

SENATE BILL 411

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1998 Regular Session  
8r2189  
CF 8r1075

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By: **Senator Bromwell**

Introduced and read first time: February 6, 1998

Assigned to: Finance

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A BILL ENTITLED

1 AN ACT concerning

2 **Public Service Companies - Standards of Conduct Relating to Regulated**  
3 **and Nonregulated Business Activities**

4 FOR the purpose of providing certain standards of conduct between certain public  
5 service companies and certain affiliates; defining certain terms; providing for  
6 the application of this Act; and generally relating to public service companies.

7 BY adding to

8 Article - Public Utility Companies

9 Section 5-305

10 Annotated Code of Maryland

11 (As enacted by Chapter \_\_\_\_\_ (S.B. 1) of the Acts of the General Assembly of

12 1998)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

14 MARYLAND, That the Laws of Maryland read as follows:

15 **Article - Public Utility Companies**

16 5-305.

17 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
18 INDICATED.

19 (2) "AFFILIATE" INCLUDES A NONREGULATED BUSINESS ACTIVITY OF A  
20 PUBLIC SERVICE COMPANY REGARDLESS OF THE ORGANIZATIONAL STRUCTURE OF  
21 THE ACTIVITY.

22 (3) "BUSINESS ACTIVITY" DOES NOT INCLUDE A CHARITABLE  
23 CONTRIBUTION MADE TO A NOT-FOR-PROFIT ORGANIZATION OR ENTITY.

24 (B) THIS SECTION APPLIES TO A PUBLIC SERVICE COMPANY THAT:

25 (1) IS REGULATED BY THE COMMISSION;

26 (2) PROVIDES GAS OR ELECTRIC SERVICE; AND

1 (3) ENGAGES IN OR HAS AN AFFILIATE THAT ENGAGES IN A  
2 NONREGULATED BUSINESS ACTIVITY.

3 (C) A PUBLIC SERVICE COMPANY REGULATED BY THE COMMISSION AND ITS  
4 NONREGULATED AFFILIATES SHALL CONFORM TO THE FOLLOWING STANDARDS OF  
5 CONDUCT IN ALL BUSINESS, TRANSACTION, AND MARKETING ACTIVITIES  
6 INCLUDING BUT NOT LIMITED TO:

7 (1) A PUBLIC SERVICE COMPANY ENGAGED IN ANY NONREGULATED  
8 BUSINESS, ACTIVITY, OPERATION, OR TRANSACTION SHALL:

9 (I) DO SO AS A SEPARATE AFFILIATED CORPORATION OR OTHER  
10 LEGAL ENTITY; AND

11 (II) MAINTAIN SEPARATE BOOKS AND RECORDS THAT SHALL BE  
12 MADE AVAILABLE TO THE COMMISSION ON REQUEST.

13 (2) A PUBLIC SERVICE COMPANY AND ITS AFFILIATE SHALL:

14 (I) OPERATE FROM PHYSICALLY SEPARATE LOCATIONS;

15 (II) MAINTAIN SEPARATE TELECOMMUNICATIONS AND BUSINESS  
16 OPERATIONS; AND

17 (III) OWN AND MAINTAIN SEPARATE ASSETS, INFORMATION  
18 SYSTEMS, AND OTHER GOODS AND EQUIPMENT USED TO CONDUCT BUSINESS.

19 (3) A PUBLIC SERVICE COMPANY:

20 (I) MAY NOT USE ITS PERSONNEL OR ASSETS TO PERFORM  
21 ANALYSES OR PROVIDE OTHER SERVICES WITH RESPECT TO ITS AFFILIATE OR  
22 CUSTOMERS;

23 (II) MAY NOT TRANSFER EMPLOYEES WITHIN THE BUSINESS  
24 ENTITY;

25 (III) SHALL MAINTAIN A SEPARATE WORK FORCE; AND

26 (IV) SHALL SEPARATELY RECRUIT, TRAIN, HIRE, AND CONDUCT  
27 PERSONNEL ACTIVITIES.

28 (4) (I) A PUBLIC SERVICE COMPANY SHALL SEEK COMPETITIVE  
29 PROPOSALS FROM VENDORS AND CONTRACTORS FOR ADMINISTERING  
30 UTILITY-SPONSORED AND RELATED PROGRAMS.

31 (II) AN AFFILIATE MAY SUBMIT A PROPOSAL AND SHALL BE  
32 SUBJECT TO THE SAME PUBLICIZED OR WRITTEN EVALUATION AND CONTRACTING  
33 TERMS AS AN UNAFFILIATED BIDDER.

34 (III) A PUBLIC SERVICE COMPANY MAY NOT CONTRACT FOR  
35 NONTARIFF SERVICE OR PURCHASES WITH AN AFFILIATE WITHOUT FOLLOWING

1 COMPETITIVE SOLICITATION PROCUREMENT PROCEDURES AND SHALL RECORD  
2 EACH AFFILIATE TRANSACTION RESULTING FROM A COMPETITIVE PROCUREMENT.

3 (5) A PUBLIC SERVICE COMPANY AND ITS AFFILIATE MAY NOT SHARE  
4 BETWEEN THEMSELVES CUSTOMER OR POTENTIAL CUSTOMER INFORMATION OR  
5 BUSINESS RELATED RECORDS.

6 (6) AN AFFILIATE MAY NOT USE THE UTILITY BILL FOR FINANCING  
7 UNLESS THIS SERVICE IS OFFERED TO THIRD PARTIES UNDER THE SAME TERMS AND  
8 CONDITIONS.

9 (7) A PUBLIC SERVICE COMPANY MAY OFFER THE SAME PERMITTED  
10 DISCOUNTS, REBATES, TERMS OF SERVICE, PROMOTIONAL PRACTICES, OR  
11 GUARANTEES TO ALL NONUTILITY, UNAFFILIATED SUPPLIERS OR CUSTOMERS THAT  
12 IT OFFERS TO ITS AFFILIATE OR AFFILIATE'S CUSTOMERS AND SHALL APPLY EACH  
13 TARIFF PROVISION IN THE SAME MANNER TO THE SAME OR SIMILARLY SITUATED  
14 PERSONS.

15 (8) A PUBLIC SERVICE COMPANY SHALL PROCESS ALL SIMILAR  
16 REQUESTS FOR REGULATED UTILITY SERVICES IN THE SAME MANNER AND PERIOD  
17 OF TIME.

18 (9) (I) A PUBLIC SERVICE COMPANY AND ITS AFFILIATE MAY NOT  
19 MAKE JOINT CALLS.

20 (II) A PUBLIC SERVICE COMPANY AND ITS AFFILIATE MAY NOT  
21 CONDUCT JOINT PROMOTIONS.

22 (III) AN AFFILIATE MAY NOT UTILIZE THE COMPANY'S NAME, LOGO,  
23 OR TRADEMARK.

24 (IV) A COMPANY MAY NOT PROVIDE SALES LEADS OR  
25 PROCUREMENT ADVICE TO ITS AFFILIATE OR IMPLY THAT A BUSINESS  
26 RELATIONSHIP EXISTS BETWEEN THE ENTITIES.

27 (V) A COMPANY MAY RESPOND TO A CUSTOMER'S REQUEST FOR  
28 INFORMATION REGARDING SERVICES PROVIDED BY ITS AFFILIATE BUT MAY NOT  
29 MENTION OR REFER TO ITS AFFILIATE.

30 (VI) A CUSTOMER MAY ARRANGE FOR A COMPANY  
31 REPRESENTATIVE TO CALL TO ADVISE ON TECHNICAL OR SAFETY ISSUES BUT THE  
32 ADVICE MAY NOT RELATE TO SALES OR MARKETING.

33 (10) A PUBLIC SERVICE COMPANY MAY NOT ARRANGE, GUARANTEE, OR  
34 PROVIDE FINANCING TO ITS AFFILIATE IN ORDER FOR THE AFFILIATE TO PURCHASE  
35 GOODS, PRODUCTS, OR EQUIPMENT.

36 (11) (I) ALL PERMITTED TRANSACTIONS BETWEEN REGULATED  
37 PUBLIC SERVICE COMPANY ACTIVITIES AND AFFILIATES SHALL BE:

1                                   1.       RECORDED ACCORDING TO THE PUBLIC SERVICE  
2 COMPANY'S COST ALLOCATION MANUAL; AND

3                                   2.       FILED AND PREAPPROVED BY THE COMMISSION.

4                                   (II)     A PUBLIC SERVICE COMPANY THAT OFFERS EITHER DIRECTLY  
5 OR INDIRECTLY ANY TRANSACTION, SERVICE, PERSONNEL, OR ACTIVITY TO ITS  
6 AFFILIATE MUST ALLOCATE THAT OFFER TO PREVENT CROSS-SUBSIDIZATION BY  
7 RATEPAYERS.

8                                   (III)    THE COMMISSION SHALL ANNUALLY CONDUCT AN  
9 ALLOCATION COMPLIANCE AUDIT OF THE PUBLIC SERVICE COMPANY.

10                                (IV)     INDEPENDENT COMPLIANCE AUDITS FOR MAJOR UTILITIES  
11 SHALL BE CONDUCTED ONCE EVERY 2 YEARS.

12                                (12)    A PUBLIC SERVICE COMPANY SHALL MAINTAIN WITH THE  
13 COMMISSION A FILE ON ITS NONREGULATED BUSINESS ACTIVITIES THAT SHALL  
14 INCLUDE:

15                                (I)      EACH NONPUBLIC SERVICE COMPANY BUSINESS OPERATION;

16                                (II)     ITS BUSINESS PURPOSE;

17                                (III)    WHEN IT WAS FORMED OR ACQUIRED;

18                                (IV)    THE TYPE OF LEGAL ENTITY OF THE OPERATION;

19                                (V)      THE PUBLIC SERVICE COMPANY'S SPECIFIC OWNERSHIP  
20 INTEREST;

21                                (VI)    THE NAMES AND ADDRESSES OF ALL OFFICERS AND  
22 DIRECTORS OF THE OPERATION;

23                                (VII)   ALL BUSINESS LOCATION ADDRESSES; AND

24                                (VIII)  ANY ADDITIONAL INFORMATION THE COMMISSION REQUESTS.

25                                (13)    A PUBLIC SERVICE COMPANY AND ITS AFFILIATE SHALL ADOPT  
26 SPECIFIC WRITTEN PROCEDURES TO ENSURE THAT MANAGEMENT AND EMPLOYEES  
27 UNDERSTAND AND FOLLOW THESE STANDARDS OF CONDUCT AND SHALL INCLUDE  
28 TRAINING AND EDUCATION, WRITTEN NOTICES, AND OTHER INFORMATION TO  
29 REINFORCE ONGOING COMPLIANCE.

30                                (14)    (I)      IF A PUBLIC SERVICE COMPANY'S COMPETITOR OR CUSTOMER  
31 BELIEVES THAT THE PUBLIC SERVICE COMPANY HAS VIOLATED ANY OF THE  
32 STANDARDS OF CONDUCT PERTAINING TO AFFILIATE TRANSACTIONS, THE  
33 COMPETITOR OR CUSTOMER MAY FILE WITH THE COMMISSION, A WRITTEN  
34 COMPLAINT WITHIN 30 DAYS AFTER IDENTIFYING THE ALLEGED VIOLATION. THE  
35 COMPLAINING COMPETITOR OR CUSTOMER (COMPLAINANT) SHALL

1 SIMULTANEOUSLY FORWARD A COPY OF THE COMPLAINT TO THE OFFICE OF  
2 GENERAL COUNSEL OF THE AFFECTED PUBLIC SERVICE COMPANY.

3 (II) A PUBLIC SERVICE COMPANY SHALL FILE WITHIN 30 DAYS,  
4 SIMULTANEOUSLY WITH THE COMMISSION AND THE COMPLAINANT, A WRITTEN  
5 RESPONSE TO THE COMPLAINT THAT SHALL INCLUDE THE DATE OF THE COMPANY'S  
6 RESPONSE AND STATEMENTS ADDRESSING THE COMPLAINT.

7 (III) THE PUBLIC SERVICE COMPANY AND THE COMPLAINANT MAY  
8 MEET TO RESOLVE THE COMPLAINT WITHIN 2 WEEKS AFTER THE DATE OF THE  
9 PUBLIC SERVICE COMPANY'S RESPONSE.

10 (IV) THE PUBLIC SERVICE COMPANY AND THE COMPLAINANT  
11 SHALL IMMEDIATELY NOTIFY THE COMMISSION IF THE COMPLAINT CANNOT BE  
12 INFORMALLY RESOLVED. THE COMMISSION SHALL THEN ADDRESS THE COMPLAINT  
13 UNDER ITS OWN PROCEDURES.

14 (15) THE COMMISSION MAY AUDIT, INSPECT, INVESTIGATE, AND  
15 CONDUCT OTHER PROCEEDINGS AS THE COMMISSION REQUIRES TO ENFORCE  
16 COMPLIANCE WITH THESE STANDARDS OF CONDUCT AND MAY RETAIN AN  
17 INDEPENDENT CONSULTANT TO CONDUCT THE AUDITS.

18 (D) (1) IF THE COMMISSION FINDS THAT A PUBLIC SERVICE COMPANY HAS  
19 VIOLATED SUBSECTION (C) OF THIS SECTION, THE COMMISSION MAY ISSUE AN  
20 ORDER REQUIRING A REFUND FROM THE PUBLIC SERVICE COMPANY TO ITS  
21 RATEPAYERS.

22 (2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A REFUND UNDER  
23 PARAGRAPH (1) OF THIS SUBSECTION SHALL BE IN AN AMOUNT EQUAL TO THE  
24 VALUE OF THE BENEFIT TO THE AFFILIATE IN VIOLATION OF SUBSECTION (C) OF  
25 THIS SECTION.

26 (3) THE REFUND SHALL BE CALCULATED FROM THE LATER OF:

27 (I) OCTOBER 1, 1999; OR

28 (II) THE DATE OF THE LATEST NOTICE TO THE COMMISSION  
29 UNDER § 4-203 OF THIS ARTICLE AFFECTING A RATE INVOLVED IN THE VIOLATION  
30 OF SUBSECTION (C) OF THIS SECTION.

31 (4) THE REFUND MAY BE PAID TO RATEPAYERS IN A MANNER THE  
32 COMMISSION DETERMINES.

33 (E) IN ADDITION TO THE REFUND UNDER SUBSECTION (D) OF THIS SECTION,  
34 THE PUBLIC SERVICE COMPANY MAY BE REQUIRED TO PAY A PENALTY UP TO THREE  
35 TIMES THE AMOUNT OF THE REFUND, IN A MANNER THE COMMISSION DETERMINES.

36 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
37 construed as clarifying and additional to, and not in derogation of, existing law and

1 may not be construed to have any effect on any existing regulation, order, or final  
2 proceeding relating to a public service company.

3 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
4 October 1, 1998.