



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB1849

Introduced 2/15/2019, by Sen. Sue Rezin

SYNOPSIS AS INTRODUCED:

220 ILCS 5/9-210.5

Amends the Public Utilities Act. Modifies a Section concerning valuation of water and sewer utilities. Provides that the term "large public utility" means an investor-owned public utility that, among other specifications, regularly provides water or sewer service to customer connections (rather than regularly provides water or sewer service to more than 30,000 customer connections). Provides that in an acquiring large public utility's 2 rate cases after an acquisition, the large public utility shall (rather than may) file a rate tariff for an acquired water or sewer utility that establishes an annual rate of 2.5% or less, which shall apply to all customers of the utility going forward, regardless of the rates previously established by the district or tariff group into which the water or sewer utility is to be combined. Provides that any water or sewer utility system which may be purchased shall, before the purchase of the water or sewer utility system, require a vote by referendum of the voters of any affected unit of local government approving the purchase. Provides that a unit of local government that has approved the purchase of a water or sewer utility system may apply to the Illinois Commerce Commission for a docketed proceeding to negotiate the purchase of a buyback of a water or sewer utility system after 3 years after the purchase. Effective immediately.

LRB101 09045 JRG 54138 b

A BILL FOR

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 (Text of Section before amendment by P.A. 100-1151)

8 Sec. 9-210.5. (Repealed).

9 (Source: P.A. 100-751, eff. 8-10-18. Repealed internally, eff.
10 6-1-18. P.A. 100-751 contained an extension of the internal
11 repealer, but did not take effect until 8-10-18.)

12 (Text of Section after amendment by P.A. 100-1151)

13 (Section scheduled to be repealed on June 1, 2028)

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

15 (a) In this Section:

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

1 rendered, and (3) shall not have a member of the person's
2 immediate family, including a spouse, parents or spouse's
3 parents, children or spouses of children, or siblings and
4 their spouses or children, be a director, officer, or
5 employee of either the large public utility or water or
6 sewer utility or the water or sewer utility or its direct
7 affiliates or subsidiaries for at least 12 months before
8 becoming engaged under this Section or receive a material
9 financial benefit from the sale of the water or sewer
10 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 30,000~~ 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, or
18 surface water protection district, or a sewer district
19 of any kind established as a special district under the
20 laws of this State that regularly provides water or
21 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 may
6 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 being
19 acquired or by the large public utility. Each appraiser shall
20 be engaged on reasonable terms approved by the Commission. Each
21 appraiser shall be a disinterested person licensed as a State
22 certified general real estate appraiser under the Real Estate
23 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 which

1 the water or sewer utility would be sold in a voluntary
2 transaction between a willing buyer and willing seller
3 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, which
10 is to be incorporated into the appraisal under the cost
11 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 or
20 sewer utility and large public utility in a reasonable and
21 timely manner.

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

10 (d) The lesser of (i) the purchase price or (ii) the fair
11 market value determined under subsection (c) of this Section
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. The total amount of all of the appraisers' fees to be
22 included in the transaction and closing costs shall not exceed
23 the greater of \$15,000 or 5% of the appraised value of the
24 water or sewer utility being acquired. This rate base treatment
25 shall not be deemed to violate this Act, including, but not
26 limited to, any Sections in Articles VIII and IX of this Act

1 that might be affected by this Section. Any acquisition of a
2 water or sewer utility that affects the cumulative base rates
3 of the large public utility's existing ratepayers in the tariff
4 group into which the water or sewer utility is to be combined
5 by less than (1) 2.5% at the time of the acquisition for any
6 single acquisition completed under this Section or (2) 5% for
7 all acquisitions completed under this Section before the
8 Commission's final order in the next rate case shall not be
9 deemed to violate Section 7-204 or any other provision of this
10 Act.

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

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

1 and options that shall be available to assist customers to pay
2 their bills after the acquisition.

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

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

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

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

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

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

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

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

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

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

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

24 (m) Any contractor or subcontractor that performs work on a
25 water or sewer utility acquired by a large public utility under
26 this Section shall be a responsible bidder as described in

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

10 (m-5) Any water or sewer utility system which may be
11 purchased shall, before the purchase of the water or sewer
12 utility system, require a vote by referendum of the voters of
13 any affected unit of local government approving the purchase. A
14 unit of local government that has approved the purchase of a
15 water or sewer utility system may apply to the Illinois
16 Commerce Commission for a docketed proceeding to negotiate the
17 purchase of a buyback of a water or sewer utility system after
18 3 years after the purchase.

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

20 (Source: P.A. 100-751, eff. 8-10-18; 100-1151, eff. 6-1-19.)

21 Section 95. No acceleration or delay. Where this Act makes
22 changes in a statute that is represented in this Act by text
23 that is not yet or no longer in effect (for example, a Section
24 represented by multiple versions), the use of that text does
25 not accelerate or delay the taking effect of (i) the changes

1 made by this Act or (ii) provisions derived from any other
2 Public Act.

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.