



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB2392

by Rep. John Connor

#### SYNOPSIS AS INTRODUCED:

220 ILCS 5/9-210.5

Amends the Public Utilities Act. In provisions about 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 07164 JRG 52202 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 (Text of Section before amendment by P.A. 100-1151)

8 Sec. 9-210.5. (Repealed).

9 (Source: P.A. 100-751, eff. 8-10-18. Repealed internally, eff.  
10 6-1-18. P.A. 100-751 contained an extension of the internal  
11 repealer, but did not take effect until 8-10-18.)

12 (Text of Section after amendment by P.A. 100-1151)

13 (Section scheduled to be repealed on June 1, 2028)

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

15 (a) In this Section:

16 "Disinterested" means that the person directly  
17 involved (1) is not a director, officer, or an employee of  
18 the large public utility or the water or sewer utility or  
19 its direct affiliates or subsidiaries for at least 12  
20 months before becoming engaged under this Section; (2)  
21 shall not derive a material financial benefit from the sale  
22 of the water or sewer utility other than fees for services

1 rendered, and (3) shall not have a member of the person's  
2 immediate family, including a spouse, parents or spouse's  
3 parents, children or spouses of children, or siblings and  
4 their spouses or children, be a director, officer, or  
5 employee of either the large public utility or water or  
6 sewer utility or the water or sewer utility or its direct  
7 affiliates or subsidiaries for at least 12 months before  
8 becoming engaged under this Section or receive a material  
9 financial benefit from the sale of the water or sewer  
10 utility other than fees for services rendered.

11 "District" means a service area of a large public  
12 utility whose customers are subject to the same rate  
13 tariff.

14 "Large public utility" means an investor-owned public  
15 utility that:

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

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

20 (3) provides safe and adequate service; and

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

23 "Next rate case" means a large public utility's first  
24 general rate case after the date the large public utility  
25 acquires the water or sewer utility where the acquired  
26 water or sewer utility's cost of service is considered as

1 part of determining the large public utility's resulting  
2 rates.

3 "Prior rate case" means a large public utility's  
4 general rate case resulting in the rates in effect for the  
5 large public utility at the time it acquires the water or  
6 sewer utility.

7 "Utility service source" means the water or sewer  
8 utility or large public utility from which the customer  
9 receives its utility service type.

10 "Utility service type" means water utility service or  
11 sewer utility service or water and sewer utility service.

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

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

16 (2) a water district, including, but not limited  
17 to, a public water district, water service district, or  
18 surface water protection district, or a sewer district  
19 of any kind established as a special district under the  
20 laws of this State that regularly provides water or  
21 sewer service;

22 (3) a waterworks system or sewerage system  
23 established under the Township Code that regularly  
24 provides water or sewer service; or

25 (4) a water system or sewer system owned by a  
26 municipality that regularly provides water or sewer

1 service; and

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

4 (b) Notwithstanding any other provision of this Act, a  
5 large public utility that acquires a water or sewer utility may  
6 request that the Commission use, and, if so requested, the  
7 Commission shall use, the procedures set forth under this  
8 Section to establish the ratemaking rate base of that water or  
9 sewer utility at the time when it is acquired by the large  
10 public utility.

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

24 Each appraiser shall:

25 (1) be sworn to determine the fair market value of the  
26 water or sewer utility by establishing the amount for which

1 the water or sewer utility would be sold in a voluntary  
2 transaction between a willing buyer and willing seller  
3 under no obligation to buy or sell;

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

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

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

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

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

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

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

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

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



1 and options that shall be available to assist customers to pay  
2 their bills after the acquisition.

3 At the election next following the public meeting and  
4 notice required under this subsection, a referendum, subject to  
5 the requirements of 16-7 of the Election Code, shall be placed  
6 on the ballot for all electors within the area where the water  
7 or sewer utility operates in substantially the following form:

8 May the (name of large public utility) acquire the  
9 (name of water or sewer utility) under the terms of  
10 acquisition as published in (name of newspaper) on (date)?

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

12 If a majority of the electors voting on the referendum  
13 within the service area of the water or sewer utility vote in  
14 favor of the referendum, then the acquisition may continue as  
15 provided in this Section. If less than a majority of the  
16 electors voting on the referendum within the service area of  
17 the water or sewer utility vote against the referendum, the  
18 Commission shall deny the large public utility's acquisition of  
19 the water or sewer utility.

20 (f) The large public utility may recommend the district or  
21 tariff group of which the water or sewer utility shall, for  
22 ratemaking purposes, become a part after the acquisition, or  
23 may recommend a lesser rate for the water or sewer utility. If  
24 the large public utility recommends a lesser rate, it shall  
25 submit to the Commission its proposed rate schedule and the  
26 proposed final tariff group for the acquired water or sewer

1 utility. The Commission's approved district or tariff group or  
2 rates shall be consistent with the large public utility's  
3 recommendation, unless such recommendation can be shown to be  
4 contrary to the public interest.

5 (g) From the date of acquisition until the date that new  
6 rates are effective in the acquiring large public utility's  
7 next rate case, the customers of the acquired water or sewer  
8 utility shall pay the approved then-existing rates of the  
9 district or tariff group as ordered by the Commission, or some  
10 lesser rates as recommended by the large public utility and  
11 approved by the Commission under subsection (f); provided,  
12 that, if the application of such rates of the large public  
13 utility to customers of the acquired water or sewer utility  
14 using 54,000 gallons annually results in an increase to the  
15 total annual bill of customers of the acquired water or sewer  
16 utility, exclusive of fire service or related charges, then the  
17 large public utility's rates charged to the customers of the  
18 acquired water or sewer utility shall be uniformly reduced, if  
19 any reduction is required, by the percent that results in the  
20 total annual bill, exclusive of fire services or related  
21 charges, for the customers of the acquired water or sewer  
22 utility using 54,000 gallons being equal to 1.5% of the latest  
23 median household income as reported by the United States Census  
24 Bureau for the most applicable community or county. For each  
25 customer of the water or sewer utility with potable water usage  
26 values that cannot be reasonably obtained, a value of 4,500

1 gallons per month shall be assigned. These rates shall not be  
2 deemed to violate this Act including, but not limited to,  
3 Section 9-101 and any other applicable Sections in Articles  
4 VIII and IX of this Act. The Commission shall issue its  
5 decision establishing the rates effective for the water or  
6 sewer utility immediately following an acquisition in its order  
7 approving the acquisition.

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

1 in the district or tariff by less than 2.5%.

2 (i) Any post-acquisition improvements made by the large  
3 public utility in the water or sewer utility shall accrue a  
4 cost for financing set at the large public utility's determined  
5 rate for allowance for funds used during construction,  
6 inclusive of the debt, equity, and income tax gross up  
7 components, after the date on which the expenditure was  
8 incurred by the large public utility until the investment has  
9 been in service for a 4-year period or, if sooner, until the  
10 time the rates are implemented in the large public utility's  
11 next rate case.

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

19 (j) This Section shall be exclusively applied to large  
20 public utilities in the voluntary and mutually agreeable  
21 acquisition of water or sewer utilities. Any petitions filed  
22 with the Commission related to the acquisitions described in  
23 this Section, including petitions seeking approvals or  
24 certificates required by this Act, shall be deemed approved  
25 unless the Commission issues its final order within 11 months  
26 after the date the large public utility filed its initial

1 petition. This Section shall only apply to utilities providing  
2 water or sewer service and shall not be construed in any manner  
3 to apply to electric corporations, natural gas corporations, or  
4 any other utility subject to this Act.

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

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

12 (m) Any contractor or subcontractor that performs work on a  
13 water or sewer utility acquired by a large public utility under  
14 this Section shall be a responsible bidder as described in  
15 Section 30-22 of the Illinois Procurement Code. The contractor  
16 or subcontractor shall submit evidence of meeting the  
17 requirements to be a responsible bidder as described in Section  
18 30-22 to the water or sewer utility. Any new water or sewer  
19 facility built as a result of the acquisition shall require the  
20 contractor to enter into a project labor agreement. The large  
21 public utility acquiring the water or sewer utility shall offer  
22 employee positions to qualified employees of the acquired water  
23 or sewer utility.

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

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

1           Section 95. No acceleration or delay. Where this Act makes  
2 changes in a statute that is represented in this Act by text  
3 that is not yet or no longer in effect (for example, a Section  
4 represented by multiple versions), the use of that text does  
5 not accelerate or delay the taking effect of (i) the changes  
6 made by this Act or (ii) provisions derived from any other  
7 Public Act.

8           Section 99. Effective date. This Act takes effect upon  
9 becoming law.