

# HB3885



## 102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3885

Introduced 2/22/2021, by Rep. Ann M. Williams

### SYNOPSIS AS INTRODUCED:

220 ILCS 5/9-210.5

Amends the Public Utilities Act. In provisions concerning valuation of water and sewer utilities, provides that to be included within the definition of "large public utility" an investor-owned public utility must regularly provide water or sewer service to more than 15,000 customer connections (rather than 30,000 customer connections).

LRB102 13423 SPS 18767 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7 (Section scheduled to be repealed on June 1, 2028)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 15,000 ~~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 (f) The large public utility may recommend the district or  
24 tariff group of which the water or sewer utility shall, for  
25 ratemaking purposes, become a part after the acquisition, or  
26 may recommend a lesser rate for the water or sewer utility. If



1 the large public utility recommends a lesser rate, it shall  
2 submit to the Commission its proposed rate schedule and the  
3 proposed final tariff group for the acquired water or sewer  
4 utility. The Commission's approved district or tariff group or  
5 rates shall be consistent with the large public utility's  
6 recommendation, unless such recommendation can be shown to be  
7 contrary to the public interest.

8 (g) From the date of acquisition until the date that new  
9 rates are effective in the acquiring large public utility's  
10 next rate case, the customers of the acquired water or sewer  
11 utility shall pay the approved then-existing rates of the  
12 district or tariff group as ordered by the Commission, or some  
13 lesser rates as recommended by the large public utility and  
14 approved by the Commission under subsection (f); provided,  
15 that, if the application of such rates of the large public  
16 utility to customers of the acquired water or sewer utility  
17 using 54,000 gallons annually results in an increase to the  
18 total annual bill of customers of the acquired water or sewer  
19 utility, exclusive of fire service or related charges, then  
20 the large public utility's rates charged to the customers of  
21 the acquired water or sewer utility shall be uniformly  
22 reduced, if any reduction is required, by the percent that  
23 results in the total annual bill, exclusive of fire services  
24 or related charges, for the customers of the acquired water or  
25 sewer utility using 54,000 gallons being equal to 1.5% of the  
26 latest median household income as reported by the United

1 States Census Bureau for the most applicable community or  
2 county. For each customer of the water or sewer utility with  
3 potable water usage values that cannot be reasonably obtained,  
4 a value of 4,500 gallons per month shall be assigned. These  
5 rates shall not be deemed to violate this Act including, but  
6 not limited to, Section 9-101 and any other applicable  
7 Sections in Articles VIII and IX of this Act. The Commission  
8 shall issue its decision establishing the rates effective for  
9 the water or sewer utility immediately following an  
10 acquisition in its order approving the acquisition.

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

1 combined. Those lesser rates shall not be deemed to violate  
2 Section 7-204 or any other provision of this Act if they affect  
3 the cumulative base rates of the large public utility's  
4 existing rate payers in the district or tariff by less than  
5 2.5%.

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

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

23 (j) This Section shall be exclusively applied to large  
24 public utilities in the voluntary and mutually agreeable  
25 acquisition of water or sewer utilities. Any petitions filed  
26 with the Commission related to the acquisitions described in

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

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

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

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

1 employees of the acquired water or sewer utility.

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

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