

HOUSE BILL 604

By Marsh

AN ACT to amend Tennessee Code Annotated, Title 65,
relative to public utilities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 65, Chapter 5, Part 1, is amended by
adding the following as a new section:

(a) As used in this section:

(1) "Acquiring public utility" means a water or wastewater public utility
subject to regulation under this title that is acquiring a selling utility as the result
of a voluntary arm's-length transaction between the buyer and seller;

(2) "Fair market value" means the value of a water or wastewater system
compliant with the Uniform Standards of Professional Appraisal Practice;

(3) "Ratemaking rate base" means the dollar value of a selling utility
which, for post-acquisition ratemaking purposes, is incorporated into the rate
base of the acquiring public utility;

(4) "Selling utility" means a water or wastewater service provider located
in this state, owned by a municipal corporation or authority, or any other entity
that is being purchased by an acquiring public utility as the result of a voluntary
arm's-length transaction between the buyer and seller, and that regularly
provides service to ten thousand (10,000) or fewer customer connections; and

(5) "Utility valuation expert" means a person hired by an acquiring public
utility and selling utility for the purpose of conducting an economic valuation of
the selling utility to determine its fair market value who is licensed or certified to
perform utility valuation.

(b)

(1) An acquiring public utility that acquires a selling utility may request that the commission use, and, if so requested, the commission shall use, the procedures set forth under this section to establish the ratemaking rate base of that selling utility at the time when it is acquired by the acquiring public utility.

(2) The fair market value of the selling utility system must be based upon two (2) appraisals of the system's fair market value. One (1) appraisal must be obtained from an independent appraiser selected by the selling utility and one (1) appraisal must be obtained from an independent appraiser selected by the acquiring public utility. The fair market value is the average of the two (2) appraisals.

(3) The appraisers shall:

(A) Be sworn to determine the fair market value of the selling utility by establishing the amount for which the selling utility would be sold in a voluntary transaction between a willing buyer and a willing seller under no obligation to buy or sell;

(B) Determine fair market value in compliance with the Uniform Standards of Professional Appraisal Practice;

(C) Engage one (1) disinterested engineer who is a licensed professional engineer in this state to prepare an assessment of tangible assets of the selling utility which is to be incorporated into the appraisal under the cost approach; and

(D) Return their appraisal, in writing, to the selling utility in a reasonable time and manner.

(4) The lesser of the purchase price or the fair market value constitutes the rate base associated with the selling utility by incorporating it into the rate base of the current tariff district designated by the acquiring public utility under

this section. The amount of the appraisers' fees must be included in the rate base, and must not exceed the greater of fifteen thousand dollars (\$15,000) or five percent (5%) of the appraised value of the selling utility. This rate base treatment does not violate this section.

(c)

(1) The commission shall accept the acquiring public utility's district or tariff group recommendation, unless the recommendation is determined by the commission to be contrary to the public interest.

(2) Any post-acquisition improvements made by the acquiring public utility to the selling utility must accrue cost for financing set at the acquiring public utility determined rate for allowance for funds used during construction, inclusive of debt, equity, and income tax gross up components, after the date on which the expenditure was made by the acquiring public utility until the investment has been placed in service and new rates or surcharges are implemented by the acquiring public utility.

(3) Nothing in this section prohibits a party from declining to proceed with an acquisition or be deemed as establishing the final purchase price of an acquisition.

(4) A determination of the ratemaking rate base under subdivision (b)(4) constitutes a finding that the determination will result in just and reasonable rates to all customers of the public utility, including, but not limited to, existing customers of the public utility.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.