

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

20 (3) This amendatory Act of the 100th General Assembly
21 manifests the intention of the General Assembly to extend
22 the repeal date for Section 9-210.5 of this Act and have
23 Section 9-210.5 of this Act, as amended by Public Act

1 100-751, continue in effect until June 1, 2028.

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

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

9 (d) Section 9-210.5 of this Act shall be deemed to have
10 been in continuous effect since August 9, 2013 (the effective
11 date of Public Act 98-213), and it shall continue to be in
12 effect, as amended by Public Act 100-751, until it is otherwise
13 lawfully amended or repealed. All previously enacted
14 amendments to the Section taking effect on or after August 9,
15 2013, are hereby validated.

16 (e) In order to ensure the continuing effectiveness of
17 Section 9-210.5 of this Act, that Section is set forth in full
18 and reenacted by this amendatory Act of the 100th General
19 Assembly. In this amendatory Act of the 100th General Assembly,
20 the base text of the reenacted Section is set forth as amended
21 by Public Act 100-751.

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

25 (g) Section 9-210.5 of this Act applies to all proceedings
26 pending on or filed on or before the effective date of this

1 amendatory Act of the 100th General Assembly.

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

4 (220 ILCS 5/9-210.5)

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

6 (a) In this Section:

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

24 "District" means a service area of a large public

1 utility whose customers are subject to the same rate
2 tariff.

3 "Large public utility" means an investor-owned public
4 utility that:

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

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

9 (3) provides safe and adequate service; and

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

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

18 "Prior rate case" means a large public utility's
19 general rate case resulting in the rates in effect for the
20 large public utility at the time it acquires the water or
21 sewer utility.

22 "Utility service source" means the water or sewer
23 utility or large public utility from which the customer
24 receives its utility service type.

25 "Utility service type" means water utility service or
26 sewer utility service or water and sewer utility service.

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

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

5 (2) a water district, including, but not limited
6 to, a public water district, water service district, or
7 surface water protection district, or a sewer district
8 of any kind established as a special district under the
9 laws of this State that regularly provides water or
10 sewer service;

11 (3) a waterworks system or sewerage system
12 established under the Township Code that regularly
13 provides water or sewer service; or

14 (4) a water system or sewer system owned by a
15 municipality that regularly provides water or sewer
16 service; and

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

19 (b) Notwithstanding any other provision of this Act, a
20 large public utility that acquires a water or sewer utility may
21 request that the Commission use, and, if so requested, the
22 Commission shall use, the procedures set forth under this
23 Section to establish the ratemaking rate base of that water or
24 sewer utility at the time when it is acquired by the large
25 public utility.

26 (c) If a large public utility elects the procedures under

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

13 Each appraiser shall:

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

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

21 (3) engage one disinterested engineer who is licensed
22 in this State, and who may be the same engineer that is
23 engaged by the other appraisers, to prepare an assessment
24 of the tangible assets of the water or sewer utility, which
25 is to be incorporated into the appraisal under the cost
26 approach;

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

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.

11 If the appraiser cannot engage an engineer, as described in
12 paragraph (3) of this subsection (c), within 30 days after the
13 appraiser is engaged, then the Commission's Executive Director
14 or designee shall recommend the engineer the appraiser should
15 engage. The Commission's Executive Director or designee shall
16 provide his or her recommendation within 30 days after he or
17 she is officially notified of the appraiser's failure to engage
18 an engineer and the appraiser shall promptly work to engage the
19 recommended engineer. If the appraiser is unable to negotiate
20 reasonable engagement terms with the recommended engineer
21 within 15 days after the recommendation by the Commission's
22 Executive Director or designee, then the appraiser shall notify
23 the Commission's Executive Director or designee and the process
24 shall be repeated until an engineer is successfully engaged.

25 (d) The lesser of (i) the purchase price or (ii) the fair
26 market value determined under subsection (c) of this Section

1 shall constitute the rate base associated with the water or
2 sewer utility as acquired by and incorporated into the rate
3 base of the district designated by the acquiring large public
4 utility under this Section, subject to any adjustments that the
5 Commission deems necessary to ensure such rate base reflects
6 prudent and useful investments in the provision of public
7 utility service. The reasonable transaction and closing costs
8 incurred by the large public utility shall be treated
9 consistent with the applicable accounting standards under this
10 Act. The total amount of all of the appraisers' fees to be
11 included in the transaction and closing costs shall not exceed
12 the greater of \$15,000 or 5% of the appraised value of the
13 water or sewer utility being acquired. This rate base treatment
14 shall not be deemed to violate this Act, including, but not
15 limited to, any Sections in Articles VIII and IX of this Act
16 that might be affected by this Section. Any acquisition of a
17 water or sewer utility that affects the cumulative base rates
18 of the large public utility's existing ratepayers in the tariff
19 group into which the water or sewer utility is to be combined
20 by less than (1) 2.5% at the time of the acquisition for any
21 single acquisition completed under this Section or (2) 5% for
22 all acquisitions completed under this Section before the
23 Commission's final order in the next rate case shall not be
24 deemed to violate Section 7-204 or any other provision of this
25 Act.

26 In the Commission's order that approves the large public

1 utility's acquisition of the water or sewer utility, the
2 Commission shall issue its decision establishing (1) the
3 ratemaking rate base of the water or sewer utility; (2) the
4 district or tariff group with which the water or sewer utility
5 shall be combined for ratemaking purposes, if such combination
6 has been proposed by the large public utility; and (3) the
7 rates to be charged to customers in the water or sewer utility.

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

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

1 recommendation, unless such recommendation can be shown to be
2 contrary to the public interest.

3 (g) From the date of acquisition until the date that new
4 rates are effective in the acquiring large public utility's
5 next rate case, the customers of the acquired water or sewer
6 utility shall pay the approved then-existing rates of the
7 district or tariff group as ordered by the Commission, or some
8 lesser rates as recommended by the large public utility and
9 approved by the Commission under subsection (f); provided,
10 that, if the application of such 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 may 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. In the acquiring large public
17 utility's 2 rate cases after an acquisition, but in no
18 subsequent rate case, the large public utility may file a rate
19 tariff for a water or sewer utility acquired under this Section
20 that establishes lesser rates than the district or tariff group
21 into which the water or sewer utility is to be combined. Those
22 lesser rates shall not be deemed to violate Section 7-204 or
23 any other provision of this Act if they affect the cumulative
24 base rates of the large public utility's existing rate payers
25 in the district or tariff by less than 2.5%.

26 (i) Any post-acquisition improvements made by the large

1 public utility in the water or sewer utility shall accrue a
2 cost for financing set at the large public utility's determined
3 rate for allowance for funds used during construction,
4 inclusive of the debt, equity, and income tax gross up
5 components, after the date on which the expenditure was
6 incurred by the large public utility until the investment has
7 been in service for a 4-year period or, if sooner, until the
8 time the rates are implemented in the large public utility's
9 next rate case.

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

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

1 to apply to electric corporations, natural gas corporations, or
2 any other utility subject to this Act.

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

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

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

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

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