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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
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Legislative Budget  
Office

H.B. 364  
134<sup>th</sup> General Assembly

## Bill Analysis

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**Version:** As Reported by House Public Utilities

**Primary Sponsor:** Rep. Patton

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### SUMMARY

- Changes the law governing waterworks and sewage disposal system company infrastructure improvement surcharges imposed on customers to recover costs for capital improvements to infrastructure plant to do the following:
  - Adds the requirements that the capital improvements be (1) prudent and (2) properly classified in the Uniform System of Accounts (USOA) adopted by the National Association of Regulatory Utility Commissioners (NARUC), instead of just used and useful in rendering public utility service as current law requires;
  - Includes capital improvements consisting of the replacement of an existing plant included in *accounts under NARUC's USOA* instead of the current law requirement of replacement of existing plant including specific facilities listed in the law (which the bill deletes).
- Permits a surcharge to include capital expenditures made to comply with any consent decree, final order, or final rule of the U.S. or Ohio Environmental Protection Agency.
- Extends surcharge eligibility to include as a “replacement of an existing plant” any replacement that results in an upgrade or improvement to the previously existing plant if it is prudent, qualifies for recovery, and performs the same or similar function as the plant replaced.
- Permits a waterworks or sewage disposal system company with \$250,000 or more of annual operating income to impose, subject to refund, its proposed infrastructure improvement surcharge of certain companies if the Public Utilities Commission fails to issue a final order on the surcharge within 180 days.
- Delays infrastructure improvement surcharge termination by operation of law to no later than December 31, 2036.

## DETAILED ANALYSIS

### Infrastructure plant costs recovered by surcharge

The bill makes changes to what is included as infrastructure plant costs recoverable under an infrastructure improvement surcharge (surcharge) by a waterworks company (company in the business of supplying water through pipes or tubing, or in a similar manner, to Ohio consumers) or sewage disposal system company (company in the business of sewage disposal through pipes or tubing, and treatment works, or in a similar manner, in Ohio) that is a public utility.

Under continuing law, either type of company may apply for a surcharge to recover plant costs. The Public Utilities Commission (PUCO) may approve the surcharge if PUCO determines it is just and reasonable, and is sufficient, but does not exceed, the revenue requirement necessary to recover the plant costs and provide a fair and reasonable rate of return on the plant.<sup>1</sup>

#### Prudent and properly classified

Under the bill, capital improvements to infrastructure plant, to be eligible for the surcharge, must be determined by PUCO to be (1) prudent, (2) used and useful in rendering public utility service, and (3) properly classified in the Uniform System of Accounts (USOA) adopted by the National Association of Regulatory Utility Commissioners (NARUC) as identified in the Ohio Administrative Code. Current law requires only that PUCO determine the improvements to be used and useful.<sup>2</sup>

#### Waterworks company capital improvements

Below is a table comparing the changes made by the bill regarding the waterworks company capital improvements that may be included in the surcharge.<sup>3</sup>

Current law	Bill
Replacement of existing plant including: <ul style="list-style-type: none"> <li>▪ Chemical feed systems;</li> <li>▪ Filters;</li> <li>▪ Pumps;</li> <li>▪ Motors;</li> <li>▪ Plant generators;</li> </ul>	Replacement of <i>an</i> existing plant included in <i>accounts</i> (under NARUC's USOA): <ul style="list-style-type: none"> <li>▪ 323 – Other power production equipment;</li> <li>▪ 324 – Steam pumping equipment;</li> <li>▪ 325 – Electric pumping equipment;</li> <li>▪ 326 – Diesel pumping equipment;</li> </ul>

<sup>1</sup> R.C. 4909.172; R.C. 4905.02 and 4905.03, not in the bill.

<sup>2</sup> R.C. 4909.172(C).

<sup>3</sup> R.C. 4909.172(C)(1).

Current law	Bill
<ul style="list-style-type: none"> <li>▪ Meters;</li> <li>▪ Service lines;</li> <li>▪ Hydrants;</li> <li>▪ Mains; and</li> <li>▪ Valves.</li> </ul>	<ul style="list-style-type: none"> <li>▪ 327 – Hydraulic pumping equipment;</li> <li>▪ 328 – Other pumping equipment;</li> <li>▪ 332 – Water treatment equipment;</li> <li>▪ 342 – Distribution reservoirs &amp; standpipes;</li> <li>▪ 343 – Transmission &amp; distribution mains;</li> <li>▪ 345 – Services;</li> <li>▪ 346 – Meters;</li> <li>▪ 347 – Meter installation; and</li> <li>▪ 348 – Hydrants.</li> </ul>

### Sewage disposal system company capital improvements

Below is a table comparing the changes made by the bill regarding the sewage disposal system company capital improvements that may be included in the surcharge.<sup>4</sup>

Current law	Bill
<p>Replacement of existing infrastructure including:</p> <ul style="list-style-type: none"> <li>▪ Chemical feed systems;</li> <li>▪ Filters;</li> <li>▪ Pumps;</li> <li>▪ Motors;</li> <li>▪ Sludge-handling equipment;</li> <li>▪ Plant generators;</li> <li>▪ Mains; and</li> <li>▪ Lift stations.</li> </ul>	<p>Replacement of <i>an existing plant</i> included in <i>accounts</i> (under NARUC's USOA):</p> <ul style="list-style-type: none"> <li>▪ 352 – Collection sewers;</li> <li>▪ 352.1 – Collection sewers – Force;</li> <li>▪ 352.2 – Collection sewers – Gravity;</li> <li>▪ 353 – Services to customers;</li> <li>▪ 354 –Flow measuring devices;</li> <li>▪ 355 – Flow measuring installations;</li> <li>▪ 356 – Other collection plant facilities;</li> <li>▪ 362 – Receiving wells;</li> <li>▪ 363 – Electric pumping equipment;</li> <li>▪ 364 – Diesel pumping equipment;</li> <li>▪ 365 – Other pumping equipment;</li> <li>▪ 372 – Treatment and disposal equipment;</li> </ul>

<sup>4</sup> R.C. 4909.172(C)(2).

Current law	Bill
	<ul style="list-style-type: none"> <li>▪ 373 – Plant sewers;</li> <li>▪ 374 – Outfall sewer lines; and</li> <li>▪ 375 – Other treatment and disposal plant equipment.</li> </ul>

### **Replacement of an existing plant**

The bill defines “replacement of an existing plant” regarding waterworks and sewage disposal system company capital improvements (discussed immediately above) to include replacements that upgrade or improve the previously existing plant, provided that the replacement plant is prudent, qualifies for recovery under the bill, and performs the same or similar function or purpose as it did prior to the replacement.<sup>5</sup>

### **Other capital expenditures**

The bill also includes, as capital improvements that may be included in the surcharge, capital expenditures made by a waterworks or sewage disposal company to comply with any consent decree, final order, or final rule from either the U.S. or Ohio Environmental Protection Agency.<sup>6</sup>

### **Surcharge imposed pending PUCO approval**

The bill provides that a waterworks or sewage disposal system company with \$250,000 or more in annual operating revenues can, at the company’s discretion, put its surcharge into effect if PUCO fails to issue a final order on the company’s surcharge application within 180 days. The surcharge will take effect on the filing of the company’s revised affected rate schedule, subject to refund of amounts collected in excess of the amounts authorized by PUCO’s final order.

All refunds must include interest at the rate required by Ohio law and be accomplished as PUCO prescribes in the final order. PUCO may require an undertaking to secure the refund if it finds it is warranted by the financial condition of the waterworks or sewage disposal system company.<sup>7</sup>

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<sup>5</sup> R.C. 4909.172(C).

<sup>6</sup> R.C. 4909.172(C)(4).

<sup>7</sup> R.C. 4909.172(D).

## Surcharge termination by law

The bill requires that all infrastructure improvement surcharges must terminate by operation of law no later than December 31, 2036. Current law terminates the surcharges by operation of law not later than December 31, 2025.<sup>8</sup>

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### HISTORY

Action	Date
Introduced	07-01-21
Reported, H. Public Utilities	05-11-22

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<sup>8</sup> R.C. 4909.172(G).