



Sen. William R. Haine

Filed: 3/26/2012

09700SB3573sam001

LRB097 18541 JLS 67994 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 "Water or sewer utility" means any of the following:

19 (1) a public utility that regularly provides water
20 or sewer service to 6,000 or fewer customer
21 connections;

22 (2) a water district, including, but not limited
23 to, a public water district, water service district, or
24 surface water protection district, or a sewer district
25 of any kind established as a special district under the

1 laws of this State that regularly provides water or
2 sewer service to 7,500 or fewer customer connections;

3 (3) a waterworks system or sewerage system
4 established under the Township Code that regularly
5 provides water or sewer service to 7,500 or fewer
6 customer connections; or

7 (4) a water system or sewer system owned by a
8 municipality that regularly provides water or sewer
9 service to 7,500 or fewer customer connections; and

10 (5) any other entity that regularly provides water
11 or sewer service to 7,500 or fewer customer
12 connections.

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

25 "Utility service source" means the water or sewer
26 utility or large public utility from which the customer

1 receives its utility service type.

2 "Utility service type" means water utility service or
3 sewer utility service or water and sewer utility service.

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

8 "Next rate case" means a large public utility's first
9 general rate case after the date the large public utility
10 acquires the water or sewer utility where the acquired
11 water or sewer utility's cost of service is considered as
12 part of determining the large public utility's resulting
13 rates.

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

1 affiliates or subsidiaries for at least 12 months before
2 becoming engaged under this Section or receive a material
3 financial benefit from the sale of the water or sewer
4 utility other than fees for services rendered.

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. If the water or sewer utility being acquired and the
16 large public utility agree on one appraiser, then the appraisal
17 shall be performed by that jointly selected appraiser. If the
18 water or sewer utility being acquired and the large public
19 utility cannot agree on one appraiser, then the appraisal shall
20 be performed by 3 appraisers with the water or sewer utility
21 being acquired and the large public utility each appointing one
22 appraiser individually and those resulting 2 appraisers shall
23 together appoint an agreed-upon third appraiser. If the third
24 appraiser is not appointed within 30 days after the first 2
25 appraisers are appointed, then the manager of the Commission's
26 Water Department shall recommend the third appraiser to be

1 appointed. The manager of the Water Department shall provide
2 his or her recommendation for an appraiser within 30 days after
3 when he or she is officially notified of the failure of the 2
4 appraisers to agree upon a third appraiser, and the 2
5 appraisers shall promptly work to engage the recommended third
6 appraiser. If the appraiser or appraisers are unable to
7 negotiate reasonable engagement terms with the recommended
8 third appraiser within 15 days after the recommendation by the
9 manager of the Water Department, then the appraisers shall
10 notify the manager of the Water Department and the process
11 shall be repeated until a third appraiser is successfully
12 engaged. Each appraiser shall be a disinterested person
13 licensed as a State certified appraiser under the Real Estate
14 Appraiser Licensing Act of 2002.

15 The appraisers shall:

16 (1) be sworn to determine the fair market value of the
17 water or sewer utility by establishing the amount for which
18 the water or sewer utility would be sold in a voluntary
19 transaction between a willing buyer and willing seller
20 under no obligation to buy or sell;

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

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

1 (4) if the water or sewer utility is a public utility
2 that is regulated by the Commission, request from the
3 manager of the Accounting Department a list of investments
4 made by the water or sewer utility that had been disallowed
5 previously and that shall be excluded from the calculation
6 of the large public utility's rate base in its next rate
7 case;

8 (5) return their appraisal, in writing, to the water or
9 sewer utility and large public utility in a reasonable and
10 timely manner; and

11 (6) if the appraisers cannot agree on the engineer, as
12 described in paragraph (3) of this subsection (c), within
13 30 days after the appraisers are appointed, then the
14 Commission's manager of the Water Department shall
15 recommend the engineer which the appraiser or appraisers
16 should engage; the manager of the Water Department shall
17 provide his or her recommendation within 30 days after he
18 or she is officially notified of the appraiser or
19 appraisers failure to engage an engineer and the appraiser
20 or appraisers shall promptly work to engage the recommended
21 engineer; if the appraiser or appraisers are unable to
22 negotiate reasonable engagement terms with the recommended
23 engineer within 15 days after the recommendation by the
24 manager of the Water Department, then the appraisers shall
25 notify the manager of the Water Department and the process
26 shall be repeated until an engineer is successfully

1 engaged.

2 When 3 appraisers are required and in the event all 3
3 appointed appraisers cannot agree as to the appraised value of
4 the water or sewer utility, then an appraisal signed by 2 of
5 the appointed appraisers shall constitute a good and valid
6 appraisal. In this event, the third appraisal shall be
7 submitted to the Commission with the filing for approval of the
8 transaction. The Commission shall consider the third appraisal
9 in its determination of the rate base of the water or sewer
10 utility.

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. This rate base treatment shall not be deemed to violate
22 this Act, including, but not limited to, any Sections in
23 Articles VIII and IX of this Act that might be affected by this
24 Section. Without otherwise limiting the application of Section
25 7-204 or any other Article of this Act, any acquisition of a
26 water or sewer utility that affects the cumulative base rates

1 of the large public utility's existing ratepayers in the tariff
2 group into which the water or sewer utility is to be combined
3 by less than (1) 2.5% at the time of the acquisition for any
4 single acquisition completed under this Section or (2) 5% for
5 all acquisitions completed under this Section before the
6 Commission's final order in the next rate case shall not be
7 deemed to violate any other Article of this Act.

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

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

24 (f) The large public utility shall recommend the district
25 or tariff group of which the water or sewer utility shall, for
26 ratemaking purposes, become a part after the acquisition. The

1 Commission's recommended district or tariff group shall be
2 consistent with the large public utility's recommendation,
3 unless such recommendation can be shown to be contrary to the
4 public interest.

5 (g) From the date of acquisition until the date that new
6 rates are effective in the acquiring large public utility's
7 next rate case, the customers of the acquired water or sewer
8 utility shall pay the then-existing rates of the district or
9 tariff group ordered by the Commission; provided, that, if the
10 application of such then existing rates of the large public
11 utility to customers of the acquired water or sewer utility
12 using 54,000 gallons annually results in an increase to the
13 total annual bill of customers of the acquired water or sewer
14 utility, exclusive of fire service or related charges, then the
15 large public utility's rates charged to the customers of the
16 acquired water or sewer utility shall be uniformly reduced, if
17 any reduction is required, by the percent that results in the
18 total annual bill, exclusive of fire services or related
19 charges, for the customers of the acquired water or sewer
20 utility using 54,000 gallons being equal to 1.5% of the latest
21 median household income as reported by the United States Census
22 Bureau for the most applicable community or county. For each
23 customer of the water or sewer utility with potable water usage
24 values that cannot be reasonably obtained, a value of 4,500
25 gallons per month shall be assigned. These rates shall not be
26 deemed to violate this Act including, but not limited to,

1 Section 9-101 and any other applicable Sections in Articles
2 VIII and IX of this Act. The Commission shall issue its
3 decision establishing the rates effective for the water or
4 sewer utility immediately following an acquisition in its order
5 approving the acquisition.

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

17 (i) Any post-acquisition improvements made by the large
18 public utility in the water or sewer utility shall accrue a
19 cost for financing set at the large public utility's determined
20 rate for allowance for funds used during construction,
21 inclusive of the debt, equity, and income tax gross up
22 components, after the date on which the expenditure was
23 incurred by the large public utility until the investment has
24 been in service for a 4-year period or, if sooner, until the
25 time the rates are implemented in the large public utility's
26 next rate case.

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

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

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

23 (l) Any contractor or subcontractor that performs work on a
24 water or sewer utility acquired by a large public utility under
25 this Section shall be a responsible bidder as described in
26 Section 30-22 of the Illinois Procurement Code. The contractor

1 or subcontractor shall submit evidence of meeting the
2 requirements to be a responsible bidder as described in Section
3 30-22 to the water or sewer utility. Any new water or sewer
4 facility built as a result of the acquisition shall require the
5 contractor to enter into a project labor agreement. The large
6 public utility acquiring the water or sewer utility shall offer
7 employee positions to qualified employees of the acquired water
8 or sewer utility.

9 (m) This Section is repealed on June 1, 2017.

10 Section 99. Effective date. This Act takes effect upon
11 becoming law.".