

# SB2970



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB2970

Introduced 2/3/2010, by Sen. Emil Jones, III

#### SYNOPSIS AS INTRODUCED:

70 ILCS 2605/8c

from Ch. 42, par. 327c

Amends the Metropolitan Water Reclamation District Act. In provisions concerning the leasing of property by a sanitary district, exempts from the lease requirements any academic institution of learning which has been in existence for 5 years prior to the lease, provided that the lease limit the institution's use of the leased land to only those purposes relating to the operation of the institution's academic, "community service", or physical educational programs. Effective immediately.

LRB096 19793 RLJ 35234 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Metropolitan Water Reclamation District Act  
5 is amended by changing Section 8c as follows:

6 (70 ILCS 2605/8c) (from Ch. 42, par. 327c)

7 Sec. 8c. Leases. Every lease of property no longer or not  
8 immediately required for corporate purposes of a sanitary  
9 district, from such district to others for a term not to exceed  
10 99 years, in accordance with Section 8 of this Act, shall be  
11 negotiated, created and executed in the following manner:

12 (1) Notice of such proposed leasing shall be published  
13 for 3 consecutive weeks in a newspaper of general  
14 circulation published in such sanitary district, if any,  
15 and otherwise in the county containing such district.

16 (2) Prior to receipt of bids for the lease under this  
17 Section, the fair market value of every parcel of real  
18 property to be leased must be determined by 2 professional  
19 appraisers who are members of the American Institute of  
20 Real Estate Appraisers or a similar, equivalently  
21 recognized professional organization. The sanitary  
22 district acting through the executive director may select  
23 and engage an additional appraiser for such determination

1 of fair market value. Every appraisal report must contain  
2 an affidavit certifying the absence of any collusion  
3 involving the appraiser and relating to the lease of such  
4 property.

5 (3) No lease may be awarded unless the bid of such  
6 highest responsible bidder provides for an annual rental  
7 payment to the sanitary district of at least 6% of the  
8 parcel's fair market value determined under this Section,  
9 provided however, if the sanitary district determines that  
10 a parcel contains a special development impediment,  
11 defined as any condition that constitutes a material  
12 impediment to the development or lease of a parcel, and  
13 includes, but is not limited to: environmental  
14 contamination, obsolescence, or advanced disrepair of  
15 improvements or structures, or accumulation of large  
16 quantities of non-indigenous materials, the sanitary  
17 district may establish a minimum acceptable initial annual  
18 rental of less than 6% of the parcel's fair market value  
19 for the initial 10 years of the lease. In no event will the  
20 annual rental payment for each 10-year period after the  
21 initial 10 years of the lease be less than the 6% of the  
22 parcel's fair market value determined under this Section.  
23 Every lease must be awarded to the highest responsible  
24 bidder (including established commercial or industrial  
25 concerns and financially responsible individuals) upon  
26 free and open competitive bids. In determining the

1 responsibility of any bidder, the sanitary district may  
2 consider, in addition to financial responsibility, any  
3 past records of transactions with the bidder and any other  
4 pertinent factors, including but not limited to, the  
5 bidder's performance or past record with respect to any  
6 lease, use, occupancy, or trespass of sanitary district or  
7 other lands.

8 (4) Prior to acceptance of the bid of the highest  
9 responsible bidder and before execution of the lease the  
10 bidder shall submit to the board of commissioners and  
11 executive director, for incorporation in the lease, a  
12 detailed plan and description of improvements to be  
13 constructed upon the leased property, the time within which  
14 the improvements will be completed, and the intended uses  
15 of the leased property. If there is more than one  
16 responsible bid, the board of commissioners may authorize  
17 and direct the executive director to solicit from the 2  
18 highest responsible bidders written amendments to their  
19 prior bids, increasing their rental bid proposal by at  
20 least 5% in excess of their prior written bid, or otherwise  
21 amending the financial terms of their bid so as to maximize  
22 the financial return to the sanitary district during the  
23 term of the proposed lease. Upon the executive director's  
24 tentative agreement with one or more amended bids, the bids  
25 may be submitted to the board of commissioners with the  
26 recommendation of the executive director for acceptance of

1           one or rejection of all. The amendments may not result in a  
2           diminution of the terms of the transaction and must result  
3           in an agreement that is equal to or greater in value than  
4           the highest responsible bid initially received.

5           (5) The execution of such lease must be contemporaneous  
6           to the execution by the lessee, each member of the board of  
7           commissioners and the executive director of an affidavit  
8           certifying the absence of any collusion involving the  
9           lessee, the members and the executive director and relating  
10          to such lease.

11          (6) No later than 30 days after the effective date of  
12          the lease, the lessee must deliver to the sanitary district  
13          a certified statement of the County Assessor, Township  
14          Assessor or the county clerk of the county wherein the  
15          property is situated that such property is presently  
16          contained in the official list of lands and lots to be  
17          assessed for taxes for the several towns or taxing  
18          districts in his county.

19          (7) Such lease may be subject to annual adjustments  
20          based on changes in the Consumer Price Index published by  
21          the United States Department of Labor, Bureau of Labor  
22          Statistics, or some other well known economic governmental  
23          activity index. Any lease, the term of which will extend  
24          for 15 years or more, shall provide for a redetermination  
25          of the fair market value (independent of improvements to  
26          the property subsequent to the effective date of the lease)

1 after the initial 10 years and every 10 years thereafter,  
2 in the manner set forth in paragraph (2) of this Section,  
3 which redetermination shall be referred to as the decennial  
4 adjustment. Where the property rental is less than 6% of  
5 fair market value due to the existence of a special  
6 development impediment, the first decennial adjustment  
7 shall not occur until the twentieth year of the lease. Such  
8 redetermination shall be as of the first day of each  
9 succeeding 10 year period, and annual rental payments shall  
10 be adjusted so that the ratio of annual rental to fair  
11 market value shall be the same as that ratio for the first  
12 year of the preceding 10 year period. The decennial  
13 adjustment shall not exceed 100% of the rental in effect on  
14 the last day of the preceding 10-year period, except when  
15 the property rental is less than 6% of fair market value  
16 due to the existence of a special development impediment,  
17 in which case, the decennial adjustment shall not be so  
18 limited until the twentieth year of the lease. The rental  
19 payment for the first year of the new 10 year period may be  
20 subject to Consumer Price Index or other allowable index  
21 adjustments for each of the next 9 years, or until the end  
22 of the lease term if there are less than 9 years remaining.

23 (8) A sanitary district may require compensation to be  
24 paid in addition to rent, based on a reasonable percentage  
25 of revenues derived from a lessee's business operations on  
26 the leasehold premises or subleases, or may require

1 additional compensation from the lessee or any sublessee in  
2 the form of services, including but not limited to solid  
3 waste disposal; provided, however, that such additional  
4 compensation shall not be considered in determining the  
5 highest responsible bid, said highest responsible bid to be  
6 determined only on the initial annual rental payment as set  
7 forth in paragraph (3) of this Section.

8 (9) No assignment of such lease or sublease of such  
9 property is effective unless approved in writing by the  
10 executive director and the board of commissioners of the  
11 sanitary district. The district may consider, for any  
12 assignment or sublease, all pertinent factors including  
13 the assignee's or sublessee's responsibility in accordance  
14 with subparagraph (3) of this Section. The sanitary  
15 district may also condition its consent upon the  
16 redetermination of the annual rental required to be paid  
17 under any lease initially executed on or before January 1,  
18 1983, for which the annual rent being paid thereunder is  
19 less than 6% of the current appraised fair market value of  
20 the leased property. The redetermination of any annual  
21 rental under this Section shall be consistent with the  
22 requirements of subparagraphs (2) and (3) of this Section.  
23 No assignment or sublease is effective if the assignee or  
24 sublessee is a trust constituted by real property of which  
25 the trustee has title but no power of management or  
26 control, unless the identity of the beneficiaries of the

1 trust is revealed, upon demand, to the executive director  
2 and the board of commissioners of the sanitary district.

3 (10) Failure by the lessee to comply with a provision  
4 in the lease relating to improvements upon the leased  
5 property or any other provision constitutes grounds for  
6 forfeiture of the lease, and upon such failure the sanitary  
7 district acting through the executive director shall serve  
8 the lessee with a notice to terminate the lease and deliver  
9 possession of the property to the sanitary district within  
10 a particular period.

11 (11) If the executive director and the board of  
12 commissioners conclude that it would be in the public  
13 interest, said sanitary district may lease without  
14 complying with the prior provisions of this Section, in  
15 accordance with an Act concerning "Transfer of Real Estate  
16 between Municipal Corporations", approved July 2, 1925, as  
17 amended, to the following, upon such terms as may be  
18 mutually agreeable: (a) the United States of America and  
19 the State of Illinois, County of Cook, any municipal  
20 corporation, with provisions that the property is to be  
21 applied exclusively for public recreational purposes or  
22 other public purposes; (b) any academic institution of  
23 learning which has been in existence for 5 years prior to  
24 said lease, provided that such lease limit the  
25 institution's use of the leased land to only those purposes  
26 relating to the operation of such institution's academic, l



1       community service, or physical educational programs; or  
2       (c) any lease involving land located in a county with a  
3       population of 100,000 or less and which is leased solely  
4       for agricultural or commercial recreational uses. Any  
5       lease issued in accordance with this paragraph shall  
6       contain the provisions that such lease is terminable in  
7       accordance with service of a one-year notice to terminate  
8       after determination by the board of commissioners and the  
9       executive director that such property (or part thereof) has  
10       become essential to the corporate purposes of the sanitary  
11       district.

12       (Source: P.A. 95-604, eff. 9-11-07; 95-923, eff. 1-1-09.)

13       Section 99. Effective date. This Act takes effect upon  
14       becoming law.