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H.B. 364
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Passed by the Senate

Primary Sponsor: Rep. Patton

Local Impact Statement Procedure Required: No

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Highlights

- The bill expands the criteria for which state-regulated waterworks and sewage disposal companies may recover costs from their customers under an infrastructure improvement surcharge.
- The Ohio Environmental Protection Agency (OhioEPA) may evaluate more permit applications for hazardous waste incinerators, based on two exceptions to the permit moratorium created by the bill. Costs to review those applications would be partially offset by any fees collected. The net effect is uncertain.
- Transient noncommunity public water systems may experience administrative cost savings from no longer implementing and maintaining asset management programs and reporting to OhioEPA.
- OhioEPA may experience some administrative cost savings as a result of no longer overseeing these programs and reviewing the submitted asset inventories from transient noncommunity public water systems.
- The bill specifies the priority of a residential property assessed clean energy (PACE) lien relative to mortgages and other liens. (PACE is a voluntary special assessment added to a property's tax bill.)

Detailed Analysis

State-regulated utilities

Continuing law permits a waterworks company or a sewage disposal company to seek approval from the Public Utilities Commission of Ohio (PUCO) for an infrastructure improvement surcharge; PUCO orders refer to such a surcharge as a system improvement charge (SIC). Codified

law includes several requirements that must be met before the Commission may approve a proposed SIC. The bill expands the criteria to include additional items that may be recovered under a SIC. If not for the bill, a waterworks company or sewage disposal company could still seek recovery of those charges from customers through a base rate case, but in general, a SIC proceeding is smaller in scope than a base rate case proceeding. The bill requires PUCO to issue a final order within 180 days after a SIC application is filed by a company with \$250,000 or more in annual operating revenue, else the proposed surcharge will go into effect at the waterworks or sewage disposal company's discretion (albeit subject to refund to the extent that collections exceed amounts later authorized by PUCO).

Continuing law limits a waterworks company or sewage disposal company to no more than three concurrent SICs. Similarly, caps in current law on each SIC remain unchanged. The waterworks company SIC and sewage disposal company SIC cannot exceed 4.25% and 3%, respectively, of the utility rates applicable to a given customer that are in effect on the date the SIC application was filed.

The bill does not have a direct effect on political subdivisions; the regulated utilities affected by the bill serve only a small portion of Ohio in any case. The bill likely has a minimal impact, if any, on PUCO's agency expenditures.

Hazardous waste incinerators

The bill creates two exceptions to the moratorium against modifications to the permit. The first exception is for applications when all of the following apply:

1. The hazardous waste incinerator was in operation before April 15, 1993;
2. The application for the modified permit is for the installation of an improved air emission control system designed to achieve compliance with federal air regulations; and
3. The application does not propose to increase the treatment capacity of the incinerator or the quantity of waste to be treated by it.

The second exception is for applications when all of the following apply:

1. The hazardous waste incinerator was in operation before April 15, 1993;
2. The application for modification seeks to increase the treatment capacity of the hazardous waste incineration operations or the quantity of waste to be treated;
3. The hazardous waste incinerator is at or near its actual maximum operating capacity;
4. The application for the modified permit is for the installation of an improved air emission control system designed to achieve compliance with federal air regulations; and
5. The owner or operator of the hazardous waste incinerator has not been issued any other permit allowing for the expansion of the hazardous waste incinerator or construction of a new hazardous waste incinerator.

In general, current law prohibits the Director of Environmental Protection (OhioEPA) from issuing any new or modified hazardous waste incinerator installation and operation permits. As a result of the bill's change, the number of permit applications that are received by OhioEPA may increase. Costs to review those applications would be partially offset by any fees collected. The net effect is uncertain.

Transient noncommunity public water systems

The bill changes current law provisions that require public water systems (PWSs) to implement asset management programs. Specifically, the bill removes transient noncommunity public water systems from these requirements.¹ The bill defines a transient noncommunity public water system as a system that does not regularly serve at least 25 of the same persons over six months per year and is not a community water system or a nontransient noncommunity water system. Examples include gas stations, restaurants, and campgrounds.²

PWSs are regulated by the Ohio Environmental Protection Agency. PWS water sources are derived either from a ground water source, a surface water source, or a ground water under the direct influence of surface water source. In Ohio, around 4,800 regulated public water systems serve approximately 11 million people daily.

Locally managed public water systems

PWSs that meet the definition of a transient noncommunity public water system may experience administrative cost savings from no longer implementing and maintaining asset management programs and reporting to OhioEPA. Some systems may continue to implement their own asset management programs based on best practices, but this would be a voluntary measure once the bill is enacted.

Enforcement savings – fines and penalties

Because of the bill, OhioEPA will no longer be able to enforce certain administrative, civil, or criminal remedies as permitted under current law and specific to asset management program reporting, including license revocation for a PWS that meets the definition of a transient noncommunity public water system.³ This change would result in administrative cost savings for the agency. Generally speaking, fines and penalties may be as follows:

- Administrative – PWSs serving populations of more than 10,000, not less than \$1,000 for each day of each violation, total amount cannot exceed \$10,000 per violation; PWSs serving populations of 10,000 or fewer, \$1,000 multiplied by a number, expressed as a decimal, in order to determine the penalty amount for each day of violation, total amount cannot exceed \$2,500 per violation;
- Civil – up to \$25,000 for each violation;
- Criminal – penalties vary depending on the culpable mental state of the offender and the severity of the offense. For a reckless violation, a misdemeanor, punishable by a fine of up to \$10,000 or imprisonment for up to four years, or both. For a reckless or knowing

¹ The requirements for public water system asset management programs were first enacted by S.B. 2 of the 132nd General Assembly.

² The other types of PWSs are: (1) community (serve at least 15 service connections used by year-round residents or regularly serve at least 25 year-round residents; examples include cities, mobile home parks and nursing homes), and (2) nontransient noncommunity (serve at least 25 of the same persons over six months per year; examples include schools, hospitals, and factories).

³ For a complete listing of the fines and penalties that may be sought currently, see R.C. 6109.23, 6109.33, and 6109.99, and Ohio Administrative Code (O.A.C.) 3745-81-04.

violation that poses a significant threat to or causes significant harm to public health, a felony, punishable by a fine of up to \$25,000 or imprisonment for up to four years, or both.

As a result of this change and to the extent that a PWS may have been found in violation of any of the current asset management program requirements, these systems may experience certain cost savings in terms of fines and penalties once the bill is enacted.

Property assessed clean energy (PACE)

The bill specifies that the priority for a residential PACE lien is:

1. Always subordinate to a first mortgage, regardless of when that mortgage is recorded with the county recorder;
2. Subordinate to all other liens recorded prior to the recordation of the residential PACE lien;
3. Superior to all other liens recorded after the recordation of the residential PACE lien.

Background

A residential PACE lien is a lien for a residential PACE (property assessed clean energy) loan, which is a loan to pay for the installation of cost-effective energy improvements on a homeowner's qualifying residential real property and is repayable by the homeowner through a voluntary special assessment added to the property's tax bill. PACE provides financing for 100% of an energy project's cost (i.e., energy efficiency and renewable energy improvements) and is repaid for up to 25 years. PACE assessments stay with property upon sale and transfers to new owner.