



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Niyah Walters

Sub. H.B. 422

132nd General Assembly
(As Reported by S. Public Utilities)

Reps. Ginter and Rogers, Carfagna, Seitz, Sprague, Thompson, Anielski, Antonio, Arndt, Barnes, Celebreeze, Green, Greenspan, Hambley, Johnson, Landis, Lepore-Hagan, Miller, Perales, Riedel, Schaffer, Scherer, K. Smith, R. Smith, Stein, Sweeney, Wiggam, Young

Sens. Eklund, Beagle

BILL SUMMARY

- Allows the Public Utilities Commission (PUCO) to approve the purchase of a municipal water-works or sewage disposal system company by a large water-works or sewage disposal system company.
- Requires PUCO to establish a rate base for the company being acquired.
- Requires the acquiring company to recommend whether the company being acquired should be integrated into an existing rate division or given a new rate division.
- Adds requirements for determining the original cost of acquisition of a municipal water-works or sewage disposal system company by a large water-works or sewage disposal system company.
- Requires PUCO to create and maintain a list of utility-valuation experts to be used to appraise the original cost of acquisition.
- Requires the deferral of prudent costs of obtaining utility valuations.
- Allows the deferral of post-in-service carrying costs for post-acquisition improvements and any depreciation expenses related to those improvements.
- Releases certain conditions with respect to a 1981 conveyance of state-owned real estate in Kettering to the Miami Valley Research Foundation.

CONTENT AND OPERATION

Introduction

The bill allows a large water-works or sewage disposal system company to petition to purchase the property, plant, or business of any municipal water-works or sewage disposal system company with the consent and approval of the Public Utilities Commission (PUCO). A petition filed under the bill may also seek approval of a certificate of public convenience and necessity and the approval of an original cost valuation as provided in the bill.¹ The bill only applies to voluntary and mutually agreeable acquisitions.²

Under the bill, "large water-works or sewage disposal system company" means a water-works or sewage disposal system company that has annual operating revenues of \$250,000 or more. "Municipal water-works or sewage disposal system company" means any water-works or sewage disposal system company owned or operated by a political subdivision or by a municipal corporation. "Political subdivision" includes departments, divisions, authorities, or other units of state governments, watershed districts, soil and water conservation districts, park districts, municipal corporations, counties, townships, and other political subdivisions, special water districts, including county and regional water and sewer districts, conservancy districts, sanitary districts, sewer districts or any other public corporation or agency having the authority to acquire, construct, or operate waste water or water management facilities, and all other governmental agencies now or hereafter granted the power of levying taxes or special assessments, the United States or any agency thereof, and any agency, commission, or authority established pursuant to an interstate compact or agreement.³

Approval of an acquisition

To receive PUCO's consent and approval, the bill requires a petition to be signed and verified by the president of the large water-works or sewage disposal system company and filed with PUCO. The petition must set forth the object and purposes desired and the terms and conditions of the acquisition. Once the petition is filed, PUCO may set a time and place for a hearing, if necessary.

PUCO must approve any petition for the acquisition including a petition seeking the approval of a certificate of public necessity and convenience, if the large water-

¹ R.C. 4905.481.

² R.C. 4909.059.

³ R.C. 4905.481 and 4909.051; R.C. 6119.011, not in the bill.



works or sewage disposal system company sufficiently demonstrates and PUCO finds that the petition is just and reasonable. A petition is to be deemed approved if PUCO fails to issue a final order not later than 270 days after the initial petition is filed, unless the petition review is suspended for good cause shown.⁴

Under the bill, in the order approving the acquisition PUCO must include both of the following:

- PUCO's decision establishing the rate base of the company being acquired;
- The rate division under which the geographic area of customers from the company being acquired will be served.⁵

Rate Division

The bill requires a large water-works or sewage disposal system company acquiring a municipal water-works or sewage disposal system company to recommend whether the geographic area of customers from the company being acquired are to be integrated into an existing rate division of the acquiring company or given a new rate division. If integration is the recommendation, the acquiring company must also recommend how the area is to be integrated. The recommendation must be mutually agreed upon by both companies.⁶

Under the bill, "rate division" means a separate tariff of a water-works or sewage disposal system company for one or more geographic customer areas.⁷

Original cost determination

The bill sets forth additional requirements with respect to the determination of original cost as it relates to the acquisition of a municipal water-works or sewage disposal system company by a large water-works or sewage disposal system company. Under the bill, PUCO, in evaluating a petition for acquisition, must accept the original cost of acquisition of the company being acquired as reported under current law, if (1) PUCO finds the cost is just and reasonable and (2) the cost is determined as follows:

- The acquiring company has three appraisals performed on the property of the company being acquired.

⁴ R.C. 4905.481.

⁵ R.C. 4905.491.

⁶ R.C. 4905.49(B) and (C).

⁷ R.C. 4905.49(A).



- The three appraisals are performed by three independent utility-valuation experts mutually selected by both companies from the list of utility-valuation experts created by the bill.
- The average of the three appraisals is used as the fair market value of the company being acquired.
- Each utility-valuation expert does all of the following:
 - Determines the fair market value of the company to be acquired by establishing the amount for which the company would be sold in a voluntary transaction between a willing buyer and a willing seller under no obligation to buy or sell;
 - Determines the fair market value in compliance with the Uniform Standards of Professional Appraisal Practice;
 - Employs the cost, market, and income approach to independently quantify the future benefits of the company to be acquired;
 - Incorporates the assessment of the tangible assets of the company to be acquired (described below, next) into the appraisal under the cost, market, and income approach;
 - Engages one licensed engineer to prepare an assessment of the tangible assets of the company to be acquired. The original source of funding for any part of the tangible assets is not relevant to determining their value.
- The lesser of the purchase price or the fair market value is reported as the original cost of the company to be acquired.⁸

Each utility-valuation expert must return the appraisal, in writing, to both companies in a reasonable and timely manner. All appraisals must be included in any filing associated with the acquisition.⁹

⁸ R.C. 4909.05 and 4909.052.

⁹ R.C. 4909.053. A technical amendment may be needed to this section to replace "or" with "and" regarding the cross reference to R.C. "4905.481 or 4909.052." Although R.C. 1.02(F) might apply to interpret the "or" as an "and," simply changing it to "and" would be easier and clearer.

Utility-valuation expert list

For purposes of determining the original cost of a municipal water-works or sewage disposal system company to be acquired, the bill requires PUCO to maintain a list of utility-valuation experts that a water-works or sewage disposal system company may choose. PUCO is also responsible for creating and maintaining reasonable criteria that must be met to be included in the list.¹⁰

Deferred costs

The bill requires the prudent costs of obtaining the three valuations used to determine the market value of the system in an acquisition be deferred as an expense for future recovery in a manner determined by PUCO. In determining prudence of costs, PUCO must give due regard to the circumstances of the case, including size and complexity of, and any particular difficulties associated with the valuation.¹¹

Upon application by the acquiring company, the bill allows PUCO to authorize the deferral of post-in-service carrying cost on any improvements made to the company being acquired after acquisition. Those costs must be calculated based at the acquiring company's weighted average cost of debt as determined in its last rate case. The deferrals will begin after the expenditure is incurred and will continue until the first of the following occurs:

- The investment has been in service for three years;
- The acquiring company's next rate case that includes the investment;
- The inclusion of the investment in a charge authorized under an infrastructure improvement surcharge.¹²

Upon application by the acquiring company, the bill allows PUCO to authorize the deferral of any depreciation expense related to post-acquisition improvements to the company being acquired, to be recovered over the life of the assets commencing with the first rate case including the acquisition. The depreciation deferral will continue until the first of the following occurs:

- The investment has been in service for three years;

¹⁰ R.C. 4909.054.

¹¹ R.C. 4909.055.

¹² R.C. 4909.057(A).



- The acquiring company's next rate case that includes the investment;
- The inclusion of the investment in a charge authorized under an infrastructure improvement surcharge.¹³

Release state conditions on Miami Valley Research Foundation land

The bill releases conditions the General Assembly, in 1981, placed on a conveyance of state-owned land to the Miami Valley Research Foundation. In 1981, the 114th General Assembly passed H.B. 400 to convey state-owned land located in Kettering to the Miami Valley Research Foundation; the Governor signed a deed to effectuate the conveyance in 1981. The conveyance was subject to certain conditions, including a requirement that the land be used to conduct scientific research activities in conjunction with educational institutions, governmental entities, private industry, and other entities in a manner that would promote and foster economic development in Ohio. H.B. 400 authorized the Foundation to convey the land, but the limited use condition would continue to apply to the land. If the Foundation or a subsequent owner used the land for another purpose, H.B. 400 provides that the land reverts back to the state or that the Foundation and subsequent owner owe the state a certain monetary amount. The bill releases the restrictions regarding the use of the land and releases the state's reversionary interest. Effectively, the bill allows the Foundation or a subsequent owner to use the land for any purpose without consequence.¹⁴

HISTORY

ACTION	DATE
Introduced	11-21-17
Reported, H. Energy & Natural Resources	02-14-18
Passed House (94-1)	02-28-18
Reported, S. Public Utilities	12-03-18

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¹³ R.C. 4909.057(B).

¹⁴ Sections 3 through 6 of the bill.

