

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
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
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,
27 for a period beginning on the date that the facility begins
28 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
3 kilowatt-hour paid from time to time by the unit or units of
4 local government in which the electricity generating
5 facilities are located, excluding amounts paid for street
6 lighting and pumping service.

7 (d) Whenever a public utility is required to purchase
8 electricity pursuant to subsection (c) above, it shall be
9 entitled to credits in respect of its obligations to remit to
10 the State taxes it has collected under the Electricity Excise
11 Tax Law equal to the amounts, if any, by which payments for
12 such electricity exceed (i) the then current rate at which
13 the utility must purchase the output of qualified facilities
14 pursuant to the federal Public Utility Regulatory Policies
15 Act of 1978, less (ii) any costs, expenses, losses, damages
16 or other amounts incurred by the utility, or for which it
17 becomes liable, arising out of its failure to obtain such
18 electricity from such other sources. The amount of any such
19 credit shall, in the first instance, be determined by the
20 utility, which shall make a monthly report of such credits to
21 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 purchase
24 electricity from a qualified solid waste energy facility at
25 the rate prescribed in subsection (c) of this Section if such
26 purchase would result in estimated tax credits that exceed,
27 on a monthly basis, the utility's estimated obligation to
28 remit to the State taxes it has collected under the
29 Electricity Excise Tax Law. The owner or operator shall
30 negotiate facility operating conditions with the purchasing
31 utility in accordance with that utility's posted standard
32 terms and conditions for small power producers. If the
33 Department of Revenue disputes the amount of any such credit,
34 such dispute shall be decided by the Illinois Commerce

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
13 operated by an entity that is primarily engaged in the
14 business of producing or selling electricity, gas, or useful
15 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

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

7 (i) Beginning in February 1999 and through January 2009,
8 each qualified solid waste energy facility that sells
9 electricity to an electric utility at the purchase rate
10 described in subsection (c) shall file with the Department of
11 Revenue on or before the 15th of each month a form,
12 prescribed by the Department of Revenue, that states the
13 number of kilowatt hours of electricity for which payment was
14 received at that purchase rate from electric utilities in
15 Illinois during the immediately preceding month. This form
16 shall be accompanied by a payment from the qualified solid
17 waste energy facility in an amount equal to six-tenths of a
18 mill (\$.0006) per kilowatt hour of electricity stated on the
19 form. Payments received by the Department of Revenue shall be
20 deposited into the Municipal Economic Development Fund, a
21 trust fund created outside the State treasury. The State
22 Treasurer may invest the moneys in the Fund in any investment
23 authorized by the Public Funds Investment Act, and investment
24 income shall be deposited into and become part of the Fund.
25 Moneys in the Fund shall be used by the State Treasurer as
26 provided in subsection (j). The obligation of a qualified
27 solid waste energy facility to make payments into the
28 Municipal Economic Development Fund shall terminate upon
29 either: (1) expiration or termination of a facility's
30 contract to sell electricity to an electric utility at the
31 purchase rate described in subsection (c); or (2) entry of an
32 enforceable, final, and non-appealable order by a court of
33 competent jurisdiction that Public Act 89-448 is invalid.
34 Payments by a qualified solid waste energy facility into the

1 Municipal Economic Development Fund do not relieve the
2 qualified solid waste energy facility of its obligation to
3 reimburse the Public Utility Fund and the General Revenue
4 Fund for the actual reduction in payments to those Funds as a
5 result of credits received by electric utilities under
6 subsection (d).

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

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

21 When a qualified solid waste energy facility fails to
22 file the form or make the payment required under this
23 subsection (i), the Department of Revenue, to the extent that
24 it is practical, may enforce the payment obligation in a
25 manner consistent with Section 5 of the Retailers' Occupation
26 Tax Act, and if necessary may impose and enforce a tax lien
27 in a manner consistent with Sections 5a, 5b, 5c, 5d, 5e, 5f,
28 5g, and 5i of the Retailers' Occupation Tax Act. For
29 purposes of enforcing this subsection (i), and to the extent
30 that it is practical, the Department of Revenue may secure
31 necessary information from a qualified solid waste energy
32 facility in a manner consistent with Section 10 of the
33 Retailers' Occupation Tax Act.

34 All information received by the Department of Revenue in

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

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

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

1 eligible to receive a distribution. Distributions received
2 by a city, village, or incorporated town must be held in a
3 separate account and may be used only to promote and enhance
4 industrial, commercial, residential, service, transportation,
5 and recreational activities and facilities within its
6 boundaries, thereby enhancing the employment opportunities,
7 public health and general welfare, and economic development
8 within the community, including administrative expenditures
9 exclusively to further these activities. These funds,
10 however, shall not be used by the city, village, or
11 incorporated town, directly or indirectly, to purchase,
12 lease, operate, or in any way subsidize the operation of any
13 incinerator, and these funds shall not be paid, directly or
14 indirectly, by the city, village, or incorporated town to the
15 owner, operator, lessee, shareholder, or bondholder of any
16 incinerator. Moreover, these funds shall not be used to pay
17 attorneys fees in any litigation relating to the validity of
18 Public Act 89-448. Nothing in this Section prevents a city,
19 village, or incorporated town from using other corporate
20 funds for any legitimate purpose. For purposes of this
21 subsection, the term "municipal waste" has the meaning
22 ascribed to it in Section 3.21 of the Environmental
23 Protection Act.

24 (k) If maximum aggregate distributions of \$500,000 under
25 subsection (j) have been made after the January distribution
26 from the Municipal Economic Development Fund, then the
27 balance in the Fund shall be refunded to the qualified solid
28 waste energy facilities that made payments that were
29 deposited into the Fund during the previous 12-month period.
30 The refunds shall be prorated based upon the facility's
31 payments in relation to total payments for that 12-month
32 period.

33 (l) Beginning January 1, 2000, and each January 1
34 thereafter, each city, village, or incorporated town that

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

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