

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 36

Session of
1991

INTRODUCED BY LLOYD, FARGO, STABACK, TRELLO, BILLOW, GIGLIOTTI,
HALUSKA, PISTELLA, D. R. WRIGHT, PRESTON, PESCI, COLAIZZO AND
TIGUE, JANUARY 15, 1991

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, JANUARY 15, 1991

AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania
2 Consolidated Statutes, providing for the commission to order
3 the acquisition of small water and sewer utilities.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 66 of the Pennsylvania Consolidated
7 Statutes is amended by adding a section to read:

8 § 529. Power of commission to order acquisition of small water
9 and sewer utilities.

10 (a) General rule.--The commission may order a capable public
11 utility to acquire a small water or sewer utility if the
12 commission, after notice and an opportunity to be heard,
13 determines:

14 (1) that the small water or sewer utility is in
15 violation of statutory or regulatory standards, including,
16 but not limited to, the act of June 22, 1937 (P.L.1987,
17 No.394), known as The Clean Streams Law, the act of January
18 24, 1966 (1965 P.L.1535, No.537), known as the Pennsylvania

1 Sewage Facilities Act, and the act of May 1, 1984 (P.L.206,
2 No.43), known as the Pennsylvania Safe Drinking Water Act,
3 and the regulations adopted thereunder, which affect the
4 safety, adequacy, efficiency or reasonableness of the service
5 provided by the small water or sewer utility;

6 (2) that the small water or sewer utility has failed to
7 comply, within a reasonable period of time, with any order of
8 the Department of Environmental Resources or the commission
9 concerning the safety, adequacy, efficiency or reasonableness
10 of service, including, but not limited to, the availability
11 of water, the potability of water, the palatability of water
12 or the provision of water at adequate volume and pressure;

13 (3) that the small water or sewer utility cannot
14 reasonably be expected to furnish and maintain adequate,
15 efficient, safe and reasonable service and facilities in the
16 future;

17 (4) that alternatives to acquisition have been
18 considered in accordance with subsection (b) and have been
19 determined by the commission to be impractical or not
20 economically feasible;

21 (5) that the acquiring capable public utility is
22 financially, managerially and technically capable of
23 acquiring and operating the small water or sewer utility in
24 compliance with applicable statutory and regulatory
25 standards; and

26 (6) that the rates charged by the acquiring capable
27 public utility to its preacquisition customers will not
28 increase unreasonably because of the acquisition.

29 (b) Alternatives to acquisition.--Before the commission may
30 order the acquisition of a small water or sewer utility in

1 accordance with subsection (a), the commission shall discuss
2 with the small water or sewer utility, and shall give such
3 utility a reasonable opportunity to investigate, alternatives to
4 acquisition, including, but not limited to:

5 (1) The reorganization of the small water or sewer
6 utility under new management.

7 (2) The entering of a contract with another public
8 utility or a management or service company to operate the
9 small water or sewer utility.

10 (3) The appointment of a receiver to assure the
11 provision of adequate, efficient, safe and reasonable service
12 and facilities to the public.

13 (4) The merger of the small water or sewer utility with
14 one or more other public utilities.

15 (5) The acquisition of the small water or sewer utility
16 by a municipality, a municipal authority or a cooperative.

17 (c) Factors to be considered.--In making a determination
18 pursuant to subsection (a), the commission shall consider:

19 (1) The financial, managerial and technical ability of
20 the small water or sewer utility.

21 (2) The financial, managerial and technical ability of
22 all proximate public utilities providing the same type of
23 service.

24 (3) The expenditures which may be necessary to make
25 improvements to the small water or sewer utility to assure
26 compliance with applicable statutory and regulatory standards
27 concerning the adequacy, efficiency, safety or reasonableness
28 of utility service.

29 (4) The expansion of the franchise area of the acquiring
30 capable public utility so as to include the service area of

1 the small water or sewer utility to be acquired.

2 (5) The opinion and advice, if any, of the Department of
3 Environmental Resources as to what steps may be necessary to
4 assure compliance with applicable statutory or regulatory
5 standards concerning the adequacy, efficiency, safety or
6 reasonableness of utility service.

7 (6) Any other matters which may be relevant.

8 (d) Order of the commission.--Subsequent to the
9 determinations required by subsection (a), the commission shall
10 issue an order for the acquisition of the small water or sewer
11 utility by a capable public utility. Such order shall provide
12 for the extension of the service area of the acquiring capable
13 public utility.

14 (e) Acquisition price.--The price for the acquisition of the
15 small water or sewer utility shall be determined by agreement
16 between the small water or sewer utility and the acquiring
17 capable public utility, subject to a determination by the
18 commission that the price is reasonable. If the small water or
19 sewer utility and the acquiring capable public utility are
20 unable to agree on the acquisition price or the commission
21 disapproves the acquisition price on which the utilities have
22 agreed, the commission shall issue an order directing the
23 acquiring capable public utility to acquire the small water or
24 sewer utility by following the procedure prescribed for
25 exercising the power of eminent domain pursuant to the act of
26 June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the Eminent
27 Domain Code.

28 (f) Separate tariffs.--The commission may, in its discretion
29 and for a reasonable period of time after the date of
30 acquisition, allow the acquiring capable public utility to

charge and collect rates from the customers of the acquired small water or sewer utility pursuant to a separate tariff.

(g) Appointment of receiver.--The commission may, in its discretion, appoint a receiver to protect the interests of the customers of the small water or sewer utility. Any such appointment shall be by order of the commission, which order shall specify the duties and responsibilities of the receiver.

(h) Notice.--The notice required by subsection (a) or any other provision of this section shall be served upon the small water or sewer utility affected, the Office of Consumer Advocate, the Office of Trial Staff, the Department of Environmental Resources, all proximate public utilities providing the same type of service as the small water or sewer utility, all proximate municipalities and municipal authorities providing the same type of service as the small water or sewer utility, and the municipalities served by the small water or sewer utility. The commission shall order the affected small water or sewer utility to provide notice to its customers of the initiation of proceedings under this section in the same manner in which the utility is required to notify its customers of proposed general rate increases.

(i) Burden of proof.--The Law Bureau shall have the burden of establishing a prima facie case that the acquisition of the small water or sewer utility would be in the public interest and in compliance with the provisions of this section. Once the commission determines that a prima facie case has been established:

(1) the small water or sewer utility shall have the burden of proving its ability to render adequate, efficient, safe and reasonable service at just and reasonable rates; and

1 (2) a proximate public utility providing the same type
2 of service as the small water or sewer utility shall have the
3 opportunity and burden of proving its financial, managerial
4 or technical inability to acquire and operate the small water
5 or sewer utility.

6 (j) Plan for improvements.--Any capable public utility
7 ordered by the commission to acquire a small water or sewer
8 utility shall, prior to acquisition, submit to the commission
9 for approval a plan, including a timetable, for bringing the
10 small water or sewer utility into compliance with applicable
11 statutory and regulatory standards. The capable public utility
12 shall also provide a copy of the plan to the Department of
13 Environmental Resources and such other State or local agency as
14 the commission may direct. The commission shall give the
15 Department of Environmental Resources adequate opportunity to
16 comment on the plan and shall consider any comments submitted by
17 the department in deciding whether or not to approve the plan.
18 The reasonably and prudently incurred costs of each improvement
19 shall be recoverable in rates only after that improvement
20 becomes used and useful in the public service.

21 (k) Limitations on liability.--Upon approval by the
22 commission of a plan for improvements submitted pursuant to
23 subsection (j) and the acquisition of a small water or sewer
24 utility by a capable public utility, the acquiring capable
25 public utility shall not be liable for any damages beyond the
26 aggregate amount of \$50,000, including a maximum amount of
27 \$5,000 per incident, if the cause of those damages is
28 proximately related to identified violations of applicable
29 statutes or regulations by the small water or sewer utility.
30 This subsection shall not apply:

1 (1) beyond the end of the timetable in the plan for
2 improvements;

3 (2) whenever the acquiring capable public utility is not
4 in compliance with the plan for improvements; or

5 (3) if, within 60 days of having received notice of the
6 proposed plan for improvements, the Department of
7 Environmental Resources submitted written objections to the
8 commission and those objections have not subsequently been
9 withdrawn.

10 (1) Limitations on enforcement actions.--Upon approval by
11 the commission of a plan for improvements submitted pursuant to
12 subsection (j) and the acquisition of a small water or sewer
13 utility by a capable public utility, the acquiring capable
14 public utility shall not be subject to any enforcement actions
15 by State or local agencies which had notice of the plan if the
16 basis of such enforcement action is proximately related to
17 identified violations of applicable statutes or regulations by
18 the small water or sewer utility. This subsection shall not
19 apply:

20 (1) beyond the end of the timetable in the plan for
21 improvements;

22 (2) whenever the acquiring capable public utility is not
23 in compliance with the plan for improvements;

24 (3) if, within 60 days of having received notice of the
25 proposed plan for improvements, the Department of
26 Environmental Resources submitted written objections to the
27 commission and those objections have not subsequently been
28 withdrawn; or

29 (4) to emergency interim actions of the commission or
30 the Department of Environmental Resources, including, but not

1 limited to, the ordering of boil-water advisories or other
2 water supply warnings, of emergency treatment or of
3 temporary, alternate supplies of water.

4 (m) Definitions.--As used in this section, the following
5 words and phrases shall have the meanings given to them in this
6 subsection:

7 "Capable public utility." A public utility which regularly
8 provides the same type of service as the small water utility or
9 the small sewer utility to 4,000 or more customer connections,
10 which is not an affiliated interest of the small water utility
11 or the small sewer utility, and which provides adequate,
12 efficient, safe and reasonable service. A public utility which
13 would otherwise be a capable public utility except for the fact
14 that it has fewer than 4,000 customer connections may elect to
15 be a capable public utility for the purposes of this section
16 regardless of the number of its customer connections and
17 regardless of whether or not it is proximate to the small sewer
18 utility or small water utility to be acquired.

19 "Small sewer utility." A public utility which regularly
20 provides sewer service to 1,200 or fewer customer connections.

21 "Small water utility." A public utility which regularly
22 provides water service to 1,200 or fewer customer connections.

23 Section 2. This act shall take effect in 60 days.