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OHIO LEGISLATIVE SERVICE COMMISSION

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Sub. S.B. 38

I_133_0508-3

Bill Analysis

Version: Substitute Version in Committee

Primary Sponsor: Sen. Schuring

Helena Volzer, Attorney

SUMMARY

- Clarifies that the Revised Code does not restrict a municipal corporation from using surplus revenue deposited in its water or sewer fund for the enlargement or extension of the municipal water and sewer system, including for economic development purposes.
- Stipulates that the authority to use surplus revenue in this manner is derived from the home rule provisions of the Ohio Constitution.

DETAILED ANALYSIS

Water and sewer funds

The bill clarifies that certain provisions of the Revised Code does not restrict a municipal corporation from using surplus revenue deposited in the municipal corporation's water or sewer fund for the enlargement or extension of the municipal water and sewer system, including for economic development purposes. The bill stipulates that the authority to use surplus revenue in this manner is derived from the home rule provisions of Ohio's Constitution.¹

Under Ohio Constitution, Article XVIII, Section 4, municipal corporations have plenary and self-executing² authority to acquire, construct, own, lease, and operate any public utility,

¹R.C. 729.52 and 743.06; Ohio Constitution, Article XVIII.

² Self-executing means the authority comes directly from the Ohio Constitution and the General Assembly has no authority to complete the grant through enabling legislation or to limit or restrict the authority conferred by the Constitution. *Swank v. Village of Shiloh*, 166 Ohio St. 415; 143 N.E. 586 (1957).

the product or service of which is supplied to the municipality's residents. A public utility includes a water and sewer system. Under Article XVIII, Section 6, a municipal corporation may sell and deliver surplus product to nonresidents (for example, electricity) not exceeding 50% of the product provided to its residents. However, the 50% limitation does not apply to water and sewer services. Thus, a municipal corporation may use surplus revenue derived from a water and sewer system for extension of the system.³

Existing statutory law, presumably pre-dating this constitutional home rule authority, requires, among other things, a municipal corporation to establish a separate and distinct sewer fund and water-works fund. Money collected from sewer and water rates must be deposited in these funds. Statutory law, at least with respect to sewage systems, also purports to prohibit a municipal corporation from using surplus revenue to extend the sewer system to serve areas without sewers. Evidently, certain municipal corporations have interpreted statutory law to prohibit the use of surplus revenue for what is otherwise a constitutionally authorized purpose, namely the extension of water and sewer systems. Thus, the bill amends these statutes to clarify that the Ohio Constitution is the source of municipal authority to operate, and sell surplus product from, a water and sewer system. The bill clarifies that this authority includes the authority to use surplus revenue in municipal water and sewer funds for extending service, including for economic development purposes.⁴ The statutes in the bill do not reflect a grant of, or restriction on, authority granted by the Ohio Constitution.

HISTORY

Action	Date
Introduced	02-12-19

S0038(L-0508-3)-133/ar

³ *Mead-Richer v. City of Toledo*, 114 Ohio App. 369; 182 N.E.2d 846 (1961); *see also* 1961 Ohio Atty. Gen. Ops. No. 2078, at 140-143.

⁴ R.C. 729.52 and 743.06.