



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Sam Benham

### **H.B. 602**

132nd General Assembly  
(As Introduced)

**Reps.** Duffey and Lanese, Scherer

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### **BILL SUMMARY**

- Establishes the following penalties on a municipal corporation that charges higher sewer or water rates to property outside the municipal corporation than to property within the municipality:
  - A 20% reduction in the municipality's Local Government Fund (LGF) distributions;
  - Renders the municipality ineligible for state water and sewer development assistance.
- Establishes the following penalties on a municipal corporation that imposes certain conditions against another subdivision before furnishing water or sewer service to property in that subdivision:
  - Forfeiture of all of the municipality's LGF distributions;
  - Renders the municipality ineligible for state water and sewer development assistance.
- Redistributes forgone LGF revenue to subdivisions affected by the municipal corporation's increased water and sewer rates or conditions.
- Restores LGF revenue and eligibility for other state funding only if the municipal corporation enters into a qualifying areawide waste treatment plan.

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## CONTENT AND OPERATION

### Municipal penalties for water or sewer actions

The bill penalizes a municipal corporation that engages in certain practices with respect to its provision of sewer and water services outside municipal territory. These penalties result in a reduction or complete loss of the municipal corporation's Local Government Fund (LGF) disbursements and render the municipal corporation ineligible for state water and sewer development assistance. The extent of this penalty depends on the water and sewer actions taken by the municipal corporation. Certain actions render a municipal corporation a "noncompliant municipal corporation" or a "predatory municipal corporation," with different ramifications for each classification.

#### Noncompliant municipal corporation

The bill requires every municipal corporation that, as of the bill's effective date, charges higher water and sewer rates for property located outside municipal boundaries than it does for property in the municipal corporation to develop and publish a plan, within two years after the bill's effective date, to equalize such rates beginning on January 1, 2022. The plan may continue to allow higher rates for extraterritorial service to the extent the excess is reasonably related to the cost of providing water or sewer service to that territory (hereafter referred to as "reasonable service costs").<sup>1</sup>

A noncompliant municipal corporation is a municipal corporation that either (1) fails to publish that plan by the deadline and continues to charge higher water or sewer rates for extraterritorial property, unless related to reasonable service costs, or (2) on or after January 1, 2022, charges such higher rates, even if the municipal corporation timely publishes the plan.<sup>2</sup>

#### Predatory municipal corporation

A predatory municipal corporation is a municipal corporation that engages in any of the following practices on or after January 1, 2022:

- Requires annexation of outside territory as a condition of furnishing water or sewer services to that territory;

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<sup>1</sup> R.C. 5747.504(B).

<sup>2</sup> R.C. 5747.504(A)(2).



- Requires a township or another municipal corporation to make direct payments to the predatory municipal corporation as a condition of furnishing water or sewer services to property in that other subdivision, except those related to reasonable service costs;
- Requires a township or another municipal corporation to comply with any requirement not related to reasonable service costs as a condition of furnishing water or sewer services to property in that other subdivision;
- Withdraws or threatens to withdraw water or sewer service from the territory of a township or municipal corporation for failure of that subdivision to comply with any condition or make direct payments to the predatory municipal corporation, except those conditions or payments related to reasonable service costs.<sup>3</sup>

### **Consequences of designation**

Two consequences apply if a municipal corporation is designated as a noncompliant or predatory municipal corporation. In either case, the municipal corporation's LGF distributions are either reduced or stopped and the municipal corporation is rendered ineligible for state sewer and water system development assistance.

#### **LGF reductions**

The bill reduces by 20% the monthly LGF revenue that would be paid to a noncompliant municipal corporation. A predatory municipal corporation forgoes all of its LGF revenue.<sup>4</sup>

Continuing law requires monthly allocations to be made to counties, townships, and municipal corporations from the LGF, which is comprised of 1.66% of the state tax revenue credited to the General Revenue Fund (GRF).

#### **Redistribution of forgone LGF**

LGF revenue that is not distributed to noncompliant or predatory municipalities because of the bill is to be distributed monthly to subdivisions affected by the water or sewer actions. LGF revenue forgone by a noncompliant municipal corporation is paid to townships and other municipal corporations with any resident affected by a water and sewer rate higher than those charged to municipal residents, except to the extent related

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<sup>3</sup> R.C. 5747.504(A)(3).

<sup>4</sup> R.C. 5747.50, 5747.504(C)(2) and (D)(2), 5747.51, and 5747.53.



to reasonable service costs.<sup>5</sup> Similarly, LGF revenue forgone by a predatory municipal corporation is paid to townships and other municipal corporations affected by any action that triggers a predatory municipal corporation designation (see above).<sup>6</sup>

In both cases, forgone LGF is apportioned to such "affected subdivisions" on a pro rata basis, i.e., according to the subdivision's population in relation to the population of all affected subdivisions.<sup>7</sup> Payments may be used for the subdivision's current operating expenses.<sup>8</sup>

The bill does not specify how LGF revenue is redistributed if no affected subdivision exists because the only condition causing forgone LGF is that the noncompliant or predatory municipal corporation has not entered into a qualifying areawide waste treatment management plan (see "**Designation process**," below).

### **State water and sewer assistance**

Both noncompliant and predatory municipal corporations become ineligible for any state sewer and water system development assistance awarded by the Ohio Environmental Protection Agency, Ohio Public Works Commissioner, Ohio Water Development Authority, and the Development Services Agency. This prohibition applies to any form of assistance, including loans and grants, but does not extend to funds required to be awarded to the municipal corporation under federal law.<sup>9</sup>

### **Designation process**

The Tax Commissioner determines whether a municipal corporation qualifies as a noncompliant or predatory municipal corporation. To assist in that determination, the bill requires a municipal corporation to notify the Commissioner within 10 days after it meets the requirements of a noncompliant or predatory municipal corporation, or the Commissioner may designate a municipality as such on the basis of other information in the Commissioner's possession.<sup>10</sup>

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<sup>5</sup> R.C. 5747.504(A)(4)(b) and (E).

<sup>6</sup> R.C. 5747.504(A)(4)(a) and (E).

<sup>7</sup> R.C. 5747.504(E).

<sup>8</sup> R.C. 5747.504(F).

<sup>9</sup> R.C. 9.662 and 5747.504(C)(2)(c) and (D)(2)(c).

<sup>10</sup> R.C. 5747.504(C)(1) and (2) and (D)(1) and (2).



A designated noncompliant or predatory municipal corporation may notify the Commissioner that it has ceased to undertake the action that qualified it as such. If the Tax Commissioner determines that this is indeed the case, the municipal corporation is released from the consequences associated with that designation only if it also enters into or certifies that the municipal corporation is party to a "qualifying areawide waste treatment management plan."<sup>11</sup> A qualifying areawide waste treatment plan is an areawide waste treatment plan developed by a "designated areawide waste treatment management agency."

## **Designated areawide waste treatment management agencies**

Under federal law, the Governor must designate areawide waste treatment management agencies. For portions of a state in which the Governor has not designated such agencies, the state acts as the areawide waste treatment agency.<sup>12</sup> The areawide agencies are responsible for developing areawide waste treatment management plans to address substantial water quality control problems. The plans must include a broad range of measures to address water quality control problems such as:

- Identifying a treatment works that can meet the anticipated municipal and industrial waste treatment needs of the area over a rolling twenty-year period;
- Establishing construction priorities for treatment works and time schedules for the initiation and completion of all treatment works;
- Identifying funding mechanisms;
- Processes to control pollution.<sup>13</sup>

Under the bill, a "designated areawide waste treatment management agency" is an agency as designated by the Governor in accordance with the federal law that also complies with one of the following criteria:

(1) When the agency is responsible for waste treatment planning in two municipal corporations, not more than 50% of its' governing board is represented by any one municipal corporation;

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<sup>11</sup> R.C. 5747.504(C)(3) and (D)(3).

<sup>12</sup> In Ohio, the Ohio Environmental Protection Agency reviews and updates the state's plan. *See* <http://epa.ohio.gov/dsw/mgmtplans/208index> (2018).

<sup>13</sup> 33 U.S.C. § 1288.

(2) When the agency is responsible for waste treatment planning in three or more municipal corporations, not more than 30% of its' governing board is represented by any one municipal corporation.<sup>14</sup>

Only a designated areawide waste treatment management agency can develop the "qualifying areawide waste treatment management plan"<sup>15</sup> necessary for a noncompliant or predatory municipal corporation to be released from the consequences the bill imposes.<sup>16</sup>

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## HISTORY

ACTION	DATE
Introduced	05-15-18

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<sup>14</sup> R.C. 5747.504(A)(7).

<sup>15</sup> R.C. 5747.504(A)(6).

<sup>16</sup> R.C. 5747.504(C)(3) and (D)(3).

