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Bill Analysis

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Primary Sponsors: Reps. Johnson and McClain

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SUMMARY

- Makes changes to municipal corporation laws relating to actions at law for recovery of unpaid rents and charges for village utility services and for unpaid rates and charges for sewerage and collection or disposal services.
- Establishes new regulations and authority regarding rates and charges, fees, and other billing issues for municipal services and provides a complaint process for persons to make improper billing complaints to municipal services providers.
- Applies the requirement that a contract for sewerage services and collection or disposal services be made with the owner-occupant of the property served as a prerequisite for imposing a municipal lien for unpaid amounts for those services.
- Establishes new requirements regarding municipal liens (liens certified for water services, sewerage services, and collection or disposal services).
- Requires a municipal authority to take certain actions before a lien may be certified on a property, such as providing additional verification to the county auditor and giving notice to the property owner.
- Directs a municipal court or county court to hear municipal services improper billing appeals and municipal lien appeals under procedures and requirements imposed by the bill.
- Applies the municipal lien appeals process only to municipal liens placed on a property on or after the effective date of the bill.
- Exempts a county that operates as a municipal services provider from the municipal services improper billing requirements, the municipal services improper billing appeals process, and the municipal lien appeals process created by the bill.

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DETAILED ANALYSIS

Introduction

The bill makes changes to Ohio municipal corporation laws relating to actions at law for recovery of unpaid rates, rents, and charges for village utility services, sewerage services, and for unpaid rates and charges for collection or disposal services. The bill also provides for other new regulations and authority regarding rates and charges, fees, and other billing issues for municipal services. Additionally, the bill establishes a process that a municipal authority must follow before a municipal lien can be placed on a property. Finally, the bill empowers municipal courts and county courts to address municipal services billing and payment complaints and municipal services lien appeals.

It is not clear how these alterations might impact Municipal Home Rule authority granted by the Ohio Constitution and how the courts might address any such impact.¹

Under current law, municipal corporations in Ohio are either villages or cities. A village has a population of less than 5,000; a city has a population of 5,000 or more.²

Terms used in bill

For purposes of this analysis, “village utility services” means water, electricity, gas, and other similar utility services provided through a village’s board of trustees of public affairs.³

“Collection or disposal services,” under this analysis, refers to the collection or disposal of garbage, ashes, animal and vegetable refuse, dead animals, or animal offal.⁴

The bill defines “municipal services” as water services, collection or disposal services, and sewerage services.⁵ The bill also defines “municipal authority” to mean a board of trustees of public affairs (regarding village utility services), director of public service or other official or body designated by charter (regarding city water services), or legislative authority of a municipal corporation (regarding collection or disposal services and sewerage services), as the context requires.⁶ “Municipal services provider” is defined in the bill as the entity created or

¹ See pages 2-3 and 7-8 of the LSC [Members Brief on Municipal Home Rule \(PDF\)](https://www.lsc.ohio.gov/publications/members-briefs), which is available on the LSC website: <https://www.lsc.ohio.gov/publications/members-briefs>.

² Ohio Constitution, Article 18, Section 1.

³ R.C. 735.29(C) and (D).

⁴ R.C. 701.10.

⁵ R.C. 701.20(E).

⁶ R.C. 701.20(D).

designated by the municipal authority to provide municipal services.⁷ “Water services,” as used in this analysis, refers to water services of a city and village waterworks services.⁸

Actions at law

Village utility services actions at law

The bill provides that when rents and charges for village utility services consisting of electricity, gas, or other public utility services have not been paid when due, the board may collect them by actions at law in the village’s name from an owner, tenant, or other person who is liable to pay them. Currently, the law says those rents and charges may be collected by actions at law in the village’s name, but does not specify from whom they may be collected.

Continuing law, unchanged by the bill, permits the board to collect unpaid village water rents or charges using an action at law in the name of the village from an owner, tenant, or other person who is liable to pay.⁹

Sewerage services actions at law

The bill permits the legislative authority of a municipal corporation that has established a rate or charge for sewerage services to collect unpaid amounts from an owner, tenant, or other person who is liable to pay the unpaid amounts using an action at law in the name of the municipal corporation.¹⁰

Collection or disposal services actions at law

The bill provides that the legislative authority of a municipal corporation that has established a rate or charge for collection or disposal services, which has gone unpaid, may collect it by actions at law in the name of the municipal corporation from an owner, tenant, or other person who is liable to pay the rents or charges.¹¹

City water services actions at law

Current law, unchanged by the bill, allows the city director of public service or other official or body that assesses a water rent or charge for city water services to collect unpaid amounts by action at law in the name of the city from an owner, tenant, or other person who is liable to pay the rents or charges.¹²

⁷ R.C. 701.20(F).

⁸ R.C. 735.29(D) and 743.04.

⁹ R.C. 735.29(C) and (D)(2).

¹⁰ R.C. 729.491.

¹¹ R.C. 701.101.

¹² R.C. 743.04(A)(1)(b).

Municipal services authority

The bill creates various other new regulations and authority regarding municipal services.

Financial responsibility

The bill provides that any person who contracts to receive municipal services is financially responsible for paying all rates, fees, charges, and costs associated with the delivery of that service.¹³

Certifying liens or bringing actions at law

If, due to unpaid municipal services rates or charges, a municipal authority (1) attempts to certify a lien to the county auditor for those services¹⁴ against a property or (2) brings an action at law to collect for those services,¹⁵ the bill establishes a rebuttable presumption that amounts exceeding the termination amount cannot be certified as a lien, or recovered by the action, against the property owner.

The presumption may be rebutted by any of the following based on a preponderance of the evidence:

- The property owner agreed to pay all the unpaid rates and charges, after having been given notice of the delinquent amount;
- The property owner occupies the residence;
- The municipal authority attempted to mitigate any unpaid rates or charges by strictly adhering to its established protocol for terminating service for delinquent customers;
- Any other evidence demonstrating that the municipal authority mitigated the amount of unpaid rates and charges before proceeding against the property owner.

These provisions do not abridge or eliminate any cause of action that a municipal authority may have against the tenant personally, or other persons liable for the unpaid rents or charges.¹⁶

Under the bill, “property owner” means the person who owns the residential property to which municipal services are provided and to whom all of the following apply:

- The person does not occupy the property;
- The tenant or other occupant is contractually responsible to pay the charges and fees imposed for the municipal services;

¹³ R.C. 701.21.

¹⁴ R.C. 701.20(B).

¹⁵ R.C. 701.20(A).

¹⁶ R.C. 701.22.

- If the residential property consists of two or more dwelling units, both of the following must be true:
 - Each dwelling unit has a separate meter;
 - The tenant or other occupant of each dwelling unit is contractually responsible to pay the charges and fees imposed for the municipal services provided to the unit in which they reside.¹⁷

A “tenant” under the bill is a person entitled under a rental agreement to the use and occupancy of residential premises¹⁸ to the exclusion of others. A “dwelling unit” is a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.¹⁹

The “termination amount” means the amount of rates or charges for municipal services that when unpaid results in the termination of those services under the municipal authority regulations.²⁰

Tenant reinstatement fee

A municipal authority may establish a tenant reinstatement fee for municipal services. The fee may be applied if the tenant requests to reestablish municipal services after such services have been terminated by the municipal services provider or the tenant.²¹

Tracking unpaid rates

A municipal authority may track any unpaid rates or charges owed by a person for any municipal services between residential properties if:

- The person who contracted for municipal services currently has a debit or credit regarding the municipal services provided to the person; and
- Municipal services provided to that person have been terminated at one residential property and established at another residential property.²²

¹⁷ R.C. 701.20(G).

¹⁸ Residential premises are dwelling units, as defined under the bill, but with many notable exclusions, consisting of, for example, prisons, college dormitories, and hospitals. R.C. 5321.01(A) and (C), not in the bill.

¹⁹ R.C. 701.20(C); R.C. 5321.01(A) and (F), not in the bill.

²⁰ R.C. 701.20(H).

²¹ R.C. 701.23.

²² R.C. 701.24.

Billing details and history review

A municipal authority may access and review the billing details and histories of any person who contracts to receive municipal services in order to identify and track unpaid rates or charges.²³

Improper billing complaints

Right to make complaint

The bill provides that a person believing to have been improperly billed for municipal services may file a complaint with the municipal services provider.

Complaint process

A municipal services provider must establish a method for persons to make improper billing complaints. The provider must investigate every complaint received and resolve each complaint within ten business days. If the provider is unable to timely resolve the complaint, it must provide the person who filed the complaint a status report every five business days following the end of the ten-day period.

If a complaint is not resolved to the complaining person's satisfaction, the person may appeal the matter to a municipal court or county court (see "**Improper billing appeals**" below) if the amount in dispute is \$300 or more.²⁴

Municipal court and county court jurisdiction

The bill grants municipal courts and county courts exclusive original jurisdiction over improper billing appeals and municipal lien appeals within their respective territories and districts in addition to the jurisdiction currently granted under the law. Existing law in Revised Code Chapter 1901 (for municipal courts) and Chapter 1907 (for county courts) governs the jurisdiction of the respective courts.

A county court has territorial jurisdiction over all territory in a county not subject to the territorial jurisdiction of any municipal court.²⁵

Improper billing appeals

The bill requires a municipal court or county court to hear improper municipal services billing complaints. A municipal court or county court must hear improper municipal services billing appeals if all the following apply: (1) the complainant has previously filed such a complaint with the municipal services provider, (2) the complaint has not been resolved to the complainant's satisfaction, and (3) the disputed amount is \$300 or more. A municipal court or county court must also hear appeals from property owners in cases where a tenant who is

²³ R.C. 701.25.

²⁴ R.C. 701.26.

²⁵ R.C. 1901.187 and 1907.033; R.C. 1901.17, 1907.01, and 1907.03, not in the bill.

financially responsible for paying for municipal services failed to pay and the property owner was held responsible as a result. Municipal courts or county courts cannot hear appeals of the reasonableness of the rates, charges, or rents set by the municipal authority for municipal services.

In connection with an appeal, a municipal court or county court may access and review the billing details and histories of a person who contracts to receive municipal services in order to identify unpaid rates or charges.²⁶

Rules

The Supreme Court is permitted to adopt rules regarding improper billing appeals for municipal services, including the following:

- A procedure by which complaints are evaluated, to determine whether a hearing is warranted;
- Hearing procedures and processes;
- Standards by which a municipal court or county court resolves complaints.²⁷

Municipal liens

The bill makes several changes to existing law regarding the placement of municipal liens. A “municipal lien” is defined in the bill as a lien certified for unpaid amounts for water services, sewerage services, or collection or disposal services.²⁸

Placement of lien

Prior to certifying a municipal lien or village utility services lien to the county auditor, the municipal authority must both:

- Attempt to collect the unpaid municipal services amount at least three times by certified mail from the person who is liable;
- Wait at least 180 days from the date that the unpaid municipal services amount was due.²⁹

Additionally, before a municipal lien may be placed on a property by the county auditor under the bill, the auditor must receive both:

- Additional certification (see “**Additional certification contents**” below) from the appropriate municipal authority that the unpaid rents, rates, or charges have arisen from a service contract made directly with an owner who occupies the property served;

²⁶ R.C. 701.31 and 701.33.

²⁷ R.C. 701.32.

²⁸ R.C. 319.65(A) and 701.30(A).

²⁹ R.C. 701.103, 729.493, 735.292, and 743.042.

- Verification from the appropriate municipal authority that the required notice (see “**Notice to property owner**” below) was given to the property owner.

Under current law, no requirement for owner-occupation and owner-contracting exists as a prerequisite to imposition of a lien regarding unpaid amounts for sewerage and collection or disposal services. Further, additional certification is required under current law only for water liens and consists only of certification that the unpaid rents or charges arose under a service contact with an owner occupying the property.³⁰ Pursuant to continuing law, unchanged by the bill, a lien for unpaid collection or disposal services may only be placed when either: (1) the unpaid amount is greater than or equal to \$250, or (2) the unpaid amount is greater than or equal to the applicable annual rate or charge imposed by the municipal corporation on the person using the collection or disposal services.³¹

Additional certification contents

The bill requires the additional certification to be submitted to the county auditor before a municipal lien can be placed to consist of all of the following:

- The parcel number of the property on which the lien is requested;
- The name of the property owner;
- The name of the person who contracted for the service for which the lien is sought;
- Confirmation from the person, board, or entity that certified the lien and submitted the additional certification that all of the information submitted to the auditor has been verified.³²

Notice to property owner

The bill requires the municipal authority to provide notice to the property owner about the placement of a municipal lien on the property before the county auditor places the lien. The notice must also include a notice informing the owner of the right to file an appeal regarding the lien with a municipal court or county court (see “**Municipal lien appeals**” below). Additionally, the municipal authority must submit verification to the county auditor that the notice was provided to the property owner.³³

Collection of lien amounts

The bill maintains existing law requiring municipal lien payments to be collected in the same manner as other taxes, but makes the following changes regarding the payments:

³⁰ R.C. 701.10(A)(2), 729.49(B), 735.29(D), and 743.04(A).

³¹ R.C. 701.10(A)(1).

³² R.C. 319.65.

³³ R.C. 701.102, 729.492, 735.291, and 743.041.

Water services payments

- Removes the requirement that a county treasurer accepts separately tendered amounts as payment for the full amount of municipal water liens. Current law does not require separately tendered amounts as payment for the full amount of municipal sewerage or collection or disposal services.
- Eliminates the requirement that municipal water liens be released *immediately* upon payment of the certified amount, and instead provides that all municipal liens must be released upon full payment of the amount.
- Exempts city water lien payments from the requirement that money collected for municipal water-works purposes be deposited weekly with the municipal treasurer and kept in a separate and distinct fund.

All municipal services payments

- Requires 90% of the municipal lien amounts collected to be processed in accordance with the biannual tax payment and remittance cycle in continuing law, and:
 - For collection or disposal liens, paid into the general fund of the municipal corporation.
 - For municipal sewerage liens, provided to the municipal corporation.
 - For village water liens, placed for distribution to the village in the proper distinct fund for water rents and charges. Current law requires all collected village water lien amounts be provided to the proper distinct fund immediately.
 - For city water liens, placed in the proper distinct fund for water-works purposes. Current law requires all collected city water lien amounts be provided to the proper distinct fund immediately.
- Requires 10% of the municipal lien amounts collected to be deposited to the credit of the county treasurer's Delinquent Tax and Assessment Collection (DTAC) fund.³⁴

The biannual tax payment and remittance cycle in current law, unchanged by the bill, allows each person charged with taxes to pay half of the full amount of their taxes before December 31, and the remaining half on or before June 20.

Continuing law provides that amounts from the county treasurer's DTAC fund can be appropriated by the board of county commissioners to be used in connection with the collection of delinquent real property, personal property, and manufactured and mobile home taxes and assessments, including proceedings relating to the foreclosure of the state's lien for property taxes. The bill exempts collected municipal lien amounts required to be deposited in the DTAC fund from existing law that (1) permits the county auditor to forego allocating delinquent taxes and assessments to the fund if the DTAC fund balance amount exceeds three

³⁴ R.C. 701.10(A)(2)(b), 729.49(B)(2), 735.29(D)(1)(b), 743.04(A)(1)(a)(ii), and 743.06.

times the amount deposited in the preceding year and (2) allows an additional amount to be deposited in the DTAC fund for use by a county land reutilization corporation functioning on behalf of a county.³⁵

Municipal lien appeals

The bill establishes a process for appealing the placement of a municipal lien placed on or after the effective date of the relevant sections with a municipal court or county court.³⁶

Applicability of the lien appeals process

The municipal lien appeals process created by the bill applies only to municipal liens placed on a property on or after the effective date of the bill.³⁷

Who may appeal

Under the bill, a person that receives notice from a municipal authority (see “**Notice to property owner**” above) of a municipal lien being placed on that person’s property may file a lien appeal with a municipal court or county court.³⁸

Rules

The Supreme Court is permitted to adopt rules governing hearing procedures for municipal lien appeals.³⁹

Standard to find for owner

The bill directs a municipal court or county court to find for the owner of the property in a municipal lien appeal if it finds both: (1) the unpaid amounts did not arise from a service contract made directly with the owner, and (2) the owner did not occupy the property served by the contract.

If the court finds for the owner,⁴⁰ then it must order the removal of the lien and the municipal authority that certified the lien to pay the property owners’ reasonable attorneys’ fees incurred in prosecuting the appeal. The county auditor must remove the lien upon court order.⁴¹

³⁵ R.C. 321.261; R.C. 323.12, not in the bill.

³⁶ R.C. 701.35 to 701.40.

³⁷ R.C. 701.39.

³⁸ R.C. 701.35.

³⁹ R.C. 701.36.

⁴⁰ The bill contains an incorrect cross reference to R.C. 3745.158. A technical amendment is necessary to change the cross reference to the correct one, R.C. 701.37.

⁴¹ R.C. 701.37 and 701.38.

Counties exempt

The bill exempts a county that operates as a municipal services provider on behalf of a municipal authority from the improper billing process and the improper billing and lien appeals requirements and processes created by the bill.⁴²

HISTORY

Action	Date
Introduced	03-07-23
Reported, H. State & Local Gov't	06-27-23

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⁴² R.C. 701.40.