

1                                    AMENDMENT TO SENATE BILL 724

2                    AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 724, AS AMENDED,  
3 by replacing everything after the enacting clause with the  
4 following:

5                    "Section 5. The Public Utilities Act is amended by  
6 changing Section 8-403.1 as follows:

7                    (220 ILCS 5/8-403.1) (from Ch. 111 2/3, par. 8-403.1)

8                    Sec. 8-403.1. Electricity purchased from qualified solid  
9 waste energy facility; tax credit; distributions for economic  
10 development.

11                    (a) It is hereby declared to be the policy of this State  
12 to encourage the development of alternate energy production  
13 facilities in order to conserve our energy resources and to  
14 provide for their most efficient use.

15                    (b) For the purpose of this Section and Section 9-215.1,  
16 "qualified solid waste energy facility" means a facility  
17 determined by the Illinois Commerce Commission to qualify as  
18 such under the Local Solid Waste Disposal Act, to use methane  
19 gas generated from landfills as its primary fuel, and to  
20 possess characteristics that would enable it to qualify as a  
21 cogeneration or small power production facility under federal  
22 law.

1           (c) In furtherance of the policy declared in this  
2 Section, the Illinois Commerce Commission shall require  
3 electric utilities to enter into long-term contracts to  
4 purchase electricity from qualified solid waste energy  
5 facilities located in the electric utility's service area,  
6 for a period beginning on the date that the facility begins  
7 generating electricity and having a duration of not less than  
8 10 years in the case of facilities fueled by  
9 landfill-generated methane, or 20 years in the case of  
10 facilities fueled by methane generated from a landfill owned  
11 by a forest preserve district. The purchase rate contained  
12 in such contracts shall be equal to the average amount per  
13 kilowatt-hour paid from time to time by the unit or units of  
14 local government in which the electricity generating  
15 facilities are located, excluding amounts paid for street  
16 lighting and pumping service.

17           (d) Whenever a public utility is required to purchase  
18 electricity pursuant to subsection (c) above, it shall be  
19 entitled to credits in respect of its obligations to remit to  
20 the State taxes it has collected under the Electricity Excise  
21 Tax Law equal to the amounts, if any, by which payments for  
22 such electricity exceed (i) the then current rate at which  
23 the utility must purchase the output of qualified facilities  
24 pursuant to the federal Public Utility Regulatory Policies  
25 Act of 1978, less (ii) any costs, expenses, losses, damages  
26 or other amounts incurred by the utility, or for which it  
27 becomes liable, arising out of its failure to obtain such  
28 electricity from such other sources. The amount of any such  
29 credit shall, in the first instance, be determined by the  
30 utility, which shall make a monthly report of such credits to  
31 the Illinois Commerce Commission and, on its monthly tax  
32 return, to the Illinois Department of Revenue. Under no  
33 circumstances shall a utility be required to purchase  
34 electricity from a qualified solid waste energy facility at

1 the rate prescribed in subsection (c) of this Section if such  
2 purchase would result in estimated tax credits that exceed,  
3 on a monthly basis, the utility's estimated obligation to  
4 remit to the State taxes it has collected under the  
5 Electricity Excise Tax Law. The owner or operator shall  
6 negotiate facility operating conditions with the purchasing  
7 utility in accordance with that utility's posted standard  
8 terms and conditions for small power producers. If the  
9 Department of Revenue disputes the amount of any such credit,  
10 such dispute shall be decided by the Illinois Commerce  
11 Commission. Whenever a qualified solid waste energy facility  
12 has paid or otherwise satisfied in full the capital costs or  
13 indebtedness incurred in developing and implementing the  
14 qualified facility, the qualified facility shall reimburse  
15 the Public Utility Fund and the General Revenue Fund in the  
16 State treasury for the actual reduction in payments to those  
17 Funds caused by this subsection (d) in a manner to be  
18 determined by the Illinois Commerce Commission and based on  
19 the manner in which revenues for those Funds were reduced.

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

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

31 (g) The Illinois Commerce Commission shall require that:  
32 (1) electric utilities use the electricity purchased from a  
33 qualified solid waste energy facility to displace electricity  
34 generated from nuclear power or coal mined and purchased

1 outside the boundaries of the State of Illinois before  
2 displacing electricity generated from coal mined and  
3 purchased within the State of Illinois, to the extent  
4 possible, and (2) electric utilities report annually to the  
5 Commission on the extent of such displacements.

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

17 (i) Beginning in February 1999 and through January 2009,  
18 each qualified solid waste energy facility that sells  
19 electricity to an electric utility at the purchase rate  
20 described in subsection (c) shall file with the Department of  
21 Revenue on or before the 15th of each month a form,  
22 prescribed by the Department of Revenue, that states the  
23 number of kilowatt hours of electricity for which payment was  
24 received at that purchase rate from electric utilities in  
25 Illinois during the immediately preceding month. This form  
26 shall be accompanied by a payment from the qualified solid  
27 waste energy facility in an amount equal to six-tenths of a  
28 mill (\$0.0006) per kilowatt hour of electricity stated on the  
29 form. Payments received by the Department of Revenue shall be  
30 deposited into the Municipal Economic Development Fund, a  
31 trust fund created outside the State treasury. The State  
32 Treasurer may invest the moneys in the Fund in any investment  
33 authorized by the Public Funds Investment Act, and investment  
34 income shall be deposited into and become part of the Fund.

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

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

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

31 When a qualified solid waste energy facility fails to  
32 file the form or make the payment required under this  
33 subsection (i), the Department of Revenue, to the extent that  
34 it is practical, may enforce the payment obligation in a

1 manner consistent with Section 5 of the Retailer's Occupation  
2 Tax Act, and if necessary may impose and enforce a tax lien  
3 in a manner consistent with Sections 5a, 5b, 5c, 5d, 5e, 5f,  
4 5g, and 5i of the Retailers' Occupation Tax Act. For  
5 purposes of enforcing this subsection (i), and to the extent  
6 that it is practical, the Department of Revenue may secure  
7 necessary information from a qualified solid waste energy  
8 facility in a manner consistent with Section 10 of the  
9 Retailers' Occupation Tax Act.

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

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

25 (j) The State Treasurer, without appropriation, must  
26 make distributions immediately after January 15, April 15,  
27 July 15, and October 15 of each year, up to maximum aggregate  
28 distributions of \$500,000 for the distributions made in the 4  
29 quarters beginning with the April distribution and ending  
30 with the January distribution, from the Municipal Economic  
31 Development Fund to each city, village, or incorporated town  
32 that has within its boundaries an incinerator that: (1) uses  
33 municipal waste as its primary fuel to generate electricity;  
34 (2) was determined by the Illinois Commerce Commission to

1 qualify as a qualified solid waste energy facility prior to  
2 the effective date of Public Act 89-448; and (3) commenced  
3 operation prior to January 1, 1998. Total distributions in  
4 the aggregate to all qualified cities, villages, and  
5 incorporated towns in the 4 quarters beginning with the April  
6 distribution and ending with the January distribution shall  
7 not exceed \$500,000. The amount of each distribution shall  
8 be determined pro rata based on the population of the city,  
9 village, or incorporated town compared to the total  
10 population of all cities, villages, and incorporated towns  
11 eligible to receive a distribution. Distributions received  
12 by a city, village, or incorporated town must be held in a  
13 separate account and may be used only to promote and enhance  
14 industrial, commercial, residential, service, transportation,  
15 and recreational activities and facilities within its  
16 boundaries, thereby enhancing the employment opportunities,  
17 public health and general welfare, and economic development  
18 within the community, including administrative expenditures  
19 exclusively to further these activities. These funds,  
20 however, shall not be used by the city, village, or  
21 incorporated town, directly or indirectly, to purchase,  
22 lease, operate, or in any way subsidize the operation of any  
23 incinerator, and these funds shall not be paid, directly or  
24 indirectly, by the city, village, or incorporated town to the  
25 owner, operator, lessee, shareholder, or bondholder of any  
26 incinerator. Moreover, these funds shall not be used to pay  
27 attorneys fees in any litigation relating to the validity of  
28 Public Act 89-448. Nothing in this Section prevents a city,  
29 village, or incorporated town from using other corporate  
30 funds for any legitimate purpose. For purposes of this  
31 subsection, the term "municipal waste" has the meaning  
32 ascribed to it in Section 3.21 of the Environmental  
33 Protection Act.

34 (k) If maximum aggregate distributions of \$500,000 under

1 subsection (j) have been made after the January distribution  
2 from the Municipal Economic Development Fund, then the  
3 balance in the Fund shall be refunded to the qualified solid  
4 waste energy facilities that made payments that were  
5 deposited into the Fund during the previous 12-month period.  
6 The refunds shall be prorated based upon the facility's  
7 payments in relation to total payments for that 12-month  
8 period.

9 (1) Beginning January 1, 2000, and each January 1  
10 thereafter, each city, village, or incorporated town that  
11 received distributions from the Municipal Economic  
12 Development Fund, continued to hold any of those  
13 distributions, or made expenditures from those distributions  
14 during the immediately preceding year shall submit to a  
15 financial and compliance and program audit of those  
16 distributions performed by the Auditor General at no cost to  
17 the city, village, or incorporated town that received the  
18 distributions. The audit should be completed by June 30 or  
19 as soon thereafter as possible. The audit shall be submitted  
20 to the State Treasurer and those officers enumerated in  
21 Section 3-14 of the Illinois State Auditing Act. If the  
22 Auditor General finds that distributions have been expended  
23 in violation of this Section, the Auditor General shall refer  
24 the matter to the Attorney General. The Attorney General may  
25 recover, in a civil action, 3 times the amount of any  
26 distributions illegally expended. For purposes of this  
27 subsection, the terms "financial audit," "compliance audit",  
28 and "program audit" have the meanings ascribed to them in  
29 Sections 1-13 and 1-15 of the Illinois State Auditing Act.  
30 (Source: P.A. 90-813, eff. 1-29-99; 91-901, eff. 1-1-01.)

31 Section 99. Effective date. This Act takes effect upon  
32 becoming law."