

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2255 Session of
1988

INTRODUCED BY LLOYD, BATTISTO, FARGO, GODSHALL, STABACK,
CAPPABIANCA, PISTELLA, TIGUE, SWEET, DORR, BELARDI,
J. L. WRIGHT AND TELEK, MARCH 21, 1988

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MARCH 21, 1988

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 § 528. 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 which affect
16 the safety, adequacy, efficiency or reasonableness of the
17 service provided by the small water or sewer utility;

18 (2) that the small water or sewer utility has failed to

1 comply, within a reasonable period of time, with any order of
2 the Department of Environmental Resources or the commission
3 concerning the safety, adequacy, efficiency or reasonableness
4 of service, including, but not limited to, the availability
5 of water, the potability of water, the palatability of water
6 or the provision of water at adequate volume and pressure;

7 (3) that the small water or sewer utility cannot
8 reasonably be expected to furnish and maintain adequate,
9 efficient, safe and reasonable service and facilities in the
10 future;

11 (4) that alternatives to acquisition have been
12 considered in accordance with subsection (b) and have been
13 determined by the commission to be impractical or not
14 economically feasible; and

15 (5) that the rates charged by the acquiring capable
16 public utility to its preacquisition customers will not
17 increase unreasonably because of the acquisition.

18 (b) Alternatives to acquisition.--Before the commission may
19 order the acquisition of a small water or sewer utility in
20 accordance with subsection (a), the commission shall discuss
21 with the small water or sewer utility, and shall give such
22 utility a reasonable opportunity to investigate, alternatives to
23 acquisition, including, but not limited to:

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

26 (2) The entering of a contract with another public
27 utility or a management or service company to operate the
28 small water or sewer utility.

29 (3) The appointment of a receiver to assure the
30 provision of adequate, efficient, safe and reasonable service

1 and facilities to the public.

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

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

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

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

10 (2) The financial, managerial and technical ability of
11 all proximate public utilities providing the same type of
12 service.

13 (3) The expenditures which may be necessary to make
14 improvements to the small water or sewer utility to assure
15 compliance with applicable statutory or regulatory standards
16 concerning the adequacy, efficiency, safety or reasonableness
17 of utility service.

18 (4) The expansion of the franchise area of the acquiring
19 capable public utility so as to include the service area of
20 the small water or sewer utility to be acquired.

21 (5) Any other matters which may be relevant.

22 (d) Order of the commission.--Subsequent to the
23 determinations required by subsection (a), the commission shall
24 issue an order for the acquisition of the small water or sewer
25 utility by a capable public utility. Such order shall provide
26 for the extension of the service area of the acquiring public
27 utility.

28 (e) Acquisition price.--The price for the acquisition of the
29 small water or sewer utility shall be determined by agreement
30 between the small water or sewer utility and the acquiring

1 capable public utility, subject to a determination by the
2 commission that the price is reasonable. If the small water or
3 sewer utility and the acquiring capable public utility are
4 unable to agree on the acquisition price or the commission
5 disapproves the acquisition price on which the utilities have
6 agreed, the commission shall issue an order directing the
7 acquiring capable public utility to acquire the small water or
8 sewer utility by exercising the power of eminent domain pursuant
9 to the act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as
10 the Eminent Domain Code.

11 (f) Separate tariffs.--The commission may, in its discretion
12 and for a reasonable period of time after the date of
13 acquisition, allow the acquiring capable public utility to
14 charge and collect rates from the customers of the acquired
15 small water or sewer utility pursuant to a separate tariff.

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

21 (h) Notice.--The notice required by subsection (a) or any
22 other provision of this section shall be served upon the small
23 water or sewer utility affected, the Office of Consumer
24 Advocate, the Office of Trial Staff, the Department of
25 Environmental Resources, all proximate public utilities
26 providing the same type of service as the small water or sewer
27 utility, all proximate municipalities and municipal authorities
28 providing the same type of service as the small water or sewer
29 utility, and the municipalities served by the small water or
30 sewer utility. The commission shall order the affected small

1 water or sewer utility to provide notice to its customers of the
2 initiation of proceedings under this section in the same manner
3 in which the utility is required to notify its customers of
4 proposed general rate increases.

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

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

14 (2) a proximate public utility providing the same type
15 of service as the small water or sewer utility shall have the
16 opportunity and burden of proving its financial, managerial
17 or technical inability to acquire and operate the small water
18 or sewer utility.

19 (j) Plan for improvements.--Any capable public utility
20 ordered by the commission to acquire a small water or sewer
21 utility shall, prior to acquisition, submit to the commission
22 for approval a plan, including a timetable, for bringing the
23 small water or sewer utility into compliance with applicable
24 statutory or regulatory standards. The capable public utility
25 shall also provide a copy of the plan to the Department of
26 Environmental Resources and such other State or local agency as
27 the commission may direct. The reasonably and prudently incurred
28 costs of each improvement shall be recoverable in rates only
29 after that improvement becomes used and useful in the public
30 service.

1 (k) Limitations on liability.--Upon approval by the
2 commission of a plan for improvements submitted pursuant to
3 subsection (j) and the acquisition of a small water or sewer
4 utility by a capable public utility, the acquiring capable
5 public utility shall not be subject to any enforcement actions
6 by State or local agencies which had notice of the plan and
7 shall not be liable for any damages beyond the aggregate amount
8 of \$50,000, including a maximum amount of \$5,000 per incident,
9 if the cause of those damages or the basis of such enforcement
10 action is proximately related to identified violations of
11 applicable statutes or regulations by the small water or sewer
12 utility. This subsection shall not apply:

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

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

17 (3) if, within 30 days of having received notice of the
18 proposed plan for improvements, the Department of
19 Environmental Resources submitted written objections to the
20 commission and those objections have not subsequently been
21 withdrawn.

22 (l) Definitions.--As used in this section, the following
23 words and phrases shall have the meanings given to them in this
24 subsection:

25 "Capable public utility." A public utility which regularly
26 provides the same type of service as the small water utility or
27 the small sewer utility to 4,000 or more customer connections,
28 which is not an affiliated interest of the small water utility
29 or the small sewer utility, and which provides adequate,
30 efficient, safe and reasonable service.

1 "Small sewer utility." A public utility which regularly
2 provides sewer service to 1,000 or fewer customer connections.

3 "Small water utility." A public utility which regularly
4 provides water service to 1,000 or fewer customer connections.

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