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H.B. 422
134th General Assembly

Bill Analysis

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Version: As Reported by House State and Local Government

Primary Sponsors: Reps. Fraizer and West

Reid J. Fleeson, Attorney

UPDATED VERSION*

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 service providers.
- Applies the requirement that a contract for sewerage service and collection or disposal service 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 provide additional verification to the county auditor and give notice to the property owner before a municipal lien may be placed on a property.
- Directs the Environmental Review Appeals Commission to hear municipal service 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.

*This version corrects a statement regarding the Environmental Review Appeals Commission.

- 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.

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 the Environmental Review Appeals Commission (ERAC) 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 service” means water, electricity, gas, and other similar utility services provided through a village’s board of trustees of public affairs.³

“Collection or disposal service,” 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 service), director of public service or other official or body designated by charter (regarding city water service), or the legislative authority of a municipal corporation (regarding collection or disposal service and sewerage service), as the context requires.⁶ “Municipal services provider” is defined in the bill as the entity created or

¹ See the LSC [Members Brief on Municipal Home Rule \(PDF\)](#), pp. 2-3 and 7-8, which is available on the LSC website: lsc.ohio.gov/membersbriefs.

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 service 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 village 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. Under the bill and continuing law, all unpaid village utility service rents and charges may also be certified to the county auditor to be collected as other village taxes.⁹

Sewerage service 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 service 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 service, 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

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.¹²

⁷ R.C. 701.20(F).

⁸ R.C. 735.29(D) and 743.04.

⁹ R.C. 735.29(C).

¹⁰ R.C. 729.491.

¹¹ R.C. 701.101.

¹² R.C. 701.21.

Certifying liens or bringing actions at law

If a municipal authority attempts to certify a lien to the county auditor (for water services, sewerage services, village utility services, or municipal collection or disposal services)¹³ against a property or brings an action (an action at law to collect for water services, sewerage services, village utility services, or municipal collection or disposal services)¹⁴ due to unpaid municipal services rates or charges, 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.¹⁵

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. 701.20(B). The definition of “certify a lien” in the bill includes village water, electric, gas, and other public utility service. But, “municipal service” does not include village electric, gas, and other utility services. This is ambiguous, but since “certify a lien” includes village water service, which water service is also a municipal service under the bill, it is likely that service is what is included when the municipal authority seeks to certify a lien under this provision. The ambiguity could be clarified.

¹⁴ R.C. 701.20(A). Similar ambiguity exists for the definition of “bring an action” as for “certify a lien” in the note above since “municipal service” does not include village electric, gas, or other utility service. But, it is likely, since “bring an action” includes actions for village water service, that water service is what is addressed when a municipal authority brings an action. The ambiguity could be clarified.

¹⁵ 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.¹⁶

A “tenant” under the bill is a person entitled under a rental agreement to the use and occupancy of residential premises¹⁷ 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.¹⁸

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.¹⁹

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 service provider or the tenant.²⁰

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.²¹

¹⁶ R.C. 701.20(G).

¹⁷ 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.

¹⁸ R.C. 701.20(C); R.C. 5321.01(A) and (F), not in the bill.

¹⁹ R.C. 701.20(H).

²⁰ R.C. 701.23.

²¹ 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.²²

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 ERAC (see "**Improper billing appeals**" below) if the amount in dispute is \$300 or more.²³

Improper billing appeals

The bill requires ERAC to hear improper municipal services billing complaints. ERAC must hear improper municipal services billing appeals if all the following applies: (1) the complainant has previously filed such a complaint with the municipal service provider, (2) the complaint has not been resolved to the complainant's satisfaction, and (3) the disputed amount is \$300 or more. ERAC must also hear appeals from property owners in cases where a tenant who is financially responsible for paying for municipal services failed to pay and the property owner was held responsible as a result. ERAC 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, ERAC 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.²⁴

Hotline

The bill requires ERAC to create a hotline to do the following:

²² R.C. 701.25.

²³ R.C. 701.26.

²⁴ R.C. 3745.151 and 3745.154.

- Allow a person to file an appeal regarding an improper billing complaint for municipal services;
- Provide information regarding filing an appeal, the appeals process, and other related information.²⁵

Rules

ERAC is required to adopt rules (but is not subject to the Administrative Procedure Act, R.C. Chapter 119 in doing so) 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 ERAC resolves complaints.²⁶

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 water services, sewerage services, or collection or disposal services amounts.²⁷

Placement of lien

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**” below) that the unpaid rents, rates, or charges have arisen from a service contract made directly with an owner who occupies the property served;
- 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 service liens and consists only of certification that the unpaid rents or charges arose under a service contact with an owner occupying the property.

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

²⁵ R.C. 3745.153.

²⁶ R.C. 3745.152.

²⁷ R.C. 319.65(A) and 3745.15(A).

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.²⁸

Additional certification

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.²⁹

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 ERAC (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.³⁰

Collection of lien amounts

The bill maintains existing law requiring the lien amount to be collected in the same manner as other taxes, but adds that, for sewerage and collection or disposal services liens, the county treasurer must accept, rather than may accept, a payment in such amount when separately tendered as full payment for the unpaid amounts. Similarly, the county treasurer is directed for all municipal liens (instead of only water liens as required under current law) to (1) release any such lien immediately upon payment of the full certified amount and (2) place the collected funds in the appropriate distinct fund.³¹

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 ERAC.³² The bill requires ERAC to hear

²⁸ R.C. 701.10(A)(1) to (2)(a), 729.49(B)(1), 735.29(D)(1)(a), and 743.04(A)(1)(a)(i).

²⁹ R.C. 319.65.

³⁰ R.C. 701.102, 729.492, 735.291, and 743.041.

³¹ R.C. 701.10(A)(2)(b), 729.49(B)(2), 735.29(D)(1)(b), and 743.04(A)(1)(a)(ii); R.C. 323.15, not in the bill.

³² R.C. 3745.155 to 3745.1511.

all municipal lien appeals, except as discussed immediately below, and grants it exclusive original jurisdiction over such appeals.³³

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.³⁴

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 ERAC.³⁵

Rules

ERAC is required to adopt rules governing hearing procedures for municipal lien appeals consistent with existing procedural rules applicable to ERAC that govern its hearing procedures, appeal filing requirements, hearings, and appeals to Ohio appeals courts.³⁶

Standard to find for owner

The bill directs ERAC 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 ERAC finds for the owner, then it must order the removal of the lien. The county auditor is directed to remove the lien upon the order from ERAC.³⁷

Attorney’s fees

The bill requires the municipal authority that certified the challenged lien to pay the property owner’s reasonable attorneys’ fees incurred in prosecuting the lien appeal if ERAC finds for the owner.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.³⁹

³³ R.C. 3745.156.

³⁴ R.C. 3745.1510.

³⁵ R.C. 3745.155.

³⁶ R.C. 3745.157; R.C. 3745.03, 3745.04(D), 3745.05, and 3745.06, not in the bill.

³⁷ R.C. 3745.158 and 3745.159(A)(1) and (B).

³⁸ R.C. 3745.159(A)(2).

³⁹ R.C. 3745.1511.

HISTORY

| Action | Date |
|---|----------|
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