



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB5296

Introduced 1/31/2022, by Rep. Steven Reick

SYNOPSIS AS INTRODUCED:

220 ILCS 5/8-306
220 ILCS 5/9-210.5

Amends the Public Utilities Act. Provides that if an investor-owned water or sewer utility acquires another water or sewer utility, any subsequent rate increase to finance the acquisition shall only be paid by the customers in the new district or tariff group and not the existing customers of the investor-owned water or sewer utility or its existing tariff group. Provides that any capital investments or improvements made by an investor-owned water or sewer utility shall not be financed by the existing customers of the utility and shall only be paid for by customers that live in the district that received the capital investments or improvements. Repeals a provision on the valuation of water and sewer utilities on January 1, 2023 (instead of June 1, 2028).

LRB102 26058 AMQ 35512 b

1 AN ACT concerning utilities.

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 Sections 8-306 and 9-210.5 as follows:

6 (220 ILCS 5/8-306)

7 Sec. 8-306. Special provisions relating to water and sewer
8 utilities.

9 (a) No later than 120 days after the effective date of this
10 amendatory Act of the 94th General Assembly, the Commission
11 shall prepare, make available to customers upon request, and
12 post on its Internet web site information concerning the
13 service obligations of water and sewer utilities and remedies
14 that a customer may pursue for a violation of the customer's
15 rights. The information shall specifically address the rights
16 of a customer of a water or sewer utility in the following
17 situations:

18 (1) The customer's water meter is replaced.

19 (2) The customer's bill increases by more than 50%
20 within one billing period.

21 (3) The customer's water service is terminated.

22 (4) The customer wishes to complain after receiving a
23 termination of service notice.

1 (5) The customer is unable to make payment on a
2 billing statement.

3 (6) A rate is filed, including without limitation a
4 surcharge or annual reconciliation filing, that will
5 increase the amount billed to the customer.

6 (7) The customer is billed for services provided prior
7 to the date covered by the billing statement.

8 (8) The customer is due to receive a credit.

9 Each billing statement issued by a water or sewer utility
10 shall include an Internet web site address where the customer
11 can view the information required under this subsection (a)
12 and a telephone number that the customer may call to request a
13 copy of the information.

14 (b) A water or sewer utility may discontinue service only
15 after it has mailed or delivered by other means a written
16 notice of discontinuance substantially in the form of Appendix
17 A of 83 Ill. Adm. Code 280. The notice must include the
18 Internet web site address where the customer can view the
19 information required under subsection (a) and a telephone
20 number that the customer may call to request a copy of the
21 information. Any notice required to be delivered or mailed to
22 a customer prior to discontinuance of service shall be
23 delivered or mailed separately from any bill. Service shall
24 not be discontinued until at least 5 days after delivery or 8
25 days after the mailing of this notice. Service shall not be
26 discontinued and shall be restored if discontinued for the

1 reason which is the subject of a dispute or complaint during
2 the pendency of informal or formal complaint procedures of the
3 Illinois Commerce Commission under 83 Ill. Adm. Code 280.160
4 or 280.170, where the customer has complied with those rules.
5 Service shall not be discontinued and shall be restored if
6 discontinued where a customer has established a deferred
7 payment agreement pursuant to 83 Ill. Adm. Code 280.110 and
8 has not defaulted on such agreement. Residential customers who
9 are indebted to a utility for past due utility service shall
10 have the opportunity to make arrangements with the utility to
11 retire the debt by periodic payments, referred to as a
12 deferred payment agreement, unless this customer has failed to
13 make payment under such a plan during the past 12 months. The
14 terms and conditions of a reasonable deferred payment
15 agreement shall be determined by the utility after
16 consideration of the following factors, based upon information
17 available from current utility records or provided by the
18 customer or applicant:

- 19 (1) size of the past due account;
- 20 (2) customer or applicant's ability to pay;
- 21 (3) customer or applicant's payment history;
- 22 (4) reason for the outstanding indebtedness; and
- 23 (5) any other relevant factors relating to the
24 circumstances of the customer or applicant's service.

25 A residential customer shall pay a maximum of one-fourth of
26 the amount past due and owing at the time of entering into the

1 deferred payment agreement, and the water or sewer utility
2 shall allow a minimum of 2 months from the date of the
3 agreement and a maximum of 12 months for payment to be made
4 under a deferred payment agreement. Late payment charges may
5 be assessed against the amount owing that is the subject of a
6 deferred payment agreement.

7 (c) A water or sewer utility shall provide notice as
8 required by subsection (a) of Section 9-201 after the filing
9 of each information sheet under a purchased water surcharge,
10 purchased sewage treatment surcharge, or qualifying
11 infrastructure plant surcharge. The utility also shall post
12 notice of the filing in accordance with the requirements of 83
13 Ill. Adm. Code 255. Unless filed as part of a general rate
14 increase, notice of the filing of a purchased water surcharge
15 rider, purchased sewage treatment surcharge rider, or
16 qualifying infrastructure plant surcharge rider also shall be
17 given in the manner required by this subsection (c) for the
18 filing of information sheets.

19 (d) Commission rules pertaining to formal and informal
20 complaints against public utilities shall apply with full and
21 equal force to water and sewer utilities and their customers,
22 including provisions of 83 Ill. Adm. Code 280.170, and the
23 Commission shall respond to each complaint by providing the
24 consumer with a copy of the utility's response to the
25 complaint and a copy of the Commission's review of the
26 complaint and its findings. The Commission shall also provide

1 the consumer with all available options for recourse.

2 (e) Any refund shown on the billing statement of a
3 customer of a water or sewer utility must be itemized and must
4 state if the refund is an adjustment or credit.

5 (f) Water service for building construction purposes. At
6 the request of any municipality or township within the service
7 area of a public utility that provides water service to
8 customers within the municipality or township, a public
9 utility must (1) require all water service used for building
10 construction purposes to be measured by meter and subject to
11 approved rates and charges for metered water service and (2)
12 prohibit the unauthorized use of water taken from hydrants or
13 service lines installed at construction sites.

14 (g) Water meters.

15 (1) Periodic testing. Unless otherwise approved by the
16 Commission, each service water meter shall be periodically
17 inspected and tested in accordance with the schedule
18 specified in 83 Ill. Adm. Code 600.340, or more frequently
19 as the results may warrant, to insure that the meter
20 accuracy is maintained within the limits set out in 83
21 Ill. Adm. Code 600.310.

22 (2) Meter tests requested by customer.

23 (A) Each utility furnishing metered water service
24 shall, without charge, test the accuracy of any meter
25 upon request by the customer served by such meter,
26 provided that the meter in question has not been

1 tested by the utility or by the Commission within 2
2 years previous to such request. The customer or his or
3 her representatives shall have the privilege of
4 witnessing the test at the option of the customer. A
5 written report, giving the results of the test, shall
6 be made to the customer.

7 (B) When a meter that has been in service less than
8 2 years since its last test is found to be accurate
9 within the limits specified in 83 Ill. Adm. Code
10 600.310, the customer shall pay a fee to the utility
11 not to exceed the amounts specified in 83 Ill. Adm.
12 Code 600.350(b). Fees for testing meters not included
13 in this Section or so located that the cost will be out
14 of proportion to the fee specified will be determined
15 by the Commission upon receipt of a complete
16 description of the case.

17 (3) Commission referee tests. Upon written application
18 to the Commission by any customer, a test will be made of
19 the customer's meter by a representative of the
20 Commission. For such a test, a fee as provided for in
21 subsection (g)(2) shall accompany the application. If the
22 meter is found to be registering more than 1.5% fast on the
23 average when tested as prescribed in 83 Ill. Adm. Code
24 600.310, the utility shall refund to the customer the
25 amount of the fee. The utility shall in no way disturb the
26 meter after a customer has made an application for a

1 referee test until authority to do so is given by the
2 Commission or the customer in writing.

3 (h) Water and sewer utilities; low usage. Each public
4 utility that provides water and sewer service must establish a
5 unit sewer rate, subject to review by the Commission, that
6 applies only to those customers who use less than 1,000
7 gallons of water in any billing period.

8 (i) Water and sewer utilities; separate meters. Each
9 public utility that provides water and sewer service must
10 offer separate rates for water and sewer service to any
11 commercial or residential customer who uses separate meters to
12 measure each of those services. In order for the separate rate
13 to apply, a combination of meters must be used to measure the
14 amount of water that reaches the sewer system and the amount of
15 water that does not reach the sewer system.

16 (j) Each water or sewer public utility must disclose on
17 each billing statement any amount billed that is for service
18 provided prior to the date covered by the billing statement.
19 The disclosure must include the dates for which the prior
20 service is being billed. Each billing statement that includes
21 an amount billed for service provided prior to the date
22 covered by the billing statement must disclose the dates for
23 which that amount is billed and must include a copy of the
24 document created under subsection (a) and a statement of
25 current Commission rules concerning unbilled or misbilled
26 service.

1 (k) When the customer is due a refund resulting from
2 payment of an overcharge, the utility shall credit the
3 customer in the amount of overpayment with interest from the
4 date of overpayment by the customer. The rate for interest
5 shall be at the appropriate rate determined by the Commission
6 under 83 Ill. Adm. Code 280.70.

7 (l) Water and sewer public utilities; subcontractors. The
8 Commission shall adopt rules for water and sewer public
9 utilities to provide notice to the customers of the proper
10 kind of identification that a subcontractor must present to
11 the customer, to prohibit a subcontractor from soliciting or
12 receiving payment of any kind for any service provided by the
13 water or sewer public utility or the subcontractor, and to
14 establish sanctions for violations.

15 (m) Water and sewer public utilities; unaccounted-for
16 water. By December 31, 2006, each water public utility shall
17 file tariffs with the Commission to establish the maximum
18 percentage of unaccounted-for water that would be considered
19 in the determination of any rates or surcharges. The rates or
20 surcharges approved for a water public utility shall not
21 include charges for unaccounted-for water in excess of this
22 maximum percentage without well-documented support and
23 justification for the Commission to consider in any request to
24 recover charges in excess of the tariffed maximum percentage.

25 (n) Rate increases; public forums. When any public utility
26 providing water or sewer service proposes a general rate

1 increase, in addition to other notice requirements, the water
2 or sewer public utility must notify its customers of their
3 right to request a public forum. A customer or group of
4 customers must make written request to the Commission for a
5 public forum and must also provide written notification of the
6 request to the customer's municipal or, for unincorporated
7 areas, township government. The Commission, at its discretion,
8 may schedule the public forum. If it is determined that public
9 forums are required for multiple municipalities or townships,
10 the Commission shall schedule these public forums, in
11 locations within approximately 45 minutes drive time of the
12 municipalities or townships for which the public forums have
13 been scheduled. The public utility must provide advance notice
14 of 30 days for each public forum to the governing bodies of
15 those units of local government affected by the increase. The
16 day of each public forum shall be selected so as to encourage
17 the greatest public participation. Each public forum will
18 begin at 7:00 p.m. Reports and comments made during or as a
19 result of each public forum must be made available to the
20 hearing officials and reviewed when drafting a recommended or
21 tentative decision, finding or order pursuant to Section
22 10-111 of this Act.

23 (o) Water and sewer public utilities; acquisitions.
24 Notwithstanding any other provisions of this Act, if an
25 investor-owned water or sewer utility acquires another water
26 or sewer utility, any subsequent rate increase to finance the

1 acquisition shall only be paid by the customers in the new
2 district or tariff group and not the existing customers of the
3 investor-owned water or sewer utility or its existing tariff
4 group. Any capital investments or improvements made by an
5 investor-owned water or sewer utility shall not be financed by
6 the existing customers of the utility and shall only be paid
7 for by customers that live in the district that received the
8 capital investments or improvements.

9 (Source: P.A. 94-950, eff. 6-27-06.)

10 (220 ILCS 5/9-210.5)

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

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

13 (a) In this Section:

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

1 water or sewer utility or the water or sewer utility or its
2 direct affiliates or subsidiaries for at least 12 months
3 before becoming engaged under this Section or receive a
4 material financial benefit from the sale of the water or
5 sewer utility other than fees for services rendered.

6 "District" means a service area of a large public
7 utility whose customers are subject to the same rate
8 tariff.

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

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

13 (2) regularly provides water or sewer service to
14 more than 15,000 customer connections;

15 (3) provides safe and adequate service; and

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

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

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

1 sewer utility.

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

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

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

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

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

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

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

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

25 (b) Notwithstanding any other provision of this Act, a
26 large public utility that acquires a water or sewer utility

1 may request that the Commission use, and, if so requested, the
2 Commission shall use, the procedures set forth under this
3 Section to establish the ratemaking rate base of that water or
4 sewer utility at the time when it is acquired by the large
5 public utility.

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

19 Each appraiser shall:

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

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

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

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

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

17 If the appraiser cannot engage an engineer, as described
18 in paragraph (3) of this subsection (c), within 30 days after
19 the appraiser is engaged, then the Commission's Executive
20 Director or designee shall recommend the engineer the
21 appraiser should engage. The Commission's Executive Director
22 or designee shall provide his or her recommendation within 30
23 days after he or she is officially notified of the appraiser's
24 failure to engage an engineer and the appraiser shall promptly
25 work to engage the recommended engineer. If the appraiser is
26 unable to negotiate reasonable engagement terms with the

1 recommended engineer within 15 days after the recommendation
2 by the Commission's Executive Director or designee, then the
3 appraiser shall notify the Commission's Executive Director or
4 designee and the process shall be repeated until an engineer
5 is successfully engaged.

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

1 utility is to be combined by less than (1) 2.5% at the time of
2 the acquisition for any single acquisition completed under
3 this Section or (2) 5% for all acquisitions completed under
4 this Section before the Commission's final order in the next
5 rate case shall not be deemed to violate Section 7-204 or any
6 other provision of this Act.

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

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

25 (f) The large public utility may recommend the district or
26 tariff group of which the water or sewer utility shall, for

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

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

1 sewer utility using 54,000 gallons being equal to 1.5% of the
2 latest median household income as reported by the United
3 States Census Bureau for the most applicable community or
4 county. For each customer of the water or sewer utility with
5 potable water usage values that cannot be reasonably obtained,
6 a value of 4,500 gallons per month shall be assigned. These
7 rates shall not be deemed to violate this Act including, but
8 not limited to, Section 9-101 and any other applicable
9 Sections in Articles VIII and IX of this Act. The Commission
10 shall issue its decision establishing the rates effective for
11 the water or sewer utility immediately following an
12 acquisition in its order approving the acquisition.

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

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

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

18 Any post-acquisition improvements made by the large public
19 utility in the water or sewer utility shall not be depreciated
20 for ratemaking purposes from the date on which the expenditure
21 was incurred by the large public utility until the investment
22 has been in service for a 4-year period or, if sooner, until
23 the time the rates are implemented in the large public
24 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,
10 or 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) In the Commission's order that approves the large
15 utility's acquisition of the water or sewer utility, the
16 Commission shall address each aspect of the acquisition
17 transaction for which approval is required under the Act.

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

1 agreement. The large public utility acquiring the water or
2 sewer utility shall offer employee positions to qualified
3 employees of the acquired water or sewer utility.

4 (n) This Section is repealed on January 1, 2023 ~~June 1,~~
5 ~~2028~~.

6 (Source: P.A. 102-149, eff. 1-1-22.)