

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2309

Session of
1978

INTRODUCED BY MESSRS. MUSTO AND O'CONNELL, APRIL 5, 1978

AS REPORTED FROM COMMITTEE ON CONSUMER AFFAIRS, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 5, 1978

AN ACT

1 Amending the act of May 28, 1937 (P.L.1053, No.286), entitled
2 "An act relating to the regulation of public utilities;
3 defining as public utilities certain corporations, companies,
4 associations, and persons; providing for the regulation of
5 public utilities, including, to a limited extent,
6 municipalities engaging in public utility business, by
7 prescribing, defining, and limiting their duties, powers, and
8 liabilities, and regulating the exercise, surrender or
9 abandonment of their powers, privileges, and franchises;
10 defining and regulating contract carriers by motor vehicle
11 and brokers in order to regulate effectively common carriers
12 by motor vehicle; conferring upon the Pennsylvania Public
13 Utility Commission the power and duty of supervising and
14 regulating persons, associations, companies, and
15 corporations, including, to a limited extent, municipal
16 corporations subject to this act, and administering the
17 provisions of this act; authorizing the commission to fix
18 temporary rates; placing the burden of proof on public
19 utilities to sustain their rates and certain other matters;
20 authorizing a permissive or mandatory sliding scale method of
21 regulating rates; providing for the supervision of financial
22 and contractual relations between public utilities and
23 affiliated interests, and supervision and regulation of
24 accounts and securities or obligations issued, assumed, or
25 kept by persons, associations, companies, corporations or
26 municipal corporations subject to this act; conferring upon
27 the commission power to vary, reform, or revise certain
28 contracts; conferring upon the commission the exclusive power
29 to regulate or order the construction, alteration,
30 relocation, protection, or abolition of crossings of
31 facilities of public utilities, and of such facilities by or
32 over public highways, to appropriate property for the
33 construction or improvement of such crossings, and to award
34 or apportion resultant costs and damages; authorizing owners

1 of such property to sue the Commonwealth for such damages;
2 providing for ejectment proceedings in connection with the
3 appropriation of property for crossings; conferring upon the
4 commission power to control and regulate budgets of public
5 utilities; imposing upon persons, associations, companies,
6 and corporations (except municipal corporations) subject to
7 regulation, the cost of administering this act; prescribing
8 and regulating practice and procedure before the commission
9 and procedure for review by the courts of commission action;
10 giving the court of common pleas of Dauphin County exclusive
11 original jurisdiction over certain proceedings; prescribing
12 penalties, fines, and imprisonment for violations of the
13 provisions of this act and regulations and orders of the
14 commission, and the procedure for enforcing such fines and
15 penalties; and repealing legislation supplied and superseded
16 by or inconsistent with this act," further providing for the
17 acquisition RECLASSIFICATION and transfer of REAL property of <—
18 a WATER utility. <—

19 The General Assembly of the Commonwealth of Pennsylvania
20 hereby enacts as follows:

21 Section 1. ~~Subsection (e) of section 202~~ THE act of May 28, <—
22 1937 (P.L.1053, No.286), known as the "Public Utility Law,"
23 ~~amended October 7, 1976 (P.L.1057, No.215), is amended IS~~ <—
24 AMENDED BY ADDING A SECTION to read:

25 ~~Section 202. Enumeration of Acts Requiring Certificate.~~ <—
26 ~~Upon the application of any public utility and the approval of~~
27 ~~such application by the commission, evidenced by its certificate~~
28 ~~of public convenience first had and obtained, and upon~~
29 ~~compliance with existing laws, and not otherwise, it shall be~~
30 ~~lawful:~~

31 * * *

32 ~~(e) For any public utility or an affiliated interest of a~~
33 ~~public utility, as defined in section 701.1(a), except a common~~
34 ~~carrier by railroad subject to the Interstate Commerce Act, to~~
35 ~~acquire from, or to transfer to, any person or corporation,~~
36 ~~including a municipal corporation, by any method or device~~
37 ~~whatsoever, including the sale or transfer of stock and~~
38 ~~including a consolidation, merger, sale or lease, the title to,~~

~~1 or the possession or use of, any tangible or intangible property
2 used or useful in the public service: Provided, however, That
3 such approval shall not be required (1) if the undepreciated
4 book value of the property to be acquired or transferred does
5 not exceed [one thousand dollars] five hundred dollars; or (2)
6 if the undepreciated book value of the property to be acquired
7 or transferred does not exceed the lesser of (a) two per centum
8 of the undepreciated book value of all of the fixed assets of
9 such public utility, or (b) five thousand dollars in the case of
10 personalty [or fifty thousand dollars], five hundred dollars in
11 the case of unimproved realty or ten thousand dollars in the
12 case of improved realty: Provided, however, That no utility
13 shall so divide any acquisition or transfer of such property
14 which would evade the limits set forth in this exception or (3)
15 if the property to be acquired is to be installed new as a part
16 of or consumed in the operation of the used and useful property
17 of such public utility; or (4) if the property to be transferred
18 by such public utility is obsolete, worn out or otherwise
19 unservicable: And provided further, That no transfer of any
20 right, title or interest of whatever nature by a public utility
21 or an affiliated interest of a public utility in land now or
22 heretofore used or useful in the rendition of public utility
23 service shall be valid or effective unless and until such
24 transfer has been approved in writing by the commission: And
25 provided further, That where any party instituting a proceeding
26 or action against a utility under this subsection, who is the
27 prevailing party, shall be awarded, as determined by the court
28 or commission, reasonable attorney's fees and costs and any
29 costs or fines incurred by the utility as a result of such
30 proceeding or action shall not be borne by the consumer of the~~

~~utility where the utility is not the prevailing party.~~

~~But exceptions (1), (2), (3), and (4) shall not be applicable, and approval of the commission evidenced by a certificate of public convenience shall be required, if any such acquisition or transfer of property involves a transfer of patrons.~~

~~* * *~~

SECTION 421. TRANSFER OF REAL PROPERTY OF A WATER UTILITY.-- <—

IT SHALL BE UNLAWFUL FOR ANY PUBLIC UTILITY ENGAGED IN DIVERTING, DEVELOPING, PUMPING, IMPOUNDING, DISTRIBUTING, OR FURNISHING WATER TO OR FOR THE PUBLIC FOR COMPENSATION TO RECLASSIFY ON ITS BOOKS OF ACCOUNT OR TRANSFER ANY RIGHT, TITLE, OR INTEREST IN REAL PROPERTY NECESSARY IN THE PUBLIC SERVICE FOR SUCH WATER SERVICE OPERATIONS, WITHOUT FIRST APPLYING TO THE COMMISSION AND OBTAINING APPROVAL OF SUCH RECLASSIFICATION OR TRANSFER BY THE COMMISSION, EVIDENCED BY ITS CERTIFICATE OF PUBLIC CONVENIENCE. NO TRANSFER OF ANY RIGHT, TITLE OR INTEREST OF WHATEVER NATURE BY SUCH A PUBLIC UTILITY OR AFFILIATED INTEREST OF SUCH A PUBLIC UTILITY IN REAL PROPERTY NECESSARY IN THE PUBLIC SERVICE FOR SUCH WATER SERVICE OPERATIONS SHALL BE VALID OR EFFECTIVE UNLESS AND UNTIL SUCH TRANSFER HAS BEEN APPROVED IN WRITING BY THE COMMISSION: AND PROVIDED FURTHER, THAT WHERE ANY PARTY INSTITUTING A PROCEEDING OR ACTION AGAINST SUCH A UTILITY UNDER THIS SECTION, WHO IS THE PREVAILING PARTY, SHALL BE AWARDED, AS DETERMINED BY THE COURT OR COMMISSION, REASONABLE ATTORNEYS FEES AND COSTS AND ANY COSTS OR FINES INCURRED BY THE UTILITY AS A RESULT OF SUCH PROCEEDING OR ACTION SHALL NOT BE BORNE BY THE CONSUMER OF THE UTILITY WHERE THE UTILITY IS NOT THE PREVAILING PARTY.

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