



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB4508

by Rep. Nick Sauer

SYNOPSIS AS INTRODUCED:

220 ILCS 5/9-210.5

Amends the Public Utilities Act. Modifies the definition of "water or sewer utility" to remove language specifying water or sewer service provided to 7,500 or fewer customer connections as provided by certain entities. Provides that appraisals of the fair market value of the water or sewer utility that is being acquired shall be performed by 3 appraisers approved (rather than selected) by the Illinois Commerce Commission's Executive Director or designee (rather than the water department manager) and engaged by either the water or sewer utility being acquired or by the large public utility. Allows appraisers to engage one disinterested engineer who is licensed in this State who may be the same engineer that is engaged by other appraisers. Provides that in the Commission's order that approves the large public utility's acquisition of the water or sewer utility, the Commission shall issue its decision establishing, among other requirements, the rates to be charged to customers in the water or sewer utility. Provides that a large public utility may (rather than shall) recommend the district or tariff group of which the water or sewer utility shall become a part of after the acquisition, or may recommend a lesser rate for the water or sewer utility. Provides that from the date of acquisition until the date that new rates are effective in an acquiring large public utility's next rate case, the customers of the acquired water or sewer utility shall pay the approved then-existing rates of the district or tariff group as ordered by the Commission, or some lesser rates as recommended by the large public utility and approved by the Commission. Provides that in an acquiring large public utility's 2 rate cases following an acquisition, the public utility may file a rate tariff for an acquired water or sewer utility that establishes lesser rates than the district or tariff group into which the water or sewer utility is combined. Extends the repeal date of the valuation of water and sewer utilities Section from June 1, 2018 to June 1, 2028. Makes conforming changes. Effective immediately.

LRB100 15518 RJF 30563 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, 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 is not a public utility
23 that regularly provides water or sewer service ~~to 7,500~~
24 ~~or fewer customer 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 approved ~~selected~~ by the Commission's Executive
13 Director or designee ~~water department manager~~ and engaged by
14 either the water or sewer utility being acquired or by the
15 large public utility. ~~The Commission's water department~~
16 ~~manager shall select the appraisers within 30 days after the~~
17 ~~water department manager is officially notified.~~ Each
18 appraiser shall be engaged on reasonable terms approved by the
19 Commission. Each appraiser shall be a disinterested person
20 licensed as a State certified general real estate appraiser
21 under the Real Estate Appraiser Licensing Act of 2002.

22 Each appraiser shall:

23 (1) be sworn to determine the fair market value of the
24 water or sewer utility by establishing the amount for which
25 the water or sewer utility would be sold in a voluntary
26 transaction between a willing buyer and willing seller

1 under no obligation to buy or sell;

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

4 (3) engage one disinterested engineer who is licensed
5 in this State, and who may be the same engineer that is
6 engaged by the other appraisers, to prepare an assessment
7 of the tangible assets of the water or sewer utility, which
8 is to be incorporated into the appraisal under the cost
9 approach;

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

18 (5) return their appraisal, in writing, to the water or
19 sewer utility and large public utility in a reasonable and
20 timely manner.

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

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

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

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

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

1 forth the terms of its acquisition by the large public utility
2 and options that shall be available to assist customers to pay
3 their bills after the acquisition.

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (n) This Section is repealed on June 1, 2028 ~~2018~~.

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

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