

**As Introduced**

**134th General Assembly  
Regular Session  
2021-2022**

**H. B. No. 364**

**Representative Patton**



**A BILL**

To amend section 4909.172 of the Revised Code to 1  
make changes to the application process for the 2  
waterworks infrastructure improvement surcharge. 3

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 4909.172 of the Revised Code be 4  
amended to read as follows: 5

**Sec. 4909.172.** (A) A waterworks company, or a sewage 6  
disposal system company, that is a public utility may file an 7  
application with the public utilities commission for approval to 8  
collect an infrastructure improvement surcharge, determined in 9  
accordance with this section, from customers located in the 10  
company's affected service areas and subject to affected 11  
schedules filed by the company under section 4905.32 of the 12  
Revised Code. The application shall be in such form and contain 13  
such information as the commission prescribes. At the time of 14  
filing, the company shall serve a copy of the application upon 15  
the chief executive of each municipal corporation, the board of 16  
township trustees of each township, and the board of county 17  
commissioners of each county in which affected customers are 18  
located. A company for which an infrastructure improvement 19

surcharge is authorized under this section may file an 20  
application for another such surcharge not sooner than twelve 21  
months after the filing date of its most recent infrastructure 22  
improvement surcharge application. 23

(B) The commission shall provide an opportunity for the 24  
filing of comments on an application filed under division (A) of 25  
this section. After considering those comments, the commission 26  
may authorize an infrastructure improvement surcharge for the 27  
company that is just and reasonable and is sufficient, but does 28  
not exceed, the revenue requirement necessary to do both of the 29  
following: 30

(1) Cover such infrastructure plant costs of the company 31  
as are described in division (C) of this section, incurred after 32  
March 1, 2003, and before the date of filing, and not already 33  
reflected in the affected schedules filed by the company under 34  
section 4905.32 of the Revised Code; 35

(2) Provide a fair and reasonable rate of return on the 36  
filing date valuation of that particular infrastructure plant. 37

Each infrastructure improvement surcharge chargeable to 38  
each affected customer class within any single tariff of the 39  
company shall not exceed three per cent, for a sewage disposal 40  
system company, and four and ~~one-quarter~~ one-quarter per cent, 41  
for a waterworks company, of the rates and charges applicable to 42  
the class and for the tariff in effect on the date the 43  
application was filed and, as to the allowed percentage 44  
increase, shall be uniform for each such class. The commission 45  
shall not authorize a company to have more than three 46  
infrastructure improvement surcharges for any single company 47  
tariff in effect at any time. 48

Additionally, the commission shall not authorize an 49  
infrastructure improvement surcharge under this section if it 50  
determines that the surcharge causes the company to earn an 51  
excessive rate of return on its valuation under section 4909.15 52  
of the Revised Code. 53

(C) For purposes of this section, a company's costs of 54  
infrastructure plant may include depreciation expenses. Such 55  
infrastructure plant may consist of the following capital 56  
improvements that the commission determines are prudent and used 57  
and useful in rendering public utility service and that are 58  
properly classified in the uniform system of accounts adopted by 59  
the National Association of Regulatory Utility Commissioners as 60  
identified in rule 4901:1-15-32 of the Administrative Code: 61

(1) In the case of a waterworks company, replacement of an 62  
existing plant ~~including chemical feed systems, filters, pumps,~~ 63  
~~motors, plant generators, meters, service lines, hydrants,~~ 64  
~~mains, and valves,~~ included in accounts 323, 324, 325, 326, 327, 65  
328, 332, 342, 343, 345, 346, 347, and 348, as well as main 66  
extensions that eliminate dead ends to resolve documented water 67  
supply problems presenting significant health or safety issues 68  
to then existing customers, and main cleaning or relining; 69

(2) In the case of a sewage disposal system company, 70  
replacement of an existing ~~infrastructure including chemical~~ 71  
~~feed systems, filters, pumps, motors, sludge handling equipment,~~ 72  
~~plant generators, mains and lift stations,~~ plant included in 73  
accounts 352, 352.1, 352.2, 353, 354, 355, 356, 362, 363, 364, 74  
365, 372, 373, 374, and 375, as well as main extensions that 75  
resolve documented sewage disposal problems presenting 76  
significant health or safety issues to then existing customers, 77  
and main cleaning, inflow and infiltration elimination, or 78

relining; 79

(3) Unreimbursed capital expenditures made by the 80  
waterworks company, or the sewage disposal system company, for 81  
waterworks, or sewage disposal, facility relocation required by 82  
a governmental entity due to a street or highway project; 83

(4) Capital expenditures made by the waterworks company or 84  
sewage disposal system company to comply with any consent 85  
decree, final order, or final rule of the United States 86  
environmental protection agency or the Ohio environmental 87  
protection agency. 88

(5) Minimum land or land rights acquired by the company as 89  
necessary for any service line, equipment, or facility described 90  
in divisions (C) (1) to ~~(3)~~ (4) of this section. 91

As used in divisions (C) (1) and (2) of this section, 92  
"replacement of an existing plant" includes replacements that 93  
result in an upgrade or improvement of the previously existing 94  
plant, provided that the replacement plant is prudent, qualifies 95  
for recovery under this section, and performs the same or 96  
similar function or purpose as it did prior to the replacement. 97

(D) (1) If the commission fails to issue a final order 98  
within one hundred eighty days after the date the application is 99  
filed under this section, a surcharge not to exceed the proposed 100  
surcharge shall go into effect upon the filing of the revised 101  
affected rate schedules by the waterworks or sewage disposal 102  
company, subject to refund of amounts collected that exceed 103  
those authorized by the final order of the commission. 104

(2) All refunds shall include interest at the rate started 105  
in section 1343.03 of the Revised Code and shall be accomplished 106  
in a manner as prescribed by the commission in its final order. 107

The commission may require an undertaking to secure the refund 108  
under this division if it finds it is warranted by the financial 109  
condition of the waterworks or sewage disposal system company. 110

(3) This division shall only apply to applications filed 111  
by a waterworks or sewage disposal system company that has 112  
annual operating revenues of two hundred fifty thousand dollars 113  
or more. 114

(E) During the period that an authorized infrastructure 115  
improvement surcharge is in effect, the commission, by order and 116  
on its own motion or upon good cause shown, may reduce the 117  
amount of or terminate an infrastructure improvement surcharge 118  
if it determines that the surcharge causes the company to earn 119  
an excessive rate of return on its valuation under section 120  
4909.15 of the Revised Code. 121

~~(E)~~(F) An order issued by the commission deciding an 122  
application by a waterworks company or a sewage disposal system 123  
company for an increase in rates and charges pursuant to an 124  
application filed by the company under section 4909.18 of the 125  
Revised Code shall provide for the termination, as of the 126  
earlier of the effective date of the increase or the date 127  
specified in division (F) of this section, of any infrastructure 128  
improvement surcharges of the company authorized under this 129  
section. 130

~~(F)~~(G) All surcharges authorized under this section shall 131  
terminate by operation of law not later than December 31, 132  
~~2025~~2036. 133

~~(G)~~(H) The company shall provide notice of any 134  
infrastructure improvement surcharge authorized under this 135  
section to each affected customer with or on the customer's 136

first bill containing the surcharge.	137
<del>(H)</del> <u>(I)</u> The commission may adopt such rules as it	138
considers necessary to carry out this section.	139
<b>Section 2.</b> That existing section 4909.172 of the Revised	140
Code is hereby repealed.	141