



Rep. Amy Elik

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10400HB2863ham001

LRB104 08243 AAS 24795 a

1 AMENDMENT TO HOUSE BILL 2863

2 AMENDMENT NO. _____. Amend House Bill 2863 by replacing
3 everything after the enacting clause with the following:

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

6 (220 ILCS 5/9-210.5)

7 (Section scheduled to be repealed on June 1, 2028)

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

9 (a) In this Section:

10 "Disinterested" means that the person directly
11 involved (1) is not a director, officer, or an employee of
12 the large public utility or the water or sewer utility or
13 its direct affiliates or subsidiaries for at least 12
14 months before becoming engaged under this Section; (2)
15 shall not derive a material financial benefit from the
16 sale of the water or sewer utility other than fees for

1 services rendered, and (3) shall not have a member of the
2 person's immediate family, including a spouse, parents or
3 spouse's parents, children or spouses of children, or
4 siblings and their spouses or children, be a director,
5 officer, or employee of either the large public utility or
6 water or sewer utility or the water or sewer utility or its
7 direct affiliates or subsidiaries for at least 12 months
8 before becoming engaged under this Section or receive a
9 material financial benefit from the sale of the water or
10 sewer utility other than fees for services rendered.

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

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

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

18 (2) regularly provides water or sewer service to
19 more than 15,000 customer connections;

20 (3) provides safe and adequate service; and

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

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

1 part of determining the large public utility's resulting
2 rates.

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

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

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

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

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

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

22 (3) a waterworks system or sewerage system
23 established under the Township Code that regularly
24 provides water or sewer service; or

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

1 service; and

2 (5) any other entity that is not a public utility
3 that regularly provides water or sewer service.

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

11 (c) If a large public utility elects the procedures under
12 this Section to establish the rate base of a water or sewer
13 utility that it is acquiring, then 3 appraisals shall be
14 performed. The average of these 3 appraisals shall represent
15 the fair market value of the water or sewer utility that is
16 being acquired. The appraisals shall be performed by 3
17 appraisers approved by the Commission's Executive Director or
18 designee and engaged by either the water or sewer utility
19 being acquired or by the large public utility. Each appraiser
20 shall be engaged on reasonable terms approved by the
21 Commission. Each appraiser shall be a disinterested person
22 licensed as a State certified general real estate appraiser
23 under the Real Estate Appraiser Licensing Act of 2002.

24 Each appraiser shall:

25 (1) be sworn to determine the fair market value of the
26 water or sewer utility by establishing the amount for

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

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

6 (3) engage one disinterested engineer who is licensed
7 in this State, and who may be the same engineer that is
8 engaged by the other appraisers, to prepare an assessment
9 of the tangible assets of the water or sewer utility,
10 which is to be incorporated into the appraisal under the
11 cost approach;

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

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

22 If the appraiser cannot engage an engineer, as described
23 in paragraph (3) of this subsection (c), within 30 days after
24 the appraiser is engaged, then the Commission's Executive
25 Director or designee shall recommend the engineer the
26 appraiser should engage. The Commission's Executive Director

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

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

1 but not limited to, any Sections in Articles VIII and IX of
2 this Act that might be affected by this Section. Any
3 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
8 this Section or (2) 5% for all acquisitions completed under
9 this Section before the Commission's final order in the next
10 rate case shall not be deemed to violate Section 7-204 or any
11 other provision of this 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; (2) the
16 district or tariff group with which the water or sewer utility
17 shall be combined for ratemaking purposes, if such combination
18 has been proposed by the large public utility; and (3) the
19 rates to be charged to customers in the water or sewer utility.

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

1 information about the public meeting being held prior to the
2 acquisition, a notice setting forth the terms of the water or
3 sewer utility's ~~its~~ acquisition by the large public utility,
4 and options that shall be available to assist customers to pay
5 their bills after the acquisition, and (3) mailing a notice 30
6 days prior to the public meeting to customers who will be
7 affected by the acquisition. The notice shall be sent to the
8 customers in the same manner as the customers' monthly bills,
9 either by mail or electronically. The notice shall be mailed
10 or electronically delivered with the customers' bills, on a
11 page separate from the bill itself, and in no less than
12 12-point font. The notice shall include (i) information about
13 the public meeting being held prior to the acquisition, (ii)
14 information on the public body that will make the decision
15 regarding the sale of the water or sewer utility, and (iii) a
16 comparison of the current rate being charged by the water or
17 sewer utility being acquired and the rate that is expected to
18 be charged immediately following the acquisition.

19 (f) The large public utility may recommend the district or
20 tariff group of which the water or sewer utility shall, for
21 ratemaking purposes, become a part after the acquisition, or
22 may recommend a lesser rate for the water or sewer utility. If
23 the large public utility recommends a lesser rate, it shall
24 submit to the Commission its proposed rate schedule and the
25 proposed final tariff group for the acquired water or sewer
26 utility. The Commission's approved district or tariff group or

1 rates shall be consistent with the large public utility's
2 recommendation, unless such recommendation can be shown to be
3 contrary to the public interest.

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

1 rates shall not be deemed to violate this Act including, but
2 not limited to, Section 9-101 and any other applicable
3 Sections in Articles VIII and IX of this Act. The Commission
4 shall issue its decision establishing the rates effective for
5 the water or sewer utility immediately following an
6 acquisition in its order approving the acquisition.

7 (h) In the acquiring large public utility's next rate
8 case, the water or sewer utility and the district or tariff
9 group ordered by the Commission and their costs of service may
10 be combined under the same rate tariff. This rate tariff shall
11 be based on allocation of costs of service of the acquired
12 water or sewer utility and the large public utility's district
13 or tariff group ordered by the Commission and utilizing a rate
14 design that does not distinguish among customers on the basis
15 of utility service source or type. This rate tariff shall not
16 be deemed to violate this Act including, but not limited to,
17 Section 9-101 of this Act. In the acquiring large public
18 utility's 2 rate cases after an acquisition, but in no
19 subsequent rate case, the large public utility may file a rate
20 tariff for a water or sewer utility acquired under this
21 Section that establishes lesser rates than the district or
22 tariff group into which the water or sewer utility is to be
23 combined. Those lesser rates shall not be deemed to violate
24 Section 7-204 or any other provision of this Act if they affect
25 the cumulative base rates of the large public utility's
26 existing rate payers in the district or tariff by less than

1 2.5%.

2 (i) Any post-acquisition improvements made by the large
3 public utility in the water or sewer utility shall accrue a
4 cost for financing set at the large public utility's
5 determined rate for allowance for funds used during
6 construction, inclusive of the debt, equity, and income tax
7 gross up components, after 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 Any post-acquisition improvements made by the large public
13 utility in the water or sewer utility shall not be depreciated
14 for ratemaking purposes from the date on which the expenditure
15 was incurred by the large public utility until the investment
16 has been in service for a 4-year period or, if sooner, until
17 the time the rates are implemented in the large public
18 utility's next rate case.

19 (j) This Section shall be exclusively applied to large
20 public utilities in the voluntary and mutually agreeable
21 acquisition of water or sewer utilities. Any petitions filed
22 with the Commission related to the acquisitions described in
23 this Section, including petitions seeking approvals or
24 certificates required by this Act, shall be deemed approved
25 unless the Commission issues its final order within 11 months
26 after the date the large public utility filed its initial

1 petition. This Section shall only apply to utilities providing
2 water or sewer service and shall not be construed in any manner
3 to apply to electric corporations, natural gas corporations,
4 or any other utility subject to this Act.

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

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

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

24 (n) This Section is repealed on June 1, 2028.

25 (Source: P.A. 102-149, eff. 1-1-22.)".