



A Review of Pending Ohio Legislation that Could Impact Water and Wastewater Facilities

2020 Government & Regulatory Affairs Workshop

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Pending Legislation

- **Water and Sewer Service Rates**
- **Construction Contracts and Projects**
- **Funding Water and Sewer Infrastructure**
- **Will the pending legislation be beneficial to your organization's efforts?**

Regulating Utility Rates Charged to Extraterritorial Customers

H.B. No. 163: Currently before the Public Utilities Committee (6th Hearing)

- **Intent:**
 - To penalize “non-compliant municipal corporations” who charge higher than necessary water or sewer rates to customers outside of the municipal jurisdiction.
- **Why?**
 - Allegations that some rates are excessive and not related to use.
 - Allegations that townships have little to no negotiating power.
 - Allegations that some utilities are using unfounded metrics to inflate costs to fund work and keep annexed customer costs lower.

Penalties

H.B. No. 163:

- Tax Commissioner withholds funds from Local Government Fund
 - Funds are redistributed to political subdivisions affected by the actions of the “non-compliant municipal corporation”
- Forbids Directors/Chairperson OWDA from awarding any loan, grant, or other form of financial assistance...
 - ...except for awards of federal funds required by federal law or guidelines

“Higher than Necessary” Extraterritorial Rates

H.B. No. 163: As introduced.

- Two ways to be declared a “non-compliant municipal corporation” —proof that municipality is:
 - charging extraterritorial rates for similar property not justified pursuant to *generally accepted municipal water or sewer industry pricing practices*,
 - OR
 - requiring the extraterritorial subdivision to make direct payments as a condition of providing such services in excess of the cost related to extending such service.

Defenses to “Higher than Necessary” Rates

H.B. No. 163: As introduced.

- Generally accepted industry pricing practices
 - Prove rates established according to generally accepted industry practices – AWWA as an example.
- Direct payments as a condition of providing services
 - Prove rates are reasonably related to the cost of providing water or sewer services

Arguments Against

- Unconstitutional—undermines constitutional home rule authority, constitutional authority of municipalities generally;
- Will increase litigation;
- Risk vs. Reward – Municipalities take on risk for larger infrastructure downstream whereas non-incorporated entities can leave;
- Fear that loss of funding and not providing service will stall growth;
- Service agreements are voluntarily negotiated to avoid more costly alternatives;
- Forces annexation – takes options away from unincorporated areas;
- Enforceability issues with existing agreements – could this trigger annexation for service demands?
- This could cost existing customers more money.

Amendments

H.B. No. 163:

As Amended in Committee: (concerns from minority caucus)

- Issues related to establishing rates:
 - Rates of not more than 125% of the rates charged to customer class inside municipality are presumed to be reasonable.

- Existing Service Agreements:
 - Bill will not apply to existing service agreements.

Chances of Passing

- Currently in the Public Utilities Committee – 6th hearing just held
- Similar bill attempted last GA...failed (but it included penalty for forcing annexation for service—removed from this version).
- There is more testimony against this bill than for it at this time.
 - Those representing municipalities generally oppose it.
 - Those representing townships generally support it.
- Has the 125% presumption of reasonableness and not including existing service agreements quelled opposition?

HB 163 Take-Away

- Very important to understand the methodology behind your water and sewer rates.
- What existing agreements exist for your utility?
- Be prepared to make tough decisions on:
 - the risk involved in extending utility service in the future, AND
 - renewing existing service agreements.

Modifying Ohio Law Contracts

- **H.B. No. 251: Statute of Limitations for Written and Oral Contracts**

Statute of Limitations

H.B. No. 251: Passed the House – Currently before the Senate Judiciary Committee

- **Intent:**
 - To decrease the statute of limitations for written and oral contracts from 8 years and 6 years to 6 years and 4 years, respectively.
- **Why?**
 - Alleged to protect businesses in Ohio and attract more business to Ohio.

Arguments / Testimony

- **For:** Primarily business representatives.
 - Reduce expense to business in maintaining records.
 - Create certainty and predictability of risk:
 - ...permit investment of funds withheld due to risk.

- **Against:** Primarily creditor/debt collection organizations—absent are representatives from government or owners of construction projects.
 - Allegation that business climate will improve is false—testimony that after reduction from 15 years to 8 years, Ohio business ranking decreased.
 - Litigation will increase by reducing the amount of time to address breaches of contract.
 - NOT PRESENTED – defective construction issues.

Chances of Passing

- Passed by the House unanimously – currently before Senate Judiciary Committee 3rd hearing – decreasing opposition
 - Changing proposed statute of limitations period from 3 years to 6 years for written/4 years for oral contracts appears to have appeased some in creditor industry.
 - Appears poised to pass absent further opposition.

- Attracts and improves business activity? Remains to be seen.

- Reduce risk to business?
 - Yes; but, at whose expense?

HB 251 Take-Away

- Post construction inspection of facilities (vertical or horizontal) is important.

- It is even more important to work with your experts to establish a timeframe and scope of facility inspection that is within the statute of limitations period to:
 - bring timely claims,
 - avoid litigation, or
 - file a lawsuit before the expiration of the limitations period.

Optional Prevailing Wage

- H.B. No. 78: Permit certain entities to apply Ohio's Prevailing Wage Law to projects.

Optional Prevailing Wage

H.B. No. 78: Currently before the Commerce and Labor Committee (1st Hearing)

- **Intent:**
 - To allow political subdivisions, special districts, and state institutions of higher education to elect to apply the Prevailing Wage Law to public improvement projects.
 - O.R.C. 4115.03 to 4115.21 would be optional.

Optional Prevailing Wage

H.B. No. 78: Currently before the Commerce and Labor Committee (1st Hearing)

- **Intent re Thresholds:**
 - “New” construction threshold for Building Construction: **\$250,000**
 - **Would increase to \$500,000 under the bill.**
 - “Reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting” threshold level for Building Construction: **\$75,000.**

As of Jan. 1, 2020

- “New” construction that involves roads, streets, alleys, sewers, ditches and other works connected to road or bridge construction threshold level has been adjusted to: **\$93,292**
- “Reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting” that involves roads, streets, alleys, sewers, ditches and other works connected to road or bridge construction threshold level has been adjusted to: **\$27,950**

Optional Prevailing Wage

H.B. No. 78:

- **Why?** Arguments for...
 - Prevailing wages in less populated areas can increase public-improvement costs as much as 20 percent higher.
 - Increasing threshold for new construction projects from \$250,000 to \$500,000 expected to increase projects.
 - To support free-market principles.

Optional Prevailing Wage

H.B. No. 78: Currently before the Commerce and Labor Committee (1st Hearing)

- **Arguments Against:**
 - No testimony at this time...but...
 - Work Quality/Competence
 - Worker Productivity
 - Worker Safety
 - Worker Compensation

Chances of Passing

- 88 years of prevailing wage law.
- Similar proposed legislation has failed in the past—most recently in last GA where bill prohibited PW. This bill makes PW optional.
- Legislators proposing bill claim to have House support.

Water Quality Trust Fund and Advisory Council

H.B. No. 7: Passed the House and is currently before the Senate Finance Committee (1st Hearing)

- **H2Ohio Trust Fund and the H2Ohio Advisory Council**

Water Quality Trust Fund and Advisory Council

H.B. No. 7:

- **Intent:**
 - To create water quality protection and preservation funding programs.
 - Prioritize / Fund
 - Build off of H2Ohio fund passed in operating budget. Meant to work in conjunction with S.B. 2 re watershed planning.

- **Why?**
 - To address and fund diverse water quality issues.
 - Protection, preservation, and restoration of lakes and rivers.

Water Quality Trust Fund and Advisory Council

Organization:

- OWDA governs as trustee;
- State Treasurer as Executive Director of the trust fund;
- H2Ohio Advisory Council prioritize and fund:
 - 18-member Advisory Council
 - 4 members Directors of Agriculture, EPA, ODNR and (Lake Erie Commission—non-voting member)
 - 10 members appt by Governor
 - 2 members by appointed by House Speaker (each party)
 - 2 members by Senate President (each party)

Water Quality Trust Fund and Advisory Council

Funding and Distribution:

- Funded through EOY unspent balance, appropriation proceeds of state land transactions;
- Distribution through loans or grants;
- No more than \$100 million distributed
 - Meant to prevent depletion
 - Meant to be a generational endowment

Water Quality Trust Fund and Advisory Council

Funding Wastewater Infrastructure:

- While not clearly addressed in the bill, testimony indicates that municipal wastewater treatment facilities can obtain grants and loans for construction.
 - Governor indicates focus on disadvantaged communities.

- Concerns raised at Senate Finance Committee:
 - Will this reward politicians who didn't have the "political will" to increase rates to address issues?
 - Isn't the budget surplus fund leftover funds that belong to the people?

Funding for Water and Sewer

- H.B. 343 – Emergency funding to earmark state funds and provide grants to local subdivisions for water and sewer system projects necessary for the immediate preservation of public health, safety, and welfare.
 - \$10 million – encumbered by 2020
- H.B. 264 – refinancing of loans for wastewater infrastructure projects.
 - OWDA can make loans/grants – will be able to refinance
- H.B. 84 – Make private water and sewer laterals eligible as projects under the State Capital Improvements Program.

Authorizing Public-Private Initiatives for Public Facilities

H.B. No. 218: State and Local Government Committee –
2nd hearing

- Permits certain public entities to enter into public-private initiatives,
- Public ownership is retained throughout the duration of the project,
- Private sector designs, builds or retrofits, finances and maintains the public asset for up to a 40-year term,
- Private sector will incur financial penalties for substandard performance,
- Facilities to be handed-back to the public owner in a pre-defined good or better condition.



Questions?



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