



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Amy L. Archer

S.B. 157

132nd General Assembly
(As Introduced)

Sen. Bacon

BILL SUMMARY

Metering public utility service to multiple dwelling units

- Requires a proprietor or proprietor's agent to measure public utility service provided to consumers through a master meter, master meter in conjunction with a submeter, or public utility-owned meter.
- Applies the meter requirements to public utility service provided by an electric company, natural gas company, water-works company, and sewage disposal system company.
- Exempts public utility service provided by a municipal corporation or cooperative from the meter requirements.

Charges for service

- Requires a proprietor or proprietor's agent charging consumers for public utility service to allocate rates, fees, and costs using one of the following methods:
 - Actual consumption measured by a submeter;
 - Market-based rates, fees, or charges;
 - Fixed rate per unit of public utility service;
 - Actual consumption measured by a formula, including a ratio utility billing system.
- Requires a proprietor or proprietor's agent to bill consumers monthly unless the proprietor or proprietor's agent is billed on a less frequent basis by the utility.

Administrative fees

- Permits a proprietor or proprietor's agent who is charging actual rates, fees, and costs of consumption as measured by a submeter to impose a maximum of one reasonable administrative fee per month relating to the provision of, or billing for, the public utility service for which the consumer is charged.
- Provides that the one-administrative-fee-per-month limitation does not apply to the submeter accuracy testing fee.
- Requires that the administrative fee be disclosed to the consumer at the time of the lease, rental agreement, or association service agreement and expressed as a cost per unit for public utility service.

Common areas and commonly used equipment

- Permits a proprietor or proprietor's agent to charge consumers for public utility service provided to common areas and for commonly used equipment.
- Prohibits the rates, fees, or costs charged for public utility service provided to common areas and commonly used equipment from exceeding the actual rates, fees, or costs incurred for public utility services for common areas and equipment.

Notices and records

- Requires a proprietor or proprietor's agent to provide each prospective consumer an acknowledgment form to sign before entering into a rental agreement, association agreement, lease, or contract for public utility service that includes certain information regarding billing and charges.
- Requires a proprietor or proprietor's agent to include specific billing and measurement information in a consumer's bill for submetered electric service.
- Requires a proprietor or proprietor's agent to maintain public utility service measurement records for the previous three years after the termination of a lease, rental or association agreement, or contract for public utility service.
- Requires and proprietor or proprietor's agent to make measurement records available upon reasonable prior request and to retain the records for a minimum of three years after the termination of a lease, rental or association agreement, or contract for public utility service.

Submeter standards and accuracy

- Requires all meters to meet quality standards established by the Public Utilities Commission of Ohio (PUCO).
- Requires the proprietor, upon the written request of the consumer, to test the accuracy of the consumer's submeter in the presence and at the convenience of the consumer or consumer's authorized representative.
- Requires the proprietor to promptly inform the consumer or consumer's representative of the test results.
- Permits the proprietor to charge the consumer a fee (to be disclosed at the time of the lease or agreement), not to exceed \$50, if the submeter tests within the accuracy standards established by PUCO.

Service line repair and maintenance

- Provides that a proprietor or proprietor's agent is responsible for all costs related to the routine operation, repair, and maintenance of service lines.
- Provides that a proprietor's agent is not responsible for repairs to service lines required as a result of a *force majeure* event, tampering, or careless actions by a proprietor or consumer.

Termination of public utility service

- Permits a proprietor or proprietor's agent to terminate public utility service for nonpayment of charges for that service, and expressly permits termination by a unit owners association regardless of whether that authority is set forth in statutorily required association documents.
- Requires termination to be done pursuant to PUCO rules governing utility service termination applicable to electric light companies and natural gas companies.
- Provides that public utility service termination is not constructive eviction under Ohio law.
- Prohibits a manufactured home park operator or landlord from evicting a resident or tenant for failure to make timely payment for public utility service if the service is terminated for nonpayment by the proprietor or proprietor's agent.
- Provides that a park operator's or landlord's right to seek eviction for other violations of the rental agreement or lease is not waived.

Reselling limitations

- Provides that the bill does not limit the authority of PUCO or other authority, as jurisdictionally applicable, to prohibit or limit the reselling of public utility service.

Legal remedies

- Permits the Attorney General to bring a civil action to enforce the bill's provisions without affecting the right of a consumer to pursue any remedy available under the law for a failure to comply with, or a violation of, the bill's provisions.
- Permits the affected consumer, if a proprietor or proprietor's agent violates or fails to comply with certain provisions of the bill, to bring a civil action to obtain either or both of the following:
 - Treble the total amount of overcharges resulting from a compliance failure or violation as treble damages and reasonable attorney's fees;
 - An injunction to prevent the reoccurrence of conduct.
- Limits the period during which the consumer may bring the civil action to the three-year period that begins when the consumer discovered or reasonably should have discovered the failure or violation.
- Prevents damage and reasonable attorney's fees recovery if the proprietor or proprietor's agent refunds the overcharge in compliance with specific timing provisions set forth in the bill.
- Provides that the limitations on recovery of treble damages and reasonable attorney's fees are not applicable if:
 - The consumer was overcharged as a result of conduct that the proprietor or proprietor's agent knew or reasonably should have known would result in the overcharge; or
 - The overcharge amount, less any amount already refunded, exceeds \$350 at the time of the filing of the action.

TABLE OF CONTENTS

Metering public utility service to multiple dwelling units	5
Charges for service	5
Administrative fees.....	6
Common areas and commonly used equipment	7
Notices and records	7



Prospective consumer acknowledgment form.....	7
Submetered electric service bill	7
Record maintenance.....	8
Submeter standards and accuracy.....	8
Standards.....	8
Testing.....	9
Service line repair and maintenance	9
Termination of public utility service.....	9
Reselling limitations	10
Legal remedies	10
Attorney general action.....	10
Consumer action.....	10
Damage recovery limitations.....	11
Attorney's fees recovery limitation	11
Exceptions to recovery limitations.....	12

CONTENT AND OPERATION

Metering public utility service to multiple dwelling units

The bill requires a proprietor (landlord, manufactured home park operator, unit owners association, or "other person or entity that has an ownership interest in the property or facilities at the property") or proprietor's agent (any person or entity that provides public utility service or billing services on behalf of a proprietor) charging rates, fees, or costs to measure public utility service provided to the consumer (tenants, manufactured home park residents, and condominium unit owners) through a master meter, master meter in conjunction with a submeter, or public-utility-owned meter.¹

The bill applies to public utility services provided by an electric company, natural gas company, water-works company, and sewage disposal system company. However, the bill excludes utility service provided by a municipal corporation or cooperative.²

Charges for service

Under the bill, a proprietor or proprietor's agent charging consumers for public utility service must allocate rates, fees, and costs of public utility services to consumers using one of the following methods:

¹ R.C. 4781.401, 5311.082, 5321.061, 5325.01(A) to (E) and (H), and 5325.02.

² R.C. 5325.01(F).



- Actual rates, fees, and costs of consumption as measured by a submeter for the public utility service provided to the consumer;
- Market-based rates, fees, or charges as determined by a proprietor or proprietor's agent that is not to exceed the rates, fees, or charges collected in the immediate service area from residential customers by public utilities for the same type and quantity of service on an annualized basis;
- Fixed rate per unit of public utility service, in which the fixed rate per unit is to be set upon commencement of the lease, rental agreement, or association agreement for the term of the lease or agreement;
- Actual consumption measured by a formula, including a ratio utility billing system, for determining the cost of the public utility service provided to a consumer.³

A proprietor or proprietor's agent charging consumers for public utility service is to bill consumers monthly, unless the proprietor or proprietor's agent is billed on a less frequent basis by the utility.⁴

The bill defines a "ratio utility billing system" as a method of billing a consumer by using a formula to allocate utility service charges based on factors including occupancy, square footage, or some combination of factors.⁵

Administrative fees

If a proprietor or proprietor's agent is charging actual rates, fees, and costs of consumer consumption as measured by a submeter, the bill allows the proprietor or proprietor's agent to impose a maximum of one reasonable administrative fee per month relating to the provision of, or billing for, public utility services for which the consumer is charged. The administrative fee must be disclosed to the consumer at the time of the lease, rental agreement, or association service agreement and expressed as a cost per unit of the public utility service. The submeter accuracy testing fee (discussed below) is not included in the monthly administrative fee limitation.⁶

³ R.C. 5325.04.

⁴ R.C. 5325.07.

⁵ R.C. 5325.01(G).

⁶ R.C. 5325.05.

Common areas and commonly used equipment

The bill allows a proprietor or proprietor's agent to charge consumers for public utility services provided to common areas and for commonly used equipment. However, the bill prohibits a proprietor or proprietor's agent from charging rates, fees, or costs to consumers that exceed the actual rates, fees, or costs incurred for public utility services for common areas and equipment.⁷

Notices and records

Prospective consumer acknowledgment form

The bill requires a proprietor or proprietor's agent to provide to each prospective consumer an acknowledgment form to be signed by the consumer before entering into the rental agreement, association agreement, lease, or contract for public utility service that contains the following information:

- A description of how the consumer is to be billed for public utility service;
- Whether a charge will be allocated for common areas and commonly used equipment;
- An estimation of monthly and annual costs for the consumer based on a typical unit;
- A clear statement that the residence is submetered, if applicable;
- A clear statement that the consumer is responsible for actual rates, fees, or costs incurred for utility services provided to common areas and for commonly used equipment, if applicable.⁸

Submetered electric service bill

A consumer's bill for submetered electric service must include all of the following information:

- The date and reading of the submeter at the beginning and end of the period for which the bill is rendered;
- The number of billing units metered;

⁷ R.C. 5325.06 and 5325.08(B) and (E).

⁸ R.C. 5325.08.



- The computed rate per billing unit;
- The total payment amount due for electricity consumer;
- The name of the company supplying the public utility service provided by the proprietor or proprietor's agent, along with a clear and unambiguous statement that the bill is not rendered by that company;
- The name and address of the consumer to whom the bill is applicable;
- The name of the proprietor or proprietor's agent, whichever rendered the bill, and the name or title, address, and telephone number of the person or persons to be contacted in case of a billing dispute.⁹

Record maintenance

A proprietor or proprietor's agent is required to maintain adequate records detailing all public utility service measurements for which a proprietor or proprietor's agent charges rates, fees, and costs under the bill and the charges for service. The proprietor or proprietor's agent is required to keep the public utility service measurement records for the previous three years and to retain those records for a minimum of three years after the termination of the lease, rental agreement, association agreement, or any contract for public utility service between a consumer and agent.¹⁰

Upon reasonable prior request, the proprietor or proprietor's agent is to make the public utility service measurement records available to the consumer for inspection during normal business hours. The consumer may inspect only those records pertaining to that consumer's public utility service consumption.¹¹

Submeter standards and accuracy

Standards

The bill requires all meters operating under the bill to meet the same accuracy and quality standards for utility meters established in rules by the Public Utilities Commission of Ohio (PUCO).¹²

⁹ R.C. 5325.081.

¹⁰ R.C. 5325.09(A).

¹¹ R.C. 5325.09(B).

¹² R.C. 5325.021(A).

Testing

The bill requires the proprietor, upon the consumer's written request, to test the accuracy of the consumer's submeter. At the consumer's request, the test is to be conducted in the presence of the consumer or consumer's authorized representative. The test is to be conducted at a time convenient to the consumer or consumer's representative.

The proprietor is to promptly inform the consumer or consumer's representative of the test results. The proprietor may charge the consumer a fee (which the bill requires to be disclosed to the consumer at the time of the lease, rental agreement, or association service agreement), not to exceed \$50, if the submeter tests within accuracy standards established by PUCO.¹³

Service line repair and maintenance

Under the bill, the proprietor or proprietor's agent is responsible for all costs related to routine operation, repair, and maintenance of service lines. The bill provides that a proprietor's agent is not responsible for repairs to service lines required as a result of a *force majeure* event, tampering, or careless actions by a proprietor or consumer.¹⁴

Although not defined in the bill, a "*force majeure* event" is a legal term meaning an event (such as war, labor strike, or extreme weather) or effect that cannot be reasonably anticipated or controlled.¹⁵

Termination of public utility service

The bill allows a proprietor or proprietor's agent to terminate public utility service for nonpayment. Termination of a utility service for nonpayment, regardless of the type of service being terminated, is to be done in accordance with all PUCO rules governing utility service termination established for electric light companies and natural gas companies.¹⁶ A unit owners association may terminate public utility service for nonpayment regardless of whether such authority is set forth in condominium documents required under Ohio law.¹⁷

¹³ R.C. 5325.021(B).

¹⁴ R.C. 5325.10.

¹⁵ See <http://www.merriam-webster.com/dictionary/force%20majeure#legalDictionary>. Merriam-Webster Law Dictionary, n.d. Web. 8 September 2016.

¹⁶ R.C. 5325.13(A)(1).

¹⁷ R.C. 5325.13(A)(2); R.C. 5311.05 and 5311.26, not in the bill.



The bill provides that termination of public utility service for nonpayment is not constructive eviction under Ohio law.¹⁸ If a manufactured home park operator, landlord, or proprietor's agent terminates public utility service for nonpayment, the park operator or landlord waives the right to evict the consumer for failure to make timely payment for public utility service.¹⁹ However, a park operator's or landlord's right to seek eviction for other violations of the rental agreement or lease is not waived or diminished.²⁰

Although not defined in the bill, "constructive eviction" means an eviction caused by substantially interfering with a tenant's enjoyment of the property (as by allowing the property to become uninhabitable) so that the tenant is regarded as evicted under law.²¹

Reselling limitations

Nothing in the bill limits the authority of PUCO or other jurisdictionally applicable authority to prohibit or limit the reselling of public utility services.²²

Legal remedies

Attorney general action

The bill allows the Attorney General to bring a civil action to enforce the bill's provisions. The Attorney General's authority to bring an action does not affect a consumer's right to pursue any remedy available under the law for a failure to comply with, or a violation of, the bill's provisions.²³

Consumer action

Under the bill, a consumer may bring a civil action against the proprietor or proprietor's agent if the proprietor or proprietor's agent (1) fails to comply with the bill's limitations regarding rates, fees, and charges for public utility service or the monthly administrative fee, or (2) violates the common areas and commonly used

¹⁸ R.C. 5325.13(B); R.C. Chapters 1923., not in the bill, and 5321.

¹⁹ R.C. 5325.14(A); R.C. Chapter 1923., not in the bill.

²⁰ R.C. 5325.14(B).

²¹ See <http://www.merriam-webster.com/legal/eviction>. Merriam-Webster Law Dictionary, n.d. Web. 8 September 2016.

²² R.C. 5325.15.

²³ R.C. 5325.17.



equipment prohibition. The consumer may bring a civil action to obtain either or both of the following:

- Treble the total amount of overcharges resulting from a compliance failure or violation as treble damages and reasonable attorney's fees;
- An injunction to prevent the recurrence of conduct.

The consumer must bring the civil action within a three-year period that begins when the consumer discovered or reasonably should have discovered the compliance failure or violation.²⁴

Damage recovery limitations

The bill provides that the consumer cannot recover treble damages if the proprietor or proprietor's agent refunds the overcharge to the consumer by the earliest occurrence of the following:

- 30 days after the consumer notifies the proprietor or proprietor's agent about the overcharge;
- 30 days after the consumer files any action relating to the overcharge;
- 60 days, if the consumer is billed monthly, or 90 days, if the consumer is billed quarterly, after the proprietor or proprietor's agent learns of or reasonably should have learned of the overcharge, including by the filing of an action relating to the overcharge by a similarly situated customer.²⁵

Attorney's fees recovery limitation

The consumer cannot recover reasonable attorney's fees if the proprietor or proprietor's agent refunds the overcharge to the consumer by the earliest occurrence of the following:

- 30 days after the consumer notifies the proprietor or proprietor's agent about the overcharge;
- 60 days, if the consumer is billed monthly, or 90 days, if the consumer is billed quarterly, after the proprietor or proprietor's agent learns of or

²⁴ R.C. 5325.18.

²⁵ R.C. 5325.18(A).

reasonably should have learned of the overcharge, including by the filing of an action by a similarly situated customer.²⁶

Exceptions to recovery limitations

The bill provides that the limitations on recovery of treble damages and reasonable attorney's fees are not applicable if either of the following exceptions applies:

- The proprietor or proprietor's agent overcharged the consumer as a result of conduct that the proprietor or proprietor's agent knew or reasonably should have known would result in overcharging the consumer;
- The overcharge amount, less any amount already refunded, exceeds \$350 at the time of the filing of the action.²⁷

HISTORY

ACTION	DATE
Introduced	05-25-17

S0157-I-132.docx/emr

²⁶ R.C. 5325.18(B).

²⁷ R.C. 5325.18(C).

