



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB1987

Introduced 2/7/2008, by Sen. Donne E. Trotter

SYNOPSIS AS INTRODUCED:

220 ILCS 5/2-202

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

625 ILCS 5/18c-1503

from Ch. 95 1/2, par. 18c-1503

Amends the Public Utilities Act. Provides that if the amount determined as provided in specified provisions exceeds 50% of the previous fiscal year's appropriation level (instead of \$5,000,000), the Illinois Commerce Commission shall then compute the proportionate amount, if any, which (x) the tax paid hereunder by each utility during the preceding biennium, and (y) the amount paid into the Public Utility Fund during the preceding biennium by the Department of Revenue pursuant to Sections 2-9 and 2-11 of the Electricity Excise Tax Law, bears to the difference between the amount determined as provided in specified provisions. Amends the Illinois Vehicle Code. Provides that the Commission shall administer fees and taxes under specified provisions in such a manner as to insure that any surplus generated or accumulated in the Transportation Regulatory Fund does not exceed 50% of the previous fiscal year's appropriation (instead of the surplus accumulated in the Motor Vehicle Fund during fiscal year 1984), and shall adjust the level of such fees and taxes to insure compliance with this provision. Effective immediately.

LRB095 14199 MJR 40067 b

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 Act
13 and which enjoy the privilege of operating as public utilities
14 in this State, shall bear the expense of administering this Act
15 by means of a tax on such privilege measured by the annual
16 gross revenue of such public utilities in the manner provided
17 in this Section. For purposes of this Section, "expense of
18 administering this Act" includes any costs incident to studies,
19 whether made by the Commission or under contract entered into
20 by the Commission, concerning environmental pollution problems
21 caused or contributed to by public utilities and the means for
22 eliminating or abating those problems. Such proceeds shall be
23 deposited in the Public Utility Fund in the State treasury.

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

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

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

23 (1) Except as provided in paragraph (2) of this
24 subsection (d), on or before January 10 of each year each
25 public utility subject to the provisions of this Act shall
26 file with the Commission an estimated annual gross revenue

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

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

1 by the Commission.

2 (e) All returns submitted to the Commission by a public
3 utility as provided in this subsection (e) or subsection (d) of
4 this Section shall contain or be verified by a written
5 declaration by an appropriate officer of the public utility
6 that the return is made under the penalties of perjury. The
7 Commission may audit each such return submitted and may, under
8 the provisions of Section 5-101 of this Act, take such measures
9 as are necessary to ascertain the correctness of the returns
10 submitted. The Commission has the power to direct the filing of
11 a corrected return by any utility which has filed an incorrect
12 return and to direct the filing of a return by any utility
13 which has failed to submit a return. A taxpayer's signing a
14 fraudulent return under this Section is perjury, as defined in
15 Section 32-2 of the Criminal Code of 1961.

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

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

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

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

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

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

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

17 (1) \$25 for each month or portion of a month that the
18 amount due is unpaid or

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

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

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

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

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

24 (2) determine the sum total of the following items: (A)
25 all moneys expended or obligated against appropriations
26 made from the Public Utility Fund during the preceding

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

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

7 If the amount determined as provided in item (3) of this
8 subsection exceeds 50% of the previous fiscal year's
9 appropriation level ~~\$5,000,000~~, the Commission shall then
10 compute the proportionate amount, if any, which (x) the tax
11 paid hereunder by each utility during the preceding biennium,
12 and (y) the amount paid into the Public Utility Fund during the
13 preceding biennium by the Department of Revenue pursuant to
14 Sections 2-9 and 2-11 of the Electricity Excise Tax Law, bears
15 to the difference between the amount determined as provided in
16 item (3) of this subsection (i) and 50% of the previous fiscal
17 year's appropriation level ~~\$5,000,000~~. The Commission shall
18 cause the proportionate amount determined with respect to
19 payments made under the Electricity Excise Tax Law to be
20 transferred into the General Revenue Fund in the State
21 Treasury, and notify each public utility that it may file
22 during the 3 month period after the date of notification a
23 claim for credit for the proportionate amount determined with
24 respect to payments made hereunder by the public utility. If
25 the proportionate amount is less than \$10, no notification will
26 be sent by the Commission, and no right to a claim exists as to

1 that amount. Upon the filing of a claim for credit within the
2 period provided, the Commission shall issue a credit memorandum
3 in such amount to such public utility. Any claim for credit
4 filed after the period provided for in this Section is void.

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

15 (k) The chairman or executive director may make refund of
16 fees, taxes or other charges whenever he shall determine that
17 the person or public utility will not be liable for payment of
18 such fees, taxes or charges during the next 24 months and he
19 determines that the issuance of a credit memorandum would be
20 unjust.

21 (Source: P.A. 92-11, eff. 6-11-01; 92-22, eff. 6-30-01; 92-526,
22 eff. 1-1-03.)

23 Section 10. The Illinois Vehicle Code is amended by
24 changing Section 18c-1503 as follows:

1 (625 ILCS 5/18c-1503) (from Ch. 95 1/2, par. 18c-1503)

2 Sec. 18c-1503. Legislative Intent. It is the intent of the
3 Legislature that the exercise of powers under Sections 18c-1501
4 and 18c-1502 of this Chapter shall not diminish revenues to the
5 Commission, and that any surplus or deficit of revenues in the
6 Transportation Regulatory Fund, together with any projected
7 changes in the cost of administering and enforcing this
8 Chapter, should be considered in establishing or adjusting fees
9 and taxes in succeeding years. The Commission shall administer
10 fees and taxes under this Chapter in such a manner as to insure
11 that any surplus generated or accumulated in the Transportation
12 Regulatory Fund does not exceed 50% of the previous fiscal
13 year's appropriation ~~the surplus accumulated in the Motor~~
14 ~~Vehicle Fund during fiscal year 1984,~~ and shall adjust the
15 level of such fees and taxes to insure compliance with this
16 provision.

17 (Source: P.A. 84-796.)

18 Section 99. Effective date. This Act takes effect upon
19 becoming law.