

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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HOUSE BILL 351

Short Title: Utilities/Rate Base/Fair Value Determination. (Public)

Sponsors: Representatives Watford and Collins (Primary Sponsors).

*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

Referred to: Energy and Public Utilities, if favorable, State and Local Government II

March 15, 2017

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

6 The General Assembly of North Carolina enacts:

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

8 "**§ 62-133. How rates fixed.**

9 ...

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

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

18 ...

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

33 ...."

34 **SECTION 2.** Article 7 of Chapter 62 of the General Statutes is amended by adding  
35 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.,  
4 may elect to establish rate base by using the fair value of the utility property instead of original  
5 cost when acquiring an existing water or wastewater system (system) owned by a municipality  
6 or county or an 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 two separate  
9 appraisals conducted by accredited, impartial valuation experts chosen from  
10 a 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 and the utility selling the system.

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

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

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

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

26 (3) Fees paid to utility valuation experts, in an amount not exceeding five  
27 percent (5%) of the fair value of the utility being sold, or in another amount  
28 approved by the Commission, may be included in the cost of the acquired  
29 system in addition to reasonable transaction and closing costs incurred by  
30 the acquiring public 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  
33 shall be the lesser of the purchase price negotiated between the parties to the  
34 sale or the fair value plus the fees and costs authorized in subdivision (3) of  
35 this 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) The averaging of the appraisers' valuations, which shall constitute fair value  
43 for purposes of this section.

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

46 (4) The contract of sale.

47 (5) The estimated valuation fees and transaction and closing costs incurred by  
48 the acquiring public utility.

49 (6) A tariff, including rates equal to the rates of the selling utility. The selling  
50 utility's rates shall be the rates charged to the customers of the acquiring

1                    public utility until the acquiring public utility's next general rate case, unless  
2                    otherwise ordered by the Commission for good cause shown.  
3        (d)    Final Order. – If the application meets all the requirements of subsection (c) of this  
4        section, the Commission shall issue its final order approving or denying the application within  
5        four months of the date on which the application was filed. An order approving an application  
6        shall determine the rate base value of the acquired property for rate-making purposes in a  
7        manner consistent with the provisions of this section.  
8        (e)    Commission's Authority to Set Rates. – The Commission shall retain its authority  
9        under Chapter 62 of the General Statutes to set rates for the acquired system in future rate  
10       cases, consistent with the public interest."  
11                **SECTION 3.** This act is effective when it becomes law.