

SB0164



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB0164

Introduced 2/9/2021, by Sen. John Connor

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.

LRB102 11455 SPS 16789 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7 (Section scheduled to be repealed on June 1, 2028)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
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 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,
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) The lesser of (i) the purchase price or (ii) the fair
5 market value determined under subsection (c) of this Section
6 shall constitute the rate base associated with the water or
7 sewer utility as acquired by and incorporated into the rate
8 base of the district designated by the acquiring large public
9 utility under this Section, subject to any adjustments that
10 the Commission deems necessary to ensure such rate base
11 reflects prudent and useful investments in the provision of
12 public utility service. The reasonable transaction and closing
13 costs incurred by the large public utility shall be treated
14 consistent with the applicable accounting standards under this
15 Act. The total amount of all of the appraisers' fees to be
16 included in the transaction and closing costs shall not exceed
17 the greater of \$15,000 or 5% of the appraised value of the
18 water or sewer utility being acquired. This rate base
19 treatment shall not be deemed to violate this Act, including,
20 but not limited to, any Sections in Articles VIII and IX of
21 this Act that might be affected by this Section. Any
22 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

1 this Section or (2) 5% for all acquisitions completed under
2 this Section before the Commission's final order in the next
3 rate case shall not be deemed to violate Section 7-204 or any
4 other provision of this 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; (2) the
9 district or tariff group with which the water or sewer utility
10 shall be combined for ratemaking purposes, if such combination
11 has been proposed by the large public utility; and (3) the
12 rates to be charged to customers in the water or sewer utility.

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

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

1 where the water or sewer utility operates in substantially the
2 following form:

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

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

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

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

26 (g) From the date of acquisition until the date that new

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

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

3 (h) In the acquiring large public utility's next rate
4 case, the water or sewer utility and the district or tariff
5 group ordered by the Commission and their costs of service may
6 be combined under the same rate tariff. This rate tariff shall
7 be based on allocation of costs of service of the acquired
8 water or sewer utility and the large public utility's district
9 or 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. In the acquiring large public
14 utility's 2 rate cases after an acquisition, but in no
15 subsequent rate case, the large public utility may file a rate
16 tariff for a water or sewer utility acquired under this
17 Section that establishes lesser rates than the district or
18 tariff group into which the water or sewer utility is to be
19 combined. Those lesser rates shall not be deemed to violate
20 Section 7-204 or any other provision of this Act if they affect
21 the cumulative base rates of the large public utility's
22 existing rate payers in the district or tariff by less than
23 2.5%.

24 (i) Any post-acquisition improvements made by the large
25 public utility in the water or sewer utility shall accrue a
26 cost for financing set at the large public utility's

1 determined rate for allowance for funds used during
2 construction, inclusive of the debt, equity, and income tax
3 gross up components, after the date on which the expenditure
4 was incurred by the large public utility until the investment
5 has been in service for a 4-year period or, if sooner, until
6 the time the rates are implemented in the large public
7 utility's next rate case.

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

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

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

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

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

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

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

22 Section 99. Effective date. This Act takes effect upon
23 becoming law.