



Sen. Dale A. Righter

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1 AMENDMENT TO SENATE BILL 777

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 777 by replacing  
3 everything after the enacting clause with the following:

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

1 such under the Local Solid Waste Disposal Act, to use methane  
2 gas generated from landfills as its primary fuel, and to  
3 possess characteristics that would enable it to qualify as a  
4 cogeneration or small power production facility under federal  
5 law.

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

21 (d) Whenever a public utility is required to purchase  
22 electricity pursuant to subsection (c) above, it shall be  
23 entitled to credits in respect of its obligations to remit to  
24 the State taxes it has collected under the Electricity Excise  
25 Tax Law equal to the amounts, if any, by which payments for  
26 such electricity exceed (i) the then current rate at which the

1 utility must purchase the output of qualified facilities  
2 pursuant to the federal Public Utility Regulatory Policies Act  
3 of 1978, less (ii) any costs, expenses, losses, damages or  
4 other amounts incurred by the utility, or for which it becomes  
5 liable, arising out of its failure to obtain such electricity  
6 from such other sources. The amount of any such credit shall,  
7 in the first instance, be determined by the utility, which  
8 shall make a monthly report of such credits to the Illinois  
9 Commerce Commission and, on its monthly tax return, to the  
10 Illinois Department of Revenue. Under no circumstances shall a  
11 utility be required to purchase electricity from a qualified  
12 solid waste energy facility at the rate prescribed in  
13 subsection (c) of this Section if such purchase would result in  
14 estimated tax credits that exceed, on a monthly basis, the  
15 utility's estimated obligation to remit to the State taxes it  
16 has collected under the Electricity Excise Tax Law. The owner  
17 or operator shall negotiate facility operating conditions with  
18 the purchasing utility in accordance with that utility's posted  
19 standard terms and conditions for small power producers. If the  
20 Department of Revenue disputes the amount of any such credit,  
21 such dispute shall be decided by the Illinois Commerce  
22 Commission. Whenever a qualified solid waste energy facility  
23 has paid or otherwise satisfied in full the capital costs or  
24 indebtedness incurred in developing and implementing the  
25 qualified solid waste energy facility, whenever the qualified  
26 solid waste energy facility ceases to operate and produce

1 electricity from methane gas generated from landfills, or at  
2 the end of the contract entered into pursuant to subsection (c)  
3 of this Section, whichever occurs first, the qualified solid  
4 waste energy facility shall reimburse the Public Utility Fund  
5 and the General Revenue Fund in the State treasury for the  
6 actual reduction in payments to those Funds caused by this  
7 subsection (d) in a manner to be determined by the Illinois  
8 Commerce Commission and based on the manner in which revenues  
9 for those Funds were reduced. The payments shall be made to the  
10 Illinois Commerce Commission, which shall determine the  
11 appropriate disbursements to the Public Utility Fund and the  
12 General Revenue Fund based on this subsection (d).

13 (e) The Illinois Commerce Commission shall not require an  
14 electric utility to purchase electricity from any qualified  
15 solid waste energy facility which is owned or operated by an  
16 entity that is primarily engaged in the business of producing  
17 or selling electricity, gas, or useful thermal energy from a  
18 source other than one or more qualified solid waste energy  
19 facilities.

20 (e-5) A qualified solid waste energy facility may receive  
21 the purchase rate provided in subsection (c) of this Section  
22 only for kilowatt-hours generated by the use of methane gas  
23 generated from landfills. The purchase rate provided in  
24 subsection (c) of this Section does not apply to electricity  
25 generated by the use of a fuel that is not methane gas  
26 generated from landfills. If the Illinois Commerce Commission

1 determines that a qualified solid waste energy facility has  
2 violated the requirement regarding the use of methane gas  
3 generated from a landfill as set forth in this subsection  
4 (e-5), then the Commission shall issue an order requiring that  
5 the qualified solid waste energy facility repay the State for  
6 all dollar amounts of electricity sales that are determined by  
7 the Commission to be the result of the violation. As part of  
8 that order, the Commission shall have the authority to revoke  
9 the facility's approval to act as a qualified solid waste  
10 energy facility granted by the Commission under this Section.  
11 If the amount owed by the qualified solid waste energy facility  
12 is not received by the Commission within 90 days after the date  
13 of the Commission's order that requires repayment, then the  
14 Commission shall issue an order that revokes the facility's  
15 approval to act as a qualified solid waste energy facility  
16 granted by the Commission under this Section. The Commission's  
17 action that vacates prior qualified solid waste energy facility  
18 approval does not excuse the repayment to the State treasury  
19 required by subsection (d) of this Section for utility tax  
20 credits accumulated up to the time of the Commission's action.  
21 A qualified solid waste energy facility must receive Commission  
22 approval before it may use any fuel in addition to methane gas  
23 generated from a landfill in order to generate electricity. If  
24 a qualified solid waste energy facility petitions the  
25 Commission to use any fuel in addition to methane gas generated  
26 from a landfill to generate electricity, then the Commission

1 shall have the authority to do the following:

2 (1) establish the methodology for determining the  
3 amount of electricity that is generated by the use of  
4 methane gas generated from a landfill and the amount that  
5 is generated by the use of other fuel;

6 (2) determine all reporting requirements for the  
7 qualified solid waste energy facility that are necessary  
8 for the Commission to determine the amount of electricity  
9 that is generated by the use of methane gas from a landfill  
10 and the amount that is generated by the use of other fuel  
11 and the resulting payments to the qualified solid waste  
12 energy facility; and

13 (3) require that the qualified solid waste energy  
14 facility, at the qualified solid waste energy facility's  
15 expense, install metering equipment that the Commission  
16 determines is necessary to enforce compliance with this  
17 subsection (e-5).

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

24 (f) This Section does not require an electric utility to  
25 construct additional facilities unless those facilities are  
26 paid for by the owner or operator of the affected qualified

1 solid waste energy facility.

2 (g) The Illinois Commerce Commission shall require that:

3 (1) electric utilities use the electricity purchased from a  
4 qualified solid waste energy facility to displace electricity  
5 generated from nuclear power or coal mined and purchased  
6 outside the boundaries of the State of Illinois before  
7 displacing electricity generated from coal mined and purchased  
8 within the State of Illinois, to the extent possible, and (2)  
9 electric utilities report annually to the Commission on the  
10 extent of such displacements.

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

21 (i) Beginning in February 1999 and through January 2013,  
22 each qualified solid waste energy facility that sells  
23 electricity to an electric utility at the purchase rate  
24 described in subsection (c) shall file with the Department of  
25 Revenue on or before the 15th of each month a form, prescribed  
26 by the Department of Revenue, that states the number of

1 kilowatt hours of electricity for which payment was received at  
2 that purchase rate from electric utilities in Illinois during  
3 the immediately preceding month. This form shall be accompanied  
4 by a payment from the qualified solid waste energy facility in  
5 an amount equal to six-tenths of a mill (\$.0006) per kilowatt  
6 hour of electricity stated on the form. Beginning on the  
7 effective date of this amendatory Act of the 92nd General  
8 Assembly, a qualified solid waste energy facility must file the  
9 form required under this subsection (i) before the 15th of each  
10 month regardless of whether the facility received any payment  
11 in the previous month. Payments received by the Department of  
12 Revenue shall be deposited into the Municipal Economic  
13 Development Fund, a trust fund created outside the State  
14 treasury. The State Treasurer may invest the moneys in the Fund  
15 in any investment authorized by the Public Funds Investment  
16 Act, and investment income shall be deposited into and become  
17 part of the Fund. Moneys in the Fund shall be used by the State  
18 Treasurer as provided in subsection (j).

19 Beginning on July 1, 2006 through January 31, 2013, each  
20 month the State Treasurer shall certify the following to the  
21 State Comptroller:

22 (A) the amount received by the Department of Revenue  
23 under this subsection (i) during the immediately preceding  
24 month; and

25 (B) the amount received by the Department of Revenue  
26 under this subsection (i) in the corresponding month in



1 calendar year 2002.

2 As soon as practicable after receiving the certification from  
3 the State Treasurer, the State Comptroller shall transfer from  
4 the General Revenue Fund to the Municipal Economic Development  
5 Fund in the State treasury an amount equal to the amount by  
6 which the amount calculated under item (B) of this paragraph  
7 exceeds the amount calculated under item (A) of this paragraph,  
8 if any.

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

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

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

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

25           All information received by the Department of Revenue in  
26 its administration and enforcement of this subsection (i) shall

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

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

13 (j) The State Treasurer, without appropriation, must make  
14 distributions immediately after January 15, April 15, July 15,  
15 and October 15 of each year, up to maximum aggregate  
16 distributions of \$500,000 for the distributions made in the 4  
17 quarters beginning with the April distribution and ending with  
18 the January distribution, from the Municipal Economic  
19 Development Fund to each city, village, or incorporated town  
20 located in Cook County that has approved construction within  
21 its boundaries of an incinerator that will burn recovered wood  
22 processed for fuel to generate electricity and will commence  
23 operation after 2009. Total distributions in the aggregate to  
24 all qualified cities, villages, and incorporated towns in the 4  
25 quarters beginning with the April distribution and ending with  
26 the January distribution shall not exceed \$500,000. The amount

1 of each distribution shall be determined pro rata based on the  
2 population of the city, village, or incorporated town compared  
3 to the total population of all cities, villages, and  
4 incorporated towns eligible to receive a distribution.  
5 Distributions received by a city, village, or incorporated town  
6 must be held in a separate account and may be used only to  
7 promote and enhance industrial, commercial, residential,  
8 service, transportation, and recreational activities and  
9 facilities within its boundaries, thereby enhancing the  
10 employment opportunities, public health and general welfare,  
11 and economic development within the community, including  
12 administrative expenditures exclusively to further these  
13 activities. Distributions may also be used for cleanup of open  
14 dumping from vacant properties and the removal of structures  
15 condemned by the city, village, or incorporated town. These  
16 funds, however, shall not be used by the city, village, or  
17 incorporated town, directly or indirectly, to purchase, lease,  
18 operate, or in any way subsidize the operation of any  
19 incinerator, and these funds shall not be paid, directly or  
20 indirectly, by the city, village, or incorporated town to the  
21 owner, operator, lessee, shareholder, or bondholder of any  
22 incinerator. Moreover, these funds shall not be used to pay  
23 attorneys fees in any litigation relating to the validity of  
24 Public Act 89-448. Nothing in this Section prevents a city,  
25 village, or incorporated town from using other corporate funds  
26 for any legitimate purpose. For purposes of this subsection,

1 the term "municipal waste" has the meaning ascribed to it in  
2 Section 3.290 of the Environmental Protection Act.

3 (k) If maximum aggregate distributions of \$500,000 under  
4 subsection (j) have been made after the January distribution  
5 from the Municipal Economic Development Fund, then the balance  
6 in the Fund shall be refunded to the qualified solid waste  
7 energy facilities that made payments that were deposited into  
8 the Fund during the previous 12-month period. The refunds shall  
9 be prorated based upon the facility's payments in relation to  
10 total payments for that 12-month period.

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

1 any distributions illegally expended. For purposes of this  
2 subsection, the terms "financial audit," "compliance audit",  
3 and "program audit" have the meanings ascribed to them in  
4 Sections 1-13 and 1-15 of the Illinois State Auditing Act.

5 (m) On and after the effective date of this amendatory Act  
6 of the 94th General Assembly, beginning on the first date on  
7 which renewable energy certificates or other saleable  
8 representations are sold by a qualified solid waste energy  
9 facility, with or without the electricity generated by the  
10 facility, and utilized by an electric utility or another  
11 electric supplier to comply with a renewable energy portfolio  
12 standard mandated by Illinois law or mandated by order of the  
13 Illinois Commerce Commission, that qualified solid waste  
14 energy facility may not sell electricity pursuant to this  
15 Section and shall be exempt from the requirements of  
16 subsections (a) through (l) of this Section, except that it  
17 shall remain obligated for any reimbursements required under  
18 subsection (d) of this Section. All of the provisions of this  
19 Section shall remain in full force and effect with respect to  
20 any qualified solid waste energy facility that sold electric  
21 energy pursuant to this Section at any time before July 1, 2006  
22 and that does not sell renewable energy certificates or other  
23 saleable representations to meet the requirements of a  
24 renewable energy portfolio standard mandated by Illinois law or  
25 mandated by order of the Illinois Commerce Commission.

26 (n) Notwithstanding any other provision of law to the

1 contrary, beginning on July 1, 2006, the Illinois Commerce  
2 Commission shall not issue any order determining that a  
3 facility is a qualified solid waste energy facility unless the  
4 qualified solid waste energy facility was determined by the  
5 Illinois Commerce Commission to be a qualified solid waste  
6 energy facility before July 1, 2006. As a guide to the intent,  
7 interpretation, and application of this amendatory Act of the  
8 94th General Assembly, it is hereby declared to be the policy  
9 of this State to honor each qualified solid waste energy  
10 facility contract in existence on the effective date of this  
11 amendatory Act of the 94th General Assembly if the qualified  
12 solid waste energy facility continues to meet the requirements  
13 of this Section for the duration of its respective contract  
14 term.

15 (Source: P.A. 96-449, eff. 8-14-09.)".