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LRB096 05803 MJR 23612 a

1 AMENDMENT TO HOUSE BILL 789

2 AMENDMENT NO. _____. Amend House Bill 789 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 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" 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 ~~2009~~, 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 ~~2009~~,
20 each month the State Treasurer shall certify the following to
21 the 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: ~~(1) uses or, on the effective date of~~
24 ~~Public Act 90-813, used municipal waste as its primary fuel to~~
25 ~~generate electricity;~~ ~~(2) was determined by the Illinois~~
26 ~~Commerce Commission to qualify as a qualified solid waste~~

1 ~~energy facility prior to the effective date of Public Act~~
2 ~~89-448; and (3) commenced operation prior to January 1, 1998.~~

3 Total distributions in the aggregate to all qualified cities,
4 villages, and incorporated towns in the 4 quarters beginning
5 with the April distribution and ending with the January
6 distribution shall not exceed \$500,000. The amount of each
7 distribution shall be determined pro rata based on the
8 population of the city, village, or incorporated town compared
9 to the total population of all cities, villages, and
10 incorporated towns eligible to receive a distribution.

11 Distributions received by a city, village, or incorporated town
12 must be held in a separate account and may be used only to
13 promote and enhance industrial, commercial, residential,
14 service, transportation, and recreational activities and
15 facilities within its boundaries, thereby enhancing the
16 employment opportunities, public health and general welfare,
17 and economic development within the community, including
18 administrative expenditures exclusively to further these
19 activities. Distributions may also be used for cleanup of open

20 dumping from vacant properties and the removal of structures
21 condemned by the city, village, or incorporated town. These
22 funds, however, shall not be used by the city, village, or
23 incorporated town, directly or indirectly, to purchase, lease,
24 operate, or in any way subsidize the operation of any
25 incinerator, and these funds shall not be paid, directly or
26 indirectly, by the city, village, or incorporated town to the

1 owner, operator, lessee, shareholder, or bondholder of any
2 incinerator. Moreover, these funds shall not be used to pay
3 attorneys fees in any litigation relating to the validity of
4 Public Act 89-448. Nothing in this Section prevents a city,
5 village, or incorporated town from using other corporate funds
6 for any legitimate purpose. For purposes of this subsection,
7 the term "municipal waste" has the meaning ascribed to it in
8 Section 3.290 of the Environmental Protection Act.

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

17 (l) Beginning January 1, 2000, and each January 1
18 thereafter, each city, village, or incorporated town that
19 received distributions from the Municipal Economic Development
20 Fund, continued to hold any of those distributions, or made
21 expenditures from those distributions during the immediately
22 preceding year shall submit to a financial and compliance and
23 program audit of those distributions performed by the Auditor
24 General at no cost to the city, village, or incorporated town
25 that received the distributions. The audit should be completed
26 by June 30 or as soon thereafter as possible. The audit shall

1 be submitted to the State Treasurer and those officers
2 enumerated in Section 3-14 of the Illinois State Auditing Act.
3 If the Auditor General finds that distributions have been
4 expended in violation of this Section, the Auditor General
5 shall refer the matter to the Attorney General. The Attorney
6 General may recover, in a civil action, 3 times the amount of
7 any distributions illegally expended. For purposes of this
8 subsection, the terms "financial audit," "compliance audit",
9 and "program audit" have the meanings ascribed to them in
10 Sections 1-13 and 1-15 of the Illinois State Auditing Act.

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

1 energy pursuant to this Section at any time before July 1, 2006
2 and that does not sell renewable energy certificates or other
3 saleable representations to meet the requirements of a
4 renewable energy portfolio standard mandated by Illinois law or
5 mandated by order of the Illinois Commerce Commission.

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

21 (Source: P.A. 94-836, eff. 6-6-06.)

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