



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3573

Introduced 2/10/2012, by Sen. William R. Haine

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. 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. Defines "large public utility" and "water or sewer utility". 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 other changes. Effective immediately.

LRB097 18541 CEL 63773 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. The Commission shall have power to ascertain
8 the value of the property of every public utility in this State
9 and every fact which in its judgment may or does have any
10 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 For purposes of establishing the value of public utility

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

4 This Section does not apply to valuations of water or sewer
5 utilities under Section 9-210.5.

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

7 (220 ILCS 5/9-210.5 new)

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

9 (a) In this Section:

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

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

14 (2) a water district, including, but not limited
15 to, a public water district, water service district, or
16 surface water protection district, or a sewer district
17 of any kind established as a special district under the
18 laws of this State that regularly provides water or
19 sewer service to 30,000 or fewer customer connections;

20 (3) a waterworks system or sewerage system
21 established under the Township Code that regularly
22 provides water or sewer service to 30,000 or fewer
23 customer connections; or

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

1 service to 30,000 or fewer customer connections; and

2 (5) any other entity that regularly provides water
3 or sewer service to 30,000 or fewer customer
4 connections.

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

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

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

11 (3) provides safe and adequate service; and

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

14 "District" means a service area of a large public
15 utility whose customers are subject to the same rate
16 tariff.

17 "Utility service source" means the water or sewer
18 utility or large public utility from which the customer
19 receives its utility service type.

20 "Utility service type" means water utility service or
21 sewer utility service or water and sewer utility service.

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 "Next rate case" means a large public utility's first

1 general rate case after the date the large public utility
2 acquires the water or sewer utility where the acquired
3 water or sewer utility's cost of service is considered as
4 part of determining the large public utility's resulting
5 rates.

6 "Disinterested" means that the person directly
7 involved (1) is not a director, officer, or an employee of
8 the large public utility or the water or sewer utility; (2)
9 shall not derive a material financial benefit from the sale
10 of the water or sewer utility other than fees for services
11 rendered, and (3) no member of the person's immediate
12 family, including a spouse, parents or spouse's parents,
13 children or spouses of children, or siblings and their
14 spouses or children, is a director, officer, or employee of
15 either the large public utility or water or sewer utility,
16 or may receive a material financial benefit from the sale
17 of the water or sewer utility other than fees for services
18 rendered.

19 (b) Notwithstanding any other provision of this Act, a
20 large public utility that acquires a water or sewer utility may
21 request that the Commission use the procedures set forth under
22 this Section to establish the ratemaking rate base of that
23 water or sewer utility at the time when it is acquired by the
24 large public utility.

25 (c) If a large public utility elects the procedures under
26 this Section to establish the rate base of a water or sewer

1 utility that it is acquiring, then an appraisal shall be
2 performed. If the water or sewer utility being acquired and the
3 large public utility agree on one appraiser, then the appraisal
4 shall be performed by that jointly selected appraiser. If the
5 water or sewer utility being acquired and the large public
6 utility cannot agree on one appraiser, then the appraisal shall
7 be performed by 3 appraisers with the water or sewer utility
8 being acquired and the large public utility each appointing one
9 appraiser individually and those resulting 2 appraisers shall
10 together appoint an agreed-upon third appraiser. If the third
11 appraiser is not appointed within 30 days after the first 2
12 appraisers are appointed, then the manager of the Commission's
13 Water Department shall recommend the third appraiser to be
14 appointed. The manager of the Water Department shall provide
15 his or her recommendation for an appraiser within 30 days after
16 when he or she is officially notified of the failure of the 2
17 appraisers to agree upon a third appraiser, and the 2
18 appraisers shall promptly work to engage the recommended third
19 appraiser. If the appraiser or appraisers are unable to
20 negotiate reasonable engagement terms with the recommended
21 third appraiser within 15 days after the recommendation by the
22 manager of the Water Department, then the appraisers shall
23 notify the manager of the Water Department and the process
24 shall be repeated until a third appraiser is successfully
25 engaged. Each appraiser shall be a disinterested person
26 licensed as a State certified general real estate appraiser

1 under the Real Estate Appraiser Licensing Act of 2002.

2 The appraisers shall:

3 (1) be sworn to determine the fair market value of the
4 water or sewer utility by establishing the amount for which
5 the water or sewer utility would be sold in a voluntary
6 transaction between a willing buyer and willing seller
7 under no obligation to buy or sell;

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

10 (3) engage one disinterested engineer who is licensed
11 in this State to prepare an assessment of the tangible
12 assets of the water or sewer utility, which is to be
13 incorporated into the appraisal under the cost approach;

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

21 (5) return their appraisal, in writing, to the water or
22 sewer utility and large public utility in a reasonable and
23 timely manner; and

24 (6) if the appraisers cannot agree on the engineer, as
25 described in paragraph (3) of this subsection (c), within
26 30 days after the appraisers are appointed, then the

1 Commission's manager of the Water Department shall
2 recommend the engineer which the appraiser or appraisers
3 should engage; the manager of the Water Department shall
4 provide his or her recommendation within 30 days from when
5 he or she is officially notified of the appraiser or
6 appraisers failure to engage an engineer and the appraiser
7 or appraisers shall promptly work to engage the recommended
8 engineer; if the appraiser or appraisers are unable to
9 negotiate reasonable engagement terms with the recommended
10 engineer within 15 days after the recommendation by the
11 manager of the Water Department, then the appraisers shall
12 notify the manager of the Water Department and the process
13 shall be repeated until an engineer is successfully
14 engaged.

15 When 3 appraisers are required and in the event all 3
16 appointed appraisers cannot agree as to the appraised value of
17 the water or sewer utility, then an appraisal signed by 2 of
18 the appointed appraisers shall constitute a good and valid
19 appraisal. In this event, the third appraisal shall be
20 submitted to the Commission with the filing for approval of the
21 transaction. The Commission shall consider the third appraisal
22 in its determination of the rate base of the water or sewer
23 utility.

24 (d) The lesser of the purchase price and the appraised
25 value, together with reasonable transaction and closing costs
26 incurred by the large public utility, shall constitute the rate

1 base associated with the water or sewer utility as acquired by
2 and incorporated into the rate base of the district designated
3 by the acquiring large public utility under this Section,
4 subject to any adjustments that the Commission deems necessary
5 to ensure such rate base reflects prudent and useful
6 investments in the provision of public utility service. This
7 rate base treatment shall not be deemed to violate this Act,
8 including, but not limited to, any Sections in Articles VIII
9 and IX of this Act that might be affected by this Section.
10 Without otherwise limiting the application of Section 7-204 or
11 any other Article of this Act, any acquisition of a water or
12 sewer utility that affects the cumulative base rates of the
13 large public utility's existing ratepayers in the tariff group
14 into which the water or sewer utility is to be combined by less
15 than 5% at the time of the acquisition shall not be deemed to
16 violate any other Article of this Act.

17 In the Commission's order that approves the large public
18 utility's acquisition of the water or sewer utility, the
19 Commission shall issue its decision establishing (1) the
20 ratemaking rate base of the water or sewer utility and (2) the
21 district or tariff group with which the water or sewer utility
22 shall be combined for ratemaking purposes.

23 (e) If the water or sewer utility being acquired is owned
24 by the State or any political subdivision thereof, then the
25 water or sewer utility must hold a public meeting prior to the
26 acquisition to inform the public of the terms of its

1 acquisition by the large public utility.

2 (f) The large public utility shall recommend the district
3 or tariff group of which the water or sewer utility shall, for
4 ratemaking purposes, become a part after the acquisition. The
5 Commission's recommended district or tariff group shall be
6 consistent with the large public utility's recommendation,
7 unless such recommendation can be shown to be contrary to the
8 public interest.

9 (g) From the date of acquisition until the date that new
10 rates are effective in the acquiring large public utility's
11 next rate case, the customers of the acquired water or sewer
12 utility shall pay the then-existing rates of the district or
13 tariff group ordered by the Commission. For each customer of
14 the water or sewer utility with potable water usage values that
15 cannot be reasonably obtained, a value of 5,000 gallons per
16 month shall be assigned. These rates shall not be deemed to
17 violate this Act including, but not limited to, Section 9-101
18 and any other applicable Sections in Articles VIII and IX of
19 this Act. The Commission shall issue its decision establishing
20 the rates effective for the water or sewer utility immediately
21 following an acquisition in its order approving the
22 acquisition.

23 (h) In the acquiring large public utility's next rate case,
24 the water or sewer utility and the district or tariff group
25 ordered by the Commission and their costs of service shall be
26 combined under the same rate tariff. This rate tariff shall be

1 based on allocation of costs of service of the acquired water
2 or sewer utility and the large public utility's district or
3 tariff group ordered by the Commission and utilizing a rate
4 design that does not distinguish among customers on the basis
5 of utility service source or type. This rate tariff shall not
6 be deemed to violate this Act including, but not limited to,
7 Section 9-101 of this Act.

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

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

25 (j) This Section shall be exclusively applied to large
26 public utilities in the voluntary and mutually agreeable

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

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

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

26 Section 99. Effective date. This Act takes effect upon

1 becoming law.