

Chapter 220

(Senate Bill 854)

AN ACT concerning

Public Utilities – Water and Sewage Disposal Companies – Acquisition

FOR the purpose of establishing a certain process for valuing a water company or a sewage disposal company that is the subject of a certain acquisition; prohibiting a person from acquiring a controlling interest in certain water services or sewage disposal providers for certain purposes without prior approval of the Public Service Commission; providing that the Commission may authorize a certain acquisition if the Commission finds that the acquisition is consistent with the public convenience and necessity; requiring the fair market value of the selling utility to be determined in a certain manner under certain circumstances; requiring the Public Service Commission to maintain a list of certain utility valuation experts; requiring certain utility valuation experts to perform separate valuations of a providing that the acquiring entity and the selling utility are responsible for hiring certain experts to conduct an appraisal of the selling utility in a certain manner; requiring an acquiring entity and a selling utility to engage a certain licensed engineer for certain purposes; requiring the utility valuation experts to provide completed appraisals within a certain period of time; providing for the selection of certain utility valuation experts in a certain manner; prohibiting a utility valuation expert from deriving certain benefits from a certain sale or from having a certain relationship with an acquiring entity or a selling utility within a certain period of time; authorizing the inclusion of certain fees in certain costs; requiring the rate making rate base of a selling utility and certain costs and fees to be included in the rate base of the acquiring utility or other acquiring entity in a certain manner and at a certain value; requiring an acquiring utility entity to provide certain information to the Commission in a certain application; requiring the Commission to issue a certain order on a certain application within a certain period of time; providing for a certain extension; providing that a certain application is deemed approved under certain circumstances; requiring the order to contain certain matters; providing that a certain tariff shall remain in effect until certain rates are approved; authorizing an acquiring utility to collect a certain distribution system improvement charge during a certain period subject to Commission approval; providing that a certain appraisal is presumed to be valid under certain circumstances; requiring a certain cost of service to be included in the revenue requirement of the acquiring utility entity in a certain manner; requiring an acquiring entity that is not a public utility in the State to include certain information in an application for a certificate of public convenience and necessity to operate in the State; providing for the accrual of a certain construction allowance for an acquiring utility entity for a certain period under certain circumstances; providing for the deferral of certain depreciation for certain purposes; providing for the application of this Act; defining certain terms; and generally relating to water companies and sewage disposal companies.

BY repealing and reenacting, without amendments,

Article – Public Utilities

Section 1–101(a), (d), (f), (t), (u), (v), (w), (x), (z), (ee), (ss), and (tt) and 4–206

Annotated Code of Maryland

(2010 Replacement Volume and 2017 Supplement)

BY adding to

Article – Public Utilities

Section 6–301 through 6–308 to be under the new subtitle “Subtitle 3. Acquisition of
Water Companies and Sewage Disposal Companies”

Annotated Code of Maryland

(2010 Replacement Volume and 2017 Supplement)

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

Article – Public Utilities

1–101.

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

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

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

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

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

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

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

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

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

(i) a campground that provides water, electric, gas, sewage, or telephone service to campers incident to the campground's primary business of operating and maintaining the campground; or

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

1. an electric vehicle charging station;
2. electric vehicle supply equipment; or
3. an electric vehicle charging station service company or provider.

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

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

- (i) the amount of a charge; or
- (ii) the nature and value of the service rendered for the charge.

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

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

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

4-206.

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

(b) (1) The valuation:

- (i) is not final until the Commission:
 1. serves on the public service company a copy of the order setting the proposed valuation and the method used to set the valuation; and
 2. allows a reasonable time in which to file a protest; and

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

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

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

SUBTITLE 3. ACQUISITION OF WATER COMPANIES AND SEWAGE DISPOSAL COMPANIES.

6-301.

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

(B) “ACQUIRING ENTITY” MEANS:

(1) ~~AN ACQUIRING UTILITY~~ A WATER COMPANY OR A SEWAGE COMPANY THAT IS ACQUIRING A SELLING UTILITY AS THE RESULT OF A VOLUNTARY ARM’S LENGTH TRANSACTION BETWEEN THE BUYER AND SELLER; OR

(2) ANOTHER PERSON THAT:

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

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

~~(C) “ACQUIRING UTILITY” MEANS A WATER COMPANY OR A SEWAGE DISPOSAL COMPANY THAT IS ACQUIRING A SELLING UTILITY AS THE RESULT OF A VOLUNTARY ARM’S LENGTH TRANSACTION BETWEEN THE BUYER AND SELLER.~~

~~(D)~~ (C) “AFFILIATE” HAS THE MEANING STATED IN § 7-501 OF THIS ARTICLE.

~~(E)~~ (D) “CONSTRUCTION ALLOWANCE” MEANS AN ACCOUNTING PRACTICE THAT RECOGNIZES THE CAPITAL COSTS, INCLUDING DEBT AND EQUITY

FUNDS THAT ARE USED TO FINANCE THE CONSTRUCTION COSTS OF AN IMPROVEMENT TO A SELLING UTILITY'S ASSETS BY AN ACQUIRING ENTITY.

~~(F)~~ (E) "FAIR MARKET VALUE" MEANS THE AVERAGE OF THE TWO UTILITY VALUATION EXPERT APPRAISALS CONDUCTED UNDER ~~§ 6-303~~ 6-304 OF THIS SUBTITLE.

~~(G)~~ "RATE MAKING RATE BASE" MEANS THE DOLLAR VALUE OF A SELLING UTILITY THAT, FOR PURPOSES OF RATE MAKING AFTER THE ACQUISITION, IS INCORPORATED INTO THE RATE BASE OF THE ACQUIRING ENTITY.

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

~~(I)~~ (F) "SELLING UTILITY" MEANS A WATER COMPANY OR A SEWAGE DISPOSAL COMPANY ~~IN THE STATE~~ OR ANY OTHER WATER SERVICE OR SEWAGE DISPOSAL SERVICE PROVIDER IN THE STATE, INCLUDING ANY STATE, COUNTY, OR MUNICIPAL WATER SERVICE PROVIDER OR SEWAGE DISPOSAL SERVICE PROVIDER THAT IS BEING PURCHASED BY AN ACQUIRING ENTITY AS THE RESULT OF A VOLUNTARY ARM'S LENGTH TRANSACTION BETWEEN THE BUYER AND SELLER.

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

6-302.

THIS SUBTITLE APPLIES TO THE SALE AND ACQUISITION OF WATER COMPANIES AND SEWAGE DISPOSAL COMPANIES, INCLUDING ALL TANGIBLE ASSETS, OF PUBLIC AND PRIVATE WATER SERVICE PROVIDERS AND SEWAGE DISPOSAL SERVICE PROVIDERS WITH FEWER THAN 400,000 CUSTOMERS.

6-303.

(A) WITHOUT PRIOR AUTHORIZATION OF THE COMMISSION, A PERSON MAY NOT ACQUIRE A CONTROLLING INTEREST IN ANY STATE, COUNTY, MUNICIPAL, OR SIMILAR NOT-FOR-PROFIT WATER SERVICE OR SEWAGE DISPOSAL SERVICE PROVIDER, FOR THE PURPOSE OF CONVERTING THE PROVIDER INTO A WATER COMPANY OR SEWAGE DISPOSAL COMPANY.

(B) THE COMMISSION MAY AUTHORIZE AN ACQUISITION UNDER SUBSECTION (A) OF THIS SECTION IF THE COMMISSION FINDS THAT THE ACQUISITION IS CONSISTENT WITH THE PUBLIC CONVENIENCE AND NECESSITY.

6-304.

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

~~(B) THE COMMISSION SHALL MAINTAIN A LIST OF UTILITY VALUATION EXPERTS FROM WHICH THE ACQUIRING ENTITY AND THE SELLING UTILITY SHALL EACH SELECT AN EXPERT~~ BE RESPONSIBLE FOR HIRING A UTILITY VALUATION EXPERT TO CONDUCT AN APPRAISAL OF THE SELLING UTILITY TO DETERMINE THE FAIR MARKET VALUE OF THE SELLING UTILITY.

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

~~(D) (C) EACH UTILITY VALUATION EXPERT SHALL DETERMINE THE FAIR MARKET VALUE IN COMPLIANCE~~ APPRAISAL SHALL BE COMPLETED IN ACCORDANCE WITH THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE, EMPLOYING THE COST, MARKET, AND INCOME APPROACHES.

~~(E) (D)~~ (1) THE ACQUIRING ENTITY AND THE SELLING UTILITY SHALL ENGAGE THE SERVICES OF THE SAME LICENSED ENGINEER TO CONDUCT AN ASSESSMENT OF THE TANGIBLE ASSETS OF THE SELLING UTILITY.

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

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

~~6-304.~~ 6-305.

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

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

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

~~(B)~~ A UTILITY VALUATION EXPERT MAY NOT:

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

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

6-306.

~~(C)~~ (A) (1) REASONABLE TRANSACTION AND CLOSING COSTS INCURRED BY THE ACQUIRING ENTITY SHALL BE INCLUDED IN THE RATE MAKING RATE BASE OF THE ACQUIRING ENTITY.

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

~~(2)~~ (3) FEES UNLESS THE COMMISSION FINDS JUST CAUSE TO AUTHORIZE ADDITIONAL FEES, FEES ELIGIBLE FOR INCLUSION MAY NOT EXCEED 5% OF THE FAIR MARKET VALUE OF THE SELLING UTILITY OR ANOTHER FEE THAT THE COMMISSION APPROVES \$50,000 IF THE ACTUAL FEES PAID EXCEED 5% OF THE FAIR MARKET VALUE.

~~6-305.~~

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

~~(1) THE ACQUIRING UTILITY DURING THE ACQUIRING UTILITY'S NEXT BASE RATE CASE; OR~~

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

(B) THE AS OF THE CLOSING DATE OF THE ACQUISITION, THE RATE MAKING RATE BASE OF THE SELLING UTILITY, INCLUDING ADDITIONS UNDER SUBSECTION (A) OF THIS SECTION, SHALL BE THE LESSER OF:

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

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

~~6-306.~~ 6-307.

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

~~(B)~~ IF AN ACQUIRING UTILITY ENTITY AND THE SELLING UTILITY AGREE TO USE THE PROCESS OUTLINED IN ~~§ 6-303~~ § 6-304 OF THIS SUBTITLE, THE ACQUIRING UTILITY ENTITY SHALL INCLUDE IN ITS APPLICATION FOR COMMISSION APPROVAL OF THE ACQUISITION ~~FILED UNDER § 6-101 OF THIS TITLE:~~

(1) COPIES OF THE TWO APPRAISALS PERFORMED BY THE UTILITY VALUATION EXPERTS UNDER ~~§ 6-303~~ § 6-304 OF THIS SUBTITLE;

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

(3) THE RATE MAKING RATE BASE OF THE SELLING UTILITY DETERMINED IN ACCORDANCE WITH ~~§ 6-305~~ OF THIS SUBTITLE;

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

(5) ~~A TARIFF CONTAINING A RATE EQUAL TO THE EXISTING RATES OF THE SELLING UTILITY AT THE TIME OF THE ACQUISITION AND A RATE STABILIZATION PLAN, IF APPLICABLE TO THE~~ SCHEDULE OF RATES, SERVICE CHARGES, AND ANY ADDITIONAL FEES TO BE INCURRED BY THE CUSTOMERS OF THE SELLING UTILITY AT OR IMMEDIATELY AFTER THE CLOSING DATE OF ACQUISITION.

~~(C)~~ (B) (1) ~~THE~~ SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE COMMISSION SHALL ISSUE A FINAL ORDER ON AN APPLICATION SUBMITTED UNDER THIS SUBTITLE WITHIN 180 DAYS AFTER THE FILING DATE OF A COMPLETE APPLICATION UNDER SUBSECTION ~~(B)~~ (A) OF THIS SECTION.

(2) THE COMMISSION MAY EXTEND A PROCEEDING UNDER THIS SUBTITLE FOR AN ADDITIONAL 30 DAYS IF THE COMMISSION FINDS THAT THE PROCEEDINGS CANNOT BE COMPLETED WITHIN THE INITIAL SUSPENSION PERIOD.

(3) AFTER THE EXPIRATION OF 180 DAYS UNDER PARAGRAPH (1) OF THIS SUBSECTION AND ANY EXTENSION UNDER PARAGRAPH (2) OF THIS SUBSECTION, IF THE COMMISSION HAS NOT ENTERED A FINAL ORDER, THE APPLICATION SHALL BE DEEMED APPROVED.

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

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

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

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

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

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

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

~~6-307.~~

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

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

(E) AN APPRAISAL CONDUCTED UNDER THIS SUBTITLE IS PRESUMED TO BE VALID UNLESS SUBSTANTIAL EVIDENCE DEMONSTRATES A FAILURE TO ADHERE TO THE REQUIREMENTS OF § 6-304 OR § 6-305 OF THIS SUBTITLE.

6-308.

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

(1) ~~4~~ 3 YEARS AFTER THE IMPROVEMENT IS PLACED IN SERVICE; OR

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

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

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

Approved by the Governor, April 24, 2018.