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H.B. 163
133rd General Assembly

Bill Analysis

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Version: As Reported by House Public Utilities

Primary Sponsor: Rep. Brinkman

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SUMMARY

- Creates a declaratory judgment process by which a municipal corporation providing water or sewer services in other subdivisions may be penalized for engaging in either of the following practices with respect to pricing or providing the extraterritorial service, except as authorized in contracts currently in effect:
 - Charging higher extraterritorial rates for similar property not justified pursuant to generally accepted municipal water or sewer industry pricing practices, with certain exceptions;
 - Requiring the extraterritorial subdivision to make direct payments to the municipal corporation as a condition of providing such services in excess of the cost related to extending such service.
- Redistributes local government funds (LGF) of the “noncompliant municipal corporation” to subdivisions affected by its improper water or sewer practices and prohibits the municipal corporation from qualifying for state water and sewer development assistance.
- Creates a declaratory judgment process by which the noncompliant municipal corporation may terminate these consequences if it ceases the improper water or sewer practices.

DETAILED ANALYSIS

Extraterritorial municipal water and sewer service

The bill creates declaratory judgment processes by which a municipal corporation extending its water or sewer services to territory outside the municipal corporation may be penalized for engaging in certain practices with respect to the provision and pricing of such services. Specifically, the municipal corporation will be penalized by forfeiting its local government funding (LGF) from the state, which will be redistributed to other subdivisions

affected by those water or sewer practices and will be ineligible from receiving state water and sewer development assistance.

The Ohio Constitution expressly grants municipal corporations the home rule authority to operate public utilities, even to the point of providing those services extraterritorially.¹ The Constitution further authorizes municipalities, without limitation, to sell water and sewer services to areas located outside the municipal corporation.² As such, current law does not generally regulate the manner by which municipal corporations may provide and price water and sewer services.

Declaratory judgment action

The bill imposes financial consequences on municipal corporations that engage in either of the following practices:

- Charging ratepayers of the same property class, e.g., residential or commercial, located outside the municipal corporation a higher rate for water or sewer than the municipal corporation charges for the same property class located within the municipal corporation;
- Requiring, as a condition of providing extraterritorial water or sewer services, that another subdivision make direct payments to the municipal corporation.

To trigger these consequences and to establish that the municipal corporation engages in one of those improper practices, the bill creates a special judicial action through which a subdivision, i.e., a township or another municipal corporation, affected by, or with ratepayers affected by, the improper practices may file an action for declaratory judgment in the court of common pleas to designate the municipal corporation as a “noncompliant municipal corporation” that engages in an improper practice.³ An action may not be brought if the improper practice is authorized pursuant to a contract in effect on the bill’s effective date between the water- or sewer-supplying municipal corporation and the subdivision affected by or with ratepayers affected by the improper practice.⁴

Once the action is filed, the municipal corporation becomes the defendant in the action and other subdivisions receiving water or sewer services from the municipal corporation must be notified and may, with notification to the court, be made a party to the action. The court is required to declare the municipal corporation as noncompliant if it finds that the municipal corporation, by a preponderance of the evidence, engages in an improper practice. However, if the practice complained of its improperly high rates, the municipal corporation may justify its practice if it establishes by a preponderance of the evidence that either (1) the higher

¹ Article XVIII, Section 4, Ohio Constitution.

² Article XVIII, Section 6, Ohio Constitution.

³ R.C. 743.80(A), (B), and (C).

⁴ R.C. 743.50(G).

extraterritorial rates do not exceed 125% of the rates imposed on the same class of property within the municipality's boundaries and did not exceed that amount on the bill's effective date or (2) the higher rates are consistent with generally accepted industry practices and water and sewer rate-setting methodology for municipal-owned water or sewer systems. (An example of such guidance might include practice manuals for such systems from an industry organization such as the American Water Works Association.) Similarly, if the practice complained of is improper direct payment, the municipal corporation may defend the practice by establishing by a preponderance of the evidence that the direct payments are reasonably related to the cost of providing water or sewer services to the other subdivision.⁵

If the court issues a declaratory judgment finding the municipal defendant to be a noncompliant municipal corporation, the court must also determine which subdivisions that are parties to the action are affected by the municipal corporation's improper practices. Any of these "affected subdivisions" may file the judgment with the Tax Commissioner, which triggers consequences against the noncompliant municipal corporation. The judgment must be filed within 180 days after the time to appeal the declaration has elapsed.⁶

Consequences

Filing the declaratory judgment with the Tax Commissioner triggers two actions against the noncompliant municipal corporation. First, the Tax Commissioner is required to cease making payments from the LGF to the noncompliant municipal corporation. Instead, the money is paid to affected subdivisions identified in the declaration on a per capita basis, i.e., according to each subdivision's population. Affected subdivisions may use this money for operating expenses.⁷

Second, the Tax Commissioner is required to forward the judgment to the Environmental Protection Agency, Ohio Public Works Commission, Ohio Water Development Authority, and Development Services Agency. After receiving the judgment these agencies are prohibited from awarding any form of financial assistance to the noncompliant municipal corporation, except for federal funds required by federal law to be awarded to it.⁸

Cessation of consequences

The bill authorizes a noncompliant municipal corporation to file another declaratory judgment action in the same court that designated it as such to remove the designation and cease the consequences associated with it. Every affected subdivision is made a defendant to the action, and the noncompliant municipal corporation must show, by a preponderance of the evidence, that the municipal corporation no longer engages in the improper practices with respect to each of the affected subdivisions.

⁵ R.C. 743.80(C).

⁶ R.C. 743.80(D) and (E).

⁷ R.C. 5747.504(B), (D), and (E), 5747.50, 5747.51, and 5747.53.

⁸ R.C. 9.662 and 5747.504(B)(1).

The municipal corporation may certify the court's declaratory judgment that the municipal corporation is no longer noncompliant to the Tax Commissioner within 180 days after the time to appeal the declaration has elapsed.⁹ Once received, the Tax Commissioner must (1) resume LGF payments to the municipal corporation and cease redirecting them to the affected subdivisions and (2) notify the other state agencies that the municipal corporation is again eligible for state water and sewer development assistance.¹⁰

HISTORY

Action	Date
Introduced	03-25-19
Reported, H. Public Utilities	05-19-20

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⁹ R.C. 743.80(F).

¹⁰ R.C. 5747.504(C).