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Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Crawley

Rocky Hernandez, Attorney

SUMMARY

- Prohibits a public water system (PWS) from curtailing, disrupting, or disconnecting a customer's water service due to the nonpayment of fees and charges for the service, except for a present or imminently hazardous situation or on the request of the customer.
- Requires a PWS to assist a customer who is delinquent in paying water service fees and charges to establish a payment schedule to pay the delinquent amounts.
- Prohibits a PWS from placing a lien on the real property of a customer with delinquent water service fees and charges.
- Requires each PWS to create a Water Affordability Program (WAP) with the goals of preventing the violation of the human right to water and sanitation as established by the United Nations and to set water service fees and charges based on a sliding income scale, not exceeding 4.5% of income.
- Requires each PWS to create an Emergency Water Assistance Program (EWAP) to provide financial assistance and delinquency forgiveness to a customer in the event of an emergency or other situation in which the customer is temporarily unable to pay the customer's water service fees and charges.
- Allows for a PWS to fund a WAP and EWAP with revenue raised from imposing fees and charges for water service.
- Establishes a system of forfeitures for a PWS that violates or fails to comply with the bill's requirements and the rules adopted thereunder.
- Requires all PWSs to file a report with the Ohio Environmental Protection Agency (EPA), beginning July 1, 2021, that details certain information, including the following: average fees and charges for water service, the number of water service curtailments, disruptions, or disconnections that year, and PWS assistance programs.

- Requires a PWS to (1) enter information from its most recent Consumer Confidence Report into a database created and maintained by the EPA and available for public inspection and (2) provide a summary of that information in customer bills in reasonably understandable language.

DETAILED ANALYSIS

Disconnection of water service prohibited

The bill prohibits water service curtailment, disruption, or disconnection to any customer's residence due to the nonpayment of fees and charges for the services. Water service refers to all services that a public water system (PWS) provides to a customer. A PWS provides water to the public for human consumption through pipes or other constructed conveyances if it has at least 15 service connections or regularly serves at least 25 individuals. A PWS also includes any collection, treatment, storage, and distribution facilities under control of the PWS operator and used primarily in connection with the PWS, any collection or pretreatment storage facilities not under such control that are used primarily in connection with the PWS, and any water supply system serving an agricultural labor camp. A municipal corporation's water utility is not exempted from inclusion as a PWS.¹

Exceptions

The bill allows a PWS to curtail, disrupt, or disconnect a customer's residential water service if there is a present or imminently hazardous situation, or the customer requests the service curtailment, disruption, or disconnection.²

Financial assistance from public water systems

Payment schedule for delinquent customers

The bill requires a PWS to assist a customer who is delinquent in paying water service fees and charges to establish a payment schedule to pay the delinquent amounts.³

Liens on real property prohibited

The bill prohibits a PWS from imposing a lien on the real property of a customer with delinquent water service fees and charges.⁴

Connection fees prohibited

The bill prohibits a PWS from imposing a fee on a customer for connecting water service. The PWS must follow flushing protocol when connecting service.⁵

¹ R.C. 4915.01 and 4915.02; R.C. 6109.01, not in the bill.

² R.C. 4915.04.

³ R.C. 4915.10.

⁴ R.C. 4915.11.

⁵ R.C. 4915.12.

Informational materials

The bill requires a PWS to leave informational material at each customer's residence when connecting water service regarding the protections and requirements that the bill creates.⁶

Water Affordability Program

The bill requires that each PWS establish a Water Affordability Program (WAP) to prevent the violation of the human right to water and sanitation as established by the United Nations Resolution 64/292 of July 28, 2010.⁷

Sliding scale to set water service fees and charges

The bill further requires that each WAP utilize a sliding scale based on customer income to set water service fees and charges, not exceeding 4.5% of a customer's income.⁸

Proof of income

The bill requires customers to provide the PWS with a proof of income to determine the customer's water service fees and charges under the WAP. The bill allows income to be established with any of the following:

- A copy of the customer's most recent paycheck;
- A copy of the customer's most recent state or federal tax return;
- Any other reasonable means to establish income that the PWS is willing to accept.⁹

No proof of income needed for certain customers

The bill requires customers participating in low-income customer assistance programs administered by the Director of Development or receiving assistance from other federal, state, or local sources for purposes of obtaining or maintaining utility service to be automatically placed on the lowest bracket of the WAP sliding scale (apparently without the need to provide proof of income as described above).¹⁰

Emergency Water Assistance Program

The bill requires each PWS to establish an Emergency Water Assistance Program (EWAP) to provide financial assistance to a customer facing an emergency or other situation, which leaves the customer temporarily unable to pay water service fees and charges.¹¹

⁶ R.C. 4915.13.

⁷ R.C. 4915.15(A).

⁸ R.C. 4915.15(B).

⁹ R.C. 4915.17.

¹⁰ R.C. 4915.16 and 4915.17.

¹¹ R.C. 4915.20.

Requirements

The bill requires the EWAP to include the following components:

- Provision of financial assistance based on an income sliding scale that would allow for full payment of water service fees and charges;
- Creation of an affordable and attainable payment schedule based on the customer's income that allows an eligible customer to pay delinquent water service fees and charges.¹²

Delinquent fees and charges forgiven

The bill requires a PWS to forgive a customer's delinquent water service fees and charges after 24 months of continual payment under an EWAP payment schedule.¹³

Program funding

The bill allows a PWS to use any revenue raised from imposing fees and charges for water service to fund a WAP and EWAP, despite any provision of the Revised Code or regulation adopted thereunder, or any order of the Public Utilities Commission regarding the setting of rates and the imposition of fees and charges for water service, to the contrary.¹⁴

Reporting requirement

The bill requires all PWSs to file a report with the Ohio Environmental Protection Agency (EPA) on or before the first of July each year starting in 2021. The report must contain the following:

- The average fees and charges for water service by customer category;
- The average monthly bill for customers that have two, four, and six individuals in the household and the process by which the average was determined;
- The number of curtailments, disruptions, or disconnections of water service during the year broken down by census tract, zip code, and category of customer;
- All policies and procedures regarding curtailment, disruption, or disconnection of water service due to a present or imminently hazardous situation, or by customer request;
- Any assistance programs the PWS has available for low-income customers.¹⁵

¹² R.C. 4915.20(A) and (B).

¹³ R.C. 4915.21.

¹⁴ R.C. 4915.23.

¹⁵ R.C. 4915.25.

Report to be publically available

The bill requires the EPA to publish on its website each PWS annual report described above. Additionally, each PWS must maintain a physical copy of its report at each of its business locations.¹⁶

EPA database

The bill requires the EPA to create and maintain a publicly accessible database for each PWS to input certain information from its Consumer Confidence Report. A PWS must periodically update that information with any new information it provides in subsequent reports.¹⁷

PWS consumer confidence report highlights in database

The bill requires each PWS to input the following information from its most recent Consumer Confidence Report into the EPA database:

- Drinking water quality;
- Water quality of the rivers, lakes, or streams from which the PWS obtains water, if applicable;
- Hyperlinks to information concerning pollutants in the water, the normal range of those pollutants, and the health effects of consuming them.¹⁸

Physical copies of information

The bill requires each PWS to include a summary of the above information with each customer's monthly bill for water service written in reasonably understandable language.¹⁹

Forfeitures

The bill requires the EPA to adopt a system of forfeitures for any violation or failure to comply with the bill's requirements and any rules adopted thereunder.²⁰ The amount of the forfeitures will depend on the number of customers served by the PWS.

Greater than 10,000 customers

For a PWS serving more than 10,000 customers, the forfeiture will be a minimum of \$1,000 for each offense, with a maximum of \$10,000 per violation of failure to comply.²¹

¹⁶ R.C. 4915.26.

¹⁷ R.C. 4915.31.

¹⁸ R.C. 4915.30(A).

¹⁹ R.C. 4915.30(B).

²⁰ R.C. 4915.32.

²¹ R.C. 4915.32(A).

10,000 customers or less

For a PWS serving 10,000 or fewer customers, the EPA shall adopt a graduated system of forfeitures for each offense based on the following factors, not exceeding \$2,500 per violation or failure to comply:

- The size of the PWS;
- The threat to public health presented by the offense;
- Other factors that may be necessary to ensure compliance with the bill's requirements and the rules adopted thereunder.²²

Daily continuance of violation or offense

The bill states each day's continuance of a violation or failure to comply with the bill's requirements, or any of the rules adopted thereunder, as a separate offense.²³

Prosecution

The bill requires that actions to recover the forfeitures must be prosecuted in the name of the state and may be brought in the court of common pleas of any county in which the PWS is located. These actions must be commenced and prosecuted by the Attorney General when the Attorney General is directed to do so by the EPA.²⁴

Disposition of forfeitures

First violation or failure to comply

The bill requires that the forfeiture imposed on a PWS for a first violation or failure to comply with the bill or any rules adopted thereunder, must be earmarked in the treasury of the political subdivision (which, under the bill, is a township, county, or municipal corporation) where the violation or failure to comply occurred. The political subdivision has 30 days from the date of the earmark to use that amount to cure any defect or damage caused by the PWS violation or failure to comply. All remaining amounts of the earmark not used to cure must be paid to the Treasurer of the State for deposit into the state treasury to the credit of the Drinking Water Protection Fund.²⁵

Second and subsequent violations

The bill further requires that forfeitures recovered for a second or subsequent violation or failure to comply must be paid to the Attorney General who must deposit the amounts into the Drinking Water Protection Fund.²⁶

²² R.C. 4915.32(B).

²³ R.C. 4915.33.

²⁴ R.C. 4915.34.

²⁵ R.C. 4915.35(A) and (B); R.C. 6109.30, not in the bill.

²⁶ R.C. 4915.35(C); R.C. 6109.30, not in the bill.

Forfeitures are cumulative

The bill designates all forfeitures imposed on a PWS as cumulative. A suit for the recovery of one does not bar the recovery of any other.²⁷

Other state laws not applicable

The bill provides that the laws governing rebates and special rates by public utilities must not be construed to prohibit or limit a PWS from complying with the bill's provisions or any rules adopted thereunder.²⁸

EPA rules

The bill requires the EPA to adopt rules, under the Ohio Administrative Procedure Act (R.C. Chapter 119), necessary to administer and enforce the bill.²⁹

COMMENT

Since a PWS includes municipal water utilities, the bill directly regulates municipal utility activity. As a result, it may be subject to challenge under the home rule provisions of the Ohio Constitution. Under home rule authority, municipalities have the power to acquire, construct, own, lease, and operate a public utility to serve the municipality or its inhabitants and others.³⁰ This means that municipalities have broad authority to control their utilities and how they operate, which the state may not infringe upon. The bill, because it would apply to municipal water utilities, might conflict with that municipal authority by directly affecting utility operations.

HISTORY

Action	Date
Introduced	05-19-20

H0639-I-133/ar

²⁷ R.C. 4915.36.

²⁸ R.C. 4915.37; R.C. 4905.33 to 4905.35, not in the bill.

²⁹ R.C. 4915.40.

³⁰ Ohio Constitution, Article XVIII, Section 4.