or incorporated town to  
14 the owner, operator, lessee, shareholder, or bondholder of any  
15 incinerator. Moreover, these funds shall not be used to pay  
16 attorneys fees in any litigation relating to the validity of  
17 Public Act 89-448. Nothing in this Section prevents a city,  
18 village, or incorporated town from using other corporate funds  
19 for any legitimate purpose. For purposes of this subsection,  
20 the term "municipal waste" has the meaning ascribed to it in  
21 Section 3.290 of the Environmental Protection Act.

22 (k) If maximum aggregate distributions of \$500,000 under  
23 subsection (j) have been made after the January distribution  
24 from the Municipal Economic Development Fund, then the balance  
25 in the Fund shall be refunded to the qualified solid waste  
26 energy facilities that made payments that were deposited into

1 the Fund during the previous 12-month period. The refunds shall  
2 be prorated based upon the facility's payments in relation to  
3 total payments for that 12-month period.

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

24 (m) On and after the effective date of this amendatory Act  
25 of the 94th General Assembly, beginning on the first date on  
26 which renewable energy certificates or other saleable

1 representations are sold by a qualified solid waste energy  
2 facility, with or without the electricity generated by the  
3 facility, and utilized by an electric utility or another  
4 electric supplier to comply with a renewable energy portfolio  
5 standard mandated by Illinois law or mandated by order of the  
6 Illinois Commerce Commission, that qualified solid waste  
7 energy facility may not sell electricity pursuant to this  
8 Section and shall be exempt from the requirements of  
9 subsections (a) through (l) of this Section, except that it  
10 shall remain obligated for any reimbursements required under  
11 subsection (d) of this Section. All of the provisions of this  
12 Section shall remain in full force and effect with respect to  
13 any qualified solid waste energy facility that sold electric  
14 energy pursuant to this Section at any time before July 1, 2006  
15 and that does not sell renewable energy certificates or other  
16 saleable representations to meet the requirements of a  
17 renewable energy portfolio standard mandated by Illinois law or  
18 mandated by order of the Illinois Commerce Commission.

19 (n) Notwithstanding any other provision of law to the  
20 contrary, beginning on July 1, 2006, the Illinois Commerce  
21 Commission shall not issue any order determining that a  
22 facility is a qualified solid waste energy facility unless the  
23 qualified solid waste energy facility was determined by the  
24 Illinois Commerce Commission to be a qualified solid waste  
25 energy facility before July 1, 2006. As a guide to the intent,  
26 interpretation, and application of this amendatory Act of the

1 94th General Assembly, it is hereby declared to be the policy  
2 of this State to honor each qualified solid waste energy  
3 facility contract in existence on the effective date of this  
4 amendatory Act of the 94th General Assembly if the qualified  
5 solid waste energy facility continues to meet the requirements  
6 of this Section for the duration of its respective contract  
7 term.

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