

AN ACT

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

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 4909.05 be amended and sections 4905.481, 4905.49, 4905.491, 4909.051, 4909.052, 4909.053, 4909.054, 4909.055, 4909.057, and 4909.059 of the Revised Code be enacted to read as follows:

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

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

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

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

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

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

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

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

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

Sec. 4909.05. As used in this section:

(A) A "lease purchase agreement" is an agreement pursuant to which a public utility leasing property is required to make rental payments for the term of the agreement and either the utility is granted the right to purchase the property upon the completion of the term of the agreement and upon the payment of an additional fixed sum of money or title to the property vests in the utility upon the making of the final rental payment.

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

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

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

(2) The actual acquisition cost, not including periodic rental fees, of rights-of-way, trailways, or other land rights held, or, with respect to a natural gas, water-works, or sewage disposal system company, projected to be held as of the date certain, by virtue of easements, leases, or other forms of grants of rights as to usage;

(3) The original cost of all other kinds and classes of property used and useful, or, with respect to a natural gas, water-works, or sewage disposal system company, projected to be used and useful as of the date certain, in the rendition of service to the public. ~~Such~~ Subject to section

4909.052 of the Revised Code, such original costs of property, other than land owned in fee, shall be the cost, as determined to be reasonable by the commission, to the person that first dedicated or dedicates the property to the public use and shall be set forth in property accounts and subaccounts as prescribed by the commission. To the extent that the costs of property comprising a coal research and development facility, as defined in section 1555.01 of the Revised Code, or a coal development project, as defined in section 1551.30 of the Revised Code, have been allowed for recovery as Ohio coal research and development costs under section 4905.304 of the Revised Code, none of those costs shall be included as a cost of property under this division.

(4) The cost of property constituting all or part of a project leased to or used by the utility, or, with respect to a natural gas, water-works, or sewage disposal system company, projected to be leased to or used by the utility as of the date certain, under Chapter 165., 3706., 6121., or 6123. of the Revised Code 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;

(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 respect to a natural gas, water-works, or sewage disposal system company, projected to be used and useful as of the date certain. Such reports shall be filed in the office of the commission for the information of the governor and the general assembly.

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

"Large water-works or sewage disposal system company" means a water-works or sewage disposal system company that has annual operating revenues of two hundred fifty thousand dollars 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 defined in section 6119.011 of the Revised Code or by a municipal corporation.

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

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

(B) The three appraisals are performed by three independent utility-valuation experts mutually selected by the acquiring company and the company being acquired from the list maintained under section 4909.054 of the Revised Code.

(C) The average of the three appraisals is used as the fair market value of the company being acquired.

(D) Each utility-valuation expert does all of the following:

(1) 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;

(2) Determines the fair market value in compliance with the uniform standards of professional appraisal practice;

(3) Employs the cost, market, and income approach to independently quantify the future benefits of the company to be acquired;

(4) Incorporates the assessment described in division (D)(5) of this section into the appraisal under the cost, market, and income approach;

(5) Engages one engineer who is licensed 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 shall not be relevant to the determination of the value of those assets.

(E) The lesser of the purchase price or the fair market value, described in division (C) of this section, is reported as the original cost under division (C)(3) of section 4909.05 of the Revised Code of the company to be acquired.

Sec. 4909.053. Each utility-valuation expert employed under section 4909.052 of the Revised Code shall return the appraisal required under that section, in writing, to both companies described in that section in a reasonable and timely manner. All appraisals shall be included in any filing associated with the acquisition under section 4905.481 or 4909.052 of the Revised Code.

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

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

difficulties associated with, the valuation.

Sec. 4909.057. (A) Upon application of the acquiring company, the public utilities commission may authorize the acquiring company to defer post-in-service carrying costs on any improvements made to the company that is acquired after an acquisition described in section 4909.052 of the Revised Code. Such costs shall be calculated at the acquiring company's weighted average cost of debt as determined in its last rate case. Such deferrals shall commence after the date on which the expenditure was incurred and shall continue until the investment has been in service for a three-year period, until the acquiring company's next rate case that includes the investment, or until the inclusion of the investment in a charge authorized under section 4909.172 of the Revised Code, whichever occurs first.

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

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

SECTION 2. That existing section 4909.05 of the Revised Code is hereby repealed.

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

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

~~The deed shall contain a reverter clause in accordance with the second paragraph of Section 3 of this act and shall require the Foundation to make the payment described in the third paragraph of Section 3 of this act.~~

SECTION 4. That existing Section 4 of Am. H.B. 400 of the 114th General Assembly is hereby repealed.

SECTION 5. That Sections 2 and 3 of Am. H.B. 400 of the 114th General Assembly are hereby repealed.

SECTION 6. With respect to real estate transferred to Miami Valley Research Foundation by Governor's Deed dated July 24, 1981, and registered with the Auditor of State in Volume 8, Page 17, New Deeds Various State Lands, and recorded in the Recorder's Office, Montgomery County, Ohio, in Microfiche 81-386D06, the Auditor is hereby authorized to prepare, and the Governor is hereby authorized to execute, a release or other recordable instrument by which (i) the second, third, fourth, and fifth recitals in such Governor's Deed are rescinded, (ii) the restrictions on use and conveyance of such land contained in such recitals are terminated, and (iii) the provisions of such recitals relating to reversion of such land to the State of Ohio are canceled ab initio.

Not later than thirty days after the effective date of this act, the Auditor of State, with the assistance of the Attorney General, shall prepare a release or other recordable instrument releasing the conditions specified in the second, third, fourth, and fifth recitals of the Governor's Deed dated July 24, 1981, conveying real estate to Miami Valley Research Foundation, registered with the Auditor of State in Volume 8, Page 17, New Deeds Various State Lands, and recorded in the Recorder's Office, Montgomery County, Ohio, in Microfiche 81-386D06.

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

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20 ____.

Secretary of State.

File No. _____ Effective Date _____