

AN ACT concerning regulation.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Public Utilities Act is amended by adding Section 9-210.6 as follows:

(220 ILCS 5/9-210.6 new)

Sec. 9-210.6. Continuation of Section 9-210.5 of this Act; validation.

(a) The General Assembly finds and declares that:

(1) Public Act 100-751, which took effect on August 10, 2018, contained provisions that would have changed the repeal date for Section 9-210.5 of this Act from June 1, 2018 to June 1, 2028.

(2) The Statute on Statutes sets forth general rules on the repeal of statutes and the construction of multiple amendments, but Section 1 of that Act also states that these rules will not be observed when the result would be "inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute".

(3) This amendatory Act of the 100th General Assembly manifests the intention of the General Assembly to extend the repeal date for Section 9-210.5 of this Act and have Section 9-210.5 of this Act, as amended by Public Act

100-751, continue in effect until June 1, 2028.

(b) Any construction of this Act that results in the repeal of Section 9-210.5 of this Act on June 1, 2018 would be inconsistent with the manifest intent of the General Assembly and repugnant to the context of this Act.

(c) It is hereby declared to have been the intent of the General Assembly that Section 9-210.5 of this Act shall not be subject to repeal on June 1, 2018.

(d) Section 9-210.5 of this Act shall be deemed to have been in continuous effect since August 9, 2013 (the effective date of Public Act 98-213), and it shall continue to be in effect, as amended by Public Act 100-751, until it is otherwise lawfully amended or repealed. All previously enacted amendments to the Section taking effect on or after August 9, 2013, are hereby validated.

(e) In order to ensure the continuing effectiveness of Section 9-210.5 of this Act, that Section is set forth in full and reenacted by this amendatory Act of the 100th General Assembly. In this amendatory Act of the 100th General Assembly, the base text of the reenacted Section is set forth as amended by Public Act 100-751.

(f) All actions of the Commission or any other person or entity taken in reliance on or pursuant to Section 9-210.5 are hereby validated.

(g) Section 9-210.5 of this Act applies to all proceedings pending on or filed on or before the effective date of this

amendatory Act of the 100th General Assembly.

Section 10. The Public Utilities Act is amended by reenacting Section 9-210.5 as follows:

(220 ILCS 5/9-210.5)

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

(a) In this Section:

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

"District" means a service area of a large public

utility whose customers are subject to the same rate tariff.

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

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

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

(3) provides safe and adequate service; and

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

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

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

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

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

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

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

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

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

(4) a water system or sewer system owned by a municipality that regularly provides water or sewer service; and

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

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

(c) If a large public utility elects the procedures under

this Section to establish the rate base of a water or sewer utility that it is acquiring, then 3 appraisals shall be performed. The average of these 3 appraisals shall represent the fair market value of the water or sewer utility that is being acquired. The appraisals shall be performed by 3 appraisers approved by the Commission's Executive Director or designee and engaged by either the water or sewer utility being acquired or by the large public utility. Each appraiser shall be engaged on reasonable terms approved by the Commission. Each appraiser shall be a disinterested person licensed as a State certified general real estate appraiser under the Real Estate Appraiser Licensing Act of 2002.

Each appraiser shall:

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

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

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

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

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

If the appraiser cannot engage an engineer, as described in paragraph (3) of this subsection (c), within 30 days after the appraiser is engaged, then the Commission's Executive Director or designee shall recommend the engineer the appraiser should engage. The Commission's Executive Director or designee shall provide his or her recommendation within 30 days after he or she is officially notified of the appraiser's failure to engage an engineer and the appraiser shall promptly work to engage the recommended engineer. If the appraiser is unable to negotiate reasonable engagement terms with the recommended engineer within 15 days after the recommendation by the Commission's Executive Director or designee, then the appraiser shall notify the Commission's Executive Director or designee and the process shall be repeated until an engineer is successfully engaged.

(d) The lesser of (i) the purchase price or (ii) the fair market value determined under subsection (c) of this Section

shall constitute the rate base associated with the water or sewer utility as acquired by and incorporated into the rate base of the district designated by the acquiring large public utility under this Section, subject to any adjustments that the Commission deems necessary to ensure such rate base reflects prudent and useful investments in the provision of public utility service. The reasonable transaction and closing costs incurred by the large public utility shall be treated consistent with the applicable accounting standards under this Act. The total amount of all of the appraisers' fees to be included in the transaction and closing costs shall not exceed the greater of \$15,000 or 5% of the appraised value of the water or sewer utility being acquired. This rate base treatment shall not be deemed to violate this Act, including, but not limited to, any Sections in Articles VIII and IX of this Act that might be affected by this Section. Any acquisition of a water or sewer utility that affects the cumulative base rates of the large public utility's existing ratepayers in the tariff group into which the water or sewer utility is to be combined by less than (1) 2.5% at the time of the acquisition for any single acquisition completed under this Section or (2) 5% for all acquisitions completed under this Section before the Commission's final order in the next rate case shall not be deemed to violate Section 7-204 or any other provision of this Act.

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 (1) the ratemaking rate base of the water or sewer utility; (2) the district or tariff group with which the water or sewer utility shall be combined for ratemaking purposes, if such combination has been proposed by the large public utility; and (3) the rates to be charged to customers in the water or sewer utility.

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

(f) The large public utility may recommend the district or tariff group of which the water or sewer utility shall, for ratemaking purposes, become a part after the acquisition, or may recommend a lesser rate for the water or sewer utility. If the large public utility recommends a lesser rate, it shall submit to the Commission its proposed rate schedule and the proposed final tariff group for the acquired water or sewer utility. The Commission's approved district or tariff group or rates shall be consistent with the large public utility's

recommendation, unless such recommendation can be shown to be contrary to the public interest.

(g) From the date of acquisition until the date that new rates are effective in the 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 under subsection (f); provided, that, if the application of such rates of the large public utility to customers of the acquired water or sewer utility using 54,000 gallons annually results in an increase to the total annual bill of customers of the acquired water or sewer utility, exclusive of fire service or related charges, then the large public utility's rates charged to the customers of the acquired water or sewer utility shall be uniformly reduced, if any reduction is required, by the percent that results in the total annual bill, exclusive of fire services or related charges, for the customers of the acquired water or sewer utility using 54,000 gallons being equal to 1.5% of the latest median household income as reported by the United States Census Bureau for the most applicable community or county. For each customer of the water or sewer utility with potable water usage values that cannot be reasonably obtained, a value of 4,500 gallons per month shall be assigned. These rates shall not be deemed to violate this Act including, but not limited to,

Section 9-101 and any other applicable Sections in Articles VIII and IX of this Act. The Commission shall issue its decision establishing the rates effective for the water or sewer utility immediately following an acquisition in its order approving the acquisition.

(h) In the acquiring large public utility's next rate case, the water or sewer utility and the district or tariff group ordered by the Commission and their costs of service may be combined under the same rate tariff. This rate tariff shall be based on allocation of costs of service of the acquired water or sewer utility and the large public utility's district or tariff group ordered by the Commission and utilizing a rate design that does not distinguish among customers on the basis of utility service source or type. This rate tariff shall not be deemed to violate this Act including, but not limited to, Section 9-101 of this Act. In the acquiring large public utility's 2 rate cases after an acquisition, but in no subsequent rate case, the large public utility may file a rate tariff for a water or sewer utility acquired under this Section that establishes lesser rates than the district or tariff group into which the water or sewer utility is to be combined. Those lesser rates shall not be deemed to violate Section 7-204 or any other provision of this Act if they affect the cumulative base rates of the large public utility's existing rate payers in the district or tariff by less than 2.5%.

(i) Any post-acquisition improvements made by the large

public utility in the water or sewer utility shall accrue a cost for financing set at the large public utility's determined rate for allowance for funds used during construction, inclusive of the debt, equity, and income tax gross up components, after the date on which the expenditure was incurred by the large public utility until the investment has been in service for a 4-year period or, if sooner, until the time the rates are implemented in the large public utility's next rate case.

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

(j) This Section shall be exclusively applied to large public utilities in the voluntary and mutually agreeable acquisition of water or sewer utilities. Any petitions filed with the Commission related to the acquisitions described in this Section, including petitions seeking approvals or certificates required by this Act, shall be deemed approved unless the Commission issues its final order within 11 months after the date the large public utility filed its initial petition. This Section shall only apply to utilities providing water or sewer service and shall not be construed in any manner

to apply to electric corporations, natural gas corporations, or any other utility subject to this Act.

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

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

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

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

(Source: P.A. 100-751, eff. 8-10-18.)