

HB4382



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB4382

Introduced 1/21/2022, by Rep. Eva Dina Delgado

SYNOPSIS AS INTRODUCED:

220 ILCS 5/2-202

from Ch. 111 2/3, par. 2-202

Amends the Public Utilities Act. Provides that during the month of June (rather than October) of each year, the Illinois Commerce Commission shall make specified determinations with respect to moneys deposited into the Public Utility Fund during the next (rather than current) fiscal year and the moneys expected to be expended or obligated against appropriations made from the Fund during the next (rather than current) fiscal year. Effective immediately.

LRB102 21886 SPS 31007 b

A BILL FOR

1 AN ACT concerning regulation.

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 2-202 as follows:

6 (220 ILCS 5/2-202) (from Ch. 111 2/3, par. 2-202)

7 Sec. 2-202. Policy; Public Utility Fund; tax.

8 (a) It is declared to be the public policy of this State
9 that in order to maintain and foster the effective regulation
10 of public utilities under this Act in the interests of the
11 People of the State of Illinois and the public utilities as
12 well, the public utilities subject to regulation under this
13 Act and which enjoy the privilege of operating as public
14 utilities in this State, shall bear the expense of
15 administering this Act by means of a tax on such privilege
16 measured by the annual gross revenue of such public utilities
17 in the manner provided in this Section. For purposes of this
18 Section, "expense of administering this Act" includes any
19 costs incident to studies, whether made by the Commission or
20 under contract entered into by the Commission, concerning
21 environmental pollution problems caused or contributed to by
22 public utilities and the means for eliminating or abating
23 those problems. Such proceeds shall be deposited in the Public

1 Utility Fund in the State treasury.

2 (b) All of the ordinary and contingent expenses of the
3 Commission incident to the administration of this Act shall be
4 paid out of the Public Utility Fund except the compensation of
5 the members of the Commission which shall be paid from the
6 General Revenue Fund. Notwithstanding other provisions of this
7 Act to the contrary, the ordinary and contingent expenses of
8 the Commission incident to the administration of the Illinois
9 Commercial Transportation Law may be paid from appropriations
10 from the Public Utility Fund through the end of fiscal year
11 1986.

12 (c) A tax is imposed upon each public utility subject to
13 the provisions of this Act equal to .08% of its gross revenue
14 for each calendar year commencing with the calendar year
15 beginning January 1, 1982, except that the Commission may, by
16 rule, establish a different rate no greater than 0.1%. For
17 purposes of this Section, "gross revenue" shall not include
18 revenue from the production, transmission, distribution, sale,
19 delivery, or furnishing of electricity. "Gross revenue" shall
20 not include amounts paid by telecommunications retailers under
21 the Telecommunications Infrastructure Maintenance Fee Act.

22 (d) Annual gross revenue returns shall be filed in
23 accordance with paragraph (1) or (2) of this subsection (d).

24 (1) Except as provided in paragraph (2) of this
25 subsection (d), on or before January 10 of each year each
26 public utility subject to the provisions of this Act shall

1 file with the Commission an estimated annual gross revenue
2 return containing an estimate of the amount of its gross
3 revenue for the calendar year commencing January 1 of said
4 year and a statement of the amount of tax due for said
5 calendar year on the basis of that estimate. Public
6 utilities may also file revised returns containing updated
7 estimates and updated amounts of tax due during the
8 calendar year. These revised returns, if filed, shall form
9 the basis for quarterly payments due during the remainder
10 of the calendar year. In addition, on or before March 31 of
11 each year, each public utility shall file an amended
12 return showing the actual amount of gross revenues shown
13 by the company's books and records as of December 31 of the
14 previous year. Forms and instructions for such estimated,
15 revised, and amended returns shall be devised and supplied
16 by the Commission.

17 (2) Beginning with returns due after January 1, 2002,
18 the requirements of paragraph (1) of this subsection (d)
19 shall not apply to any public utility in any calendar year
20 for which the total tax the public utility owes under this
21 Section is less than \$10,000. For such public utilities
22 with respect to such years, the public utility shall file
23 with the Commission, on or before March 31 of the
24 following year, an annual gross revenue return for the
25 year and a statement of the amount of tax due for that year
26 on the basis of such a return. Forms and instructions for

1 such returns and corrected returns shall be devised and
2 supplied by the Commission.

3 (e) All returns submitted to the Commission by a public
4 utility as provided in this subsection (e) or subsection (d)
5 of this Section shall contain or be verified by a written
6 declaration by an appropriate officer of the public utility
7 that the return is made under the penalties of perjury. The
8 Commission may audit each such return submitted and may, under
9 the provisions of Section 5-101 of this Act, take such
10 measures as are necessary to ascertain the correctness of the
11 returns submitted. The Commission has the power to direct the
12 filing of a corrected return by any utility which has filed an
13 incorrect return and to direct the filing of a return by any
14 utility which has failed to submit a return. A taxpayer's
15 signing a fraudulent return under this Section is perjury, as
16 defined in Section 32-2 of the Criminal Code of 2012.

17 (f) (1) For all public utilities subject to paragraph (1)
18 of subsection (d), at least one quarter of the annual amount of
19 tax due under subsection (c) shall be paid to the Commission on
20 or before the tenth day of January, April, July, and October of
21 the calendar year subject to tax. In the event that an
22 adjustment in the amount of tax due should be necessary as a
23 result of the filing of an amended or corrected return under
24 subsection (d) or subsection (e) of this Section, the amount
25 of any deficiency shall be paid by the public utility together
26 with the amended or corrected return and the amount of any

1 excess shall, after the filing of a claim for credit by the
2 public utility, be returned to the public utility in the form
3 of a credit memorandum in the amount of such excess or be
4 refunded to the public utility in accordance with the
5 provisions of subsection (k) of this Section. However, if such
6 deficiency or excess is less than \$1, then the public utility
7 need not pay the deficiency and may not claim a credit.

8 (2) Any public utility subject to paragraph (2) of
9 subsection (d) shall pay the amount of tax due under
10 subsection (c) on or before March 31 next following the end of
11 the calendar year subject to tax. In the event that an
12 adjustment in the amount of tax due should be necessary as a
13 result of the filing of a corrected return under subsection
14 (e), the amount of any deficiency shall be paid by the public
15 utility at the time the corrected return is filed. Any excess
16 tax payment by the public utility shall be returned to it after
17 the filing of a claim for credit, in the form of a credit
18 memorandum in the amount of the excess. However, if such
19 deficiency or excess is less than \$1, the public utility need
20 not pay the deficiency and may not claim a credit.

21 (g) Each installment or required payment of the tax
22 imposed by subsection (c) becomes delinquent at midnight of
23 the date that it is due. Failure to make a payment as required
24 by this Section shall result in the imposition of a late
25 payment penalty, an underestimation penalty, or both, as
26 provided by this subsection. The late payment penalty shall be

1 the greater of:

2 (1) \$25 for each month or portion of a month that the
3 installment or required payment is unpaid or

4 (2) an amount equal to the difference between what
5 should have been paid on the due date, based upon the most
6 recently filed estimated, annual, or amended return, and
7 what was actually paid, times 1%, for each month or
8 portion of a month that the installment or required
9 payment goes unpaid. This penalty may be assessed as soon
10 as the installment or required payment becomes delinquent.

11 The underestimation penalty shall apply to those public
12 utilities subject to paragraph (1) of subsection (d) and shall
13 be calculated after the filing of the amended return. It shall
14 be imposed if the amount actually paid on any of the dates
15 specified in subsection (f) is not equal to at least
16 one-fourth of the amount actually due for the year, and shall
17 equal the greater of:

18 (1) \$25 for each month or portion of a month that the
19 amount due is unpaid or

20 (2) an amount equal to the difference between what
21 should have been paid, based on the amended return, and
22 what was actually paid as of the date specified in
23 subsection (f), times a percentage equal to 1/12 of the
24 sum of 10% and the percentage most recently established by
25 the Commission for interest to be paid on customer
26 deposits under 83 Ill. Adm. Code 280.70(e)(1), for each

1 month or portion of a month that the amount due goes
2 unpaid, except that no underestimation penalty shall be
3 assessed if the amount actually paid on or before each of
4 the dates specified in subsection (f) was based on an
5 estimate of gross revenues at least equal to the actual
6 gross revenues for the previous year. The Commission may
7 enforce the collection of any delinquent installment or
8 payment, or portion thereof by legal action or in any
9 other manner by which the collection of debts due the
10 State of Illinois may be enforced under the laws of this
11 State. The executive director or his designee may excuse
12 the payment of an assessed penalty or a portion of an
13 assessed penalty if he determines that enforced collection
14 of the penalty as assessed would be unjust.

15 (h) All sums collected by the Commission under the
16 provisions of this Section shall be paid promptly after the
17 receipt of the same, accompanied by a detailed statement
18 thereof, into the Public Utility Fund in the State treasury.

19 (i) During the month of October of each odd-numbered year
20 the Commission shall:

21 (1) determine the amount of all moneys deposited in
22 the Public Utility Fund during the preceding fiscal
23 biennium plus the balance, if any, in that fund at the
24 beginning of that biennium;

25 (2) determine the sum total of the following items:

26 (A) all moneys expended or obligated against

1 appropriations made from the Public Utility Fund during
2 the preceding fiscal biennium, plus (B) the sum of the
3 credit memoranda then outstanding against the Public
4 Utility Fund, if any; and

5 (3) determine the amount, if any, by which the sum
6 determined as provided in item (1) exceeds the amount
7 determined as provided in item (2).

8 If the amount determined as provided in item (3) of this
9 subsection exceeds 50% of the previous fiscal year's
10 appropriation level, the Commission shall then compute the
11 proportionate amount, if any, which (x) the tax paid hereunder
12 by each utility during the preceding biennium, and (y) the
13 amount paid into the Public Utility Fund during the preceding
14 biennium by the Department of Revenue pursuant to Sections 2-9
15 and 2-11 of the Electricity Excise Tax Law, bears to the
16 difference between the amount determined as provided in item
17 (3) of this subsection (i) and 50% of the previous fiscal
18 year's appropriation level. The Commission shall cause the
19 proportionate amount determined with respect to payments made
20 under the Electricity Excise Tax Law to be transferred into
21 the General Revenue Fund in the State Treasury, and notify
22 each public utility that it may file during the 3 month period
23 after the date of notification a claim for credit for the
24 proportionate amount determined with respect to payments made
25 hereunder by the public utility. If the proportionate amount
26 is less than \$10, no notification will be sent by the

1 Commission, and no right to a claim exists as to that amount.
2 Upon the filing of a claim for credit within the period
3 provided, the Commission shall issue a credit memorandum in
4 such amount to such public utility. Any claim for credit filed
5 after the period provided for in this Section is void.

6 (i-5) During the month of June ~~October~~ of each year the
7 Commission shall:

8 (1) determine the amount of all moneys expected to be
9 deposited in the Public Utility Fund during the next
10 ~~current~~ fiscal year, plus the balance, if any, in that
11 fund at the beginning of that year;

12 (2) determine the total of all moneys expected to be
13 expended or obligated against appropriations made from the
14 Public Utility Fund during the next ~~current~~ fiscal year;
15 and

16 (3) determine the amount, if any, by which the amount
17 determined in paragraph (2) exceeds the amount determined
18 as provided in paragraph (1).

19 If the amount determined as provided in paragraph (3) of
20 this subsection (i-5) results in a deficit, the Commission may
21 assess electric utilities and gas utilities for the difference
22 between the amount appropriated for the ordinary and
23 contingent expenses of the Commission and the amount derived
24 under paragraph (1) of this subsection (i-5). Such proceeds
25 shall be deposited in the Public Utility Fund in the State
26 treasury. The Commission shall apportion that difference among

1 those public utilities on the basis of each utility's share of
2 the total intrastate gross revenues of the utilities subject
3 to this subsection (i-5). Payments required under this
4 subsection (i-5) shall be made in the time and manner directed
5 by the Commission. The Commission shall permit utilities to
6 recover Illinois Commerce Commission assessments effective
7 pursuant to this subsection through an automatic adjustment
8 mechanism that is incorporated into an existing tariff that
9 recovers costs associated with this Section, or through a
10 supplemental customer charge.

11 Within 6 months after the first time assessments are made
12 under this subsection (i-5), the Commission shall initiate a
13 docketed proceeding in which it shall consider, in addition to
14 assessments from electric and gas utilities subject to this
15 subsection, the raising of assessments from, or the payment of
16 fees by, water and sewer utilities, entities possessing
17 certificates of service authority as alternative retail
18 electric suppliers under Section 16-115 of this Act, entities
19 possessing certificates of service authority as alternative
20 gas suppliers under Section 19-110 of this Act, and
21 telecommunications carriers providing local exchange
22 telecommunications service or interexchange
23 telecommunications service under Sections 13-204 or 13-205 of
24 this Act. The amounts so determined shall be based on the costs
25 to the agency of the exercise of its regulatory and
26 supervisory functions with regard to the different industries

1 and service providers subject to the proceeding. No less often
2 than every 3 years after the end of a proceeding under this
3 subsection (i-5), the Commission shall initiate another
4 proceeding for that purpose.

5 The Commission may use this apportionment method until the
6 docketed proceeding in which the Commission considers the
7 raising of assessments from other entities subject to its
8 jurisdiction under this Act has concluded. No credit memoranda
9 shall be issued pursuant to subsection (i) if the amount
10 determined as provided in paragraph (3) of this subsection
11 (i-5) results in a deficit.

12 (j) Credit memoranda issued pursuant to subsection (f) and
13 credit memoranda issued after notification and filing pursuant
14 to subsection (i) may be applied for the 2 year period from the
15 date of issuance, against the payment of any amount due during
16 that period under the tax imposed by subsection (c), or,
17 subject to reasonable rule of the Commission including
18 requirement of notification, may be assigned to any other
19 public utility subject to regulation under this Act. Any
20 application of credit memoranda after the period provided for
21 in this Section is void.

22 (k) The chairman or executive director may make refund of
23 fees, taxes or other charges whenever he shall determine that
24 the person or public utility will not be liable for payment of
25 such fees, taxes or charges during the next 24 months and he
26 determines that the issuance of a credit memorandum would be

1 unjust.

2 (Source: P.A. 99-906, eff. 6-1-17.)

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.