

## **As Passed by the House**

**134th General Assembly**

**Regular Session**

**2021-2022**

**Am. H. B. No. 364**

**Representative Patton**

**Cosponsors: Representatives Carruthers, Ginter, Hoops, Jones, Loychik,  
Manning, Seitz, Stephens, Troy**

## **A BILL**

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

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

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

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

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located. A company for which an infrastructure improvement surcharge is authorized under this section may file an application for another such surcharge not sooner than twelve months after the filing date of its most recent infrastructure improvement surcharge application.

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

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

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

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

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

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

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

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

relining;	79
(3) Unreimbursed capital expenditures made by the waterworks company, or the sewage disposal system company, for waterworks, or sewage disposal, facility relocation required by a governmental entity due to a street or highway project;	80 81 82 83
(4) <u>Capital expenditures made by the waterworks company or sewage disposal system company to comply with any consent decree, final order, or final rule of the United States environmental protection agency or the Ohio environmental protection agency.</u>	84 85 86 87 88
(5) Minimum land or land rights acquired by the company as necessary for any service line, equipment, or facility described in divisions (C)(1) to <del>(3)-(4)</del> of this section.	89 90 91
<u>As used in divisions (C)(1) and (2) of this section, "replacement of an existing plant" includes replacements that result in an upgrade or improvement of the previously existing plant, provided that the replacement plant is prudent, qualifies for recovery under this section, and performs the same or similar function or purpose as it did prior to the replacement.</u>	92 93 94 95 96 97
(D) <u>(1) If the commission fails to issue a final order within one hundred eighty days after the date the application is filed under this section, and at the waterworks or sewage disposal company's discretion, a surcharge not to exceed the proposed surcharge shall go into effect upon the filing of the revised affected rate schedules by the company, subject to refund of amounts collected that exceed those authorized by the final order of the commission.</u>	98 99 100 101 102 103 104 105
<u>(2) All refunds shall include interest at the rate stated in section 1343.03 of the Revised Code and shall be accomplished</u>	106 107

in a manner as prescribed by the commission in its final order. 108  
The commission may require an undertaking to secure the refund 109  
under this division if it finds it is warranted by the financial 110  
condition of the waterworks or sewage disposal system company. 111

(3) This division shall only apply to applications filed 112  
by a waterworks or sewage disposal system company that has 113  
annual operating revenues of two hundred fifty thousand dollars 114  
or more. 115

(E) During the period that an authorized infrastructure 116  
improvement surcharge is in effect, the commission, by order and 117  
on its own motion or upon good cause shown, may reduce the 118  
amount of or terminate an infrastructure improvement surcharge 119  
if it determines that the surcharge causes the company to earn 120  
an excessive rate of return on its valuation under section 121  
4909.15 of the Revised Code. 122

(F) An order issued by the commission deciding an 123  
application by a waterworks company or a sewage disposal system 124  
company for an increase in rates and charges pursuant to an 125  
application filed by the company under section 4909.18 of the 126  
Revised Code shall provide for the termination, as of the 127  
earlier of the effective date of the increase or the date 128  
specified in division (F) of this section, of any infrastructure 129  
improvement surcharges of the company authorized under this 130  
section. 131

(G) All surcharges authorized under this section shall 132  
terminate by operation of law not later than December 31, 133  
20252036. 134

(H) The company shall provide notice of any 135  
infrastructure improvement surcharge authorized under this 136

section to each affected customer with or on the customer's  
first bill containing the surcharge. 137  
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(H)—(I) The commission may adopt such rules as it  
considers necessary to carry out this section. 139  
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**Section 2.** That existing section 4909.172 of the Revised  
Code is hereby repealed. 141  
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