



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

HB5157

Introduced 2/9/2024, by Rep. Nabeela Syed

#### SYNOPSIS AS INTRODUCED:

220 ILCS 5/9-210.5  
220 ILCS 5/9-220.2

Amends the Public Utilities Act. Provides that 20% of the lesser of (rather than the lesser of): (i) the purchase price or (ii) the fair market value 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, subject to any adjustments that the Illinois Commerce Commission deems necessary to ensure such rate base reflects prudent and useful investments in the provision of public utility service. Provides that the difference between the rate base and the purchase price or fair market value shall be borne by the shareholders of the acquiring large public utility. In provisions concerning the acquisition of a water or sewer utility, provides that, at the next election following the public meeting and notice requirements, a referendum shall be placed on the ballot for all electors within the area the water or sewer utility operates. Provides that, if a majority of the electors voting on the referendum within the service area of the water or sewer utility vote in favor of the referendum, then the acquisition may continue. Provides that, if less than a majority of the electors voting on the referendum within the service area of the water or sewer utility vote in favor of the referendum, the Commission shall not approve the large public utility's acquisition of the water or sewer utility. Removes a provision that provides that the Commission may authorize a water or sewer utility to file a surcharge which adjusts rates and charges to provide for recovery of costs associated with an investment in qualifying infrastructure plant, independent of any other matters related to the utility's revenue requirement. Makes other changes.

LRB103 35475 SPS 65544 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 Sections 9-210.5 and 9-220.2 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7 (Section scheduled to be repealed on June 1, 2028)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 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) Twenty percent of the ~~The~~ lesser of (i) the purchase  
5 price or (ii) the fair market value determined under  
6 subsection (c) of this Section shall constitute the rate base  
7 associated with the water or sewer utility as acquired by and  
8 incorporated into the rate base of the district designated by  
9 the acquiring large public utility under this Section, subject  
10 to any adjustments that the Commission deems necessary to  
11 ensure such rate base reflects prudent and useful investments  
12 in the provision of public utility service. The difference  
13 between the rate base and the purchase price or fair market  
14 value shall be borne by the shareholders of the acquiring  
15 large public utility. The reasonable transaction and closing  
16 costs incurred by the large public utility shall be treated  
17 consistent with the applicable accounting standards under this  
18 Act. The total amount of all of the appraisers' fees to be  
19 included in the transaction and closing costs shall not exceed  
20 the greater of \$15,000 or 5% of the appraised value of the  
21 water or sewer utility being acquired. This rate base  
22 treatment shall not be deemed to violate this Act, including,  
23 but not limited to, any Sections in Articles VIII and IX of  
24 this Act that might be affected by this Section, provided that  
25 only 20% of the transaction and closing costs are included in  
26 the rate base. Any acquisition of a water or sewer utility that

1 affects the cumulative base rates of the large public  
2 utility's existing ratepayers in the tariff group into which  
3 the water or sewer utility is to be combined by less than (1)  
4 2.5% at the time of the acquisition for any single acquisition  
5 completed under this Section or (2) 5% for all acquisitions  
6 completed under this Section before the Commission's final  
7 order in the next rate case shall not be deemed to violate  
8 Section 7-204 or any other provision of this Act.

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

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



1       At the next election following the public meeting and  
2 notice required by this subsection, a referendum, subject to  
3 the requirements of Section 16-7 of the Election Code, shall  
4 be placed on the ballot for all electors within the area the  
5 water or sewer utility operates in substantially the following  
6 form:

7           May the (name of large public utility) acquire the  
8 (name of water or sewer utility) under the terms of  
9 acquisition published in (name of newspaper) on (date)?

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

11       If a majority of the electors voting on the referendum  
12 within the service area of the water or sewer utility vote in  
13 favor of the referendum, then the acquisition may continue as  
14 provided in this Section. If less than a majority of the  
15 electors voting on the referendum within the service area of  
16 the water or sewer utility vote in favor of the referendum, the  
17 Commission shall not approve the large public utility's  
18 acquisition of the water or sewer utility.

19       (f) The large public utility may recommend the district or  
20 tariff group of which the water or sewer utility shall, for  
21 ratemaking purposes, become a part after the acquisition, or  
22 may recommend a lesser rate for the water or sewer utility. If  
23 the large public utility recommends a lesser rate, it shall  
24 submit to the Commission its proposed rate schedule and the  
25 proposed final tariff group for the acquired water or sewer  
26 utility. The Commission's approved district or tariff group or

1 rates shall be consistent with the large public utility's  
2 recommendation, unless such recommendation can be shown to be  
3 contrary to the public interest.

4 (g) From the date of acquisition until the date that new  
5 rates are effective in the acquiring large public utility's  
6 next rate case, the customers of the acquired water or sewer  
7 utility shall pay the approved then-existing rates of the  
8 district or tariff group as ordered by the Commission, or some  
9 lesser rates as recommended by the large public utility and  
10 approved by the Commission under subsection (f); provided,  
11 that, if the application of such rates of the large public  
12 utility to customers of the acquired water or sewer utility  
13 using 54,000 gallons annually results in an increase to the  
14 total annual bill of customers of the acquired water or sewer  
15 utility, exclusive of fire service or related charges, then  
16 the large public utility's rates charged to the customers of  
17 the acquired water or sewer utility shall be uniformly  
18 reduced, if any reduction is required, by the percent that  
19 results in the total annual bill, exclusive of fire services  
20 or related charges, for the customers of the acquired water or  
21 sewer utility using 54,000 gallons being equal to 1.5% of the  
22 latest median household income as reported by the United  
23 States Census Bureau for the most applicable community or  
24 county. For each customer of the water or sewer utility with  
25 potable water usage values that cannot be reasonably obtained,  
26 a value of 4,500 gallons per month shall be assigned. These

1 rates shall not be deemed to violate this Act including, but  
2 not limited to, Section 9-101 and any other applicable  
3 Sections in Articles VIII and IX of this Act. The Commission  
4 shall issue its decision establishing the rates effective for  
5 the water or sewer utility immediately following an  
6 acquisition in its order approving the acquisition.

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

1 2.5%.

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

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

19 (j) This Section shall be exclusively applied to large  
20 public utilities in the voluntary and mutually agreeable  
21 acquisition of water or sewer utilities. Any petitions filed  
22 with the Commission related to the acquisitions described in  
23 this Section, including petitions seeking approvals or  
24 certificates required by this Act, shall be deemed approved  
25 unless the Commission issues its final order within 11 months  
26 after the date the large public utility filed its initial

1 petition. This Section shall only apply to utilities providing  
2 water or sewer service and shall not be construed in any manner  
3 to apply to electric corporations, natural gas corporations,  
4 or any other utility subject to this Act.

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

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

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

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

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

1 (220 ILCS 5/9-220.2)

2 Sec. 9-220.2. Water and sewer surcharges authorized.

3 (a) The Commission may authorize a water or sewer utility  
4 to file a surcharge which adjusts rates and charges to provide  
5 for recovery of (i) the cost of purchased water, (ii) the cost  
6 of purchased sewage treatment service, or (iii) other costs  
7 which fluctuate for reasons beyond the utility's control or  
8 are difficult to predict, ~~or (iv) costs associated with an~~  
9 ~~investment in qualifying infrastructure plant, independent of~~  
10 ~~any other matters related to the utility's revenue~~  
11 ~~requirement.~~ A surcharge approved under this Section can  
12 operate on an historical or a prospective basis.

13 (b) (Blank). ~~For purposes of this Section, "costs~~  
14 ~~associated with an investment in qualifying infrastructure~~  
15 ~~plant" include a return on the investment in and depreciation~~  
16 ~~expense related to plant items or facilities (including, but~~  
17 ~~not limited to, replacement mains, meters, services, and~~  
18 ~~hydrants) which (i) are not reflected in the rate base used to~~  
19 ~~establish the utility's base rates and (ii) are non revenue~~  
20 ~~producing. For purposes of this Section, a "non revenue~~  
21 ~~producing facility" is one that is not constructed or~~  
22 ~~installed for the purpose of serving a new customer.~~

23 (c) On a periodic basis, the Commission shall initiate  
24 hearings to reconcile amounts collected under each surcharge  
25 authorized pursuant to this Section with the actual prudently  
26 incurred costs recoverable for each annual period during which

1 the surcharge was in effect.

2 (Source: P.A. 91-638, eff. 1-1-00.)