

**TESTIMONY OF MICHAEL R. SMALZ,
ON BEHALF OF THE OHIO POVERTY LAW CENTER,
REGARDING SENATE BILL 157,
TO THE SENATE PUBLIC UTILITIES COMMITTEE**

Chairman Beagle, Vice Chair LaRose, Ranking Minority Member Williams, and Committee Members:

I am a Senior Attorney with the Ohio Poverty Law Center (OPLC). The Poverty Law Center's mission is to protect and expand the legal rights of low-income Ohioans and we work closely with Ohio's legal aid programs. We are testifying as opponents of SB 157.

We appreciate the efforts of the bill's sponsor to address some of the harmful submetering (reselling) practices encountered by tenants, mobile home park residents, and condominium unit owners. We also understand that the proposed legislation is intended to be a starting point for discussion regarding necessary consumer protections. Over the years those abuses have included excessive utility charges and administrative fees, defective submeters, deceptive practices including the failure to disclose the submetering charges at the time of signing the lease or rental agreement, and the failure to promptly reconnect utility service upon payment of the delinquent charges. Some years ago, two of the submetering companies in central Ohio – American Power & Light (AP&L) and Nationwide Energy Power (NEP) entered into contracts with local landlords under which they could unilaterally evict tenants for nonpayment of their utility submetering charges, and hundreds of tenants were evicted. That practice – which was the subject of a lawsuit filed by the Legal Aid Society of Columbus against American Power & Light – was stopped.

OPLC agrees with the testimony that was presented last week by the Office of the Ohio Consumers' Counsel on SB 157. The proposed legislation fails to provide a reasonable and meaningful cap on utility submetering charges, leaves some utility consumers totally unprotected, and provides inadequate consumer protections.

First, under the bill a "proprietor" or "proprietor's agent" – a landlord, mobile home park operator, a condominium association, or a submetering company – may charge "a fixed rate per unit of utility service" that "shall be set upon the commencement of the lease, rental agreement, or association service agreement for the term of the lease, rental agreement, or association service agreement"(Lines 76 – 80). This means that the submeterer may charge any unit rate – and a rate far higher than the submeterer's actual costs – so long as the unit rate is established at the beginning of the tenancy or residency and remains in effect for the term of the lease or agreement. From a consumer protection standpoint, this is a big step backward from the policy adopted by the PUCO in its pending investigative docket. In its June 26, 2017 Entry on Rehearing, the Commission prohibited resellers –i.e., submetering entities – from charging consumers more than what the customer would have paid the local public utility if the consumer were a direct customer of the public utility. Moreover, any "administrative fees" charged by the submeterer in addition to the consumption-based unit rate must fall within that cap. Therefore,

SB 157 should be amended to codify the Commission's ruling and should not be used as a mechanism to overturn that ruling to the detriment of Ohio's utility consumers.

Second, the proposed exclusion of utility service provided by a municipal corporation or a cooperative (Lines 32-35) would leave many utility consumers unprotected and should be removed from the bill. In addition, it should be clarified that the consumer protections in SB 157 cover water and sewer service in addition to electric and natural gas service. My legal aid colleagues inform me that, outside of central Ohio, excessive submetering charges and deceptive practices are more common with respect to water and sewage service than with electric or natural gas service and are more of a statewide issue.

Third, SB 157 bill allows landlords and park operators to use a RUBS (ratio utility based system) formula to charge "actual consumption" to a consumer for the cost of the public utility service provided to the consumer (Lines 81-83). However, by definition, a RUBS formula does not measure a customer's actual consumption; it estimates the customer's usage according to a certain formula, such as the customer's residential square footage, number of bedrooms, number of tenants in the unit, number of bathrooms (for water), etc. Excessive and sometimes inexplicable RUBS charges are a major problem for many low-income tenants and mobile home park residents. We have even encountered cases where park residents were away from their home for more than a month with no consumption during that time, and yet were billed hundreds of dollars for water and sewer charges for that period. Therefore, SB 157 should be amended to prohibit the landlord or park operator that uses a RUBS formula from charging in the aggregate, for all occupants who receive utility service through a single master meter, more than the total bill that the landlord or park operator received for the master meter.

Fourth, if submetering entities are allowed to charge a separate administrative fee in addition to a unit rate-based charge, there should be a specific dollar cap on the monthly administrative fee. Several states, for example, allow a \$1 or \$3 dollar monthly administrative fee. Such a specific dollar would be much easier to enforce than the amorphous "reasonable administrative fee" standard proposed in SB 157 (Lines 84-89).

Finally, the proposed consumer procedural protections in SB 157 are inadequate. For example, the bill requires that the submetering entity follow all rules for terminating public utility service for nonpayment established by the PUCO as such rules are applied to electric light companies and natural gas companies (Lines 165-171), but does not say anything about reconnection procedures or charges. The PUCO rules should apply to utility service disconnections **and** reconnections.

In summary, SB 157 as introduced does not adequately address the issues of excessive utility charges and lack of consumer protections with regards to utility submetering and reselling. We urge the Committee to amend the bill to address these concerns.

Thank you. I would be happy to answer any questions.