

## **BILL ANALYSIS**

Senate Research Center  
86R13595 GRM-D

S.B. 1725  
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Water & Rural Affairs  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Current statutes in Texas can restrict a private or privately-regulated water utility's ability to recover an investment from the acquisition of a public or private water or wastewater system to its original cost. Due to current statute, some public systems are often deprived from receiving full market value for their assets and regulated water utilities are prevented from recouping their entire investment. S.B. 1725 removes these barriers by creating an optional and voluntary valuation appraisal process to determine the asset value while providing clarity to the valuation and rate-making process when a private or publicly-regulated utility acquires the water or wastewater assets of a public or private system.

As proposed, S.B. 1725 amends current law relating to the valuation of a retail public utility or its facilities as part of a voluntary acquisition.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter H, Chapter 13, Water Code, by adding Section 13.305, as follows:

Sec. 13.305. VOLUNTARY VALUATION OF ACQUIRED UTILITY OR FACILITIES. (a) Defines "acquiring utility," "ratemaking rate base," and "selling utility."

(b) Requires the Public Utility Commission of Texas (PUC) to maintain a list of experts qualified to conduct economic valuations of utilities for the purposes of this section.

(c) Authorizes an acquiring utility and a selling utility to agree to determine by the following process the fair market value of the selling utility or the facilities to be sold, as applicable:

(1) the acquiring utility and the selling utility are required to notify the PUC of their intent to determine the fair market value under this section;

(2) not later than the 30th day after the date the PUC receives notice under Subdivision (1), the PUC is required to select three utility valuation experts from the list maintained under Subsection (b);

(3) each utility valuation expert is required to perform an appraisal in compliance with Uniform Standards of Professional Appraisal Practice, employing the cost, market, and income approaches, to determine the fair market value; and

(4) the three utility valuation experts selected under Subdivision (2) jointly are required to retain a licensed engineer to conduct an assessment of the

tangible assets of the selling utility, or the facilities to be sold, as applicable, and requires each utility valuation expert to:

(A) incorporate the assessment into the appraisal under the cost approach required under Subdivision (3); and

(B) provide the completed appraisal to the acquiring utility and the selling utility in a reasonable and timely manner.

(d) Prohibits a utility valuation expert described by Subsection (b) from deriving any material financial benefit from the sale other than fees for services rendered or being or having been within the year preceding the date the service contract is executed an immediate family member of a director, officer, or employee of the acquiring utility or the selling utility.

(e) Authorizes a fee paid to a utility valuation expert to be included in the transaction and closing costs associated with the acquisition by the acquiring utility. Prohibits a fee from exceeding the lesser of five percent of the fair market value or a fee amount approved by the PUC.

(f) Provides that, for the purposes of the acquisition, the fair market value is the average of the three utility valuation expert appraisals conducted under Subsection (c).

(g) Provides that, for an acquisition of a selling utility, the ratemaking rate base of the selling utility is the lesser of the purchase price negotiated by the acquiring utility and the selling utility or the fair market value. Requires the ratemaking rate base of the selling utility to be incorporated into the rate base of the acquiring utility during the utility's next rate base case under Subchapter F (Proceedings Before Regulatory Authority).

(h) Requires the acquiring utility, if the acquiring utility and the selling utility use the process for establishing fair market value in Subsection (c), to submit as attachments to an application required under Section 13.301 (Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction):

(1) copies of the three appraisals performed by the utility valuation experts under Subsection (c);

(2) the purchase price agreed to by the acquiring utility and the selling utility;

(3) if applicable, the ratemaking rate base determined under Subsection (g);

(4) if applicable, the transaction and closing costs incurred by the acquiring utility that will be included in the utility's rate base; and

(5) if applicable, a tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition.

(i) Requires the PUC, if the PUC approves the application for acquisition under Section 13.301, to issue an order that includes the ratemaking rate base of the selling utility as determined under Subsection (g) and any additional conditions for the acquisition the PUC requires.

(j) Requires a tariff submitted under Subsection (h)(5) to remain in effect until the PUC approves new rates as part of a rate base case proceeding.

(k) Provides that the original sources of funding for any part of the water or sewer assets of the selling utility are not relevant to determine the value of the selling utility's assets. Requires the selling utility's cost of service to be incorporated into the revenue requirement of the acquiring utility's next rate base case proceeding.

(l) Defines "allowance of funds used during construction." Requires an acquiring utility's postacquisition improvements to accrue an allowance of funds used during construction after the date the cost was incurred until the earlier of the fourth anniversary of the date the asset entered into service or the inclusion of the asset in the acquiring utility's next rate base case.

(m) Requires depreciation on an acquiring utility's postacquisition improvements to be deferred for book and ratemaking purposes.

SECTION 2. Effective date: September 1, 2019.