



Sen. Laura M. Murphy

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1 AMENDMENT TO SENATE BILL 75

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 75, AS AMENDED, by  
3 replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Illinois Municipal Code is amended by  
6 changing Section 11-124-5 as follows:

7 (65 ILCS 5/11-124-5)

8 Sec. 11-124-5. Acquisition of water or sewer systems by  
9 eminent domain.

10 (a) In addition to other provisions providing for the  
11 acquisition of water or sewer systems or water or sewer works,  
12 whenever a public utility subject to the Public Utilities Act  
13 utilizes public property (including, but not limited to,  
14 right-of-way) of a municipality for the installation or  
15 maintenance of all or part of its water distribution system or  
16 sewer system, the municipality has the right to exercise

1 eminent domain to acquire all or part of the water or sewer  
2 system, in accordance with this Section. Unless it complies  
3 with the provisions set forth in this Section, a municipality  
4 is not permitted to acquire by eminent domain that portion of a  
5 system located in another incorporated municipality without  
6 agreement of that municipality, but this provision shall not  
7 prevent the acquisition of that portion of the water or sewer  
8 system existing within the acquiring municipality.

9 (b) Where a water or sewer system that is owned by a public  
10 utility (as defined in the Public Utilities Act) provides  
11 water or sewer service to customers located in 2 or more  
12 municipalities, the system may be acquired by a majority of  
13 the municipalities by eminent domain. If the system is to be  
14 acquired by more than one municipality, then there must be an  
15 intergovernmental agreement in existence between the acquiring  
16 municipalities providing for the acquisition.

17 (c) If a water or sewer system that is owned by a public  
18 utility provides water or sewer service to customers located  
19 in one or more municipalities and also to customers in an  
20 unincorporated area and if at least 70% of the customers of the  
21 system or portion thereof are located within the municipality  
22 or municipalities, then the system, or portion thereof as  
23 determined by the corporate authorities, may be acquired,  
24 using eminent domain or otherwise, by either a municipality  
25 under subsection (a) or an entity created by agreement between  
26 municipalities where at least 70% of the customers reside. For

1 the purposes of determining "customers of the system", only  
2 retail customers directly billed by the company shall be  
3 included in the computation. The number of customers of the  
4 system most recently reported to the Illinois Commerce  
5 Commission for any calendar year preceding the year a  
6 resolution is passed by a municipality or municipalities  
7 expressing preliminary intent to purchase the water or sewer  
8 system or portion thereof shall be presumed to be the total  
9 number of customers within the system. The public utility  
10 shall provide information relative to the number of customers  
11 within each municipality and within the system within 60 days  
12 after any such request by a municipality.

13 (d) In the case of acquisition by a municipality or  
14 municipalities or a public entity created by law to own or  
15 operate a water system under this Section, service and water  
16 supply must be provided to persons who are customers of the  
17 system on the effective date of this amendatory Act of the 94th  
18 General Assembly without discrimination based on whether the  
19 customer is located within or outside of the boundaries of the  
20 acquiring municipality or municipalities or entity, and a  
21 supply contract existing on the effective date of this  
22 amendatory Act of the 94th General Assembly must be honored by  
23 an acquiring municipality, municipalities, or entity according  
24 to the terms so long as the agreement does not conflict with  
25 any other existing agreement.

26 (e) For the purposes of this Section, "system" includes

1 all assets reasonably necessary to provide water or sewer  
2 service to a contiguous or compact geographical service area  
3 or to an area served by a common pipeline and include, but are  
4 not limited to, interests in real estate, all wells, pipes,  
5 treatment plants, pumps and other physical apparatus, data and  
6 records of facilities and customers, fire hydrants, equipment,  
7 or vehicles and also includes service agreements and  
8 obligations derived from use of the assets, whether or not the  
9 assets are contiguous to the municipality, municipalities, or  
10 entity created for the purpose of owning or operating a water  
11 or sewer system.

12 (f) Before making a good faith offer, a municipality may  
13 pass a resolution of intent to study the feasibility of  
14 purchasing or exercising its power of eminent domain to  
15 acquire any water system or water works, sewer system or sewer  
16 works, or combined water and sewer system or works, or part  
17 thereof. Upon the passage of such a resolution, the  
18 municipality shall have the right to review and inspect all  
19 financial and other records, and both corporeal and  
20 incorporeal assets of such utility related to the condition  
21 and the operation of the system or works, or part thereof, as  
22 part of the study and determination of feasibility of the  
23 proposed acquisition by purchase or exercise of the power of  
24 eminent domain, and the utility shall make knowledgeable  
25 persons who have access to all relevant facts and information  
26 regarding the subject system or works available to answer

1 inquiries related to the study and determination.

2 The right to review and inspect shall be upon reasonable  
3 notice to the utility, with reasonable inspection and review  
4 time limitations and reasonable response times for production,  
5 copying, and answer. In addition, the utility may utilize a  
6 reasonable security protocol for personnel on the  
7 municipality's physical inspection team.

8 In the absence of other agreement, the utility must  
9 respond to any notice by the municipality concerning its  
10 review and inspection within 21 days after receiving the  
11 notice. The review and inspection of the assets of the company  
12 shall be over such period of time and carried out in such  
13 manner as is reasonable under the circumstances.

14 Information requested that is not privileged or protected  
15 from discovery under the Illinois Code of Civil Procedure but  
16 is reasonably claimed to be proprietary, including, without  
17 limitation, information that constitutes trade secrets or  
18 information that involves system security concerns, shall be  
19 provided, but shall not be considered a public record and  
20 shall be kept confidential by the municipality.

21 In addition, the municipality must, upon request,  
22 reimburse the utility for the actual, reasonable costs and  
23 expenses, excluding attorneys' fees, incurred by the utility  
24 as a result of the municipality's inspection and requests for  
25 information. Upon written request, the utility shall issue a  
26 statement itemizing, with reasonable detail, the costs and

1 expenses for which reimbursement is sought by the utility.  
2 Where such written request for a statement has been made, no  
3 payment shall be required until 30 days after receipt of the  
4 statement. Such reimbursement by the municipality shall be  
5 considered income for purposes of any rate proceeding or other  
6 financial request before the Illinois Commerce Commission by  
7 the utility.

8 The municipality and the utility shall cooperate to  
9 resolve any dispute arising under this subsection. In the  
10 event the dispute under this subsection cannot be resolved,  
11 either party may request relief from the circuit court in any  
12 county in which the water or sewer system is located, with the  
13 prevailing party to be awarded such relief as the court deems  
14 appropriate under the discovery abuse sanctions currently set  
15 forth in the Illinois Code of Civil Procedure.

16 The municipality's right to inspect physical assets and  
17 records in connection with the purpose of this Section shall  
18 not be exercised with respect to any system more than one time  
19 during a 5-year period, unless a substantial change in the  
20 size of the system or condition of the operating assets of the  
21 system has occurred since the previous inspection. Rights  
22 under franchise agreements and other agreements or statutory  
23 or regulatory provisions are not limited by this Section and  
24 are preserved.

25 The passage of time between an inspection of the utilities  
26 and physical assets and the making of a good faith offer or

1 initiation of an eminent domain action because of the limit  
2 placed on inspections by this subsection shall not be used as a  
3 basis for challenging the good faith of any offer or be used as  
4 the basis for attacking any appraisal, expert, argument, or  
5 position before a court related to an acquisition by purchase  
6 or eminent domain.

7 (g) Notwithstanding any other provision of law, the  
8 Illinois Commerce Commission has no approval authority of any  
9 eminent domain action brought by any governmental entity or  
10 combination of such entities to acquire water or sewer systems  
11 or water or sewer works, except as is provided in subsection  
12 (h) of Section 10-5-10 of the Eminent Domain Act.

13 (h) The provisions of this Section are severable under  
14 Section 1.31 of the Statute on Statutes.

15 (i) This Section does not apply to any public utility  
16 company that, on January 1, 2006, supplied a total of 70,000 or  
17 fewer meter connections in the State unless and until (i) that  
18 public utility company receives approval from the Illinois  
19 Commerce Commission under Section 7-204 of the Public  
20 Utilities Act for the reorganization of the public utility  
21 company or (ii) the majority control of the company changes  
22 through a stock sale, a sale of assets, a merger (other than an  
23 internal reorganization) or otherwise. For the purpose of this  
24 Section, "public utility company" means the public utility  
25 providing water or sewer service and includes any of its  
26 corporate parents, subsidiaries, or affiliates possessing a

1 franchised water or sewer service in the State.

2 (j) Any contractor or subcontractor that performs work on  
3 a water or sewer system acquired by a municipality or  
4 municipalities under this Section shall comply with the  
5 requirements of Section 30-22 of the Illinois Procurement  
6 Code. The contractor or subcontractor shall submit evidence of  
7 compliance with Section 30-22 to the municipality or  
8 municipalities.

9 (k) The municipality or municipalities acquiring the water  
10 or sewer system shall offer available employee positions to  
11 the qualified employees of the acquired water or sewer system.

12 (l) No later than 60 days after January 1, 2027, and at  
13 least once every 5 years thereafter, a public utility subject  
14 to the Public Utilities Act shall provide notice via U.S. Mail  
15 to the municipal clerk of each municipality in which the  
16 public utility provides water or sewer service that includes  
17 an explanation of the rights afforded to a municipality under  
18 this Section.

19 The notice under this subsection (l) may be sent on a  
20 postcard via U.S. Mail and shall be written in a substantially  
21 similar format to the following:

22 "All or part of (insert name of service area), owned and  
23 operated by (insert name of public utility), is within the  
24 geographic boundaries of (insert municipality). Section  
25 11-124-5 of the Illinois Municipal Code grants a municipality  
26 the right, via resolution, to study the feasibility of

1 purchasing or exercising its power of eminent domain to  
2 acquire any water system or water works, sewer system or sewer  
3 works, or combined water and sewer system or water and sewer  
4 works.

5 (Source: P.A. 103-13, eff. 6-9-23.)

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

8 (220 ILCS 5/9-210.5)

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

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

11 (a) In this Section:

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

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

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

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

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

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

14 (3) provides safe and adequate service; and

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

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

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

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

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

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

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

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

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

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

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

24 (b) Notwithstanding any other provision of this Act, a  
25 large public utility that acquires a water or sewer utility  
26 may request that the Commission use, and, if so requested, the

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

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

18 Each appraiser shall:

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

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

26 (3) engage one disinterested engineer who is licensed

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

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

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

16 If the appraiser cannot engage an engineer, as described  
17 in paragraph (3) of this subsection (c), within 30 days after  
18 the appraiser is engaged, then the Commission's Executive  
19 Director or designee shall recommend the engineer the  
20 appraiser should engage. The Commission's Executive Director  
21 or designee shall provide his or her recommendation within 30  
22 days after he or she is officially notified of the appraiser's  
23 failure to engage an engineer and the appraiser shall promptly  
24 work to engage the recommended engineer. If the appraiser is  
25 unable to negotiate reasonable engagement terms with the  
26 recommended engineer within 15 days after the recommendation

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

5 (c-5) Beginning on January 1, 2027, if a large public  
6 utility elects the procedures under this Section to acquire a  
7 water or sewer utility, the large public utility shall, within  
8 45 days after filing a petition for a certificate of public  
9 convenience and necessity under Section 8-406, provide a  
10 notice to each existing customer of the large public utility  
11 on the customer's monthly bill, either via U.S. Mail or  
12 electronically, informing the customer of the terms of the  
13 proposed acquisition, including the proposed purchase price  
14 identified in the signed asset purchase agreement, by the  
15 large public utility. If the notice is provided via U.S. Mail,  
16 the notice shall include the text of a link to the portion of  
17 the Commission's website that houses the applicable docket  
18 information. If the notice is provided electronically, the  
19 notice shall include a link to the portion of the Commission's  
20 website that houses the applicable docket information.

21 (d) Twenty percent of either ~~The lesser of~~ (i) the  
22 purchase price or (ii) the fair market value determined under  
23 subsection (c) of this Section shall constitute the rate base  
24 associated with the water or sewer utility as acquired by and  
25 incorporated into the rate base of the district designated by  
26 the acquiring large public utility under this Section, subject

1 to any adjustments that the Commission deems necessary to  
2 ensure such rate base reflects prudent and useful investments  
3 in the provision of public utility service. The difference  
4 between the rate base and the purchase price or fair market  
5 value shall be borne by the shareholders of the acquiring  
6 large public utility. The reasonable transaction and closing  
7 costs incurred by the large public utility shall be treated  
8 consistent with the applicable accounting standards under this  
9 Act. The total amount of all of the appraisers' fees to be  
10 included in the transaction and closing costs shall not exceed  
11 the greater of \$15,000 or 5% of the appraised value of the  
12 water or sewer utility being acquired. This rate base  
13 treatment shall not be deemed to violate this Act, including,  
14 but not limited to, any Sections in Articles VIII and IX of  
15 this Act that might be affected by this Section, provided that  
16 only 20% of the transaction and closing costs are included in  
17 the rate base. Any acquisition of a water or sewer utility that  
18 affects the cumulative base rates of the large public  
19 utility's existing ratepayers in the tariff group into which  
20 the water or sewer utility is to be combined by less than (1)  
21 2.5% at the time of the acquisition for any single acquisition  
22 completed under this Section or (2) 5% for all acquisitions  
23 completed under this Section before the Commission's final  
24 order in the next rate case shall not be deemed to violate  
25 Section 7-204 or any other provision of this Act.

26 In the Commission's order that approves the large public

1 utility's acquisition of the water or sewer utility, the  
2 Commission shall issue its decision establishing (1) the  
3 ratemaking rate base of the water or sewer utility; (2) the  
4 district or tariff group with which the water or sewer utility  
5 shall be combined for ratemaking purposes, if such combination  
6 has been proposed by the large public utility; and (3) the  
7 rates to be charged to customers in the water or sewer utility.

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

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

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

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

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

6 (h) In the acquiring large public utility's next rate  
7 case, the water or sewer utility and the district or tariff  
8 group ordered by the Commission and their costs of service may  
9 be combined under the same rate tariff. This rate tariff shall  
10 be based on allocation of costs of service of the acquired  
11 water or sewer utility and the large public utility's district  
12 or tariff group ordered by the Commission and utilizing a rate  
13 design that does not distinguish among customers on the basis  
14 of utility service source or type. This rate tariff shall not  
15 be deemed to violate this Act including, but not limited to,  
16 Section 9-101 of this Act. In the acquiring large public  
17 utility's 2 rate cases after an acquisition, but in no  
18 subsequent rate case, the large public utility may file a rate  
19 tariff for a water or sewer utility acquired under this  
20 Section that establishes lesser rates than the district or  
21 tariff group into which the water or sewer utility is to be  
22 combined. Those lesser rates shall not be deemed to violate  
23 Section 7-204 or any other provision of this Act if they affect  
24 the cumulative base rates of the large public utility's  
25 existing rate payers in the district or tariff by less than  
26 2.5%.

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

11           Any post-acquisition improvements made by the large public  
12 utility in the water or sewer utility shall not be depreciated  
13 for ratemaking purposes from 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           (j) This Section shall be exclusively applied to large  
19 public utilities in the voluntary and mutually agreeable  
20 acquisition of water or sewer utilities. Any petitions filed  
21 with the Commission related to the acquisitions described in  
22 this Section, including petitions seeking approvals or  
23 certificates required by this Act, shall be deemed approved  
24 unless the Commission issues its final order within 11 months  
25 after the date the large public utility filed its initial  
26 petition. This Section shall only apply to utilities providing

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

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

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

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

23 (n) This Section is repealed on June 30, 2038 ~~June 1, 2028~~.  
24 (Source: P.A. 102-149, eff. 1-1-22.)

25 Section 99. Effective date. This Act takes effect January

1 1, 2027.".