



Rep. Brandon W. Phelps

Filed: 5/1/2012

09700SB3573ham001

LRB097 18541 CEL 69032 a

1 AMENDMENT TO SENATE BILL 3573

2 AMENDMENT NO. _____. Amend Senate Bill 3573 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Public Utilities Act is amended by changing
5 Section 9-210 and by adding Section 9-210.5 as follows:

6 (220 ILCS 5/9-210) (from Ch. 111 2/3, par. 9-210)

7 Sec. 9-210. (a) The Commission shall have power to
8 ascertain the value of the property of every public utility in
9 this State and every fact which in its judgment may or does
10 have any bearing on such value. In all proceedings before the
11 Commission, initiated by the Commission upon its own motion, or
12 initiated by an application of such public utility, in which
13 the value of the property of any public utility or utilities is
14 an issue, the burden of establishing such value shall be upon
15 such public utility or utilities. In making such valuation the
16 Commission may avail itself of any information, books,

1 documents, or records in the possession of any officer,
2 department or board of the State or any subdivision thereof.
3 The Commission shall have power to make revaluation from time
4 to time and also to ascertain the value of all new
5 construction, extensions, and additions to the property of
6 every public utility.

7 (b) For purposes of establishing the value of public
8 utility property, when determining rates or charges, or for any
9 other reason, the Commission may base its determination on the
10 original cost of such property.

11 (c) This Section does not apply to valuations of water or
12 sewer utilities under Section 9-210.5. This subsection (c) is
13 inoperative on and after June 1, 2017.

14 (Source: P.A. 84-617.)

15 (220 ILCS 5/9-210.5 new)

16 Sec. 9-210.5. Valuation of water and sewer utilities.

17 (a) In this Section:

18 "Disinterested" means that the person directly
19 involved (1) is not a director, officer, or an employee of
20 the large public utility or the water or sewer utility or
21 its direct affiliates or subsidiaries for at least 12
22 months before becoming engaged under this Section; (2)
23 shall not derive a material financial benefit from the sale
24 of the water or sewer utility other than fees for services
25 rendered, and (3) shall not have a member of the person's

1 immediate family, including a spouse, parents or spouse's
2 parents, children or spouses of children, or siblings and
3 their spouses or children, be a director, officer, or
4 employee of either the large public utility or water or
5 sewer utility or the water or sewer utility or its direct
6 affiliates or subsidiaries for at least 12 months before
7 becoming engaged under this Section or receive a material
8 financial benefit from the sale of the water or sewer
9 utility other than fees for services rendered.

10 "District" means a service area of a large public
11 utility whose customers are subject to the same rate
12 tariff.

13 "Large public utility" means an investor-owned public
14 utility that:

15 (1) is subject to regulation by the Illinois
16 Commerce Commission under this Act;

17 (2) regularly provides water or sewer service to
18 more than 30,000 customer connections;

19 (3) provides safe and adequate service; and

20 (4) is not a water or sewer utility as defined in
21 this subsection (a).

22 "Next rate case" means a large public utility's first
23 general rate case after the date the large public utility
24 acquires the water or sewer utility where the acquired
25 water or sewer utility's cost of service is considered as
26 part of determining the large public utility's resulting

1 rates.

2 "Prior rate case" means a large public utility's
3 general rate case resulting in the rates in effect for the
4 large public utility at the time it acquires the water or
5 sewer utility.

6 "Utility service source" means the water or sewer
7 utility or large public utility from which the customer
8 receives its utility service type.

9 "Utility service type" means water utility service or
10 sewer utility service or water and sewer utility service.

11 "Water or sewer utility" means any of the following:

12 (1) a public utility that regularly provides water
13 or sewer service to 6,000 or fewer customer
14 connections;

15 (2) a water district, including, but not limited
16 to, a public water district, water service district, or
17 surface water protection district, or a sewer district
18 of any kind established as a special district under the
19 laws of this State that regularly provides water or
20 sewer service to 7,500 or fewer customer connections;

21 (3) a waterworks system or sewerage system
22 established under the Township Code that regularly
23 provides water or sewer service to 7,500 or fewer
24 customer connections; or

25 (4) a water system or sewer system owned by a
26 municipality that regularly provides water or sewer

1 service to 7,500 or fewer customer connections; and
2 (5) any other entity that regularly provides water
3 or sewer service to 7,500 or fewer customer
4 connections.

5 (b) Notwithstanding any other provision of this Act, a
6 large public utility that acquires a water or sewer utility may
7 request that the Commission use, and, if so requested, the
8 Commission shall use, the procedures set forth under this
9 Section to establish the ratemaking rate base of that water or
10 sewer utility at the time when it is acquired by the large
11 public utility.

12 (c) If a large public utility elects the procedures under
13 this Section to establish the rate base of a water or sewer
14 utility that it is acquiring, then an appraisal shall be
15 performed. The appraisal shall be performed by an appraiser
16 selected by the Commission's water department manager and
17 engaged by either the water or sewer utility being acquired or
18 by the large public utility. The Commission's water department
19 manager shall select an appraiser within 30 days after when he
20 or she is officially notified. The appraiser shall be engaged
21 on reasonable terms approved by the Commission. The appraiser
22 shall be a disinterested person licensed as a State certified
23 appraiser under the Real Estate Appraiser Licensing Act of
24 2002.

25 The appraiser shall:

26 (1) be sworn to determine the fair market value of the

1 water or sewer utility by establishing the amount for which
2 the water or sewer utility would be sold in a voluntary
3 transaction between a willing buyer and willing seller
4 under no obligation to buy or sell;

5 (2) determine fair market value in compliance with the
6 Uniform Standards of Professional Appraisal Practice;

7 (3) engage one disinterested engineer who is licensed
8 in this State to prepare an assessment of the tangible
9 assets of the water or sewer utility, which is to be
10 incorporated into the appraisal under the cost approach;

11 (4) if the water or sewer utility is a public utility
12 that is regulated by the Commission, request from the
13 manager of the Accounting Department a list of investments
14 made by the water or sewer utility that had been disallowed
15 previously and that shall be excluded from the calculation
16 of the large public utility's rate base in its next rate
17 case;

18 (5) return their appraisal, in writing, to the water or
19 sewer utility and large public utility in a reasonable and
20 timely manner; and

21 (6) if the appraiser cannot engage an engineer, as
22 described in paragraph (3) of this subsection (c), within
23 30 days after the appraiser is engaged, then the
24 Commission's manager of the Water Department shall
25 recommend the engineer which the appraiser should engage;
26 the manager of the Water Department shall provide his or

1 her recommendation within 30 days after he or she is
2 officially notified of the appraiser's failure to engage an
3 engineer and the appraiser shall promptly work to engage
4 the recommended engineer; if the appraiser are unable to
5 negotiate reasonable engagement terms with the recommended
6 engineer within 15 days after the recommendation by the
7 manager of the Water Department, then the appraiser shall
8 notify the manager of the Water Department and the process
9 shall be repeated until an engineer is successfully
10 engaged.

11 (d) The lesser of the purchase price or the appraised value
12 shall constitute the rate base associated with the water or
13 sewer utility as acquired by and incorporated into the rate
14 base of the district designated by the acquiring large public
15 utility under this Section, subject to any adjustments that the
16 Commission deems necessary to ensure such rate base reflects
17 prudent and useful investments in the provision of public
18 utility service. The reasonable transaction and closing costs
19 incurred by the large public utility shall be treated
20 consistent with the applicable accounting standards under this
21 Act. The amount of the appraiser's fees to be included in the
22 transaction and closing costs shall not exceed the greater of
23 \$15,000 or 5% of the appraised value of the water or sewer
24 utility being acquired. This rate base treatment shall not be
25 deemed to violate this Act, including, but not limited to, any
26 Sections in Articles VIII and IX of this Act that might be

1 affected by this Section. Without otherwise limiting the
2 application of Section 7-204 or any other Article of this Act,
3 any acquisition of a water or sewer utility that affects the
4 cumulative base rates of the large public utility's existing
5 ratepayers in the tariff group into which the water or sewer
6 utility is to be combined by less than (1) 2.5% at the time of
7 the acquisition for any single acquisition completed under this
8 Section or (2) 5% for all acquisitions completed under this
9 Section before the Commission's final order in the next rate
10 case shall not be deemed to violate any other Article of this
11 Act.

12 In the Commission's order that approves the large public
13 utility's acquisition of the water or sewer utility, the
14 Commission shall issue its decision establishing (1) the
15 ratemaking rate base of the water or sewer utility and (2) the
16 district or tariff group with which the water or sewer utility
17 shall be combined for ratemaking purposes.

18 (e) If the water or sewer utility being acquired is owned
19 by the State or any political subdivision thereof, then the
20 water or sewer utility must inform the public of the terms of
21 its acquisition by the large public utility by (1) holding a
22 public meeting prior to the acquisition and (2) causing to be
23 published, in a newspaper of general circulation in the area
24 that the water or sewer utility operates, a notice setting
25 forth the terms of its acquisition by the large public utility
26 and options that shall be available to assist customers to pay

1 their bills after the acquisition.

2 (f) The large public utility shall recommend the district
3 or tariff group of which the water or sewer utility shall, for
4 ratemaking purposes, become a part after the acquisition. The
5 Commission's recommended district or tariff group shall be
6 consistent with the large public utility's recommendation,
7 unless such recommendation can be shown to be contrary to the
8 public interest.

9 (g) From the date of acquisition until the date that new
10 rates are effective in the acquiring large public utility's
11 next rate case, the customers of the acquired water or sewer
12 utility shall pay the then-existing rates of the district or
13 tariff group ordered by the Commission; provided, that, if the
14 application of such then-existing rates of the large public
15 utility to customers of the acquired water or sewer utility
16 using 54,000 gallons annually results in an increase to the
17 total annual bill of customers of the acquired water or sewer
18 utility, exclusive of fire service or related charges, then the
19 large public utility's rates charged to the customers of the
20 acquired water or sewer utility shall be uniformly reduced, if
21 any reduction is required, by the percent that results in the
22 total annual bill, exclusive of fire services or related
23 charges, for the customers of the acquired water or sewer
24 utility using 54,000 gallons being equal to 1.5% of the latest
25 median household income as reported by the United States Census
26 Bureau for the most applicable community or county. For each

1 customer of the water or sewer utility with potable water usage
2 values that cannot be reasonably obtained, a value of 4,500
3 gallons per month shall be assigned. These rates shall not be
4 deemed to violate this Act including, but not limited to,
5 Section 9-101 and any other applicable Sections in Articles
6 VIII and IX of this Act. The Commission shall issue its
7 decision establishing the rates effective for the water or
8 sewer utility immediately following an acquisition in its order
9 approving the acquisition.

10 (h) In the acquiring large public utility's next rate case,
11 the water or sewer utility and the district or tariff group
12 ordered by the Commission and their costs of service shall be
13 combined under the same rate tariff. This rate tariff shall be
14 based on allocation of costs of service of the acquired water
15 or sewer utility and the large public utility's district or
16 tariff group ordered by the Commission and utilizing a rate
17 design that does not distinguish among customers on the basis
18 of utility service source or type. This rate tariff shall not
19 be deemed to violate this Act including, but not limited to,
20 Section 9-101 of this Act.

21 (i) Any post-acquisition improvements made by the large
22 public utility in the water or sewer utility shall accrue a
23 cost for financing set at the large public utility's determined
24 rate for allowance for funds used during construction,
25 inclusive of the debt, equity, and income tax gross up
26 components, after the date on which the expenditure was

1 incurred by the large public utility until the investment has
2 been in service for a 4-year period or, if sooner, until the
3 time the rates are implemented in the large public utility's
4 next rate case.

5 Any post-acquisition improvements made by the large public
6 utility in the water or sewer utility shall not be depreciated
7 for ratemaking purposes from the date on which the expenditure
8 was incurred by the large public utility until the investment
9 has been in service for a 4-year period or, if sooner, until
10 the time the rates are implemented in the large public
11 utility's next rate case.

12 (j) This Section shall be exclusively applied to large
13 public utilities in the voluntary and mutually agreeable
14 acquisition of water or sewer utilities. Any petitions filed
15 with the Commission related to the acquisitions described in
16 this Section, including petitions seeking approvals or
17 certificates required by this Act, shall be deemed approved
18 unless the Commission issues its final order within 11 months
19 after the date the large public utility filed its initial
20 petition. This Section shall only apply to utilities providing
21 water or sewer service and shall not be construed in any manner
22 to apply to electric corporations, natural gas corporations, or
23 any other utility subject to this Act.

24 (k) Nothing in this Section shall prohibit a party from
25 declining to proceed with an acquisition or be deemed as
26 establishing the final purchase price of an acquisition.

1 (l) In the Commission's order that approves the large
2 utility's acquisition of the water or sewer utility, the
3 Commission shall address each aspect of the acquisition
4 transaction for which approval is required under the Act.

5 (m) Any contractor or subcontractor that performs work on a
6 water or sewer utility acquired by a large public utility under
7 this Section shall be a responsible bidder as described in
8 Section 30-22 of the Illinois Procurement Code. The contractor
9 or subcontractor shall submit evidence of meeting the
10 requirements to be a responsible bidder as described in Section
11 30-22 to the water or sewer utility. Any new water or sewer
12 facility built as a result of the acquisition shall require the
13 contractor to enter into a project labor agreement. The large
14 public utility acquiring the water or sewer utility shall offer
15 employee positions to qualified employees of the acquired water
16 or sewer utility.

17 (n) This Section is repealed on June 1, 2017.

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