



State of Wisconsin
2015 - 2016 LEGISLATURE

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2015 ASSEMBLY BILL 554

December 1, 2015 - Introduced by Representatives AUGUST, ZEPNICK, SANFELIPPO, MURPHY, KLEEFISCH, KNODL and SKOWRONSKI, cosponsored by Senator LASEE. Referred to Committee on Energy and Utilities.

1 **AN ACT to renumber and amend** 66.0817 (3) and 196.795 (6m) (a) 3.; **to**
2 **consolidate, renumber and amend** 66.0817 (4) and (5); and **to create**
3 66.0817 (5m) of the statutes; **relating to:** out-of-state sewer and water
4 affiliates of public utility holding companies and the sale or lease of municipal
5 water or sewer public utilities to investor-owned public utilities.

Analysis by the Legislative Reference Bureau

This bill changes how the assets of out-of-state sewer and water affiliates are treated under a current law that limits the extent to which a public utility holding company (holding company) can invest in nonutility affiliates. The bill also makes changes to the procedure that applies under current law for the sale or lease of a water or sewer utility by a city, village, or town (municipality) to an investor-owned public utility.

Holding companies. Current law imposes certain requirements on a holding company, which is a company that controls 5 percent or more of the outstanding voting securities of a public utility that is not a telecommunications utility. A public utility that is controlled by a holding company is called a public utility affiliate. Other affiliates that the holding company controls are called nonutility affiliates.

Current law limits nonutility investments by prohibiting the sum of the assets of each nonutility affiliate of the holding company from exceeding limits that are based on specified percentages of the assets of the public utility affiliates. Current law includes a test for determining whether an out-of-state affiliate is treated like

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a public utility affiliate or nonutility affiliate for purposes of the limits on nonutility investments. Under the test, if an out-of-state affiliate is incorporated in another state and satisfies all of the following requirements, it is treated like a public utility affiliate: 1) it provides heat, light, power, or natural gas for public use in another state; 2) it is an "affiliated interest," as defined under current law, of a public utility in this state; and 3) it is operated on an integrated system basis with that public utility. If an out-of-state affiliate does not satisfy the foregoing requirements, it is treated like a nonutility affiliate.

This bill allows an out-of-state affiliate that provides sewer service or water for public use to satisfy the first requirement itemized above and exempts such an affiliate from satisfying the third requirement. As a result, if an out-of-state sewer or water affiliate is incorporated in another state and satisfies the test as affected by the bill, its assets are treated like public utility affiliate assets for purposes of the limits on nonutility investments.

Sales and leases. Under current law, for any type of municipal utility, the municipality must adopt an ordinance or resolution authorizing a proposed sale or lease and submit the proposal to the Public Service Commission (PSC) for approval. If the PSC determines that the interests of the municipality and its residents will be best served by the sale or lease, the PSC must fix the price and other terms. If the PSC does so, the proposal must then be approved by a majority of the municipality's residents in a referendum. The notice for the referendum must include the price and terms fixed by the PSC. If a majority of the municipality's residents approve the proposal, the municipality may consummate the sale or lease with the proposed purchaser or lessee on the terms fixed by the PSC and at a price not less than the price fixed by the PSC. However, the municipality may also consummate the purchase or lease with any other person with whom better terms approved by the PSC can be made. If the municipality does not consummate the sale or lease within one year of the referendum, or the time is not extended by the PSC, the proceedings are void.

The bill applies to the proposed sale or lease of a municipal water or sewer utility and does not affect proposals involving other types of utilities. Also, the bill applies only to sales or leases to investor-owned public utilities. Under the bill, a referendum on the proposed sale or lease is not required unless, within 30 days after the municipality adopts the ordinance or resolution required under current law, a petition requesting the referendum is filed with the municipal clerk. The petition must be signed by a number of the municipality's qualified electors that is at least 25 percent of the votes cast in the municipality for governor in the last general election. If a petition is not filed within that deadline, no referendum is required and the municipality must submit the proposal to the PSC. If a referendum is held due to the filing of a petition within the deadline and a majority approves the proposal, the municipality must submit the proposal to the PSC for approval.

Under the bill, the PSC has similar authority regarding the proposal as under current law. If the PSC approves the proposal, the municipality may consummate the sale or lease with the proposed purchaser or lessee on the terms fixed by the PSC and at a price not less than the price fixed by the PSC. Finally, the bill provides that if the municipality does not consummate the sale or lease within one year after

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submitting the proposal to the PSC for approval, or the time is not extended by the PSC, the proceedings are void.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 66.0817 (3) of the statutes is renumbered 66.0817 (3) (a) and
2 amended to read:

3 66.0817 (3) (a) The Except as provided in sub. (5m), the municipality shall
4 submit the preliminary agreement when executed to the department of
5 transportation or public service commission, which shall determine whether the
6 interests of the municipality and its residents will be best served by the sale or lease,
7 and if it so determines, shall fix the price and other terms.

8 **SECTION 2.** 66.0817 (4) and (5) of the statutes are consolidated, renumbered
9 66.0817 (3) (b) and amended to read:

10 66.0817 (3) (b) After the price and other terms are fixed under ~~sub. (3) par. (a)~~,
11 the proposal shall be submitted to the electors of the municipality. The notice of the
12 referendum shall include a description of the plant and a summary of the
13 preliminary agreement and of the price and terms as fixed by the department of
14 transportation or public service commission. If a majority voting on the question
15 votes for the sale or lease, the board or council may consummate the sale or lease,
16 upon the terms and at a price not less than fixed by the department of transportation
17 or public service commission, with the proposed purchaser or lessee or any other with
18 whom better terms approved by the department of transportation or public service
19 commission can be made. ~~(5)~~ Unless the sale or lease is consummated within one
20 year of the referendum, or the time is extended by the department of transportation
21 or public service commission, the proceedings are void.

ASSEMBLY BILL 554**SECTION 3**

1 **SECTION 3.** 66.0817 (5m) of the statutes is created to read:

2 66.0817 (**5m**) If the preliminary agreement is for the sale or lease of a public
3 utility that furnishes water or sewer service to an investor-owned public utility, the
4 proposal shall be submitted to the electors of the municipality if, within 30 days after
5 the adoption of a resolution or ordinance under sub. (1), a petition conforming to the
6 requirements of s. 8.40 requesting such submission, signed by a number of qualified
7 electors equal to at least 25 percent of the votes cast in the municipality for governor
8 at the last general election, is filed in the office of the municipal clerk. If a petition
9 is not filed within that time, or if a referendum is held and a majority voting on the
10 question votes for the sale or lease, the municipality shall submit the preliminary
11 agreement to the public service commission, which shall determine whether the
12 interests of the municipality and its residents will be best served by the sale or lease.
13 If the public service commission determines those interests are best served by the
14 sale or lease, the commission shall fix the price and other terms. The municipality
15 may consummate the sale or lease, upon the terms, and at a price not less than, fixed
16 by the public service commission, with the proposed purchaser or lessee. Unless the
17 sale or lease is consummated within one year of submission of the preliminary
18 agreement to the public service commission, or the time is extended by the
19 commission, the proceedings are void.

20 **SECTION 4.** 196.795 (6m) (a) 3. of the statutes is renumbered 196.795 (6m) (a)
21 3. (intro.) and amended to read:

22 196.795 (**6m**) (a) 3. (intro.) “Foreign affiliate” means a person that is engaged
23 in the production, transmission, delivery or furnishing of sewer service, heat, light,
24 power, water, or natural gas either directly or indirectly to or for use of the public in
25 another state, and that satisfies all of the following:

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1 a. The person is incorporated under the laws of another state, ~~that,~~

2 b. The person is an affiliated interest, as defined in s. 196.52 (1), of a public
3 utility ~~and that,~~

4 c. The person is operated on an integrated system basis, as determined by the
5 commission, with the public utility under subd. 3. b., except that this subd. 3. c. does
6 not apply if the person is engaged in the production, transmission, delivery, or
7 furnishing of water or sewer service.

8 **SECTION 5. Initial applicability.**

9 (1) The treatment of section 66.0817 (3) and (5m) of the statutes first applies
10 to preliminary agreements that are executed on the effective date of this subsection.

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(END)