

AN ACT

To enact section 4905.403 of the Revised Code to require a report by the Public Utilities Commission 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 utility service at a reasonable rate and to declare an emergency.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 4905.403 of the Revised Code be enacted to read as follows:

Sec. 4905.403. (A) As used in this section:

(1) "Control bid" means the purchase of, or offer to purchase, from a resident of this state, by tender offer, invitation for tenders, or otherwise, any equity security of a natural gas company in this state that is a public utility under section 4905.02 of the Revised Code 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 ten per cent of any class of the issued and outstanding equity securities of the subject natural gas company or subject holding company. "Control bid" excludes any of the following:

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

(b) 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 for the purpose of avoiding the provisions of this section, and not involving any public offering of the other security within the meaning of Section 4 of Title I of the "Securities Act of 1933," 48 Stat. 77, 15 U.S.C.A. 77d(2), as amended;

(c) Pursuant to a merger, consolidation, combination, majority share acquisition, or other transaction, the acquisition of any equity security of a natural gas company in this state that is a public utility under section 4905.02 of the Revised Code or any equity security of a holding company controlling such a company, if, prior to the date upon which the offeror

comes the owner of more than ten per cent of any class of the issued and outstanding equity securities of the subject natural gas company or holding company, the directors of the subject natural gas company or subject holding company had approved the acquisition.

(2) "Dealer" has the same meaning as in section 1707.01 of the Revised Code.

(3) "Equity security" means 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 public utilities commission.

(4) "Offeror" means a person that makes, or in any way participates or aids in making, a control bid. "Offeror" 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, but excludes a subject natural gas company in this state that is a public utility under section 4905.02 of the Revised Code or a subject holding company controlling such a company when making a control bid for its own securities.

(B) No offeror shall make a control bid for a natural gas company in this state that is a public utility under section 4905.02 of the Revised Code, or a holding company controlling such a company, without the offeror filing the control bid with the public utilities commission, in such form and pursuant to such procedures as the commission prescribes. Not later than three days after the date of the filing, the commission shall fix a time for a hearing and shall notify the offeror and the subject natural gas company or subject holding company. The exclusive purpose of the hearing shall be to determine whether acceptance of the control bid will promote public convenience in this state and result in the provision of adequate natural gas service in this state by the natural gas company at a reasonable rate, rental, toll, or charge. not later than twenty days after the date of the filing or not later than such later date as is agreed to by both the offeror and the subject natural gas company or subject holding company, the commission shall issue a report of its findings and make the report available to the general public.

(C) With respect to a control bid to which division (B) of this section applies, the filing required by that division shall be made at the time of making the control bid in the case of a control bid initiated on or after the effective date of this section, and shall be made not later than five days after the effective date of this section in the case of a pending control bid initiated

prior to the effective date of this section.

(D) The commission shall adopt rules to carry out this section, including rules identifying any additional securities that it deems equity securities under division (A)(3) of this section and rules prescribing the form and procedures pertaining to a filing under division (B) of this section.

(E) The authority conferred by this section is in addition to any authority of the commission under this chapter with respect to a natural gas company that is a public utility under section 4905.02 of the Revised Code or a holding company controlling such a company.

(F) This section 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.

SECTION 2. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is to establish at the earliest possible time a regulatory mechanism that 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 within the state; and that provides the public and the marketplace with necessary information to use in evaluating the actual merits of that bid. Therefore, this act shall go into immediate effect.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 452

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____