

SENATE BILL 813

C5

2lr2120

By: **Senators Astle and Pugh**

Introduced and read first time: February 3, 2012

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Telephone Companies – Exemption from Prior Approval of Public Service**
3 **Commission – Franchises, Securities, and Financing**

4 FOR the purpose of exempting telephone companies from obtaining prior approval of
5 the Public Service Commission before taking certain actions affecting a
6 franchise or a right to a franchise; exempting telephone companies from
7 obtaining prior approval of the Commission before purchasing, acquiring,
8 taking, or holding any part of the capital stock of another public service
9 company; exempting telephone companies from obtaining prior approval of the
10 Commission before taking certain actions relating to financing the telephone
11 company, including the issuance of stock, bonds, securities, notes, or other
12 evidence of indebtedness; and generally relating to exempting telephone
13 companies from prior approval of the Commission on actions relating to
14 franchises, securities, and financing.

15 BY repealing and reenacting, with amendments,
16 Article – Public Utilities
17 Section 5–202, 5–203, 6–101, 6–102, and 6–103
18 Annotated Code of Maryland
19 (2010 Replacement Volume and 2011 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article – Public Utilities**

23 5–202.

24 **(A) THIS SECTION DOES NOT APPLY TO TELEPHONE COMPANIES.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(B)** Without prior authorization of the Commission, a public service company
2 may not:

3 (1) assign, lease, or transfer a franchise or a right under a franchise;

4 (2) enter into any agreement or contract that materially affects a
5 franchise or a right under a franchise; or

6 (3) abandon or discontinue the exercise of a franchise or a right as a
7 whole or in part.

8 5–203.

9 **(A) THIS SECTION DOES NOT APPLY TO TELEPHONE COMPANIES.**

10 **[(a)] (B)** Subject to § 6–101 of this article, without prior authorization of the
11 Commission, a public service company may not purchase, acquire, take, or hold any
12 part of the capital stock of another public service company that operates in Maryland.

13 **[(b)] (C)** (1) This subsection applies to corporations that operate in
14 Maryland.

15 (2) Except as provided in paragraph (5) of this subsection, without
16 prior authorization of the Commission, a public service company may not:

17 (i) assume or guarantee an obligation or liability with respect
18 to stocks, bonds, securities, notes, or other evidence of indebtedness that is payable as
19 a whole or in part to any person more than 12 months after the date of issuance; or

20 (ii) issue stocks, bonds, securities, notes, or other evidence of
21 indebtedness payable as a whole or in part more than 12 months after the date of
22 issuance.

23 (3) Stocks, bonds, securities, notes, or other evidence of indebtedness
24 described under paragraph (2)(ii) of this subsection shall be issued in accordance with
25 §§ 6–102 and 6–103 of this article.

26 (4) The Commission shall take action on an application for
27 authorization under this section within a reasonable time after receipt.

28 (5) Prior authorization of the Commission is not required for an
29 assumption or guarantee under paragraph (2)(i) of this subsection or an issuance
30 under paragraph (2)(ii) of this subsection made by a gas company, electric company, or
31 telephone company whose gross annual revenues, for the most recent calendar year for
32 which data are available, are less than 3% of the total gross annual revenues of all
33 public service companies in the State during the same calendar year, if the gas
34 company, electric company, or telephone company:

1 (i) provides prior written notice to the Commission of the
2 transaction; and

3 (ii) obtains approval of the transaction from the entity in
4 another state that regulates the gas company, electric company, or telephone
5 company.

6 6–101.

7 **(A) THIS SECTION DOES NOT APPLY TO TELEPHONE COMPANIES.**

8 **[(a)] (B)** (1) This subsection applies only to corporations that operate in
9 Maryland.

10 (2) Except as provided in paragraph (4) of this subsection, a public
11 service company shall obtain authorization from the Commission before the public
12 service company:

13 (i) assumes or guarantees an obligation or liability with respect
14 to stocks, bonds, securities, notes, or other evidence of indebtedness of any person that
15 is payable wholly or partly more than 12 months after the date of the assumption or
16 guarantee;

17 (ii) issues stocks, bonds, securities, notes, or other evidence of
18 indebtedness that is payable wholly or partly more than 12 months after the date
19 issued; or

20 (iii) lends money to an affiliate, as defined in § 7–501 of this
21 article, at rates or on terms that are significantly more favorable to the affiliate than
22 the rates or terms that are otherwise commercially available to the affiliate.

23 (3) An issuance under paragraph (2)(ii) of this subsection shall
24 conform to §§ 6–102 and 6–103 of this subtitle.

25 (4) Prior authorization of the Commission is not required for an
26 assumption or guarantee under paragraph (2)(i) of this subsection or an issuance
27 under paragraph (2)(ii) of this subsection made by a gas company, electric company, or
28 telephone company whose gross annual revenues, for the most recent calendar year for
29 which data are available, are less than 3% of the total gross annual revenues of all
30 public service companies in the State during the same calendar year, if the gas
31 company, electric company, or telephone company:

32 (i) provides prior written notice to the Commission of the
33 transaction; and

1 (ii) obtains approval of the transaction from the entity in
2 another state that regulates the gas company, electric company, or telephone
3 company.

4 **[(b)] (C)** (1) Subject to the requirements of subsection **[(c)] (D)** of this
5 section, the Commission may authorize an act described under subsection **[(a)(2)]**
6 **(B)(2)** of this section if the Commission finds that the act is consistent with the public
7 convenience and necessity.

8 (2) Authorization under this subsection does not:

9 (i) revive a lapsed franchise, validate an invalid franchise, or
10 add to the powers and privileges in a franchise; or

11 (ii) waive a forfeiture.

12 **[(c)] (D)** (1) This subsection does not apply to the formation of a holding
13 company by a public service company in a corporate reorganization that involves an
14 exchange of stock of the public service company for stock in the holding company.

15 (2) In this subsection, a company controlling a public service company
16 is deemed a public service company of the same class as the controlled public service
17 company.

18 (3) Without prior authorization of the Commission, a public service
19 company may not take, hold, or acquire any part of the capital stock of a public service
20 company that:

21 (i) operates in Maryland; and

22 (ii) is of the same class as the acquiring company.

23 (4) (i) Except as provided in subparagraph (ii) of this paragraph, a
24 stock corporation may not take, hold, or acquire more than 10% of the total capital
25 stock of a public service company that operates in Maryland unless:

26 1. the stock is acquired as collateral security; and

27 2. the Commission approves the acquisition.

28 (ii) The Commission may authorize a public service company of
29 the same class to take, hold, or acquire more than 10% of the total capital stock of a
30 public service company that operates in Maryland.

31 (5) A public service company may not be a party to a violation of this
32 subsection.

1 (6) Notwithstanding paragraph (2) of this subsection, § 6–105 of this
2 subtitle shall apply, and the provisions of this subsection do not apply, to the
3 acquisition, ownership, or disposition of any capital stock or voting securities of a
4 company that controls, directly or indirectly, a gas and electric company.

5 (7) Notwithstanding any other provision of this subsection, the
6 Commission may authorize, in accordance with § 6–105 of this subtitle, the taking,
7 holding, or acquiring of all or any part of the capital stock of a gas and electric
8 company that operates in the State by a stock corporation or a public service company
9 that is not of the same class as the gas and electric company.

10 6–102.

11 (a) **(1)** This section applies only to public service companies that operate
12 in Maryland.

13 **(2) THIS SECTION DOES NOT APPLY TO TELEPHONE COMPANIES.**

14 (b) The Commission shall authorize a public service company to issue stocks,
15 bonds, securities, notes, or other evidence of indebtedness, payable wholly or partly
16 more than 12 months after the date of issuance, if the Commission finds that the
17 issuance is reasonably required for the public service company to:

18 (1) acquire property;

19 (2) construct, complete, extend, or improve its facilities;

20 (3) discharge or lawfully refund its obligations;

21 (4) maintain or improve service; or

22 (5) reimburse money, not secured by or obtained from the issuance,
23 that is expended for a purpose described in item (1), (2), or (3) of this subsection within
24 5 years before the filing of an application with the Commission for the reimbursement.

25 (c) (1) The Commission may authorize a public service company to issue
26 stocks, bonds, securities, notes, or other evidence of indebtedness, payable wholly or
27 partly more than 12 months after the date of issuance, for the public service company
28 to:

29 (i) conform the aggregate capitalization of the public service
30 company to the value of its property; or

31 (ii) subject to paragraph (2) of this subsection, pay a dividend in
32 shares of the public service company's own stock.

1 (2) An order of the Commission authorizing an issuance under
2 paragraph (1)(ii) of this subsection shall state that:

3 (i) concurrently with the issuance, the public service company
4 shall transfer from surplus to capital an amount that the Commission determines
5 under paragraph (3) of this subsection; and

6 (ii) a sum equal to the amount to be transferred has been
7 expended from income or other money in the treasury of the public service company
8 not secured by, obtained from, or reimbursed by the issuance of stocks, bonds, notes, or
9 other evidence of indebtedness of the public service company for a purpose described in
10 subsection (b)(1), (2), or (3) of this section.

11 (3) The amount that the Commission determines under paragraph
12 (2)(i) of this subsection may not be less than:

13 (i) the aggregate par value of the stock whose issuance is to be
14 authorized; or

15 (ii) if the stock has no par value, the capital value of the stock.

16 (d) (1) An authorization by the Commission under subsection (b) or (c) of
17 this section shall be by order.

18 (2) The order shall specify:

19 (i) the amount of the issuance authorized; and

20 (ii) the purpose under subsection (b) or (c) of this section for
21 which the issuance is reasonably required.

22 (e) (1) Notwithstanding subsections (b), (c), (d), and (g) of this section, the
23 Commission may approve the issuance of stocks, bonds, securities, notes, or other
24 evidence of indebtedness in connection with the organization of a new public service
25 company by the purchaser of the franchise or property of a public service company sold
26 under judicial proceedings, mortgage, or deed of trust.

27 (2) An issuance that the Commission approves under this subsection
28 shall be in the amount that the Commission considers necessary fully to protect the
29 rights and equities of the holders of the securities of the predecessor company.

30 (f) A public service company's application for authorization under this
31 section of long-term debt in excess of \$1,000,000 shall include a copy of any restrictive
32 covenant attached to the debt.

1 (g) (1) Except as provided in paragraph (2) of this subsection, this section
2 does not prevent a public service company from issuing, without the prior consent of
3 the Commission, notes that are:

- 4 (i) for proper corporate purposes;
- 5 (ii) not otherwise in violation of the law; and
- 6 (iii) payable at periods totaling not more than 12 months after
7 the date of issuance.

8 (2) Except as authorized under subsection (b) or (c) of this section,
9 notes issued under paragraph (1) of this subsection may not be refunded directly or
10 indirectly, wholly or partly, by an evidence of indebtedness running for more than 12
11 months.

12 6-103.

13 (a) (1) This section applies only to public service companies that operate
14 in Maryland.

15 (2) **THIS SECTION DOES NOT APPLY TO TELEPHONE COMPANIES.**

- 16 (b) (1) A public service company may not:
- 17 (i) capitalize or issue bonds against or as lien on a contract for
18 consolidation, merger, or lease; or
- 19 (ii) except as provided in paragraph (2) of this subsection,
20 capitalize a franchise or the right to own a franchise.

21 (2) A public service company may capitalize a franchise or right to own
22 a franchise in an amount not exceeding the amount, exclusive of any tax or annual
23 charge, actually paid to the State or a political subdivision as consideration for the
24 grant of the franchise or right.

25 (c) The stated capital, as determined under Title 2, Subtitle 3 of the
26 Corporations and Associations Article, of a public service company formed by a merger
27 or consolidation of corporations may not exceed, solely by virtue of the merger or
28 consolidation, the stated capital of the corporations merged or consolidated plus any
29 additional sum paid in cash.

30 (d) (1) This subsection does not apply to the capitalization of a franchise
31 to be a public service company.

32 (2) Notwithstanding any other provision of this article, the
33 Commission may approve the capitalization of tangible and intangible property of:

1 (i) a newly chartered public service company; or

2 (ii) a public service company organized or reorganized by the
3 purchaser of the franchise and property of its predecessor at a sale under judicial
4 proceedings, mortgage, or deed of trust.

5 (3) Capitalization under paragraph (2) of this subsection shall be in
6 the amount and form that the Commission considers reasonably necessary to enable
7 the public service company to obtain the capital necessary to establish itself as a going
8 concern.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2012.