



**93RD GENERAL ASSEMBLY**  
**State of Illinois**  
**2003 and 2004**

Introduced 2/6/2004, by Jeffrey M. Schoenberg

**SYNOPSIS AS INTRODUCED:**

220 ILCS 5/8-403.1

from Ch. 111 2/3, par. 8-403.1

Amends the Public Utilities Act. Provides additional requirements for contracts in which an electric utility is purchasing electricity from a qualified solid waste energy facility. Provides that all qualified solid waste energy facilities shall receive a monthly incentive payment from the State Treasurer for all the monthly kilowatt-hours sold to an electric utility. Provides circumstances under which the incentive payment may be suspended or revoked. Provides that, after the effective date of this amendatory Act, public utilities are not entitled to State tax credits for the purchase of electricity from a qualified solid waste energy facility. Requires qualified solid waste energy facilities to have a Commission-approved plan to reimburse the State for tax credits resulting from electricity sold prior to the effective date of this Act. Effective immediately.

LRB093 18812 AMC 44547 b

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT concerning 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 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 policy of this State to  
11 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" or "QSWEF" means a  
16 facility determined by the Illinois Commerce Commission to  
17 qualify as such under the Local Solid Waste Disposal Act, to  
18 use methane gas generated from landfills as its primary fuel,  
19 ~~and~~ to possess characteristics that would enable it to qualify  
20 as a cogeneration or small power production facility under  
21 federal law, to meet the ownership requirements set forth in  
22 this Section, to meet the primary fuel use requirements set  
23 forth in this Section, to meet the requirements for the  
24 reimbursement of State tax credits set forth in this Section,  
25 and to meet all other requirements set forth in this Section.  
26 The Commission, in order to promote the development of landfill  
27 sites for QSWEF use, shall have the authority to determine the  
28 number of QSWEFs approved at a single landfill site. In  
29 determining, for the purposes of this Section, whether a  
30 facility meets the requirements to become a small power  
31 production facility under federal law, the Commission may  
32 consider, but is not bound by, any action or inaction of a

1 federal administrative agency or any self-certification of a  
2 facility under federal law.

3 (c) In furtherance of the policy declared in this Section,  
4 the Illinois Commerce Commission shall require electric  
5 utilities to enter into long-term contracts, pursuant to a  
6 tariff approved by the Commission, to purchase electricity from  
7 qualified solid waste energy facilities located in the electric  
8 utility's service area, for a period beginning on the date that  
9 the facility begins generating electricity and having a  
10 duration of not less than 10 years in the case of facilities  
11 fueled by landfill-generated methane, or 20 years in the case  
12 of facilities fueled by methane generated from a landfill owned  
13 by a forest preserve district. The purchase rate contained in  
14 such contracts shall be equal to the average amount per  
15 kilowatt-hour paid from time to time by the unit or units of  
16 local government in which the electricity generating  
17 facilities are located, excluding amounts paid for street  
18 lighting and pumping service. Utilities may not enter into  
19 contracts pursuant to this subsection with QSWEFs to purchase  
20 amounts of electricity greater than amounts determined by the  
21 Commission. Such contracts are not transferable from the  
22 petitioning owners to other entities without prior Commission  
23 approval. The Commission shall not require electric utilities  
24 to enter into any contracts pursuant to this Section with any  
25 facilities that filed a formal application with the Commission  
26 for QSWEF status unless the facilities filed formal application  
27 with the Commission for QSWEF status before the effective date  
28 of this amendatory Act of the 93rd General Assembly and began  
29 commercial operation within 6 months after that effective date.

30 For all facilities approved by the Illinois Commerce  
31 Commission as a QSWEF prior to the effective date of this  
32 amendatory Act of the 93rd General Assembly, the purchase rate  
33 for the remainder of their existing contracts with electric  
34 utilities shall be the then current rate at which the utility  
35 must purchase the output of qualified facilities pursuant to  
36 the federal Public Utility Regulatory Policies Act of 1978.

1 Beginning on the effective date of this amendatory Act of  
2 the 93rd General Assembly, and pursuant to this subsection, all  
3 QSWEFs shall receive a monthly incentive payment from the State  
4 Treasurer for all of the monthly kilowatt-hours sold to an  
5 electric utility under this subsection. The amount of the  
6 incentive payment shall be calculated by the electric utility  
7 that purchases the output of the QSWEF and by using the  
8 following formulae:

9 (1) for all QSWEFs using landfill methane as their  
10 primary fuel,  $IP = 0.5 \times (RR - AC)$ , or

11 (2) for all QSWEFs using landfill methane generated  
12 from a landfill owned by a forest preserve district as  
13 their primary fuel,  $IP = 0.5 \times (RR - AC)$ .

14 For the purposes of this subsection, "IP" means incentive  
15 payment, "RR" means retail rate or the average amount per  
16 kilowatt-hour paid from time to time by the unit or units of  
17 local government in which the electricity generating  
18 facilities are located, excluding amounts paid for street  
19 lighting and pumping service, multiplied by the qualified solid  
20 waste energy facility's monthly kilowatt-hours sold to the  
21 electric utility, and "AC" means avoided costs or the then  
22 current rate at which the utility must purchase the output of  
23 qualified facilities pursuant to the federal Public Utility  
24 Regulatory Policies Act of 1978 and as determined pursuant to  
25 83 Ill. Adm. Code 430.80 multiplied by the qualified solid  
26 waste energy facility's monthly kilowatt-hours sold to the  
27 electric utility.

28 The electric utility shall submit the monthly calculation  
29 of the incentive payment to the State Treasurer and the  
30 Illinois Commerce Commission and shall include the  
31 kilowatt-hours and per kilowatt-hours rates used in  
32 calculating retail rates and avoided costs.

33 The electric utility shall file a tariff with the Illinois  
34 Commerce Commission that sets forth the calculations required  
35 by this subsection.

36 (d) Until the effective date of this amendatory Act of the

1 93rd General Assembly, whenever a public utility is required to  
2 purchase electricity pursuant to subsection (c) above, it shall  
3 be entitled to credits in respect of its obligations to remit  
4 to the State taxes it has collected under the Electricity  
5 Excise Tax Law equal to the amounts, if any, by which payments  
6 for such electricity exceed (i) the then current rate at which  
7 the utility must purchase the output of qualified facilities  
8 pursuant to the federal Public Utility Regulatory Policies Act  
9 of 1978, less (ii) any costs, expenses, losses, damages or  
10 other amounts incurred by the utility, or for which it becomes  
11 liable, arising out of its failure to obtain such electricity  
12 from such other sources. The amount of any such credit shall,  
13 in the first instance, be determined by the utility, which  
14 shall make a monthly report of such credits to the Illinois  
15 Commerce Commission and, on its monthly tax return, to the  
16 Illinois Department of Revenue. Under no circumstances shall a  
17 utility be required to purchase electricity from a qualified  
18 solid waste energy facility at the rate prescribed in  
19 subsection (c) of this Section if such purchase would result in  
20 estimated tax credits that exceed, on a monthly basis, the  
21 utility's estimated obligation to remit to the State taxes it  
22 has collected under the Electricity Excise Tax Law. The owner  
23 or operator shall negotiate facility operating conditions with  
24 the purchasing utility in accordance with that utility's posted  
25 standard terms and conditions for small power producers. If the  
26 Department of Revenue disputes the amount of any such credit,  
27 such dispute shall be decided by the Illinois Commerce  
28 Commission.

29 Whenever a qualified solid waste energy facility that has  
30 sold electricity at rates in effect prior to the effective date  
31 of this amendatory Act of the 93rd General Assembly has paid or  
32 otherwise satisfied in full the capital costs or indebtedness  
33 incurred in developing and implementing the qualified facility  
34 or at the end of the contract entered into pursuant to  
35 subsection (c), whichever occurs first, the QSWEF ~~qualified~~  
36 ~~facility~~ shall reimburse the Public Utility Fund and the

1 General Revenue Fund in the State treasury for the actual  
2 reduction in payments to those Funds caused by this subsection  
3 (d) in a manner to be determined by the Illinois Commerce  
4 Commission and based on the manner in which revenues for those  
5 Funds were reduced. The payments shall be made to the Illinois  
6 Commerce Commission, which shall determine the appropriate  
7 disbursements to the Public Utility Fund and the General  
8 Revenue Fund.

9 The purchasing utility may not enter into any new contracts  
10 to purchase electricity from a QSWEF until after the Commission  
11 has approved a plan submitted by the facility that assures the  
12 reimbursement to the State treasury required by subsection (d).

13 A QSWEF that lacks a Commission approved plan to reimburse  
14 the State for tax credits resulting from electricity sold prior  
15 to the effective date of this amendatory Act of the 93rd  
16 General Assembly, shall submit such a plan for Commission  
17 approval within 60 days of the effective date of this  
18 amendatory Act of the 93rd General Assembly. Failure to do so  
19 may result in the suspension of the incentive payment provided  
20 for in subsection (c). The Commission shall have the authority  
21 to alter any reimbursement plan submitted by a QSWEF pursuant  
22 to this subsection. If a QSWEF fails to comply with the  
23 Commission's Order pursuant to this subsection, then the  
24 Commission shall automatically suspend the incentive payment.  
25 If the incentive payment is suspended pursuant to this  
26 subsection, then it can only be reinstated by an Order of the  
27 Illinois Commerce Commission that finds that a QSWEF is in  
28 compliance with the requirements of this subsection.

29 The Commission shall have the authority to alter, pursuant  
30 to an investigation based upon its own motion or a petition  
31 filed with the Commission, any previously approved plan  
32 submitted by a QSWEF to reimburse the State treasury as  
33 required by this subsection. A QSWEF's failure to comply with  
34 the Commission's Order pursuant to this subsection shall result  
35 in the automatic suspension of the incentive payment provided  
36 for in subsection (c). If the incentive payment is suspended

1 pursuant to this subsection, then it can only be reinstated by  
2 an Order of the Illinois Commerce Commission that finds that a  
3 QSWEF is in compliance with the Commission's action taken  
4 pursuant to this subsection.

5 (e) The Illinois Commerce Commission shall not require an  
6 electric utility to purchase electricity from any qualified  
7 solid waste energy facility which is directly or indirectly  
8 owned or operated by an entity that is primarily engaged in the  
9 business of producing or selling electricity, gas, or useful  
10 thermal energy from a source other than one or more qualified  
11 solid waste energy facilities. Commission-approved owners and  
12 operators of QSWEFs must meet the requirements of this  
13 subsection for the duration of the contract entered into with a  
14 utility pursuant to subsection (c). Failure to remain in  
15 compliance will result in the forfeiture of the incentive  
16 payment set forth in subsection (c). Such forfeiture will not  
17 excuse the repayment to the State treasury required by  
18 subsection (d) for utility tax credits accumulated prior to the  
19 effective date of this amendatory Act of the 93rd General  
20 Assembly and up to the time of the forfeiture.

21 No part of a QSWEF's ownership or operation may be sold or  
22 otherwise transferred to any entity, corporation, partnership,  
23 trust, or holding company without prior Commission approval.  
24 Failure to obtain such prior approval will result in the  
25 forfeiture of the incentive payment set forth in subsection  
26 (c). Such forfeiture will not excuse the repayment to the State  
27 treasury required by subsection (d) for utility tax credits  
28 accumulated prior to the effective date of this amendatory Act  
29 of 93rd General Assembly and up to the time of the forfeiture.

30 (e-5) A QSWEF shall receive the subsection (c) incentive  
31 payment only for kilowatt-hours generated by the use of methane  
32 gas generated from landfills. The Commission shall have the  
33 authority to suspend or revoke the right to the subsection (c)  
34 incentive payment for all amounts of electricity that the  
35 Commission determines are generated by the use of a fuel that  
36 is not methane gas generated from landfills. The Commission

1 shall make such a determination pursuant to an investigation on  
2 its own motion or pursuant to a petition filed with the  
3 Commission. The Commission shall have the authority to require  
4 a QSWEF to repay amounts received for electricity purchased  
5 under the subsection (c) contracts between the electric utility  
6 and the QSWEF for all amounts of electricity that the  
7 Commission determines are generated in violation of the  
8 landfill methane requirement set forth in this subsection. The  
9 Commission shall make such a determination pursuant to an  
10 investigation on its own motion or pursuant to a petition filed  
11 with the Commission.

12 If the Commission determines that a QSWEF has violated the  
13 requirement regarding the use of methane gas generated from a  
14 landfill as set forth in this subsection, then the Commission  
15 shall require that the QSWEF repay the State for all dollar  
16 amounts of electricity sales that are determined by the  
17 Commission to be the result of the violations. If the amount  
18 owed by the QSWEF is not received by the Commission within 90  
19 days of the date of the Commission's Order that requires  
20 re-payment, then the Commission shall issue an Order that  
21 vacates the facility's QSWEF approval that was previously  
22 granted under subsection (b). Commission action that vacates  
23 prior QSWEF approval does not excuse the repayment to the State  
24 treasury required by subsection (d) for utility tax credits  
25 accumulated up to the time of the Commission action.

26 A QSWEF must receive Commission approval before it can use  
27 any fuel in addition to methane gas generated from a landfill  
28 in order to generate electricity.

29 If a QSWEF or an entity seeking QSWEF approval petitions  
30 the Commission to use any fuel in addition to methane gas  
31 generated from a landfill to generate electricity, then the  
32 Commission shall have the authority to:

33 (i) establish the methodology for determining the  
34 amount of electricity that is generated by the use of  
35 methane gas generated from a landfill and the amount that  
36 is generated by the use of other fuel;



1           (ii) determine all reporting requirements for the  
2           QSWEF that are necessary for the Commission to determine  
3           the amount of electricity that is generated by the use of  
4           methane gas from a landfill and the amount that is  
5           generated by the use of other fuel, and the resulting  
6           payments to the QSWEF;

7           (iii) Require that the QSWEF, at the QSWEF's expense,  
8           install metering equipment that the Commission determines  
9           is necessary to enforce compliance with this subsection;

10          If the Commission approves a petition to use any fuel in  
11          addition to methane gas generated from a landfill for the  
12          generation of electricity, the Commission shall establish  
13          procedures for calculating the subsection (c) incentive  
14          payment that is applicable only to kilowatt-hours generated by  
15          the use of methane gas generated from a landfill and for  
16          submitting these calculations to the State Treasurer.

17          If a QSWEF fails to comply with a Commission Order,  
18          pursuant to this subsection, then the Commission shall  
19          automatically suspend the incentive payment prescribed by  
20          subsection (c). If the incentive payment is suspended pursuant  
21          to this subsection, then it can only be reinstated by an Order  
22          of the Illinois Commerce Commission that finds that a QSWEF is  
23          in compliance with the requirements of this subsection.

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  
27          solid waste energy facility.

28          (g) The Illinois Commerce Commission shall require that:  
29          (1) electric utilities use the electricity purchased from a  
30          qualified solid waste energy facility to displace electricity  
31          generated from nuclear power or coal mined and purchased  
32          outside the boundaries of the State of Illinois before  
33          displacing electricity generated from coal mined and purchased  
34          within the State of Illinois, to the extent possible, and (2)  
35          electric utilities report annually to the Commission on the  
36          extent of such displacements.

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

11 (i) Beginning in February 1999 and through January 2009,  
12 each qualified solid waste energy facility that sells  
13 electricity to an electric utility at the purchase rate  
14 described in subsection (c) shall file with the Department of  
15 Revenue on or before the 15th of each month a form, prescribed  
16 by the Department of Revenue, that states the number of  
17 kilowatt hours of electricity for which payment was received at  
18 that purchase rate from electric utilities in Illinois during  
19 the immediately preceding month. This form shall be accompanied  
20 by a payment from the qualified solid waste energy facility in  
21 an amount equal to six-tenths of a mill (\$0.0006) per kilowatt  
22 hour of electricity stated on the form. Beginning on the  
23 effective date of this amendatory Act of the 92nd General  
24 Assembly, a qualified solid waste energy facility must file the  
25 form required under this subsection (i) before the 15th of each  
26 month regardless of whether the facility received any payment  
27 in the previous month. Payments received by the Department of  
28 Revenue shall be deposited into the Municipal Economic  
29 Development Fund, a trust fund created outside the State  
30 treasury. The State Treasurer may invest the moneys in the Fund  
31 in any investment authorized by the Public Funds Investment  
32 Act, and investment income shall be deposited into and become  
33 part of the Fund. Moneys in the Fund shall be used by the State  
34 Treasurer as provided in subsection (j). The obligation of a  
35 qualified solid waste energy facility to make payments into the  
36 Municipal Economic Development Fund shall terminate upon

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

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

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

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

1 purpose of enforcing this subsection (i), the Department of  
2 Revenue may secure necessary information from a qualified solid  
3 waste energy facility in a manner consistent with Section 10 of  
4 the Retailers' Occupation Tax Act.

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

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

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

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

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

33 (l) Beginning January 1, 2000, and each January 1  
34 thereafter, each city, village, or incorporated town that  
35 received distributions from the Municipal Economic Development  
36 Fund, continued to hold any of those distributions, or made

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

17 (m) All QSWEFs are subject to the authority of the Illinois  
18 Commerce Commission as provided in Article V of the Public  
19 Utilities Act.

20 (n) The Commission shall have the authority, after notice  
21 and hearing held on complaint or the Commission's own motion:

22 (1) to suspend or revoke the right to subsection (c)  
23 incentive payments for a violation of this Section or of  
24 any Commission order, decision, or rule concerning QSWEFs;

25 (2) to suspend or revoke an entity's status as a QSWEF;

26 or

27 (3) to impose penalties under Section 5-202.

28 (o) Failure of a QSWEF to make subsection (d) reimbursement  
29 payments to the State does not relieve the QSWEF of its  
30 obligation to make such payments.

31 In the event that a QSWEF ceases to operate prior to the  
32 end of its subsection (c) contract with an electric utility,  
33 the QSWEF is nevertheless obligated to reimburse the State as  
34 set forth in subsection (d) for all tax credits granted to the  
35 utility for generation purchased from the QSWEF. In the event  
36 of such a default, the full amount of the reimbursement

1 obligation will become due and owing.

2 In the event that a QSWEF fails to make reimbursement  
3 payments at any time after the term of its subsection (c)  
4 contract concludes, the State may take action to collect the  
5 full amounts owed under this Section. In the event of such a  
6 default, the full amount of the reimbursement obligation will  
7 become due and owing.

8 (p) For the purposes of enforcement of this Section, the  
9 Commission or its duly authorized agents or employees shall  
10 have full and complete access to all books, records, studies,  
11 and reports of a QSWEF related to this Section. If a QSWEF  
12 fails to allow the Commission or its duly authorized agents or  
13 employees full and complete access to all books, records,  
14 studies, and reports of the QSWEF, then, pursuant to an  
15 investigation based upon its own motion or a petition, the  
16 Commission shall suspend the incentive payment prescribed by  
17 subsection (c). If the incentive payment is suspended pursuant  
18 to this subsection, then it can only be reinstated by an Order  
19 of the Illinois Commerce Commission that finds that a QSWEF is  
20 in compliance with the requirements of this subsection.

21 (q) Each QSWEF shall file, no later than the first business  
22 day of February of each calendar year, a sworn affidavit with  
23 the Commission's Chief Clerk that expressly affirms or denies  
24 their compliance with this Section, all applicable Commission  
25 rules governing QSWEF status and Qualifying Facility status  
26 under federal law, and all Orders of the Commission governing  
27 QSWEF status.

28 Failure to meet this filing requirement within 15 days of  
29 the required filing date shall result in the automatic  
30 suspension of the incentive payment prescribed by subsection  
31 (c). The requirements of the sworn affidavit may be set forth  
32 in an electric utility's tariff approved by the Commission or  
33 in the Commission's rules. If the subsection (c) incentive  
34 payment is suspended pursuant to this subsection, then it can  
35 only be reinstated by an Order of the Illinois Commerce  
36 Commission that finds that a QSWEF is in compliance with the

1 requirements of this subsection.

2 If the Commission, based upon an investigation of its own  
3 motion or by petition, finds that the sworn affidavit filed  
4 pursuant to this subsection is not supported by fact, then the  
5 Commission shall automatically suspend the incentive payment  
6 prescribed by subsection (c). If the incentive payment is  
7 suspended pursuant to this subsection, then it can only be  
8 reinstated by an Order of the Illinois Commerce Commission that  
9 finds that a QSWEF is in compliance with the requirements of  
10 this subsection.

11 (Source: P.A. 91-901, eff. 1-1-01; 92-435, eff. 8-17-01;  
12 92-574, eff. 6-26-02.)

13 Section 99. Effective date. This Act takes effect upon  
14 becoming law.