

As Passed by the House

132nd General Assembly

Regular Session

2017-2018

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

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 govern 4
acquisitions of municipal water-works and sewage 5
disposal system companies by certain larger 6
nonmunicipal water-works or sewage disposal 7
system companies. 8

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

Section 1. That section 4909.05 be amended and sections 9
4905.481, 4905.49, 4905.491, 4909.051, 4909.052, 4909.053, 10
4909.054, 4909.055, 4909.057, and 4909.059 of the Revised Code 11
be enacted to read as follows: 12

Sec. 4905.481. With the consent and approval of the public 13
utilities commission, a large water-works or sewage disposal 14
system company may purchase the property, plant, or business of 15
any municipal water-works or sewage disposal system company, as 16

those companies are defined in section 4909.051 of the Revised 17
Code. A petition filed under this section may also seek approval 18
of a certificate of public convenience and necessity and the 19
approval of an original cost valuation under section 4909.052 of 20
the Revised Code. 21

To obtain the consent and approval of the commission for 22
such authority, a petition, signed and verified by the president 23
of the large water-works or sewage disposal system company, 24
clearly setting forth the object and purposes desired, and the 25
terms and conditions of the same, shall be filed with the 26
commission. If the commission deems it necessary, it shall, upon 27
the filing of such petition, fix a time and place for a hearing. 28

The commission shall approve any petition filed with the 29
commission under this section related to an acquisition 30
described in section 4909.052 of the Revised Code, including a 31
petition seeking the approval of a certificate of public 32
convenience and necessity, provided that a large water-works or 33
sewage disposal system company pursuant to section 4909.051 of 34
the Revised Code sufficiently demonstrates, and the commission 35
finds, that such petition is just and reasonable. A petition 36
filed under this section shall be deemed approved if the 37
commission fails to issue a final order not later than two 38
hundred seventy days after the date the initial petition is 39
filed, unless the commission suspends review of the petition for 40
good cause shown. 41

Sec. 4905.49. (A) As used in this section and section 42
4905.491 of the Revised Code, "rate division" means a separate 43
tariff of a water-works or sewage disposal system company for 44
one or more geographic customer areas. 45

(B) A water-works or sewage disposal system company 46

acquiring a municipal water-works or sewage disposal system 47
company as described in section 4909.052 of the Revised Code 48
shall recommend whether the geographic area of the customers of 49
the company being acquired shall be integrated into an existing 50
rate division of the acquiring company or given a new rate 51
division. If the recommendation is for integration into an 52
existing rate division, the acquiring company shall recommend 53
how the area is to be integrated. 54

(C) The recommendations made under division (B) of this 55
section shall be mutually agreed upon by the two companies. 56

Sec. 4905.491. In an order issued under section 4905.481 57
of the Revised Code approving an acquisition described in 58
section 4909.052 of the Revised Code, the public utilities 59
commission shall include both of the following: 60

(A) The commission's decision establishing the rate base 61
of the company being acquired, as determined under sections 62
4909.05, 4909.052, and 4909.055 of the Revised Code; 63

(B) The rate division under which the geographic area of 64
the customers of the company being acquired shall be served. 65

Sec. 4909.05. As used in this section: 66

(A) A "lease purchase agreement" is an agreement pursuant 67
to which a public utility leasing property is required to make 68
rental payments for the term of the agreement and either the 69
utility is granted the right to purchase the property upon the 70
completion of the term of the agreement and upon the payment of 71
an additional fixed sum of money or title to the property vests 72
in the utility upon the making of the final rental payment. 73

(B) A "leaseback" is the sale or transfer of property by a 74
public utility to another person contemporaneously followed by 75

the leasing of the property to the public utility on a long-term 76
basis. 77

(C) The public utilities commission shall prescribe the 78
form and details of the valuation report of the property of each 79
public utility or railroad in the state. Such report shall 80
include all the kinds and classes of property, with the value of 81
each, owned, held, or, with respect to a natural gas, water- 82
works, or sewage disposal system company, projected to be owned 83
or held as of the date certain, by each public utility or 84
railroad used and useful, or, with respect to a natural gas, 85
water-works, or sewage disposal system company, projected to be 86
used and useful as of the date certain, for the service and 87
convenience of the public. Such report shall contain the 88
following facts in detail: 89

(1) The original cost of each parcel of land owned in fee 90
and in use, or, with respect to a natural gas, water-works, or 91
sewage disposal system company, projected to be owned in fee and 92
in use as of the date certain, determined by the commission; and 93
also a statement of the conditions of acquisition, whether by 94
direct purchase, by donation, by exercise of the power of 95
eminent domain, or otherwise; 96

(2) The actual acquisition cost, not including periodic 97
rental fees, of rights-of-way, trailways, or other land rights 98
held, or, with respect to a natural gas, water-works, or sewage 99
disposal system company, projected to be held as of the date 100
certain, by virtue of easements, leases, or other forms of 101
grants of rights as to usage; 102

(3) The original cost of all other kinds and classes of 103
property used and useful, or, with respect to a natural gas, 104
water-works, or sewage disposal system company, projected to be 105

used and useful as of the date certain, in the rendition of 106
service to the public. ~~Such~~ Subject to section 4909.052 of the 107
Revised Code, such original costs of property, other than land 108
owned in fee, shall be the cost, as determined to be reasonable 109
by the commission, to the person that first dedicated or 110
dedicates the property to the public use and shall be set forth 111
in property accounts and subaccounts as prescribed by the 112
commission. To the extent that the costs of property comprising 113
a coal research and development facility, as defined in section 114
1555.01 of the Revised Code, or a coal development project, as 115
defined in section 1551.30 of the Revised Code, have been 116
allowed for recovery as Ohio coal research and development costs 117
under section 4905.304 of the Revised Code, none of those costs 118
shall be included as a cost of property under this division. 119

(4) The cost of property constituting all or part of a 120
project leased to or used by the utility, or, with respect to a 121
natural gas, water-works, or sewage disposal system company, 122
projected to be leased to or used by the utility as of the date 123
certain, under Chapter 165., 3706., 6121., or 6123. of the 124
Revised Code and not included under division (C) (3) of this 125
section exclusive of any interest directly or indirectly paid by 126
the utility with respect thereto whether or not capitalized; 127

(5) In the discretion of the commission, the cost to a 128
utility, in an amount determined to be reasonable by the 129
commission, of property constituting all or part of a project 130
leased to the utility, or, with respect to a natural gas, water- 131
works, or sewage disposal system company, projected to be leased 132
to the utility as of the date certain, under a lease purchase 133
agreement or a leaseback and not included under division (C) (3) 134
of this section exclusive of any interest directly or indirectly 135
paid by the utility with respect thereto whether or not 136

capitalized;	137
(6) The proper and adequate reserve for depreciation, as determined to be reasonable by the commission;	138 139
(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;	140 141 142 143 144
(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.	145 146 147 148 149
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.	150 151 152 153 154 155 156 157 158 159 160 161 162
<u>Sec. 4909.051. As used in sections 4909.052 to 4909.055 of the Revised Code:</u>	163 164
<u>"Large water-works or sewage disposal system company"</u>	165

means a water-works or sewage disposal system company that has 166
annual operating revenues of two hundred fifty thousand dollars 167
or more. 168

"Municipal water-works or sewage disposal system company" 169
means any water-works or sewage disposal system company owned or 170
operated by a political subdivision defined in section 6119.011 171
of the Revised Code or by a municipal corporation. 172

Sec. 4909.052. Subject to a finding that such costs are 173
just and reasonable, the public utilities commission in 174
evaluating a petition submitted under section 4905.481 of the 175
Revised Code shall accept the original cost, reported under 176
division (C) (3) of section 4909.05 of the Revised Code, of the 177
acquisition of a municipal water-works or sewage disposal system 178
company that is acquired by a large water-works or sewage 179
disposal system company, provided that the original cost is 180
determined according to all of the following requirements: 181

(A) The acquiring company has three appraisals performed 182
on the property of the company being acquired. 183

(B) The three appraisals are performed by three 184
independent utility-valuation experts mutually selected by the 185
acquiring company and the company being acquired from the list 186
maintained under section 4909.054 of the Revised Code. 187

(C) The average of the three appraisals is used as the 188
fair market value of the company being acquired. 189

(D) Each utility-valuation expert does all of the 190
following: 191

(1) Determines the fair market value of the company to be 192
acquired by establishing the amount for which the company would 193
be sold in a voluntary transaction between a willing buyer and a 194

<u>willing seller under no obligation to buy or sell;</u>	195
<u>(2) Determines the fair market value in compliance with</u>	196
<u>the uniform standards of professional appraisal practice;</u>	197
<u>(3) Employs the cost, market, and income approach to</u>	198
<u>independently quantify the future benefits of the company to be</u>	199
<u>acquired;</u>	200
<u>(4) Incorporates the assessment described in division (D)</u>	201
<u>(5) of this section into the appraisal under the cost, market,</u>	202
<u>and income approach;</u>	203
<u>(5) Engages one engineer who is licensed to prepare an</u>	204
<u>assessment of the tangible assets of the company to be acquired.</u>	205
<u>The original source of funding for any part of the tangible</u>	206
<u>assets shall not be relevant to the determination of the value</u>	207
<u>of those assets.</u>	208
<u>(E) The lesser of the purchase price or the fair market</u>	209
<u>value, described in division (C) of this section, is reported as</u>	210
<u>the original cost under division (C) (3) of section 4909.05 of</u>	211
<u>the Revised Code of the company to be acquired.</u>	212
<u>Sec. 4909.053.</u> <u>Each utility-valuation expert employed</u>	213
<u>under section 4909.052 of the Revised Code shall return the</u>	214
<u>appraisal required under that section, in writing, to both</u>	215
<u>companies described in that section in a reasonable and timely</u>	216
<u>manner. All appraisals shall be included in any filing</u>	217
<u>associated with the acquisition under section 4905.481 or</u>	218
<u>4909.052 of the Revised Code.</u>	219
<u>Sec. 4909.054.</u> <u>For purposes of section 4909.052 of the</u>	220
<u>Revised Code, the public utilities commission shall maintain a</u>	221
<u>list of utility-valuation experts from which a water-works or</u>	222
<u>sewage disposal system company may choose. The commission shall</u>	223

be responsible for creating and maintaining reasonable criteria 224
that must be met to be included in the list. 225

Sec. 4909.055. Prudent costs of obtaining the three 226
valuations used to determine the market value of the system in 227
an acquisition described in section 4909.052 of the Revised Code 228
shall be deferred as an expense for future recovery in a manner 229
as determined by the public utilities commission. In determining 230
the prudence of costs under this section, the commission shall 231
give due regard to the circumstances of the case, including the 232
size and complexity of, and any particular difficulties 233
associated with, the valuation. 234

Sec. 4909.057. (A) Upon application of the acquiring 235
company, the public utilities commission may authorize the 236
acquiring company to defer post-in-service carrying costs on any 237
improvements made to the company that is acquired after an 238
acquisition described in section 4909.052 of the Revised Code. 239
Such costs shall be calculated at the acquiring company's 240
weighted average cost of debt as determined in its last rate 241
case. Such deferrals shall commence after the date on which the 242
expenditure was incurred and shall continue until the investment 243
has been in service for a three-year period, until the acquiring 244
company's next rate case that includes the investment, or until 245
the inclusion of the investment in a charge authorized under 246
section 4909.172 of the Revised Code, whichever occurs first. 247

(B) Upon application of the acquiring company, the public 248
utilities commission may authorize the acquiring company to 249
defer any depreciation expense related to the post-acquisition 250
improvements described in division (A) of this section to be 251
recovered over the life of the assets commencing with the first 252
rate case including the acquisition. This depreciation deferral 253

shall continue until the associated investment has been in 254
service for a three-year period, until the acquiring company's 255
next rate case that includes the investment, or until the 256
inclusion of the investment in a charge authorized under section 257
4909.172 of the Revised Code, whichever occurs first. 258

Sec. 4909.059. Sections 4905.481, 4905.49, 4905.491, and 259
4909.051 to 4909.057 of the Revised Code shall be exclusively 260
applied to voluntary and mutually agreeable acquisitions. 261

Section 2. That existing section 4909.05 of the Revised 262
Code is hereby repealed. 263