

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 351
Committee Substitute Favorable 4/25/17

Short Title: Utilities/Rate Base/Fair Value Determination.

(Public)

Sponsors:

Referred to:

March 15, 2017

1 A BILL TO BE ENTITLED
2 AN ACT AUTHORIZING WATER AND WASTEWATER PUBLIC UTILITIES TO ELECT
3 TO USE A FAIR VALUE DETERMINATION FOR RATE-MAKING PURPOSES
4 WHEN ACQUIRING UTILITIES OWNED BY COUNTIES, MUNICIPALITIES, OR
5 OTHER GOVERNMENTAL ENTITIES.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 62-133 reads as rewritten:
8 "§ 62-133. How rates fixed.

9 ...

10 (b) In fixing such rates, the Commission shall:

11 (1) Ascertain the reasonable original cost or the fair value under G.S. 62-133.1A
12 of the public utility's property used and useful, or to be used and useful
13 within a reasonable time after the test period, in providing the service
14 rendered to the public within the State, less that portion of the cost that has
15 been consumed by previous use recovered by depreciation expense. In
16 addition, construction work in progress may be included in the cost of the
17 public utility's property under any of the following circumstances:

18 ...

19 (c) The original cost of the public utility's property, including its construction work in
20 progress, shall be determined as of the end of the test period used in the hearing and the
21 probable future revenues and expenses shall be based on the plant and equipment in operation
22 at that time. If the public utility elects to establish rate base using fair value, the fair value
23 determination of the public utility's property shall be made as provided in G.S. 62-133.1A, and
24 the probable future revenues and expenses shall be based on the plant and equipment in
25 operation at the end of the test period. The test period shall consist of 12 months' historical
26 operating experience prior to the date the rates are proposed to become effective, but the
27 Commission shall consider such relevant, material and competent evidence as may be offered
28 by any party to the proceeding tending to show actual changes in costs, revenues or the cost of
29 the public utility's property used and useful, or to be used and useful within a reasonable time
30 after the test period, in providing the service rendered to the public within this State, including
31 its construction work in progress, which is based upon circumstances and events occurring up
32 to the time the hearing is closed.

33"

34 SECTION 2. Article 7 of Chapter 62 of the General Statutes is amended by adding
35 a new section to read as follows:



1 "§ 62-133.1A. Fair value determination of government-owned water and wastewater
2 systems.

3 (a) Election. – A water or wastewater public utility, as defined by G.S. 62-3(23)a.2.,
4 may elect to establish rate base by using the fair value of the utility property instead of original
5 cost when acquiring an existing water or wastewater system owned by a municipality or county
6 or an authority or district established under Chapter 162A of the General Statutes.

7 (b) Determination of Fair Value. –

8 (1) The fair value of a system to be acquired shall be based on two separate
9 appraisals conducted by accredited, impartial valuation experts chosen from
10 a list to be established by the Commission. The following shall apply to the
11 valuation:

12 a. One appraiser shall represent the public utility acquiring the system
13 and another appraiser shall represent the utility selling the system.

14 b. Each appraiser shall determine fair value in compliance with the
15 uniform standards of professional appraisal practice, employing cost,
16 market, and income approaches to assessment of value.

17 c. Fair value, for rate-making purposes under G.S. 62-133, shall be the
18 average of the appraisals provided for by this subsection.

19 d. The original source of funding for all or any portions of the water
20 and sewer assets being acquired is not relevant to an evaluation of
21 fair value.

22 (2) The acquiring public utility and selling utility shall jointly retain a licensed
23 engineer to conduct an assessment of the tangible assets of the system to be
24 acquired, and the assessment shall be used by both appraisers in determining
25 fair value.

26 (3) Fees paid to utility valuation experts, in an amount not exceeding five
27 percent (5%) of the fair value of the utility being sold, or in another amount
28 approved by the Commission, may be included in the cost of the acquired
29 system in addition to reasonable transaction and closing costs incurred by
30 the acquiring public utility.

31 (4) The rate base value of the acquired system, which shall be reflected in the
32 acquiring public utility's next general rate case for rate-making purposes,
33 shall be the lesser of the purchase price negotiated between the parties to the
34 sale or the fair value plus the fees and costs authorized in subdivision (3) of
35 this subsection.

36 (5) The normal rules of depreciation shall begin to apply against the rate base
37 value upon purchase of the system by the acquiring public utility.

38 (c) Application and Procedure. – An application to the Commission for a determination
39 of the rate base value of the system to be acquired shall contain all of the following:

40 (1) Copies of the valuations performed by the appraisers, as provided in
41 subdivision (1) of subsection (b) of this section.

42 (2) Any deficiencies identified by the engineering assessment conducted
43 pursuant to subdivision (2) of subsection (b) of this section and a five-year
44 plan for prudent and necessary infrastructure improvements by the acquiring
45 entity.

46 (3) Projected rate impact for the selling entity's customers for the next five
47 years.

48 (4) The averaging of the appraisers' valuations, which shall constitute fair value
49 for purposes of this section.

50 (5) The assessment of tangible assets performed by a licensed professional
51 engineer, as provided in subdivision (2) of subsection (b) of this section.

- 1 (6) The contract of sale.
- 2 (7) The estimated valuation fees and transaction and closing costs incurred by
- 3 the acquiring public utility.
- 4 (8) A tariff, including rates equal to the rates of the selling utility. The selling
- 5 utility's rates shall be the rates charged to the customers of the acquiring
- 6 public utility until the acquiring public utility's next general rate case, unless
- 7 otherwise ordered by the Commission for good cause shown.
- 8 (d) Final Order. – If the application meets all the requirements of subsection (c) of this
- 9 section, the Commission shall issue its final order approving or denying the application within
- 10 four months of the date on which the application was filed. An order approving an application
- 11 shall determine the rate base value of the acquired property for rate-making purposes in a
- 12 manner consistent with the provisions of this section.
- 13 (e) Commission's Authority to Set Rates. – The Commission shall retain its authority
- 14 under Chapter 62 of the General Statutes to set rates for the acquired system in future rate
- 15 cases, and shall have the discretion to classify the acquired system as a separate entity for
- 16 ratemaking purposes, consistent with the public interest."
- 17 **SECTION 3.** This act is effective when it becomes law.