92_HB5562 LRB9212261LBpr

- 1 AN ACT concerning public utilities.
- 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
- 5 changing 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
- 11 to 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
- 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
- 23 Section, the Illinois Commerce Commission shall require
- 24 electric utilities to enter into long-term contracts to
- 25 purchase electricity from qualified solid waste energy
- 26 facilities located in the electric utility's service area,
- for a period beginning on the date that the facility begins
- generating electricity and having a duration of not less than
- 29 10 years in the case of facilities fueled by
- 30 landfill-generated methane, or 20 years in the case of
- 31 facilities fueled by methane generated from a landfill owned

- 1 by a forest preserve district. The purchase rate contained
- 2 in such contracts shall be equal to the average amount per
- kilowatt-hour paid from time to time by the unit or units of 3
- 4 local government in which the electricity generating
- 5 facilities are located, excluding amounts paid for street
- 6 lighting and pumping service.

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- 7 (d) Whenever a public utility is required to purchase
- 8 electricity pursuant to subsection (c) above, it shall
- 9 entitled to credits in respect of its obligations to remit to
- the State taxes it has collected under the Electricity Excise 10
- 11 Tax Law equal to the amounts, if any, by which payments for
- such electricity exceed (i) the then current rate at which 12
- the utility must purchase the output of qualified facilities 13
- pursuant to the federal Public Utility Regulatory Policies 14
- 15 1978, less (ii) any costs, expenses, losses, damages
- becomes liable, arising out of its failure to obtain such

or other amounts incurred by the utility, or for which it

- electricity from such other sources. The amount of any such 18
- 19 credit shall, in the first instance, be determined by the
- utility, which shall make a monthly report of such credits to 20
- 2.1 the Illinois Commerce Commission and, on its monthly tax
- 22 return, to the Illinois Department of Revenue. Under no
- 23 circumstances shall a utility be required to
- electricity from a qualified solid waste energy facility at 24
- the rate prescribed in subsection (c) of this Section if such 25
- purchase would result in estimated tax credits that exceed, 26
- on a monthly basis, the utility's estimated obligation to 27
- remit to the State taxes it has collected under 28
- 29 Electricity Excise Tax Law. The owner or operator shall
- 30 negotiate facility operating conditions with the purchasing
- utility in accordance with that utility's posted standard 31
- 32 terms and conditions for small power producers. Ιf
- Department of Revenue disputes the amount of any such credit, 33
- such dispute shall be decided by the Illinois Commerce 34

- 1 Commission. Whenever a qualified solid waste energy facility
- 2 has paid or otherwise satisfied in full the capital costs or
- 3 indebtedness incurred in developing and implementing the
- 4 qualified facility, the qualified facility shall reimburse
- 5 the Public Utility Fund and the General Revenue Fund in the
- 6 State treasury for the actual reduction in payments to those
- 7 Funds caused by this subsection (d) in a manner to be
- 8 determined by the Illinois Commerce Commission and based on
- 9 the manner in which revenues for those Funds were reduced.
- 10 (e) The Illinois Commerce Commission shall not require
- 11 an electric utility to purchase electricity from any
- 12 qualified solid waste energy facility which is owned or
- operated by an entity that is primarily engaged in the
- 14 business of producing or selling electricity, gas, or useful
- thermal energy from a source other than one or more qualified
- 16 solid waste energy facilities.
- 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
- 27 purchased within the State of Illinois, to the extent
- 28 possible, and (2) electric utilities report annually to the
- 29 Commission on the extent of such displacements.
- 30 (h) Nothing in this Section is intended to cause an
- 31 electric utility that is required to purchase power hereunder
- 32 to incur any economic loss as a result of its purchase. All
- 33 amounts paid for power which a utility is required to
- 34 purchase pursuant to subparagraph (c) shall be deemed to be

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charges.

costs prudently incurred for purposes of computing charges under rates authorized by Section 9-220 of this Act. Tax credits provided for herein shall be reflected in charges made pursuant to rates so authorized to the extent such credits are based upon a cost which is also reflected in such

(i) Beginning in February 1999 and through January 2009, qualified solid waste energy facility that sells electricity to an electric utility at the purchase rate described in subsection (c) shall file with the Department of Revenue on or before the 15th of each month a form, prescribed by the Department of Revenue, that states the number of kilowatt hours of electricity for which payment was received at that purchase rate from electric utilities in Illinois during the immediately preceding month. This form shall be accompanied by a payment from the qualified solid waste energy facility in an amount equal to six-tenths of a mill (\$0.0006) per kilowatt hour of electricity stated on the form. Beginning on the effective date of this amendatory Act of the 92nd General Assembly, a qualified solid waste energy facility must file the form required under this subsection (i) before the 15th of each month regardless of whether the facility received any payment in the previous month. Payments received by the Department of Revenue shall be deposited into the Municipal Economic Development Fund, a trust fund created outside the State treasury. The State Treasurer may invest the moneys in the Fund in any investment authorized by the Public Funds Investment Act, and investment income shall be into and become part of the Fund. Moneys in the Fund shall be used by the State Treasurer as provided in subsection (j). The obligation of a qualified solid waste energy facility to make payments into the Municipal Economic Development Fund shall terminate upon either: (1) expiration or termination of a facility's contract to sell electricity

1 to an electric utility at the purchase rate described in

subsection (c); or (2) entry of an enforceable, final, and

3 non-appealable order by a court of competent jurisdiction

4 that Public Act 89-448 is invalid. Payments by a qualified

5 solid waste energy facility into the Municipal Economic

6 Development Fund do not relieve the qualified solid waste

energy facility of its obligation to reimburse the Public

8 Utility Fund and the General Revenue Fund for the actual

reduction in payments to those Funds as a result of credits

received by electric utilities under subsection (d).

11 A qualified solid waste energy facility that fails to 12 timely file the requisite form and payment as required by 13 this subsection (i) shall be subject to penalties and

interest in conformance with the provisions of the Illinois

15 Uniform Penalty and Interest Act.

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

When a qualified solid waste energy facility fails to file the form or make the payment required under this subsection (i), the Department of Revenue, to the extent that it is practical, may enforce the payment obligation in a manner consistent with Section 5 of the Retailers' Occupation Tax Act, and if necessary may impose and enforce a tax lien in a manner consistent with Sections 5a, 5b, 5c, 5d, 5e, 5f, 5g, and 5i of the Retailers' Occupation Tax Act. No tax lien may be imposed or enforced, however, unless a qualified solid waste energy facility fails to make the payment required

- 1 under this subsection (i). Only to the extent necessary and
- 2 for the purpose of enforcing this subsection (i), the
- 3 Department of Revenue may secure necessary information from a
- 4 qualified solid waste energy facility in a manner consistent
- 5 with Section 10 of the Retailers' Occupation Tax Act.
- 6 All information received by the Department of Revenue in
- 7 its administration and enforcement of this subsection (i)
- 8 shall be confidential in a manner consistent with Section 11
- 9 of the Retailers' Occupation Tax Act. The Department of
- 10 Revenue may adopt rules to implement the provisions of this
- 11 subsection (i).
- 12 For purposes of implementing the maximum aggregate
- distribution provisions in subsections (j) and (k), when a
- 14 qualified solid waste energy facility makes a late payment to
- 15 the Department of Revenue for deposit into the Municipal
- 16 Economic Development Fund, that payment and deposit shall be
- 17 attributed to the month and corresponding quarter in which
- 18 the payment should have been made, and the Treasurer shall
- 19 make retroactive distributions or refunds, as the case may
- 20 be, whenever such late payments so require.
- 21 (j) The State Treasurer, without appropriation, must
- 22 make distributions immediately after January 15, April 15,
- July 15, and October 15 of each year, up to maximum aggregate
- 24 distributions of \$500,000 for the distributions made in the 4
- 25 quarters beginning with the April distribution and ending
- 26 with the January distribution, from the Municipal Economic
- 27 Development Fund to each city, village, or incorporated town
- that has within its boundaries an incinerator that: (1) uses
- or, on the effective date of Public Act 90-813, used
- 30 municipal waste as its primary fuel to generate electricity;
- 31 (2) was determined by the Illinois Commerce Commission to
- 32 qualify as a qualified solid waste energy facility prior to
- 33 the effective date of Public Act 89-448; and (3) commenced
- operation prior to January 1, 1998. Total distributions in

1 the aggregate to all qualified cities, villages, and 2 incorporated towns in the 4 quarters beginning with the April distribution and ending with the January distribution shall 3 4 not exceed \$500,000. The amount of each distribution shall be determined pro rata based on the population of the city, 5 б village, or incorporated town compared to the 7 population of all cities, villages, and incorporated towns 8 eligible to receive a distribution. Distributions received by 9 a city, village, or incorporated town must be held in a separate account and may be used only to promote and enhance 10 11 industrial, commercial, residential, service, transportation, and recreational activities and facilities 12 within its boundaries, thereby enhancing the employment opportunities, 13 public health and general welfare, and economic development 14 15 within the community, including administrative expenditures 16 exclusively to further these activities. 17 however, shall not be used by the city, village, incorporated town, directly or indirectly, to 18 purchase, 19 lease, operate, or in any way subsidize the operation of any incinerator, and these funds shall not be paid, directly or 20 21 indirectly, by the city, village, or incorporated town to the 22 owner, operator, lessee, shareholder, or bondholder of any 23 incinerator. Moreover, these funds shall not be used to pay attorneys fees in any litigation relating to the validity of 24 25 Public Act 89-448. Nothing in this Section prevents a city, village, or incorporated town from using other corporate 26 27 funds for any legitimate purpose. For purposes of this subsection, the term "municipal waste" has the meaning 28 29 ascribed to it in Section 3.21 of the Environmental 30 Protection Act. 31

31 (k) If maximum aggregate distributions of \$500,000 under 32 subsection (j) have been made after the January distribution 33 from the Municipal Economic Development Fund, then the 34 balance in the Fund shall be refunded to the qualified solid

- 1 waste energy facilities that made payments that were
- 2 deposited into the Fund during the previous 12-month period.
- 3 The refunds shall be prorated based upon the facility's
- 4 payments in relation to total payments for that 12-month
- 5 period.
- 6 (1) Beginning January 1, 2000, and each January 1
- 7 thereafter, each city, village, or incorporated town that
- 8 received distributions from the Municipal Economic
- 9 Development Fund, continued to hold any of those
- 10 distributions, or made expenditures from those distributions
- 11 during the immediately preceding year shall submit to a
- 12 financial and compliance and program audit of those
- 13 distributions performed by the Auditor General at no cost to
- 14 the city, village, or incorporated town that received the
- 15 distributions. The audit should be completed by June 30 or
- 16 as soon thereafter as possible. The audit shall be submitted
- 17 to the State Treasurer and those officers enumerated in
- 18 Section 3-14 of the Illinois State Auditing Act. If the
- 19 Auditor General finds that distributions have been expended
- 20 in violation of this Section, the Auditor General shall refer
- 21 the matter to the Attorney General. The Attorney General may
- 22 recover, in a civil action, 3 times the amount of any
- 23 distributions illegally expended. For purposes of this
- 24 subsection, the terms "financial audit," "compliance audit",
- 25 and "program audit" have the meanings ascribed to them in
- 26 Sections 1-13 and 1-15 of the Illinois State Auditing Act.
- 27 (Source: P.A. 91-901, eff. 1-1-01; 92-435, eff. 8-17-01.)