



Rep. Jay Hoffman

Filed: 11/9/2018

10000SB3051ham002

LRB100 19159 SMS 43291 a

1 AMENDMENT TO SENATE BILL 3051

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 3051 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Public Utilities Act is amended by adding  
5 Section 9-210.6 as follows:

6 (220 ILCS 5/9-210.6 new)

7 Sec. 9-210.6. Continuation of Section 9-210.5 of this Act;  
8 validation.

9 (a) The General Assembly finds and declares that:

10 (1) Public Act 100-751, which took effect on August 10,  
11 2018, contained provisions that would have changed the  
12 repeal date for Section 9-210.5 of this Act from June 1,  
13 2018 to June 1, 2028.

14 (2) The Statute on Statutes sets forth general rules on  
15 the repeal of statutes and the construction of multiple  
16 amendments, but Section 1 of that Act also states that

1       these rules will not be observed when the result would be  
2       "inconsistent with the manifest intent of the General  
3       Assembly or repugnant to the context of the statute".

4       (3) This amendatory Act of the 100th General Assembly  
5       manifests the intention of the General Assembly to extend  
6       the repeal date for Section 9-210.5 of this Act and have  
7       Section 9-210.5 of this Act, as amended by Public Act  
8       100-751, continue in effect until June 1, 2028.

9       (b) Any construction of this Act that results in the repeal  
10      of Section 9-210.5 of this Act on June 1, 2018 would be  
11      inconsistent with the manifest intent of the General Assembly  
12      and repugnant to the context of this Act.

13      (c) It is hereby declared to have been the intent of the  
14      General Assembly that Section 9-210.5 of this Act shall not be  
15      subject to repeal on June 1, 2018.

16      (d) Section 9-210.5 of this Act shall be deemed to have  
17      been in continuous effect since August 9, 2013 (the effective  
18      date of Public Act 98-213), and it shall continue to be in  
19      effect, as amended by Public Act 100-751, until it is otherwise  
20      lawfully amended or repealed. All previously enacted  
21      amendments to the Section taking effect on or after August 9,  
22      2013, are hereby validated.

23      (e) In order to ensure the continuing effectiveness of  
24      Section 9-210.5 of this Act, that Section is set forth in full  
25      and reenacted by this amendatory Act of the 100th General  
26      Assembly. In this amendatory Act of the 100th General Assembly,

1 the base text of the reenacted Section is set forth as amended  
2 by Public Act 100-751.

3 (f) All actions of the Commission or any other person or  
4 entity taken in reliance on or pursuant to Section 9-210.5 are  
5 hereby validated.

6 (g) Section 9-210.5 of this Act applies to all proceedings  
7 pending on or filed on or before the effective date of this  
8 amendatory Act of the 100th General Assembly.

9 Section 10. The Public Utilities Act is amended by  
10 reenacting Section 9-210.5 as follows:

11 (220 ILCS 5/9-210.5)

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

13 (a) In this Section:

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

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

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

10 "Large public utility" means an investor-owned public  
11 utility that:

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

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

16 (3) provides safe and adequate service; and

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

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

25 "Prior rate case" means a large public utility's  
26 general rate case resulting in the rates in effect for the

1 large public utility at the time it acquires the water or  
2 sewer utility.

3 "Utility service source" means the water or sewer  
4 utility or large public utility from which the customer  
5 receives its utility service type.

6 "Utility service type" means water utility service or  
7 sewer utility service or water and sewer utility service.

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

9 (1) a public utility that regularly provides water  
10 or sewer service to 6,000 or fewer customer  
11 connections;

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

18 (3) a waterworks system or sewerage system  
19 established under the Township Code that regularly  
20 provides water or sewer service; or

21 (4) a water system or sewer system owned by a  
22 municipality that regularly provides water or sewer  
23 service; and

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

26 (b) Notwithstanding any other provision of this Act, a

1 large public utility that acquires a water or sewer utility may  
2 request that the Commission use, and, if so requested, the  
3 Commission shall use, the procedures set forth under this  
4 Section to establish the ratemaking rate base of that water or  
5 sewer utility at the time when it is acquired by the large  
6 public utility.

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

20 Each appraiser shall:

21 (1) be sworn to determine the fair market value of the  
22 water or sewer utility by establishing the amount for which  
23 the water or sewer utility would be sold in a voluntary  
24 transaction between a willing buyer and willing seller  
25 under no obligation to buy or sell;

26 (2) determine fair market value in compliance with the

1 Uniform Standards of Professional Appraisal Practice;

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

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

15 (5) return their appraisal, in writing, to the water or  
16 sewer utility and large public utility in a reasonable and  
17 timely manner.

18 If the appraiser cannot engage an engineer, as described in  
19 paragraph (3) of this subsection (c), within 30 days after the  
20 appraiser is engaged, then the Commission's Executive Director  
21 or designee shall recommend the engineer the appraiser should  
22 engage. The Commission's Executive Director or designee shall  
23 provide his or her recommendation within 30 days after he or  
24 she is officially notified of the appraiser's failure to engage  
25 an engineer and the appraiser shall promptly work to engage the  
26 recommended engineer. If the appraiser is unable to negotiate

1 reasonable engagement terms with the recommended engineer  
2 within 15 days after the recommendation by the Commission's  
3 Executive Director or designee, then the appraiser shall notify  
4 the Commission's Executive Director or designee and the process  
5 shall be repeated until an engineer is successfully engaged.

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



1 by less than (1) 2.5% at the time of the acquisition for any  
2 single acquisition completed under this Section or (2) 5% for  
3 all acquisitions completed under this Section before the  
4 Commission's final order in the next rate case shall not be  
5 deemed to violate Section 7-204 or any other provision of this  
6 Act.

7 In the Commission's order that approves the large public  
8 utility's acquisition of the water or sewer utility, the  
9 Commission shall issue its decision establishing (1) the  
10 ratemaking rate base of the water or sewer utility; (2) the  
11 district or tariff group with which the water or sewer utility  
12 shall be combined for ratemaking purposes, if such combination  
13 has been proposed by the large public utility; and (3) the  
14 rates to be charged to customers in the water or sewer utility.

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

25 (f) The large public utility may recommend the district or  
26 tariff group of which the water or sewer utility shall, for

1 ratemaking purposes, become a part after the acquisition, or  
2 may recommend a lesser rate for the water or sewer utility. If  
3 the large public utility recommends a lesser rate, it shall  
4 submit to the Commission its proposed rate schedule and the  
5 proposed final tariff group for the acquired water or sewer  
6 utility. The Commission's approved district or tariff group or  
7 rates shall be consistent with the large public utility's  
8 recommendation, unless such recommendation can be shown to be  
9 contrary to the public interest.

10 (g) From the date of acquisition until the date that new  
11 rates are effective in the acquiring large public utility's  
12 next rate case, the customers of the acquired water or sewer  
13 utility shall pay the approved then-existing rates of the  
14 district or tariff group as ordered by the Commission, or some  
15 lesser rates as recommended by the large public utility and  
16 approved by the Commission under subsection (f); provided,  
17 that, if the application of such rates of the large public  
18 utility to customers of the acquired water or sewer utility  
19 using 54,000 gallons annually results in an increase to the  
20 total annual bill of customers of the acquired water or sewer  
21 utility, exclusive of fire service or related charges, then the  
22 large public utility's rates charged to the customers of the  
23 acquired water or sewer utility shall be uniformly reduced, if  
24 any reduction is required, by the percent that results in the  
25 total annual bill, exclusive of fire services or related  
26 charges, for the customers of the acquired water or sewer

1 utility using 54,000 gallons being equal to 1.5% of the latest  
2 median household income as reported by the United States Census  
3 Bureau for the most applicable community or county. For each  
4 customer of the water or sewer utility with potable water usage  
5 values that cannot be reasonably obtained, a value of 4,500  
6 gallons per month shall be assigned. These rates shall not be  
7 deemed to violate this Act including, but not limited to,  
8 Section 9-101 and any other applicable Sections in Articles  
9 VIII and IX of this Act. The Commission shall issue its  
10 decision establishing the rates effective for the water or  
11 sewer utility immediately following an acquisition in its order  
12 approving the acquisition.

13 (h) In the acquiring large public utility's next rate case,  
14 the water or sewer utility and the district or tariff group  
15 ordered by the Commission and their costs of service may be  
16 combined under the same rate tariff. This rate tariff shall be  
17 based on allocation of costs of service of the acquired water  
18 or sewer utility and the large public utility's district or  
19 tariff group ordered by the Commission and utilizing a rate  
20 design that does not distinguish among customers on the basis  
21 of utility service source or type. This rate tariff shall not  
22 be deemed to violate this Act including, but not limited to,  
23 Section 9-101 of this Act. In the acquiring large public  
24 utility's 2 rate cases after an acquisition, but in no  
25 subsequent rate case, the large public utility may file a rate  
26 tariff for a water or sewer utility acquired under this Section

1 that establishes lesser rates than the district or tariff group  
2 into which the water or sewer utility is to be combined. Those  
3 lesser rates shall not be deemed to violate Section 7-204 or  
4 any other provision of this Act if they affect the cumulative  
5 base rates of the large public utility's existing rate payers  
6 in the district or tariff by less than 2.5%.

7 (i) Any post-acquisition improvements made by the large  
8 public utility in the water or sewer utility shall accrue a  
9 cost for financing set at the large public utility's determined  
10 rate for allowance for funds used during construction,  
11 inclusive of the debt, equity, and income tax gross up  
12 components, after the date on which the expenditure was  
13 incurred by the large public utility until the investment has  
14 been in service for a 4-year period or, if sooner, until the  
15 time the rates are implemented in the large public utility's  
16 next rate case.

17 Any post-acquisition improvements made by the large public  
18 utility in the water or sewer utility shall not be depreciated  
19 for ratemaking purposes from the date on which the expenditure  
20 was incurred by the large public utility until the investment  
21 has been in service for a 4-year period or, if sooner, until  
22 the time the rates are implemented in the large public  
23 utility's next rate case.

24 (j) This Section shall be exclusively applied to large  
25 public utilities in the voluntary and mutually agreeable  
26 acquisition of water or sewer utilities. Any petitions filed

1 with the Commission related to the acquisitions described in  
2 this Section, including petitions seeking approvals or  
3 certificates required by this Act, shall be deemed approved  
4 unless the Commission issues its final order within 11 months  
5 after the date the large public utility filed its initial  
6 petition. This Section shall only apply to utilities providing  
7 water or sewer service and shall not be construed in any manner  
8 to apply to electric corporations, natural gas corporations, or  
9 any other utility subject to this Act.

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

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

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

1 employee positions to qualified employees of the acquired water  
2 or sewer utility.

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

4 (Source: P.A. 100-751, eff. 8-10-18.)

5 Section 99. Effective date. This Act takes effect upon  
6 becoming law.".