

**As Passed by the Senate**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**Sub. H. B. No. 422**

**Representatives Ginter, Rogers**

**Cosponsors: Representatives Carfagna, Seitz, Sprague, Thompson, Anielski, Antonio, Arndt, Barnes, Celebrezze, Green, Greenspan, Hambley, Johnson, Landis, Lepore-Hagan, Miller, Perales, Riedel, Schaffer, Scherer, Smith, K., Smith, R., Stein, Sweeney, Wiggam, Young**

**Senators Eklund, Beagle, Burke, Coley, Hackett, Jordan, Lehner, O'Brien, Schiavoni, Tavares, Yuko**

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**A BILL**

To amend section 4909.05 and to enact sections 1  
4905.481, 4905.49, 4905.491, 4909.051, 4909.052, 2  
4909.053, 4909.054, 4909.055, 4909.057, and 3  
4909.059 of the Revised Code, to amend Section 4 4  
of Am. H.B. 400 of the 114th General Assembly, 5  
and to repeal Sections 2 and 3 of Am. H.B. 400 6  
of the 114th General Assembly to govern 7  
acquisitions of municipal water-works and sewage 8  
disposal system companies by certain larger 9  
nonmunicipal water-works or sewage disposal 10  
system companies and to release certain 11  
conditions with respect to the conveyance of 12  
state-owned real estate to the Miami Valley 13  
Research Foundation. 14

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 4909.05 be amended and sections 15

4905.481, 4905.49, 4905.491, 4909.051, 4909.052, 4909.053, 16  
4909.054, 4909.055, 4909.057, and 4909.059 of the Revised Code 17  
be enacted to read as follows: 18

Sec. 4905.481. With the consent and approval of the public 19  
utilities commission, a large water-works or sewage disposal 20  
system company may purchase the property, plant, or business of 21  
any municipal water-works or sewage disposal system company, as 22  
those companies are defined in section 4909.051 of the Revised 23  
Code. A petition filed under this section may also seek approval 24  
of a certificate of public convenience and necessity and the 25  
approval of an original cost valuation under section 4909.052 of 26  
the Revised Code. 27

To obtain the consent and approval of the commission for 28  
such authority, a petition, signed and verified by the president 29  
of the large water-works or sewage disposal system company, 30  
clearly setting forth the object and purposes desired, and the 31  
terms and conditions of the same, shall be filed with the 32  
commission. If the commission deems it necessary, it shall, upon 33  
the filing of such petition, fix a time and place for a hearing. 34

The commission shall approve any petition filed with the 35  
commission under this section related to an acquisition 36  
described in section 4909.052 of the Revised Code, including a 37  
petition seeking the approval of a certificate of public 38  
convenience and necessity, provided that a large water-works or 39  
sewage disposal system company pursuant to section 4909.051 of 40  
the Revised Code sufficiently demonstrates, and the commission 41  
finds, that such petition is just and reasonable. A petition 42  
filed under this section shall be deemed approved if the 43  
commission fails to issue a final order not later than two 44  
hundred seventy days after the date the initial petition is 45

filed, unless the commission suspends review of the petition for 46  
good cause shown. 47

**Sec. 4905.49.** (A) As used in this section and section 48  
4905.491 of the Revised Code, "rate division" means a separate 49  
tariff of a water-works or sewage disposal system company for 50  
one or more geographic customer areas. 51

(B) A water-works or sewage disposal system company 52  
acquiring a municipal water-works or sewage disposal system 53  
company as described in section 4909.052 of the Revised Code 54  
shall recommend whether the geographic area of the customers of 55  
the company being acquired shall be integrated into an existing 56  
rate division of the acquiring company or given a new rate 57  
division. If the recommendation is for integration into an 58  
existing rate division, the acquiring company shall recommend 59  
how the area is to be integrated. 60

(C) The recommendations made under division (B) of this 61  
section shall be mutually agreed upon by the two companies. 62

**Sec. 4905.491.** In an order issued under section 4905.481 63  
of the Revised Code approving an acquisition described in 64  
section 4909.052 of the Revised Code, the public utilities 65  
commission shall include both of the following: 66

(A) The commission's decision establishing the rate base 67  
of the company being acquired, as determined under sections 68  
4909.05, 4909.052, and 4909.055 of the Revised Code; 69

(B) The rate division under which the geographic area of 70  
the customers of the company being acquired shall be served. 71

**Sec. 4909.05.** As used in this section: 72

(A) A "lease purchase agreement" is an agreement pursuant 73

to which a public utility leasing property is required to make 74  
rental payments for the term of the agreement and either the 75  
utility is granted the right to purchase the property upon the 76  
completion of the term of the agreement and upon the payment of 77  
an additional fixed sum of money or title to the property vests 78  
in the utility upon the making of the final rental payment. 79

(B) A "leaseback" is the sale or transfer of property by a 80  
public utility to another person contemporaneously followed by 81  
the leasing of the property to the public utility on a long-term 82  
basis. 83

(C) The public utilities commission shall prescribe the 84  
form and details of the valuation report of the property of each 85  
public utility or railroad in the state. Such report shall 86  
include all the kinds and classes of property, with the value of 87  
each, owned, held, or, with respect to a natural gas, water- 88  
works, or sewage disposal system company, projected to be owned 89  
or held as of the date certain, by each public utility or 90  
railroad used and useful, or, with respect to a natural gas, 91  
water-works, or sewage disposal system company, projected to be 92  
used and useful as of the date certain, for the service and 93  
convenience of the public. Such report shall contain the 94  
following facts in detail: 95

(1) The original cost of each parcel of land owned in fee 96  
and in use, or, with respect to a natural gas, water-works, or 97  
sewage disposal system company, projected to be owned in fee and 98  
in use as of the date certain, determined by the commission; and 99  
also a statement of the conditions of acquisition, whether by 100  
direct purchase, by donation, by exercise of the power of 101  
eminent domain, or otherwise; 102

(2) The actual acquisition cost, not including periodic 103

rental fees, of rights-of-way, trailways, or other land rights 104  
held, or, with respect to a natural gas, water-works, or sewage 105  
disposal system company, projected to be held as of the date 106  
certain, by virtue of easements, leases, or other forms of 107  
grants of rights as to usage; 108

(3) The original cost of all other kinds and classes of 109  
property used and useful, or, with respect to a natural gas, 110  
water-works, or sewage disposal system company, projected to be 111  
used and useful as of the date certain, in the rendition of 112  
service to the public. ~~Such~~ Subject to section 4909.052 of the 113  
Revised Code, such original costs of property, other than land 114  
owned in fee, shall be the cost, as determined to be reasonable 115  
by the commission, to the person that first dedicated or 116  
dedicates the property to the public use and shall be set forth 117  
in property accounts and subaccounts as prescribed by the 118  
commission. To the extent that the costs of property comprising 119  
a coal research and development facility, as defined in section 120  
1555.01 of the Revised Code, or a coal development project, as 121  
defined in section 1551.30 of the Revised Code, have been 122  
allowed for recovery as Ohio coal research and development costs 123  
under section 4905.304 of the Revised Code, none of those costs 124  
shall be included as a cost of property under this division. 125

(4) The cost of property constituting all or part of a 126  
project leased to or used by the utility, or, with respect to a 127  
natural gas, water-works, or sewage disposal system company, 128  
projected to be leased to or used by the utility as of the date 129  
certain, under Chapter 165., 3706., 6121., or 6123. of the 130  
Revised Code and not included under division (C) (3) of this 131  
section exclusive of any interest directly or indirectly paid by 132  
the utility with respect thereto whether or not capitalized; 133

(5) In the discretion of the commission, the cost to a utility, in an amount determined to be reasonable by the commission, of property constituting all or part of a project leased to the utility, or, with respect to a natural gas, water-works, or sewage disposal system company, projected to be leased to the utility as of the date certain, under a lease purchase agreement or a leaseback and not included under division (C) (3) of this section exclusive of any interest directly or indirectly paid by the utility with respect thereto whether or not capitalized;

(6) The proper and adequate reserve for depreciation, as determined to be reasonable by the commission;

(7) Any sums of money or property that the company may have received, or, with respect to a natural gas, water-works, or sewage disposal system company, is projected to receive as of the date certain, as total or partial defrayal of the cost of its property;

(8) The valuation of the property of the company, which shall be the sum of the amounts contained in the report pursuant to divisions (C) (1) to (5) of this section, less the sum of the amounts contained in the report pursuant to divisions (C) (6) and (7) of this section.

The report shall show separately the property used and useful to such public utility or railroad in the furnishing of the service to the public, the property held by such public utility or railroad for other purposes, and the property projected to be used and useful to or held by a natural gas, water-works, or sewage disposal system company as of the date certain, and such other items as the commission considers proper. The commission may require an additional report showing

the extent to which the property is used and useful, or, with 164  
respect to a natural gas, water-works, or sewage disposal system 165  
company, projected to be used and useful as of the date certain. 166  
Such reports shall be filed in the office of the commission for 167  
the information of the governor and the general assembly. 168

Sec. 4909.051. As used in sections 4909.052 to 4909.055 of 169  
the Revised Code: 170

"Large water-works or sewage disposal system company" 171  
means a water-works or sewage disposal system company that has 172  
annual operating revenues of two hundred fifty thousand dollars 173  
or more. 174

"Municipal water-works or sewage disposal system company" 175  
means any water-works or sewage disposal system company owned or 176  
operated by a political subdivision defined in section 6119.011 177  
of the Revised Code or by a municipal corporation. 178

Sec. 4909.052. Subject to a finding that such costs are 179  
just and reasonable, the public utilities commission in 180  
evaluating a petition submitted under section 4905.481 of the 181  
Revised Code shall accept the original cost, reported under 182  
division (C)(3) of section 4909.05 of the Revised Code, of the 183  
acquisition of a municipal water-works or sewage disposal system 184  
company that is acquired by a large water-works or sewage 185  
disposal system company, provided that the original cost is 186  
determined according to all of the following requirements: 187

(A) The acquiring company has three appraisals performed 188  
on the property of the company being acquired. 189

(B) The three appraisals are performed by three 190  
independent utility-valuation experts mutually selected by the 191  
acquiring company and the company being acquired from the list 192

<u>maintained under section 4909.054 of the Revised Code.</u>	193
<u>(C) The average of the three appraisals is used as the</u>	194
<u>fair market value of the company being acquired.</u>	195
<u>(D) Each utility-valuation expert does all of the</u>	196
<u>following:</u>	197
<u>(1) Determines the fair market value of the company to be</u>	198
<u>acquired by establishing the amount for which the company would</u>	199
<u>be sold in a voluntary transaction between a willing buyer and a</u>	200
<u>willing seller under no obligation to buy or sell;</u>	201
<u>(2) Determines the fair market value in compliance with</u>	202
<u>the uniform standards of professional appraisal practice;</u>	203
<u>(3) Employs the cost, market, and income approach to</u>	204
<u>independently quantify the future benefits of the company to be</u>	205
<u>acquired;</u>	206
<u>(4) Incorporates the assessment described in division (D)</u>	207
<u>(5) of this section into the appraisal under the cost, market,</u>	208
<u>and income approach;</u>	209
<u>(5) Engages one engineer who is licensed to prepare an</u>	210
<u>assessment of the tangible assets of the company to be acquired.</u>	211
<u>The original source of funding for any part of the tangible</u>	212
<u>assets shall not be relevant to the determination of the value</u>	213
<u>of those assets.</u>	214
<u>(E) The lesser of the purchase price or the fair market</u>	215
<u>value, described in division (C) of this section, is reported as</u>	216
<u>the original cost under division (C) (3) of section 4909.05 of</u>	217
<u>the Revised Code of the company to be acquired.</u>	218
<b><u>Sec. 4909.053.</u></b> Each utility-valuation expert employed	219
<u>under section 4909.052 of the Revised Code shall return the</u>	220



appraisal required under that section, in writing, to both 221  
companies described in that section in a reasonable and timely 222  
manner. All appraisals shall be included in any filing 223  
associated with the acquisition under section 4905.481 or 224  
4909.052 of the Revised Code. 225

**Sec. 4909.054.** For purposes of section 4909.052 of the 226  
Revised Code, the public utilities commission shall maintain a 227  
list of utility-valuation experts from which a water-works or 228  
sewage disposal system company may choose. The commission shall 229  
be responsible for creating and maintaining reasonable criteria 230  
that must be met to be included in the list. 231

**Sec. 4909.055.** Prudent costs of obtaining the three 232  
valuations used to determine the market value of the system in 233  
an acquisition described in section 4909.052 of the Revised Code 234  
shall be deferred as an expense for future recovery in a manner 235  
as determined by the public utilities commission. In determining 236  
the prudence of costs under this section, the commission shall 237  
give due regard to the circumstances of the case, including the 238  
size and complexity of, and any particular difficulties 239  
associated with, the valuation. 240

**Sec. 4909.057.** (A) Upon application of the acquiring 241  
company, the public utilities commission may authorize the 242  
acquiring company to defer post-in-service carrying costs on any 243  
improvements made to the company that is acquired after an 244  
acquisition described in section 4909.052 of the Revised Code. 245  
Such costs shall be calculated at the acquiring company's 246  
weighted average cost of debt as determined in its last rate 247  
case. Such deferrals shall commence after the date on which the 248  
expenditure was incurred and shall continue until the investment 249  
has been in service for a three-year period, until the acquiring 250

company's next rate case that includes the investment, or until 251  
the inclusion of the investment in a charge authorized under 252  
section 4909.172 of the Revised Code, whichever occurs first. 253

(B) Upon application of the acquiring company, the public 254  
utilities commission may authorize the acquiring company to 255  
defer any depreciation expense related to the post-acquisition 256  
improvements described in division (A) of this section to be 257  
recovered over the life of the assets commencing with the first 258  
rate case including the acquisition. This depreciation deferral 259  
shall continue until the associated investment has been in 260  
service for a three-year period, until the acquiring company's 261  
next rate case that includes the investment, or until the 262  
inclusion of the investment in a charge authorized under section 263  
4909.172 of the Revised Code, whichever occurs first. 264

Sec. 4909.059. Sections 4905.481, 4905.49, 4905.491, and 265  
4909.051 to 4909.057 of the Revised Code shall be exclusively 266  
applied to voluntary and mutually agreeable acquisitions. 267

**Section 2.** That existing section 4909.05 of the Revised 268  
Code is hereby repealed. 269

**Section 3.** That Section 4 of Am. H.B. 400 of the 114th 270  
General Assembly be amended to read as follows: 271

**Sec. 4.** Within thirty days after the effective date of the 272  
act, the Auditor of State, with the assistance of the Attorney 273  
General, shall prepare a deed to the real estate described in 274  
Section 1 of ~~this act~~ Am. H.B. 400 of the 114th General 275  
Assembly, to be executed by the Governor, countersigned by the 276  
Secretary of State, recorded in the office of the Auditor of 277  
State, and delivered to the Foundation. The deed shall be 278  
recorded in the office of the County Recorder of Montgomery 279

County.	280
<del>The deed shall contain a reverter clause in accordance</del>	281
<del>with the second paragraph of Section 3 of this act and shall</del>	282
<del>require the Foundation to make the payment described in the</del>	283
<del>third paragraph of Section 3 of this act.</del>	284
<b>Section 4.</b> That existing Section 4 of Am. H.B. 400 of the	285
114th General Assembly is hereby repealed.	286
<b>Section 5.</b> That Sections 2 and 3 of Am. H.B. 400 of the	287
114th General Assembly are hereby repealed.	288
<b>Section 6.</b> With respect to real estate transferred to	289
Miami Valley Research Foundation by Governor's Deed dated July	290
24, 1981, and registered with the Auditor of State in Volume 8,	291
Page 17, New Deeds Various State Lands, and recorded in the	292
Recorder's Office, Montgomery County, Ohio, in Microfiche 81-	293
386D06, the Auditor is hereby authorized to prepare, and the	294
Governor is hereby authorized to execute, a release or other	295
recordable instrument by which (i) the second, third, fourth,	296
and fifth recitals in such Governor's Deed are rescinded, (ii)	297
the restrictions on use and conveyance of such land contained in	298
such recitals are terminated, and (iii) the provisions of such	299
recitals relating to reversion of such land to the State of Ohio	300
are canceled ab initio.	301
Not later than thirty days after the effective date of	302
this act, the Auditor of State, with the assistance of the	303
Attorney General, shall prepare a release or other recordable	304
instrument releasing the conditions specified in the second,	305
third, fourth, and fifth recitals of the Governor's Deed dated	306
July 24, 1981, conveying real estate to Miami Valley Research	307
Foundation, registered with the Auditor of State in Volume 8,	308

Page 17, New Deeds Various State Lands, and recorded in the 309  
Recorder's Office, Montgomery County, Ohio, in Microfiche 81- 310  
386D06. 311

The release or other recordable instrument shall rescind 312  
the second, third, fourth, and fifth recitals of the July 24, 313  
1981, Governor's Deed, terminate the restrictions on use and 314  
conveyance of the real estate, and cancel the provisions of said 315  
clauses relating to reversion of the real estate to the state 316  
for conduct occurring before or after the date the release or 317  
other recordable instrument is executed. The release or other 318  
recordable instrument shall be executed by the Governor, 319  
countersigned by the Secretary of State, recorded in the office 320  
of the Auditor of State and delivered by the Auditor of State to 321  
Miami Valley Research Foundation. Miami Valley Research 322  
Foundation shall present the release or other recordable 323  
instrument for recording in the office of the County Recorder of 324  
Montgomery County. 325