

GENERAL ASSEMBLY OF NORTH CAROLINA  
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HOUSE BILL 351  
Committee Substitute Favorable 4/25/17  
Third Edition Engrossed 4/26/17  
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Short Title: Utilities/Rate Base/Fair Value Determination.

(Public)

Sponsors:

Referred to:

March 15, 2017

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 62-133 reads as rewritten:

"§ 62-133. How rates fixed.

...

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

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

...

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

...."

**SECTION 2.** Article 7 of Chapter 62 of the General Statutes is amended by adding 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., may  
4 elect to establish rate base by using the fair value of the utility property instead of original cost  
5 when acquiring an existing water or wastewater system owned by a municipality or county or an  
6 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 three separate  
9 appraisals conducted by accredited, impartial valuation experts chosen from a  
10 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 another appraiser shall represent the utility selling the system, and  
14 another appraiser shall represent the Public Staff of the Commission.

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

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

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

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

27 (3) Reasonable fees, as determined by the Commission, paid to utility valuation  
28 experts, may be included in the cost of the acquired system, in addition to  
29 reasonable transaction and closing costs incurred by the acquiring public  
30 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, shall  
33 be the lesser of the purchase price negotiated between the parties to the sale  
34 or the fair value plus the fees and costs authorized in subdivision (3) of this  
35 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 pursuant  
43 to subdivision (2) of subsection (b) of this section and a five-year plan for  
44 prudent and necessary infrastructure improvements by the acquiring entity.

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

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

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

50 (6) The contract of sale.

1           (7)    The estimated valuation fees and transaction and closing costs incurred by the  
2                    acquiring public utility.

3           (8)    A tariff, including rates equal to the rates of the selling utility. The selling  
4                    utility's rates shall be the rates charged to the customers of the acquiring public  
5                    utility until the acquiring public utility's next general rate case, unless  
6                    otherwise ordered by the Commission for good cause shown.

7           (d)    Final Order. – If the application meets all the requirements of subsection (c) of this  
8                    section, the Commission shall issue its final order approving or denying the application within  
9                    six months of the date on which the application was filed. An order approving an application  
10                   shall determine the rate base value of the acquired property for rate-making purposes in a manner  
11                   consistent with the provisions of this section.

12           (e)    Commission's Authority. – The Commission shall retain its authority under Chapter  
13                    62 of the General Statutes to set rates for the acquired system in future rate cases, and shall have  
14                    the discretion to classify the acquired system as a separate entity for rate-making purposes,  
15                    consistent with the public interest. If the Commission finds that the average of the appraisals will  
16                    not result in a reasonable fair value, the Commission may adjust the fair value as it deems  
17                    appropriate and in the public interest.

18           (f)    The Commission shall adopt rules to implement this section."

19           **SECTION 3.** This act is effective when it becomes law.