

SENATE BILL 854

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CF 8lr2663

By: **Senator Klausmeier**

Introduced and read first time: February 5, 2018

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Public Utilities – Water and Sewage Disposal Companies – Acquisition**

3 FOR the purpose of establishing a certain process for valuing a water company or a sewage
4 disposal company that is the subject of a certain acquisition; requiring the fair
5 market value of the selling utility to be determined in a certain manner under certain
6 circumstances; requiring the Public Service Commission to maintain a list of certain
7 utility valuation experts; requiring certain utility valuation experts to perform
8 separate valuations of a selling utility in a certain manner; requiring an acquiring
9 entity and a selling utility to engage a certain licensed engineer for certain purposes;
10 requiring the utility valuation experts to provide completed appraisals within a
11 certain period of time; providing for the selection of certain utility valuation experts
12 in a certain manner; prohibiting a utility valuation expert from deriving certain
13 benefits from a certain sale or from having a certain relationship with an acquiring
14 entity or a selling utility within a certain period of time; authorizing the inclusion of
15 certain fees in certain costs; requiring the rate making rate base of a selling utility
16 to be included in the rate base of the acquiring utility or other acquiring entity in a
17 certain manner and at a certain value; requiring an acquiring utility to provide
18 certain information to the Commission in a certain application; requiring the
19 Commission to issue a certain order on a certain application within a certain period
20 of time; requiring the order to contain certain matters; providing that a certain tariff
21 shall remain in effect until certain rates are approved; authorizing an acquiring
22 utility to collect a certain distribution system improvement charge during a certain
23 period subject to Commission approval; requiring a certain cost of service to be
24 included in the revenue requirement of the acquiring utility in a certain manner;
25 requiring an acquiring entity that is not a public utility in the State to include certain
26 information in an application for a certificate of public convenience and necessity to
27 operate in the State; providing for the accrual of a certain construction allowance for
28 an acquiring utility for a certain period under certain circumstances; providing for
29 the deferral of certain depreciation for certain purposes; providing for the application
30 of this Act; defining certain terms; and generally relating to water companies and
31 sewage disposal companies.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, without amendments,
2 Article – Public Utilities
3 Section 1–101(a), (d), (f), (t), (u), (v), (w), (x), (z), (ee), (ss), and (tt) and 4–206
4 Annotated Code of Maryland
5 (2010 Replacement Volume and 2017 Supplement)

6 BY adding to
7 Article – Public Utilities
8 Section 6–301 through 6–308 to be under the new subtitle “Subtitle 3. Acquisition of
9 Water Companies and Sewage Disposal Companies”
10 Annotated Code of Maryland
11 (2010 Replacement Volume and 2017 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
13 That the Laws of Maryland read as follows:

14 **Article – Public Utilities**

15 1–101.

16 (a) In this division the following words have the meanings indicated.

17 (d) “Commission” means the Public Service Commission.

18 (f) “Company”, as a designation for a type of enterprise, includes a person that
19 owns a company individually or as an agent, trustee, or receiver of a company.

20 (t) “Own” includes own, operate, lease to or from, manage, or control.

21 (u) “Person” means an individual, receiver, trustee, guardian, personal
22 representative, fiduciary, or representative of any kind and any partnership, firm,
23 association, corporation, or other entity.

24 (v) “Plant” includes all material, equipment, and property owned by a public
25 service company and used or to be used for or in connection with a public utility service.

26 (w) “Proceeding” includes an action, complaint, hearing, investigation, trial,
27 appeal, order, or similar matter pending before, made, or conducted by an official body.

28 (x) (1) “Public service company” means a common carrier company, electric
29 company, gas company, sewage disposal company, telegraph company, telephone company,
30 water company, or any combination of public service companies.

31 (2) “Public service company” does not include:

32 (i) a campground that provides water, electric, gas, sewage, or

1 telephone service to campers incident to the campground's primary business of operating
2 and maintaining the campground; or

3 (ii) a person that owns or operates equipment used for charging
4 electric vehicles, including a person that owns or operates:

5 1. an electric vehicle charging station;

6 2. electric vehicle supply equipment; or

7 3. an electric vehicle charging station service company or
8 provider.

9 (z) (1) "Rate" means a toll, fare, tariff, fee, price, or other charge, or a
10 combination of these items, by a public service company for public utility service.

11 (2) "Rate" includes a schedule, regulation, classification, or practice of a
12 public service company that affects:

13 (i) the amount of a charge; or

14 (ii) the nature and value of the service rendered for the charge.

15 (ee) "Sewage disposal company" means a privately owned public service company
16 that owns or maintains facilities for the disposal of sewage.

17 (ss) "Water company" means a public service company that owns a water plant
18 and sells or distributes water for gain.

19 (tt) "Water plant" means the material, equipment, and property owned by a water
20 company and used or to be used for or in connection with water service.

21 4-206.

22 (a) At any time, the Commission may investigate and determine the fair value of
23 the property of a public service company used and useful in providing service to the public.

24 (b) (1) The valuation:

25 (i) is not final until the Commission:

26 1. serves on the public service company a copy of the order
27 setting the proposed valuation and the method used to set the valuation; and

28 2. allows a reasonable time in which to file a protest; and

29 (ii) is final if a protest is not filed within the time specified in the

1 order.

2 (2) If a timely protest is filed, the Commission shall enter a final valuation
3 by order after hearing.

4 (c) All final valuations are prima facie evidence of value in proceedings under this
5 division.

6 **SUBTITLE 3. ACQUISITION OF WATER COMPANIES AND SEWAGE DISPOSAL**
7 **COMPANIES.**

8 **6-301.**

9 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
10 INDICATED.

11 (B) "ACQUIRING ENTITY" MEANS:

12 (1) AN ACQUIRING UTILITY; OR

13 (2) ANOTHER PERSON THAT:

14 (I) IS ACQUIRING A SELLING UTILITY AS THE RESULT OF A
15 VOLUNTARY ARM'S LENGTH TRANSACTION BETWEEN THE BUYER AND SELLER; AND

16 (II) HAS FILED WITH THE COMMISSION, DIRECTLY OR THROUGH
17 AN AFFILIATE, AN APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND
18 NECESSITY TO OPERATE AS A PUBLIC SERVICE COMPANY IN THE STATE.

19 (C) "ACQUIRING UTILITY" MEANS A WATER COMPANY OR A SEWAGE
20 DISPOSAL COMPANY THAT IS ACQUIRING A SELLING UTILITY AS THE RESULT OF A
21 VOLUNTARY ARM'S LENGTH TRANSACTION BETWEEN THE BUYER AND SELLER.

22 (D) "AFFILIATE" HAS THE MEANING STATED IN § 7-501 OF THIS ARTICLE.

23 (E) "CONSTRUCTION ALLOWANCE" MEANS AN ACCOUNTING PRACTICE
24 THAT RECOGNIZES THE CAPITAL COSTS, INCLUDING DEBT AND EQUITY FUNDS THAT
25 ARE USED TO FINANCE THE CONSTRUCTION COSTS OF AN IMPROVEMENT TO A
26 SELLING UTILITY'S ASSETS BY AN ACQUIRING ENTITY.

27 (F) "FAIR MARKET VALUE" MEANS THE AVERAGE OF THE TWO UTILITY
28 VALUATION EXPERT APPRAISALS CONDUCTED UNDER § 6-303 OF THIS SUBTITLE.

29 (G) "RATE MAKING RATE BASE" MEANS THE DOLLAR VALUE OF A SELLING

1 UTILITY THAT, FOR PURPOSES OF RATE MAKING AFTER THE ACQUISITION, IS
2 INCORPORATED INTO THE RATE BASE OF THE ACQUIRING ENTITY.

3 (H) "RATE STABILIZATION PLAN" MEANS A PLAN THAT WILL HOLD RATES
4 CONSTANT OR PHASE RATES IN OVER A PERIOD OF TIME AFTER THE NEXT BASE RATE
5 CASE AFTER THE ACQUISITION.

6 (I) "SELLING UTILITY" MEANS A WATER COMPANY OR A SEWAGE DISPOSAL
7 COMPANY IN THE STATE THAT IS BEING PURCHASED BY AN ACQUIRING ENTITY AS
8 THE RESULT OF A VOLUNTARY ARM'S LENGTH TRANSACTION BETWEEN THE BUYER
9 AND SELLER.

10 (J) "UTILITY VALUATION EXPERT" OR "EXPERT" MEANS A PERSON HIRED
11 BY AN ACQUIRING PUBLIC UTILITY AND SELLING UTILITY FOR THE PURPOSE OF
12 CONDUCTING AN ECONOMIC VALUATION OF THE SELLING UTILITY TO DETERMINE
13 ITS FAIR MARKET VALUE.

14 **6-302.**

15 THIS SUBTITLE APPLIES TO THE SALE AND ACQUISITION OF WATER
16 COMPANIES AND SEWAGE DISPOSAL COMPANIES.

17 **6-303.**

18 (A) ON AGREEMENT BY BOTH THE ACQUIRING ENTITY AND THE SELLING
19 UTILITY, THE FAIR MARKET VALUE OF THE SELLING UTILITY SHALL BE DETERMINED
20 IN ACCORDANCE WITH THIS SECTION.

21 (B) THE COMMISSION SHALL MAINTAIN A LIST OF UTILITY VALUATION
22 EXPERTS FROM WHICH THE ACQUIRING ENTITY AND THE SELLING UTILITY SHALL
23 EACH SELECT AN EXPERT.

24 (C) EACH OF THE TWO UTILITY VALUATION EXPERTS SHALL PERFORM A
25 SEPARATE APPRAISAL OF THE SELLING UTILITY FOR THE PURPOSE OF
26 ESTABLISHING ITS FAIR MARKET VALUE.

27 (D) EACH UTILITY VALUATION EXPERT SHALL DETERMINE THE FAIR
28 MARKET VALUE IN COMPLIANCE WITH THE UNIFORM STANDARDS OF
29 PROFESSIONAL APPRAISAL PRACTICE, EMPLOYING THE COST, MARKET, AND
30 INCOME APPROACHES.

31 (E) (1) THE ACQUIRING ENTITY AND THE SELLING UTILITY SHALL
32 ENGAGE THE SERVICES OF THE SAME LICENSED ENGINEER TO CONDUCT AN

1 ASSESSMENT OF THE TANGIBLE ASSETS OF THE SELLING UTILITY.

2 (2) THE ASSESSMENT SHALL BE INCORPORATED INTO THE
3 APPRAISALS UNDER THE COST APPROACH REQUIRED UNDER SUBSECTION (D) OF
4 THIS SECTION.

5 (F) EACH UTILITY VALUATION EXPERT SHALL PROVIDE THE COMPLETED
6 APPRAISAL TO THE ACQUIRING PUBLIC ENTITY AND THE SELLING UTILITY WITHIN
7 90 DAYS AFTER EXECUTION OF THE CONTRACT FOR THE APPRAISAL SERVICE.

8 **6-304.**

9 (A) THE UTILITY VALUATION EXPERTS REQUIRED UNDER § 6-303 OF THIS
10 SUBTITLE SHALL BE SELECTED AS FOLLOWS:

11 (1) ONE SHALL BE SELECTED BY THE ACQUIRING ENTITY; AND

12 (2) ONE SHALL BE SELECTED BY THE SELLING UTILITY.

13 (B) A UTILITY VALUATION EXPERT MAY NOT:

14 (1) DERIVE ANY MATERIAL FINANCIAL BENEFIT FROM THE SALE OF
15 THE SELLING UTILITY OTHER THAN FEES FOR SERVICES RENDERED; OR

16 (2) BE AN IMMEDIATE FAMILY MEMBER OF A DIRECTOR, AN OFFICER,
17 OR AN EMPLOYEE OF EITHER THE ACQUIRING ENTITY OR THE SELLING UTILITY
18 WITHIN 12 MONTHS BEFORE THE DATE OF HIRING TO PERFORM AN APPRAISAL
19 UNDER THIS SUBTITLE.

20 (C) (1) FEES PAID TO UTILITY VALUATION EXPERTS MAY BE INCLUDED IN
21 THE TRANSACTION AND CLOSING COSTS ASSOCIATED WITH ACQUISITION BY THE
22 ACQUIRING ENTITY.

23 (2) FEES ELIGIBLE FOR INCLUSION MAY NOT EXCEED 5% OF THE FAIR
24 MARKET VALUE OF THE SELLING UTILITY OR ANOTHER FEE THAT THE COMMISSION
25 APPROVES.

26 **6-305.**

27 (A) THE RATE MAKING RATE BASE OF THE SELLING UTILITY SHALL BE
28 INCORPORATED INTO THE RATE BASE OF:

29 (1) THE ACQUIRING UTILITY DURING THE ACQUIRING UTILITY'S NEXT

1 BASE RATE CASE; OR

2 (2) IN THE CASE OF AN ACQUIRING ENTITY THAT IS NOT A PUBLIC
3 SERVICE COMPANY IN THE STATE AT THE TIME OF FILING UNDER THIS SUBTITLE,
4 THE ACQUIRING ENTITY'S INITIAL TARIFF FILING.

5 (B) THE RATE MAKING RATE BASE OF THE SELLING UTILITY SHALL BE THE
6 LESSER OF:

7 (1) THE PURCHASE PRICE NEGOTIATED BY THE ACQUIRING ENTITY
8 AND SELLING UTILITY; OR

9 (2) THE FAIR MARKET VALUE OF THE SELLING UTILITY.

10 6-306.

11 (A) THIS SECTION APPLIES TO THE ACQUISITION OF A SELLING UTILITY BY
12 AN ACQUIRING UTILITY.

13 (B) IF AN ACQUIRING UTILITY AND THE SELLING UTILITY AGREE TO USE
14 THE PROCESS OUTLINED IN § 6-303 OF THIS SUBTITLE, THE ACQUIRING UTILITY
15 SHALL INCLUDE IN ITS APPLICATION FOR COMMISSION APPROVAL OF THE
16 ACQUISITION FILED UNDER § 6-101 OF THIS TITLE:

17 (1) COPIES OF THE TWO APPRAISALS PERFORMED BY THE UTILITY
18 VALUATION EXPERTS UNDER § 6-303 OF THIS SUBTITLE;

19 (2) THE PURCHASE PRICE OF THE SELLING UTILITY AS AGREED TO BY
20 THE ACQUIRING UTILITY AND THE SELLING UTILITY;

21 (3) THE RATE MAKING RATE BASE DETERMINED IN ACCORDANCE
22 WITH § 6-305 OF THIS SUBTITLE;

23 (4) THE TRANSACTION AND CLOSING COSTS INCURRED BY THE
24 ACQUIRING UTILITY THAT WILL BE INCLUDED IN ITS RATE BASE; AND

25 (5) A TARIFF CONTAINING A RATE EQUAL TO THE EXISTING RATES OF
26 THE SELLING UTILITY AT THE TIME OF THE ACQUISITION AND A RATE
27 STABILIZATION PLAN, IF APPLICABLE TO THE ACQUISITION.

28 (C) THE COMMISSION SHALL ISSUE A FINAL ORDER ON AN APPLICATION
29 SUBMITTED UNDER THIS SUBTITLE WITHIN 180 DAYS AFTER THE FILING DATE OF A
30 COMPLETE APPLICATION UNDER SUBSECTION (B) OF THIS SECTION.

1 (D) IF THE COMMISSION ISSUES AN ORDER APPROVING THE APPLICATION
2 FOR ACQUISITION, THE ORDER SHALL INCLUDE:

3 (1) THE RATE MAKING RATE BASE OF THE SELLING UTILITY, AS
4 DETERMINED UNDER § 6-305 OF THIS SUBTITLE; AND

5 (2) ANY CONDITIONS OF APPROVAL THAT THE COMMISSION
6 REQUIRES.

7 (E) (1) THE TARIFF SUBMITTED UNDER SUBSECTION (B)(5) OF THIS
8 SECTION SHALL REMAIN IN EFFECT UNTIL NEW RATES ARE APPROVED FOR THE
9 ACQUIRING UTILITY IN A BASE RATE CASE PROCEEDING.

10 (2) THE ACQUIRING UTILITY MAY COLLECT A DISTRIBUTION SYSTEM
11 IMPROVEMENT CHARGE DURING THIS PERIOD AS APPROVED BY THE COMMISSION.

12 (F) (1) THE SELLING UTILITY'S COST OF SERVICE SHALL BE
13 INCORPORATED INTO THE REVENUE REQUIREMENT OF THE ACQUIRING UTILITY AS
14 PART OF THE ACQUIRING UTILITY'S NEXT BASE RATE CASE PROCEEDING.

15 (2) THE ORIGINAL SOURCE OF FUNDING FOR ANY PART OF THE
16 WATER OR SEWER ASSETS OF THE SELLING UTILITY MAY NOT BE RELEVANT IN
17 DETERMINING THE VALUE OF THOSE ASSETS.

18 **6-307.**

19 (A) THIS SECTION APPLIES TO THE ACQUISITION OF A SELLING UTILITY BY
20 AN ACQUIRING ENTITY THAT IS NOT A PUBLIC SERVICE COMPANY IN THE STATE AT
21 THE TIME OF FILING FOR APPROVAL OF THE ACQUISITION.

22 (B) THE ACQUIRING ENTITY SHALL PROVIDE ALL THE INFORMATION
23 REQUIRED BY § 6-306(B) OF THIS SUBTITLE TO THE COMMISSION AS AN
24 ATTACHMENT TO ITS APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE
25 AND NECESSITY TO OPERATE AS A PUBLIC SERVICE COMPANY IN THE STATE.

26 **6-308.**

27 (A) THE COST OF AN IMPROVEMENT THAT AN ACQUIRING UTILITY PLACES
28 IN SERVICE AFTER THE ACQUISITION THAT IS NOT INCLUDED IN A DISTRIBUTION
29 IMPROVEMENT CHARGE SHALL ACCRUE A CONSTRUCTION ALLOWANCE AFTER THE
30 DATE THE COST WAS INCURRED UNTIL THE EARLIER OF:

1 **(1) 4 YEARS AFTER THE IMPROVEMENT IS PLACED IN SERVICE; OR**

2 **(2) THE DATE THE IMPROVEMENT IS INCLUDED IN THE ACQUIRING**
3 **UTILITY'S NEXT BASE RATE CASE.**

4 **(B) DEPRECIATION ON AN ACQUIRING UTILITY'S IMPROVEMENTS AFTER**
5 **THE ACQUISITION THAT HAVE NOT BEEN INCLUDED IN THE CALCULATION OF A**
6 **DISTRIBUTION SYSTEM IMPROVEMENT CHARGE SHALL BE DEFERRED FOR BOOK**
7 **AND RATE MAKING PURPOSES.**

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2018.