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HOUSE BILL NO. 835

Offered January 8, 2020

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A BILL to amend and reenact §§ 56-88 and 56-90 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-90.2, relating to the Utility Transfers Act; water and sewer utilities; sales of assets.

Patron—Sullivan

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-88 and 56-90 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-90.2 as follows:

§ 56-88. Definitions.

~~In As used in this chapter the following terms shall have the following meanings, unless the context requires a different meaning:~~

"Acquire" or "acquisition" includes any purchase or other acquisition, whether by payment, exchange, gift, conveyance, lease, license, merger, consolidation, or otherwise.

"Acquiring utility" means a public utility that is acquiring a selling utility, or the water and sewer facilities of a selling utility, as the result of a voluntary arm's-length transaction.

"Authority" means a water or wastewater authority created under the provisions of § 15.2-5102 or Article 6 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2.

"Company" means a corporation, a partnership, an association, a joint-stock company, a business trust, or an organized group of persons, whether incorporated or not; or any receiver, trustee, or other liquidating agent of any of the foregoing in his capacity as such; but not a municipal corporation or county.

"Dispose of" or "disposition" includes any sale or other disposition, whether by payment, exchange, gift, conveyance, lease, license, merger, consolidation, or otherwise.

"Fair market value" means the value of water or sewer assets as determined by subsection B of § 56-90.2.

"Public utility" means any company ~~which~~ that owns or operates facilities within the Commonwealth for the generation, transmission, or distribution of electric energy for sale; for the production, transmission, or distribution, otherwise than in enclosed portable containers, of natural or manufactured gas for sale for heat, light, or power, but excluding any company described in subdivision (b) (8) or (b) (10) of § 56-265.1; or for the furnishing of sewerage facilities or water.

"Ratemaking rate base" means the dollar value of a selling utility that is incorporated in the rate base of the acquiring utility for post-acquisition ratemaking purposes.

"Selling utility" means a public utility, municipality, county, authority, or other government entity providing water or sewer services that is being purchased by an acquiring utility, or is selling water or sewer facilities to an acquiring utility, as the result of a voluntary arm's-length transaction.

"Utility assets" means the facilities in place of any public utility ~~or~~ municipality, county, authority, or other government entity for the production, transmission, or distribution of electric energy or natural or manufactured gas, or for the furnishing of sewerage facilities or water.

"Utility security" means any note, draft, debenture, bond, share of stock, certificate, collateral trust certificate, preorganization certificate or subscription, transferable share, investment contract, receiver's or trustee's certificate, or any other instrument or interest commonly known as a security ~~which~~ that is issued, assumed, or guaranteed by any public utility or any company ~~which~~ that would be a public utility if the facilities owned or operated by it were within the Commonwealth, or any company substantially engaged in the ownership of any of the aforesaid securities or in supplying management or advice to any of the aforesaid companies; or any certificate of deposit for, voting trust certificate for, certificate of interest or participation in, temporary or interim certificate for, receipt for, guaranty of, assumption of liability on, or warrant or right to subscribe to or purchase or acquire, any of the aforesaid securities.

"Utility valuation expert" means a person hired by an acquiring utility and selling utility for the purpose of conducting an economic valuation of the selling utility to determine its fair market value.

"Voluntary arm's-length transaction" means a transaction involving the sale by a selling utility and purchase by an acquiring utility of a utility or utility assets, which transaction is negotiated by independent parties, each acting in its own self-interest, in which transaction each party had assistance

INTRODUCED

HB835

59 of legal counsel.

60 "Water or sewer assets" means some or all of the utility assets of a selling utility for providing
61 sewerage or water services or both.

62 "Water or sewer public utility" means a public utility that owns or operates facilities within the
63 Commonwealth for the furnishing of water or sewerage facilities.

64 **§ 56-90. Procedure for authority to acquire or dispose of utility assets or securities.**

65 Application for authority to acquire or dispose of utility assets or utility securities under § 56-89 shall
66 be by petition to the Commission. The petition may be joint or several. It shall be signed and verified
67 by the president or any vice-president and the secretary or any assistant secretary of the petitioner. The
68 petition shall clearly summarize the object in view, the proposed procedure and the terms and conditions
69 thereof. Upon the filing of the petition, if the Commission shall deem a hearing necessary, the
70 Commission shall assign the matter for prompt hearing. If and when the Commission, with or without
71 hearing, shall be satisfied that adequate service to the public at just and reasonable rates will not be
72 impaired or jeopardized by granting the prayer of the petition, the Commission shall make such order in
73 the premises as it may deem proper and the circumstances require, and thereupon it shall be lawful to
74 do the things provided for in such order, subject, however, to the exception contained in § 56-89 as to
75 counties and municipalities. *If a water or sewer public utility elects to establish a rate base for water or
76 sewer assets using fair market value, the fair market value shall be determined as provided in § 56-90.2.*

77 **§ 56-90.2. Fair market value determination of water and sewer systems.**

78 A. When acquiring an existing water or sewer system, a water utility or sewer utility may elect at its
79 sole discretion to establish its rate base by using the fair market value of the system instead of the
80 system's depreciated original cost.

81 B. If a water utility or sewer utility elects to use the fair market value of an existing water and
82 sewer system as authorized by subsection A, the fair market value of the system shall be based on three
83 separate appraisals conducted by accredited and impartial utility valuation experts. In such a
84 determination of the system's fair market value:

85 1. One utility valuation expert shall represent the acquiring utility, one utility valuation expert shall
86 represent the selling utility, and one utility valuation expert shall represent the Commission;

87 2. Each utility valuation expert shall determine the fair market value of the system in compliance
88 with the uniform standards of professional appraisal practice, employing cost, market, and income
89 approaches to assessment of value;

90 3. The fair market value of the system, for rate-making purposes under § 56-90, shall be the average
91 of the three appraisals provided for in subdivision 2; and

92 4. The original source of funding for all or any portions of the utility assets being acquired shall not
93 be relevant to an evaluation of the fair market value of the system.

94 C. If a water or sewer public utility elects to establish its rate base by using the fair market value of
95 the system as authorized by subsection A, the acquiring utility and selling utility shall jointly retain a
96 licensed professional engineer to assess the tangible assets of the system to be acquired. Such
97 assessment shall be used by the three utility valuation experts in determining fair market value pursuant
98 to subsection B.

99 D. Reasonable fees, as determined by the Commission, paid to utility valuation experts may be
100 included in the cost of the acquired system assets, in addition to reasonable transaction and closing
101 costs incurred by the acquiring utility to acquire the water or sewer assets.

102 E. The rate base value of the acquired system assets, which shall be reflected in the acquiring public
103 utility's next base rate case for rate-making purposes, shall be the fees and costs authorized in
104 subsection D plus the lesser of the purchase price negotiated between the acquiring utility and the
105 selling utility or the fair market value.

106 F. An application to the Commission for approval of an election to determine the system's rate base
107 by using the fair market value of the system to be acquired as authorized by subsection A shall include
108 the following:

109 1. Copies of the valuations performed by the utility valuation experts as provided in subsection B;

110 2. The averaging of the three utility valuation experts' valuations provided for in subdivision B 2,
111 which shall constitute fair market value for purposes of this section;

112 3. The assessment of tangible assets performed by a licensed professional engineer, as provided in
113 subsection C;

114 4. The asset purchase agreement;

115 5. The estimated valuation fees and transaction and closing costs incurred by the acquiring utility;
116 and

117 6. A tariff indicating the rates to be charged to the selling utility's customers by the acquiring utility
118 as shown or justified in the asset purchase agreement or the joint petition.

119 G. If the application meets all the requirements of subsection F, the Commission shall issue its final
120 order approving or denying the application within the timeframe prescribed by subdivision A 2 of

121 § 56-88.1. *An order approving an application shall determine the rate base value of the acquired water*
122 *or sewer assets for ratemaking purposes in a manner consistent with the provisions of this section.*

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HB835