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DELAWARE STATE SENATE

142nd GENERAL ASSEMBLY

SENATE BILL NO. 99

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE TO PROVIDE FOR REGULATION OF WASTEWATER UTILITIES BY THE PUBLIC SERVICE COMMISSION.

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

1           Section 1. Amend Section 102(2), Subchapter I, Chapter 1, Title 26 of the Delaware Code, by inserting “wastewater  
2 (which shall include sanitary sewer charge),” after “water,” in the definition of public utility.

3           Section 2. Amend Section 117(b), Subchapter I, Chapter 1, Title 26 of the Delaware Code, by inserting “wastewater,”  
4 after “water”.

5           Section 3. Amend Section 202(a), Subchapter II, Chapter 1, Title 26 of the Delaware Code, by inserting “and Section  
6 203D” after “Section 203C” and inserting “and wastewater” after “water”.

7           Section 5.       Amend Section 202, Subchapter II, Chapter 1, Title 26 of the Delaware Code, by inserting a new  
8 subsection 202 (h) as follows:

9           (h) Notwithstanding any other provisions of this Title, the Commission shall not have any supervisory or regulatory  
10 authority over wastewater utilities serving fewer than fifty customers in the aggregate.

11          Section 6. Amend Section 202(b), Subchapter II, Chapter 1, Title 26 of the Delaware Code, by inserting “and Section  
12 203D” after “Section 203C” and inserting “and wastewater” after the first reference to “water” and inserting “or wastewater”  
13 after the next two references to “water”.

14          Section 7. Amend Subchapter II, Chapter 1, Title 26 of the Delaware Code, by inserting a new section 203D as  
15 follows:

16          Section 203D. Certificates of public convenience and necessity for wastewater utilities.

17 (a) (i) Except for municipalities, governmental agencies and wastewater authorities and districts, which  
18 are governed under subsection (b) of this Section and wastewater utilities serving or to serve fewer than fifty  
19 customers in the aggregate, no person or entity shall begin the business of a wastewater utility nor shall any  
20 existing wastewater utility begin any extension or expansion of its business or operations without having first  
21 obtained from the Commission a certificate that the present or future public convenience and necessity requires,  
22 or will be served by, the operation of such business or the proposed extension or expansion. (ii) Except for  
23 municipalities, governmental agencies and wastewater authorities and districts, which are governed under  
24 subsection (b) of this Section and wastewater utilities serving fewer than fifty customers in the aggregate, any  
25 person or entity already in the business of a wastewater utility as of June 7, 2004 shall within 150 days of  
26 enactment of this Act obtain from the Commission a certificate of public convenience and necessity for its  
27 existing service area. Such person or entity shall provide the Commission a description of its facilities and the  
28 area it serves and a schedule of rates currently charged its customers, in such form as the Commission may  
29 require. Such person or entity need not provide the information required by subsection (d) of the section, nor any  
30 other tariff information required by Section 301 or any other provision of this Title at the time of their  
31 submission. A certificate shall be granted by the Commission to such persons or entities which provide the  
32 required information to the Commission, unless the Commission has actual knowledge at the time of the  
33 application for a certificate that the applicant is in material violation of any provisions of Title 7, 16 or 26 dealing  
34 with the provisions of wastewater services or there is a bona fide dispute as to the actual service territory served  
35 by such person or entity. The Commission shall attempt to expeditiously resolve any such dispute.

36 (b) Although municipalities, governmental agencies, and wastewater authorities or districts engaging in  
37 or desiring to engage in the business of a wastewater utility are not required to obtain a certificate of public  
38 convenience and necessity from the Commission for any existing or new service territory, these entities shall  
39 supply to the Commission a description of any existing service territory for wastewater service no later than 90  
40 days after the enactment of this Act and shall promptly give notice and a description of any extension of  
41 wastewater territory or new wastewater service territory to the Commission. Such entity shall not extend service  
42 in areas, which the Commission has granted a certificate of public convenience and necessity to another  
43 wastewater utility without receiving the approval of the Commission. Any wastewater utility shall not extend its  
44 territory into a service territory of a municipality, government agency or wastewater authority or district without

the approval of such entity and then obtaining approval of a certificate of public convenience and necessity from the Commission under this section.

(c) An application for a certificate of public convenience and necessity to begin, extend or expand the business of a wastewater utility shall be in writing, shall be in such form as determined by the Commission and shall contain the information specified in subsection (d) of this section.

(d) Except as provided for in subsection 203 (d) (2), the Commission shall issue a certificate of public convenience and necessity if the applicant therefore has submitted, together with the application, the following:

(1) A signed service agreement with the developer of a proposed subdivision or development, which subdivision or development has been duly approved by the respective county government; or

(2) A petition requesting such service signed by a majority of the landowners of the proposed territory to be served. In its application for a certificate of public convenience and necessity under this option, an applicant must show proof of notice of the application, which is to be served on all landowners of the proposed territory. The Commission shall deny an application for a certificate of public convenience and necessity if the Commission determines under this option that the public convenience and necessity would not be served. or

(3) A duly certified copy of a resolution from the governing body of a county or municipality requesting the applicant to provide service to the proposed territory to be served; and

(4) In the case of a new wastewater utility, evidence that it possesses the financial, operational and managerial capacity to serve the public convenience and necessity and to comply with all state and federal regulations.

(e) Notwithstanding any other provision of this section, a certificate of public convenience and necessity to begin, extend or expand the business or operations of a wastewater utility will not be granted if the Commission finds that the applying wastewater utility is unwilling or unable to provide safe, adequate and reliable service to existing customers, or is currently subject to a Commission finding that the utility is unwilling or unable to provide safe, adequate and reliable service to existing customers.

69 (f) An applicant for a certificate of public convenience and necessity shall be deemed in compliance  
70 with the notification requirement set forth in subdivision (c) of this section with respect to condominium units, as  
71 defined in the Delaware Unit Property Act, Chapter 22 of Title 25, upon providing certification signed by an  
72 authorized officer of the condominium association that (i) the officer of the condominium association is properly  
73 authorized to sign the petition for wastewater service, and (ii) all unit owners have been provided notice of the  
74 application. A copy of the notice provided to unit owners shall accompany the certification.

75 (g)(1) The Commission shall act on an application for a certificate of public convenience and necessity  
76 within 90 days of the submission of a completed application. For good cause shown, and if it finds that the public  
77 interest would be served, the Commission may extend the date of its action on an application for an additional  
78 period not to exceed 30 days. However, if an application for a certificate of public convenience and necessity is  
79 filed prior to July 1, 2005, the Commission may extend the date of its action on such application for an additional  
80 period, not to exceed 90 days.

81 (2) Any proceedings involving certificates of public convenience and necessity shall be conducted in  
82 accordance with the procedures set forth in subchapter III of Chapter 101 of Title 29.

83 (h) For applications submitted pursuant to subsection (d) of this section, no certificate of public  
84 convenience and necessity shall be issued where a majority of the landowners of the proposed territory to be  
85 served object to the issuance thereof.

86 (i) For purposes of this section, the phrase "land owners of the proposed territory to be served" shall  
87 refer solely to those persons having fee ownership of the affected parcel of real property within the proposed  
88 territory to be served (as reflected by appropriate tax or land record documents) at the time that the application  
89 for a certificate of public convenience and necessity is submitted by the applicant to the Commission for  
90 consideration; provided, however, that with respect to condominium units, as defined in the Delaware Unit  
91 Property Act, Chapter 22 of Title 25, this phrase shall mean the governing body or authorized officers of any  
92 condominium association with authority to act on behalf of unit owners, unless the underlying real property on  
93 which such condominium units have been built has been leased, directly or indirectly, to unit owners and the  
94 underlying real property owner retains the power to bind the unit owners.

(j) The Commission may, for good cause, undertake to suspend or revoke a certificate of public convenience and necessity held by a wastewater utility. Good cause shall consist of:

(1) A finding made by the Commission of material noncompliance by the holder of the certificate with any provisions of Title 7, 16 or 26 dealing with the provision of wastewater services to customers, or any order or rule of the Commission relating to the same; or

(2) A finding by the Commission that the wastewater utility has failed in a material manner to provide adequate or safe wastewater service to customers as evidenced by inadequate customer service, insufficient investment in, or inadequate operation of, the system or otherwise; and

(3) A finding by the Commission that, to the extent practicable, service to customers will remain uninterrupted under an alternative wastewater utility or a designated third party capable of providing adequate wastewater service; and,

(4) A finding by the Commission that to the extent practicable, any financial consequences to customers served by the utility subject to a revocation are appropriately mitigated.

Section 7. Amend Section 301, Subchapter III, Title 26 by designating the current text as subsection “(a)” and adding a new subsection (b) which reads as follows:

(b) Any person or entity in the business of a wastewater utility as of June 7, 2004 and subject to the supervision and regulation of the Commission under this Act shall file a schedule of its rates in effect as of June 7, 2004 within 120 days of enactment of this Act in such form as the Commission may require. Upon enactment of this Act, such wastewater utility’s rates will be deemed in effect pending the outcome of an initial rate change request application filed in accordance with this Title. Such application must be filed within 180 days of enactment of this Act. A wastewater utility required to make such a rate filing may seek the assistance of the Commission in preparing its rate filing. Rates in effect at the time of enactment of this Act shall be deemed temporary and not subject to change, unless ordered by the Commission. Section 306 shall not apply pending the outcome of this initial rate setting case. The Commission shall have nine months to complete its review following the filing of the rate change application. However, to the extent possible, the Commission shall attempt to expedite such application. For good cause shown, the Commission may waive any provision of this subsection.

121           Section 8. Amend Section 1301(a)(1), Chapter 13, Title 26 of the Delaware Code, by inserting “, every  
122 corporation organized for the collection and treatment of wastewater” after “water”.

#### SYNOPSIS

These amendments to Title 26 add investor-owned wastewater utilities to the list of public utilities regulated by the Public Service Commission. Wastewater utilities will be required to obtain certificates of public convenience and necessity to serve customers. As in the case of water utilities, wastewater utilities will be permitted to place necessary pipes, mains and conduits within the public right of way.

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