

# SB2745



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB2745

Introduced 2/4/2020, by Sen. Andy Manar

#### SYNOPSIS AS INTRODUCED:

220 ILCS 5/9-210.5

Amends the Public Utilities Act. In provisions concerning procedures for a large public utility to acquire a water or sewer utility, provides that if the water or sewer utility being acquired is owned by the State or a political subdivision of the State, a referendum will be required to approve the acquisition of the water or sewer utility by the large public utility (rather than only requiring a public meeting and publication of the terms of acquisition in a newspaper of general circulation in the area that the water or sewer utility operates). Effective immediately.

LRB101 16793 SPS 66189 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7 (Section scheduled to be repealed on June 1, 2028)

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;

15 (3) a waterworks system or sewerage system  
16 established under the Township Code that regularly  
17 provides water or sewer service; or

18 (4) a water system or sewer system owned by a  
19 municipality that regularly provides water or sewer  
20 service; and

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

23 (b) Notwithstanding any other provision of this Act, a  
24 large public utility that acquires a water or sewer utility may  
25 request that the Commission use, and, if so requested, the  
26 Commission shall use, the procedures set forth under this

1 Section to establish the ratemaking rate base of that water or  
2 sewer utility at the time when it is acquired by the large  
3 public utility.

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

17 Each appraiser shall:

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

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

25 (3) engage one disinterested engineer who is licensed  
26 in this State, and who may be the same engineer that is

1 engaged by the other appraisers, to prepare an assessment  
2 of the tangible assets of the water or sewer utility, which  
3 is to be incorporated into the appraisal under the cost  
4 approach;

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

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

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

1 the Commission's Executive Director or designee and the process  
2 shall be repeated until an engineer is successfully engaged.

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

1 Commission's final order in the next rate case shall not be  
2 deemed to violate Section 7-204 or any other provision of this  
3 Act.

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

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

22 At the election next following the public meeting and  
23 notice required under this subsection, a referendum, subject to  
24 the requirements of Section 16-7 of the Election Code, shall be  
25 placed on the ballot for all electors within the area where the  
26 water or sewer utility operates in substantially the following



1 form:

2 May the (name of large public utility) acquire the  
3 (name of water or sewer utility) under the terms of  
4 acquisition as published in (name of newspaper) on (date)?

5 The votes shall be recorded as "Yes" or "No".

6 If a majority of the electors voting on the referendum  
7 within the service area of the water or sewer utility vote in  
8 favor of the referendum, then the acquisition may continue as  
9 provided in this Section. If less than a majority of the  
10 electors voting on the referendum within the service area of  
11 the water or sewer utility vote against the referendum, the  
12 Commission shall deny the large public utility's acquisition of  
13 the water or sewer utility.

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

25 (g) From the date of acquisition until the date that new  
26 rates are effective in the acquiring large public utility's

1 next rate case, the customers of the acquired water or sewer  
2 utility shall pay the approved then-existing rates of the  
3 district or tariff group as ordered by the Commission, or some  
4 lesser rates as recommended by the large public utility and  
5 approved by the Commission under subsection (f); provided,  
6 that, if the application of such rates of the large public  
7 utility to customers of the acquired water or sewer utility  
8 using 54,000 gallons annually results in an increase to the  
9 total annual bill of customers of the acquired water or sewer  
10 utility, exclusive of fire service or related charges, then the  
11 large public utility's rates charged to the customers of the  
12 acquired water or sewer utility shall be uniformly reduced, if  
13 any reduction is required, by the percent that results in the  
14 total annual bill, exclusive of fire services or related  
15 charges, for the customers of the acquired water or sewer  
16 utility using 54,000 gallons being equal to 1.5% of the latest  
17 median household income as reported by the United States Census  
18 Bureau for the most applicable community or county. For each  
19 customer of the water or sewer utility with potable water usage  
20 values that cannot be reasonably obtained, a value of 4,500  
21 gallons per month shall be assigned. These rates shall not be  
22 deemed to violate this Act including, but not limited to,  
23 Section 9-101 and any other applicable Sections in Articles  
24 VIII and IX of this Act. The Commission shall issue its  
25 decision establishing the rates effective for the water or  
26 sewer utility immediately following an acquisition in its order

1 approving the acquisition.

2 (h) In the acquiring large public utility's next rate case,  
3 the water or sewer utility and the district or tariff group  
4 ordered by the Commission and their costs of service may be  
5 combined under the same rate tariff. This rate tariff shall be  
6 based on allocation of costs of service of the acquired water  
7 or sewer utility and the large public utility's district or  
8 tariff group ordered by the Commission and utilizing a rate  
9 design that does not distinguish among customers on the basis  
10 of utility service source or type. This rate tariff shall not  
11 be deemed to violate this Act including, but not limited to,  
12 Section 9-101 of this Act. In the acquiring large public  
13 utility's 2 rate cases after an acquisition, but in no  
14 subsequent rate case, the large public utility may file a rate  
15 tariff for a water or sewer utility acquired under this Section  
16 that establishes lesser rates than the district or tariff group  
17 into which the water or sewer utility is to be combined. Those  
18 lesser rates shall not be deemed to violate Section 7-204 or  
19 any other provision of this Act if they affect the cumulative  
20 base rates of the large public utility's existing rate payers  
21 in the district or tariff by less than 2.5%.

22 (i) Any post-acquisition improvements made by the large  
23 public utility in the water or sewer utility shall accrue a  
24 cost for financing set at the large public utility's determined  
25 rate for allowance for funds used during construction,  
26 inclusive of the debt, equity, and income tax gross up

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

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

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

25 (k) Nothing in this Section shall prohibit a party from  
26 declining to proceed with an acquisition or be deemed as

1 establishing the final purchase price of an acquisition.

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

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

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

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

20 Section 99. Effective date. This Act takes effect upon  
21 becoming law.