



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB1477

Introduced 2/7/2023, by Sen. Ann Gillespie

SYNOPSIS AS INTRODUCED:

220 ILCS 5/9-210.5

Amends the Public Utilities Act. Provides that in provisions concerning the valuation of water and sewer utilities, 20% of the lesser of (1) the purchase price or (2) the fair market value determined shall constitute the rate base associated with the water or sewer utility as acquired by and incorporated into the rate base of the district designated by the acquiring large public utility. Provides that the amount of the difference between the rate base and the purchase price or fair market value shall be borne by the shareholders of the acquiring large public utility. Provides that only 20% of the transaction and closing costs shall be included in rate base. Provides that any large public utility acquiring a water or sewer utility must inform (rather than if the water or sewer utility being acquired is owned by the State or any political subdivision thereof, then the water or sewer utility must inform) the public of the terms of its acquisition.

LRB103 26414 AMQ 52777 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7 (Section scheduled to be repealed on June 1, 2028)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
16 sale of the water or sewer utility other than fees for
17 services rendered, and (3) shall not have a member of the
18 person's immediate family, including a spouse, parents or
19 spouse's parents, children or spouses of children, or
20 siblings and their spouses or children, be a director,
21 officer, or employee of either the large public utility or
22 water or sewer utility or the water or sewer utility or its
23 direct affiliates or subsidiaries for at least 12 months

1 before becoming engaged under this Section or receive a
2 material financial benefit from the sale of the water or
3 sewer 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 15,000 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,
11 or surface water protection district, or a sewer
12 district of any kind established as a special district
13 under the laws of this State that regularly provides
14 water or 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
25 may 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
12 being acquired or by the large public utility. Each appraiser
13 shall be engaged on reasonable terms approved by the
14 Commission. Each appraiser shall be a disinterested person
15 licensed as a State certified general real estate appraiser
16 under the Real Estate 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
20 which the water or sewer utility would be sold in a
21 voluntary transaction between a willing buyer and willing
22 seller 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,
3 which is to be incorporated into the appraisal under the
4 cost 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
13 or sewer utility and large public utility in a reasonable
14 and timely manner.

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

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

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

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

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

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

1 available to assist customers to pay their bills after the
2 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
26 the large public utility's rates charged to the customers of

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

17 (h) In the acquiring large public utility's next rate
18 case, the water or sewer utility and the district or tariff
19 group ordered by the Commission and their costs of service may
20 be combined under the same rate tariff. This rate tariff shall
21 be based on allocation of costs of service of the acquired
22 water or sewer utility and the large public utility's district
23 or 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 may file a rate
4 tariff for a water or sewer utility acquired under this
5 Section that establishes lesser rates than the district or
6 tariff group into which the water or sewer utility is to be
7 combined. Those lesser rates shall not be deemed to violate
8 Section 7-204 or any other provision of this Act if they affect
9 the cumulative base rates of the large public utility's
10 existing rate payers in the district or tariff by less than
11 2.5%.

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

22 Any post-acquisition improvements made by the large public
23 utility in the water or sewer utility shall not be depreciated
24 for ratemaking purposes from the date on which the expenditure
25 was incurred by the large public utility until the investment
26 has been in service for a 4-year period or, if sooner, until

1 the time the rates are implemented in the large public
2 utility's next rate case.

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

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

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

22 (m) Any contractor or subcontractor that performs work on
23 a water or sewer utility acquired by a large public utility
24 under this Section shall be a responsible bidder as described
25 in Section 30-22 of the Illinois Procurement Code. The
26 contractor or subcontractor shall submit evidence of meeting

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

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

9 (Source: P.A. 102-149, eff. 1-1-22.)