



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB5185

by Rep. John Connor

SYNOPSIS AS INTRODUCED:

220 ILCS 5/9-210.5

Amends the Public Utilities Act. Provides that an acquisition of a water or sewer utility shall be paid for by shareholders and not existing ratepayers (rather than charging ratepayers in the tariff group into which the water or sewer utility is to be combined specific rates). Changes the repeal date of provisions concerning valuation of water and sewer utilities from June 1, 2018 to June 1, 2021. Effective May 31, 2018.

LRB100 19710 SMS 34984 b

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7 (Section scheduled to be repealed on June 1, 2018)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 regularly provides water
23 or sewer service to 7,500 or fewer customer
24 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 selected by the Commission's water department
13 manager and engaged by either the water or sewer utility being
14 acquired or by the large public utility. The Commission's water
15 department manager shall select the appraisers within 30 days
16 after the water department manager is officially notified. Each
17 appraiser shall be engaged on reasonable terms approved by the
18 Commission. Each appraiser shall be a disinterested person
19 licensed as a State certified general real estate appraiser
20 under the Real Estate Appraiser Licensing Act of 2002.

21 Each appraiser shall:

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

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

3 (3) engage one disinterested engineer who is licensed
4 in this State to prepare an assessment of the tangible
5 assets of the water or sewer utility, which is to be
6 incorporated into the appraisal under the cost approach;

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

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

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

1 within 15 days after the recommendation by the Commission's
2 water department manager, then the appraiser shall notify the
3 Commission's water department manager and the process shall be
4 repeated until an engineer is successfully engaged.

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

1 ~~(1) 2.5% at the time of the acquisition for any single~~
2 ~~acquisition completed under this Section or (2) 5% for all~~
3 ~~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 and (2) the
11 district or tariff group with which the water or sewer utility
12 shall be combined for ratemaking purposes.

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

23 (f) The large public utility shall recommend the district
24 or tariff group of which the water or sewer utility shall, for
25 ratemaking purposes, become a part after the acquisition. The
26 Commission's recommended district or tariff group shall be

1 consistent with the large public utility's recommendation,
2 unless such recommendation can be shown to be contrary to the
3 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 then-existing rates of the district or
8 tariff group ordered by the Commission; provided, that, if the
9 application of such then-existing rates of the large public
10 utility to customers of the acquired water or sewer utility
11 using 54,000 gallons annually results in an increase to the
12 total annual bill of customers of the acquired water or sewer
13 utility, exclusive of fire service or related charges, then the
14 large public utility's rates charged to the customers of the
15 acquired water or sewer utility shall be uniformly reduced, if
16 any reduction is required, by the percent that results in the
17 total annual bill, exclusive of fire services or related
18 charges, for the customers of the acquired water or sewer
19 utility using 54,000 gallons being equal to 1.5% of the latest
20 median household income as reported by the United States Census
21 Bureau for the most applicable community or county. For each
22 customer of the water or sewer utility with potable water usage
23 values that cannot be reasonably obtained, a value of 4,500
24 gallons per month shall be assigned. These rates shall not be
25 deemed to violate this Act including, but not limited to,
26 Section 9-101 and any other applicable Sections in Articles

1 VIII and IX of this Act. The Commission shall issue its
2 decision establishing the rates effective for the water or
3 sewer utility immediately following an acquisition in its order
4 approving the acquisition.

5 (h) In the acquiring large public utility's next rate case,
6 the water or sewer utility and the district or tariff group
7 ordered by the Commission and their costs of service shall be
8 combined under the same rate tariff. This rate tariff shall be
9 based on allocation of costs of service of the acquired water
10 or sewer utility and the large public utility's district or
11 tariff group ordered by the Commission and utilizing a rate
12 design that does not distinguish among customers on the basis
13 of utility service source or type. This rate tariff shall not
14 be deemed to violate this Act including, but not limited to,
15 Section 9-101 of this Act.

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

26 Any post-acquisition improvements made by the large public

1 utility in the water or sewer utility shall not be depreciated
2 for ratemaking purposes from the date on which the expenditure
3 was incurred by the large public utility until the investment
4 has been in service for a 4-year period or, if sooner, until
5 the time the rates are implemented in the large public
6 utility's next rate case.

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

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

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

26 (m) Any contractor or subcontractor that performs work on a

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

12 (n) This Section is repealed on June 1, 2021 ~~2018~~.

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

14 Section 99. Effective date. This Act takes effect May 31,
15 2018.