

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 9-210.5 as follows:

6 (220 ILCS 5/9-210.5)

7 (Section scheduled to be repealed on June 1, 2018)

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 sale  
16 of the water or sewer utility other than fees for services  
17 rendered, and (3) shall not have a member of the person's  
18 immediate family, including a spouse, parents or spouse's  
19 parents, children or spouses of children, or siblings and  
20 their spouses or children, be a director, officer, or  
21 employee of either the large public utility or water or  
22 sewer utility or the water or sewer utility or its direct  
23 affiliates or subsidiaries for at least 12 months before

1 becoming engaged under this Section or receive a material  
2 financial benefit from the sale of the water or sewer  
3 utility other than fees for services rendered.

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

7 "Large public utility" means an investor-owned public  
8 utility that:

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

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

13 (3) provides safe and adequate service; and

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

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

22 "Prior rate case" means a large public utility's  
23 general rate case resulting in the rates in effect for the  
24 large public utility at the time it acquires the water or  
25 sewer utility.

26 "Utility service source" means the water or sewer

1 utility or large public utility from which the customer  
2 receives its utility service type.

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

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

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

9 (2) a water district, including, but not limited  
10 to, a public water district, water service district, or  
11 surface water protection district, or a sewer district  
12 of any kind established as a special district under the  
13 laws of this State that regularly provides water or  
14 sewer service ~~to 7,500 or fewer customer connections;~~

15 (3) a waterworks system or sewerage system  
16 established under the Township Code that regularly  
17 provides water or sewer service ~~to 7,500 or fewer~~  
18 ~~customer connections;~~ or

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

22 (5) any other entity that is not a public utility  
23 that regularly provides water or sewer service ~~to 7,500~~  
24 ~~or fewer customer connections.~~

25 (b) Notwithstanding any other provision of this Act, a  
26 large public utility that acquires a water or sewer utility may

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

6 (c) If a large public utility elects the procedures under  
7 this Section to establish the rate base of a water or sewer  
8 utility that it is acquiring, then 3 appraisals shall be  
9 performed. The average of these 3 appraisals shall represent  
10 the fair market value of the water or sewer utility that is  
11 being acquired. The appraisals shall be performed by 3  
12 appraisers approved ~~selected~~ by the Commission's Executive  
13 Director or designee ~~water department manager~~ and engaged by  
14 either the water or sewer utility being acquired or by the  
15 large public utility. ~~The Commission's water department~~  
16 ~~manager shall select the appraisers within 30 days after the~~  
17 ~~water department manager is officially notified.~~ Each  
18 appraiser shall be engaged on reasonable terms approved by the  
19 Commission. Each appraiser shall be a disinterested person  
20 licensed as a State certified general real estate appraiser  
21 under the Real Estate Appraiser Licensing Act of 2002.

22 Each appraiser shall:

23 (1) be sworn to determine the fair market value of the  
24 water or sewer utility by establishing the amount for which  
25 the water or sewer utility would be sold in a voluntary  
26 transaction between a willing buyer and willing seller

1 under no obligation to buy or sell;

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

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

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

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.

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

1 provide his or her recommendation within 30 days after he or  
2 she is officially notified of the appraiser's failure to engage  
3 an engineer and the appraiser shall promptly work to engage the  
4 recommended engineer. If the appraiser is unable to negotiate  
5 reasonable engagement terms with the recommended engineer  
6 within 15 days after the recommendation by the Commission's  
7 Executive Director or designee ~~water department manager~~, then  
8 the appraiser shall notify the Commission's Executive Director  
9 or designee ~~water department manager~~ and the process shall be  
10 repeated until an engineer 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 the  
17 Commission deems necessary to ensure such rate base reflects  
18 prudent and useful investments in the provision of public  
19 utility service. The reasonable transaction and closing costs  
20 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' ~~appraiser's~~  
23 fees to be included in the transaction and closing costs shall  
24 not exceed the greater of \$15,000 or 5% of the appraised value  
25 of the 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 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 Section 7-204 or any other  
11 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; ~~and~~ (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 must inform the public of the terms of  
23 its acquisition by the large public utility by (1) holding a  
24 public meeting prior to the acquisition and (2) causing to be  
25 published, in a newspaper of general circulation in the area  
26 that the water or sewer utility operates, a notice setting

1 forth the terms of its acquisition by the large public utility  
2 and options that shall be available to assist customers to pay  
3 their bills after the acquisition.

4 (f) The large public utility may ~~shall~~ recommend the  
5 district or tariff group of which the water or sewer utility  
6 shall, for ratemaking purposes, become a part after the  
7 acquisition, or may recommend a lesser rate for the water or  
8 sewer utility. If the large public utility recommends a lesser  
9 rate, it shall submit to the Commission its proposed rate  
10 schedule and the proposed final tariff group for the acquired  
11 water or sewer utility. The Commission's approved ~~recommended~~  
12 district or tariff group or rates shall be consistent with the  
13 large public utility's recommendation, unless such  
14 recommendation can be shown to be contrary to the public  
15 interest.

16 (g) From the date of acquisition until the date that new  
17 rates are effective in the acquiring large public utility's  
18 next rate case, the customers of the acquired water or sewer  
19 utility shall pay the approved then-existing rates of the  
20 district or tariff group as ordered by the Commission, or some  
21 lesser rates as recommended by the large public utility and  
22 approved by the Commission under subsection (f); provided,  
23 that, if the application of such ~~then-existing~~ rates of the  
24 large public utility to customers of the acquired water or  
25 sewer utility using 54,000 gallons annually results in an  
26 increase to the total annual bill of customers of the acquired



1 water or sewer utility, exclusive of fire service or related  
2 charges, then the large public utility's rates charged to the  
3 customers of the acquired water or sewer utility shall be  
4 uniformly reduced, if any reduction is required, by the percent  
5 that results in the total annual bill, exclusive of fire  
6 services or related charges, for the customers of the acquired  
7 water or sewer utility using 54,000 gallons being equal to 1.5%  
8 of the latest median household income as reported by the United  
9 States Census Bureau for the most applicable community or  
10 county. For each customer of the water or sewer utility with  
11 potable water usage values that cannot be reasonably obtained,  
12 a value of 4,500 gallons per month shall be assigned. These  
13 rates shall not be deemed to violate this Act including, but  
14 not limited to, Section 9-101 and any other applicable Sections  
15 in Articles VIII and IX of this Act. The Commission shall issue  
16 its decision establishing the rates effective for the water or  
17 sewer utility immediately following an acquisition in its order  
18 approving the acquisition.

19 (h) In the acquiring large public utility's next rate case,  
20 the water or sewer utility and the district or tariff group  
21 ordered by the Commission and their costs of service may ~~shall~~  
22 be combined under the same rate tariff. This rate tariff shall  
23 be based on allocation of costs of service of the acquired  
24 water or sewer utility and the large public utility's district  
25 or tariff group ordered by the Commission and utilizing a rate  
26 design that does not distinguish among customers on the basis

1 of utility service source or type. This rate tariff shall not  
2 be deemed to violate this Act including, but not limited to,  
3 Section 9-101 of this Act. In the acquiring large public  
4 utility's 2 rate cases after an acquisition, but in no  
5 subsequent rate case, the large public utility may file a rate  
6 tariff for a water or sewer utility acquired under this Section  
7 that establishes lesser rates than the district or tariff group  
8 into which the water or sewer utility is to be combined. Those  
9 lesser rates shall not be deemed to violate Section 7-204 or  
10 any other provision of this Act if they affect the cumulative  
11 base rates of the large public utility's existing rate payers  
12 in the district or tariff by less than 2.5%.

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

23 Any post-acquisition improvements made by the large public  
24 utility in the water or sewer utility shall not be depreciated  
25 for ratemaking purposes from the date on which the expenditure  
26 was incurred by the large public utility until the investment

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

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

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

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

23 (m) 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 (n) This Section is repealed on June 1, 2028 ~~2018~~.

10 (Source: P.A. 98-213, eff. 8-9-13.)

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