



Bethany Boyd

*Bill Analysis*  
*Legislative Service Commission*

## **Sub. H.B. 452**

123rd General Assembly  
(As Passed by the House)

**Reps. Goodman, Mead, Tiberi, Trakas, Gardner, R. Miller, Vesper, Carey, DePiero, Olman, Hartnett, Jolivette, Willamowski, Hoops, Netzley, Corbin, Krupinski, Thomas, Householder, Logan, Metelsky, Taylor, Hollister, Flannery, Beatty, D. Miller, Callender, Gerberry, Jerse, Hartley, Schuler, Coughlin, Jacobson, Peterson, Jordan, Luebbers, Maier, Haines, Schuring, Amstutz, Allen, Buehrer, Clancy, Britton, Krebs, Mottley, Harris, Buchy, Austria, Cates, Brading, Wilson, Aslanides, Ogg, Boyd, Damschroder, Calvert, Patton, A. Core, Ford, Roberts, Perry, Jones, Evans, Redfern, Terwilleger, Smith, Myers, Bender, Womer Benjamin, Kilbane, Van Vyven, Verich, James, Sykes, Schuck, Metzger, Pringle, Sulzer, Sullivan, Stapleton, Gooding, Barnes, Roman, Sutton, Salerno, Barrett**

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### **BILL SUMMARY**

- Requires the Public Utilities Commission to issue public findings on whether acceptance of a "hostile" control bid for an Ohio natural gas utility or its holding company will promote the public convenience and result in the provision of adequate natural gas service at a reasonable rate.
- Declares an emergency.

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### **CONTENT AND OPERATION**

In general, the bill requires the Public Utilities Commission (PUCO) to issue a report on the service and rate effects of offers to acquire more than 10% of the equity securities of a natural gas utility serving Ohio or its holding company, where the directors of the natural gas utility or holding company have not approved the acquisition.

#### **PUCO hearing and report of findings**

The bill's focus is on a control bid to acquire more than 10% of the equity securities of a natural gas company that is a public utility under Ohio public utility law (sec. 4905.02) or of a holding company controlling such a company, if the

acquisition does not have the approval of the subject company's board of directors. In the event of a control bid, the bill requires the PUCO to hold a hearing, the exclusive purpose of which is to determine whether acceptance of the control bid will promote public convenience in Ohio and result in the provision of adequate natural gas service in Ohio by the natural gas company at a reasonable rate, rental, toll, or charge. Within three days after the date the control bid is filed with the PUCO, the PUCO must set a time for the hearing and notify the offeror and the subject natural gas company or subject holding company. (Sec. 4905.403(A)(1) and (B).)

Under the bill, the PUCO must issue a report of its findings and make the report available to the general public. The report is due not later than 20 days after the date the control bid was filed or a later date agreed to by the offeror and the subject natural gas company or subject holding company. (Sec. 4905.403(B).)

The bill states that the authority it confers is in addition to any PUCO authority under existing Ohio public utility law (Chapter 4905.) with respect to a natural gas company that is a public utility under that law, or a holding company controlling such a company (sec. 4905.403(E)). Under Ohio public utility law, the PUCO has specific authority to approve or disapprove the acquisition of control of a domestic telephone company or its holding company and a domestic electric utility or its holding company (sec. 4905.402). It also has general supervisory authority over public utilities (sec. 4905.04), and this authority extends to any person or company owning, leasing, or operating a public utility (sec. 4905.05) and to the manner in which its properties are leased, operated, managed, and conducted with respect to the adequacy or accommodation afforded by its service (sec. 4905.06). In general, a natural gas company engaged in the business of supplying natural gas for lighting, power, or heating purposes to consumers within Ohio is a "public utility" (sec. 4905.02).

#### **Duty of offeror to make a PUCO filing**

Under the bill, an offeror is prohibited from making a control bid for a natural gas company in Ohio that is a public utility under Ohio public utility law, or a holding company controlling such a company, without filing the control bid with the PUCO (sec. 4905.403(B)). The filing must be made at the time of making the control bid in the case of a control bid initiated on or after the bill's effective date, and must be made not later than five days after the bill's effective date in the case of a pending control bid initiated prior to the bill's effective date (sec. 4905.403(C)).

Some of the bill's terminology is based on current Ohio securities law, which contains provisions requiring the filing with the Division of Securities of

certain information regarding a control bid (sec. 1707.041), generally to provide disclosure of information material to a decision to accept or reject a bid. (This law does not apply to a control bid when the offeror or subject company is a public utility, or is a public utility holding company for whom a control bid is subject to federal approval (sec. 1707.041(G)(1)).

The bill defines "control bid" as the purchase of, or offer to purchase, from an Ohio resident, by tender offer, invitation for tenders, or otherwise, any equity security of a natural gas company in Ohio that is a public utility under Ohio public utility law (sec. 4905.02), or any equity security of a holding company controlling such a company, if, after that purchase, the offeror would be directly or indirectly the beneficial owner of more than 10% of any class of the issued and outstanding equity securities of the subject natural gas company or subject holding company. "Control bid," however, excludes any of the following:

(1) A bid made by a dealer, as defined in the Ohio securities law, for the dealer's own account in the ordinary course of the business of buying and selling securities;

(2) An offer to acquire any equity security solely in exchange for any other security, or the acquisition of any equity security pursuant to an offer, for the sole account of the offeror, in good faith and not to avoid the bill's provisions, and not involving any public offering or other security within the meaning of specified federal securities law;

(3) Pursuant to a merger, consolidation, combination, majority share acquisition, or other transaction, the acquisition of any equity security of a natural gas company in Ohio that is a public utility under Ohio public utility law, or any equity security of a holding company controlling such a company if, prior to the date upon which the offeror becomes the owner of more than 10% of any class of the issued and outstanding equity securities of the subject natural gas company or subject holding company, the directors of the company had approved the acquisition. (Sec. 4905.403(A)(1).)

Under current securities law, and as used in the bill, "dealer" means every person, other than a salesperson, who engages or professes to engage in Ohio, for all or part of the person's time, directly or indirectly, in the business of the sale of securities for the person's own account, or in the business of the purchase or sale of securities for the account of others in the reasonable expectation of receiving a commission, fee, or other remuneration as a result of engaging in the purchase and sale of securities. "Dealer" excludes:

(1) Any issuer, including any officer, director, employee, or trustee of, or member or manager of, or partner in, or any general partner of, any issuer, that

sells, offers for sale, or does any act in furtherance of the sale of a security that represents an economic interest in that issuer, provided no commission, fee, or other similar remuneration is paid to or received by the issuer for the sale;

(2) Any licensed attorney, public accountant, or firm of such attorneys or accountants, whose activities are incidental to the practice of the attorney's, accountant's, or firm's profession;

(3) Any person that, for the account of others, engages in the purchase or sale of securities that are issued and outstanding before such purchase and sale, if a majority or more of the equity interest of an issuer is sold in that transaction, and if, in the case of a corporation, the securities sold in that transaction represent a majority or more of the voting power of the corporation in the election of directors;

(4) Any person that brings an issuer together with a potential investor and whose compensation is not directly or indirectly based on the sale of any securities by the issuer to the investor;

(5) Any bank, savings and loan association, savings bank, or credit union chartered under the laws of the United States or any state, provided that all transactions are consummated by or through a person licensed as a dealer or broker under Ohio securities law;

(6) Any person that the Division of Securities by rule exempts from the definition of "dealer" under authority of the Ohio securities law. (Sec. 4905.403(A)(2), referencing sec. 1707.01.)

"Offeror" is defined under the bill as a person that makes, or in any way participates or aids in making, a control bid, and includes persons acting jointly or in concert in exercising, or that intend to exercise jointly or in concert, any voting rights attached to the securities for which the control bid is made. The term excludes a subject natural gas company in Ohio that is a public utility under Ohio public utility law or a subject holding company controlling such a company when making a control bid for its own securities (sec. 4905.403(A)(4)).

The bill defines "equity security" as any share or similar security, or any security convertible into any such security, or carrying any warrant or right to subscribe to or purchase any such security, or any such warrant or right, or any other security that, for the protection of security holders, is deemed an equity security by the PUCO (sec. 4905.403(A)(2)).

**Acquisitions excluded from the bill**

The bill expressly states that it does not apply to acquisitions that, prior to July 15, 1999, had received the approval of the board of directors of the subject natural gas company or subject holding company, or the approval of a majority of that company's shareholders (sec. 4905.403(F)).

**PUCO rule-making authority**

The bill requires the PUCO to adopt rules to carry out the bill's provisions, including rules identifying any additional securities that it deems equity securities and rules prescribing the form and procedures pertaining to the filing of a control bid (sec. 4905.403(D)).

**Emergency clause**

The bill contains a declaration that the bill is an emergency measure necessary to establish at the earliest possible time a regulatory mechanism that (1) "ensures that the Public Utilities Commission undertakes a timely review of a pending hostile control bid that could affect the adequacy and price of natural gas service provided to millions of Ohio consumers and, ultimately, could affect economic growth and development" in Ohio, and (2) "provides the public and the marketplace with necessary information to use in evaluating the actual merits of that bid" (Section 2). As a result of this declaration, the bill would go into immediate effect.

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	09-23-99	p. 1224
Reported, H. Public Utilities	10-19-99	p. 1294
Passed House (94-0)	10-20-99	pp. 1306-1308

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