



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB1379

by Rep. Brandon W. Phelps

SYNOPSIS AS INTRODUCED:

220 ILCS 5/9-210

from Ch. 111 2/3, par. 9-210

220 ILCS 5/9-210.5 new

Amends the Public Utilities Act. Amends the Public Utilities Act. Provides an alternative procedure that a large public utility may choose in establishing the ratemaking rate base of a water or sewer utility that the large public utility is acquiring. Provides that the Commission's order that approves the large public utility's acquisition of the water or sewer utility shall include the Commission's decision establishing (1) the ratemaking rate base of the water or sewer utility and (2) the district or tariff group with which the water or sewer utility will be combined for ratemaking purposes. Sets forth provisions concerning definitions, appraisers and their duties, ratemaking rate base, and rate cases. Makes the provisions applicable until June 1, 2018. Makes other changes. Effective immediately.

LRB098 05850 AMC 35889 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 and by adding Section 9-210.5 as follows:

6 (220 ILCS 5/9-210) (from Ch. 111 2/3, par. 9-210)

7 Sec. 9-210. (a) The Commission shall have power to
8 ascertain the value of the property of every public utility in
9 this State and every fact which in its judgment may or does
10 have any bearing on such value. In all proceedings before the
11 Commission, initiated by the Commission upon its own motion, or
12 initiated by an application of such public utility, in which
13 the value of the property of any public utility or utilities is
14 an issue, the burden of establishing such value shall be upon
15 such public utility or utilities. In making such valuation the
16 Commission may avail itself of any information, books,
17 documents, or records in the possession of any officer,
18 department or board of the State or any subdivision thereof.
19 The Commission shall have power to make revaluation from time
20 to time and also to ascertain the value of all new
21 construction, extensions, and additions to the property of
22 every public utility.

23 (b) For purposes of establishing the value of public

1 utility property, when determining rates or charges, or for any
2 other reason, the Commission may base its determination on the
3 original cost of such property.

4 (c) This Section does not apply to valuations of water or
5 sewer utilities under Section 9-210.5. This subsection (c) is
6 inoperative on and after June 1, 2018.

7 (Source: P.A. 84-617.)

8 (220 ILCS 5/9-210.5 new)

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

10 (a) In this Section:

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

1 financial benefit from the sale of the water or sewer
2 utility other than fees for services rendered.

3 "District" means a service area of a large public
4 utility whose customers are subject to the same rate
5 tariff.

6 "Large public utility" means an investor-owned public
7 utility that:

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

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

12 (3) provides safe and adequate service; and

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

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

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

25 "Utility service source" means the water or sewer
26 utility or large public utility from which the customer

1 receives its utility service type.

2 "Utility service type" means water utility service or
3 sewer utility service or water and sewer utility service.

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

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

8 (2) a water district, including, but not limited
9 to, a public water district, water service district, or
10 surface water protection district, or a sewer district
11 of any kind established as a special district under the
12 laws of this State that regularly provides water or
13 sewer service to 7,500 or fewer customer connections;

14 (3) a waterworks system or sewerage system
15 established under the Township Code that regularly
16 provides water or sewer service to 7,500 or fewer
17 customer connections; or

18 (4) a water system or sewer system owned by a
19 municipality that regularly provides water or sewer
20 service to 7,500 or fewer customer connections; and

21 (5) any other entity that regularly provides water
22 or sewer service to 7,500 or fewer customer
23 connections.

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

1 Commission shall use, the procedures set forth under this
2 Section to establish the ratemaking rate base of that water or
3 sewer utility at the time when it is acquired by the large
4 public utility.

5 (c) If a large public utility elects the procedures under
6 this Section to establish the rate base of a water or sewer
7 utility that it is acquiring, then an appraisal shall be
8 performed. The appraisal shall be performed by an appraiser
9 selected by the Commission's water department manager and
10 engaged by either the water or sewer utility being acquired or
11 by the large public utility. The Commission's water department
12 manager shall select an appraiser within 30 days after when he
13 or she is officially notified. The appraiser shall be engaged
14 on reasonable terms approved by the Commission. The appraiser
15 shall be a disinterested person licensed as a State certified
16 appraiser under the Real Estate Appraiser Licensing Act of
17 2002.

18 The appraiser shall:

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

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

26 (3) engage one disinterested engineer who is licensed

1 in this State to prepare an assessment of the tangible
2 assets of the water or sewer utility, which is to be
3 incorporated into the appraisal under the cost approach;

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

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

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

1 notify the manager of the Water Department and the process
2 shall be repeated until an engineer is successfully
3 engaged.

4 (d) The lesser of the purchase price or the appraised value
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 amount of the appraiser's fees to be included in the
15 transaction and closing costs shall not exceed the greater of
16 \$15,000 or 5% of the appraised value of the water or sewer
17 utility being acquired. This rate base treatment shall not be
18 deemed to violate this Act, including, but not limited to, any
19 Sections in Articles VIII and IX of this Act that might be
20 affected by this Section. Without otherwise limiting the
21 application of Section 7-204 or any other Article of this Act,
22 any acquisition of a water or sewer utility that affects the
23 cumulative base rates of the large public utility's existing
24 ratepayers in the tariff group into which the water or sewer
25 utility is to be combined by less than (1) 2.5% at the time of
26 the acquisition for any single acquisition completed under this

1 Section or (2) 5% for all acquisitions completed under this
2 Section before the Commission's final order in the next rate
3 case shall not be deemed to violate any other Article of this
4 Act.

5 In the Commission's order that approves the large public
6 utility's acquisition of the water or sewer utility, the
7 Commission shall issue its decision establishing (1) the
8 ratemaking rate base of the water or sewer utility and (2) the
9 district or tariff group with which the water or sewer utility
10 shall be combined for ratemaking purposes.

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

21 (f) The large public utility shall recommend the district
22 or tariff group of which the water or sewer utility shall, for
23 ratemaking purposes, become a part after the acquisition. The
24 Commission's recommended district or tariff group shall be
25 consistent with the large public utility's recommendation,
26 unless such recommendation can be shown to be contrary to the

1 public interest.

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

1 sewer utility immediately following an acquisition in its order
2 approving the acquisition.

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

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

11 Section 99. Effective date. This Act takes effect upon
12 becoming law.