

**As Introduced**

**129th General Assembly  
Regular Session  
2011-2012**

**H. B. No. 379**

**Representative Blessing**

**Cosponsors: Representatives Beck, Stebelton**

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**A B I L L**

To amend sections 4909.05, 4909.06, 4909.07, 4909.08, 1  
4909.15, 4909.156, 4909.172, 4909.18, 4909.191, 2  
and 4909.42 and to enact section 4909.173 of the 3  
Revised Code to permit, for water-works and sewage 4  
disposal system companies, certain 5  
rate-calculation adjustments and a tax adjustment 6  
surcharge, to make changes regarding water and 7  
sewer infrastructure improvement surcharges, and 8  
to alter language regarding utility requirements 9  
for when rate increases may take effect in the 10  
absence of administrative action. 11

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

**Section 1.** That sections 4909.05, 4909.06, 4909.07, 4909.08, 12  
4909.15, 4909.156, 4909.172, 4909.18, 4909.191, and 4909.42 be 13  
amended and section 4909.173 of the Revised Code be enacted to 14  
read as follows: 15

**Sec. 4909.05.** As used in this section: 16

(A) A "lease purchase agreement" is an agreement pursuant to 17  
which a public utility leasing property is required to make rental 18  
payments for the term of the agreement and either the utility is 19

granted the right to purchase the property upon the completion of 20  
the term of the agreement and upon the payment of an additional 21  
fixed sum of money or title to the property vests in the utility 22  
upon the making of the final rental payment. 23

(B) A "leaseback" is the sale or transfer of property by a 24  
public utility to another person contemporaneously followed by the 25  
leasing of the property to the public utility on a long-term 26  
basis. 27

(C) The public utilities commission shall prescribe the form 28  
and details of the valuation report of the property of each public 29  
utility or railroad in the state. Such report shall include all 30  
the kinds and classes of property, with the value of each, owned, 31  
held, or, with respect to a natural gas, water-works, or sewage 32  
disposal system company, projected to be owned or held as of the 33  
date certain, by each public utility or railroad used and useful, 34  
or, with respect to a natural gas, water-works, or sewage disposal 35  
system company, projected to be used and useful as of the date 36  
certain, for the service and convenience of the public. Such 37  
report shall contain the following facts in detail: 38

(1) The original cost of each parcel of land owned in fee and 39  
in use, or, with respect to a natural gas, water-works, or sewage 40  
disposal system company, projected to be owned in fee and in use 41  
as of the date certain, determined by the commission; and also a 42  
statement of the conditions of acquisition, whether by direct 43  
purchase, by donation, by exercise of the power of eminent domain, 44  
or otherwise; 45

(2) The actual acquisition cost, not including periodic 46  
rental fees, of rights-of-way, trailways, or other land rights 47  
held, or, with respect to a natural gas, water-works, or sewage 48  
disposal system company, projected to be held as of the date 49  
certain, by virtue of easements, leases, or other forms of grants 50  
of rights as to usage; 51

(3) The original cost of all other kinds and classes of property used and useful, or, with respect to a natural gas, water-works, or sewage disposal system company, projected to be used and useful as of the date certain, in the rendition of service to the public. Such original costs of property, other than land owned in fee, shall be the cost, as determined to be reasonable by the commission, to the person that first dedicated or dedicates the property to the public use and shall be set forth in property accounts and subaccounts as prescribed by the commission. To the extent that the costs of property comprising a coal research and development facility, as defined in section 1555.01 of the Revised Code, or a coal development project, as defined in section 1551.30 of the Revised Code, have been allowed for recovery as Ohio coal research and development costs under section 4905.304 of the Revised Code, none of those costs shall be included as a cost of property under this division.

(4) The cost of property constituting all or part of a project leased to or used by the utility, or, with respect to a natural gas, water-works, or sewage disposal system company, projected to be leased to or used by the utility as of the date certain, under Chapter 165., 3706., 6121., or 6123. of the Revised Code and not included under division (C)(3) of this section exclusive of any interest directly or indirectly paid by the utility with respect thereto whether or not capitalized;

(5) In the discretion of the commission, the cost to a utility, in an amount determined to be reasonable by the commission, of property constituting all or part of a project leased to the utility, or, with respect to a natural gas, water-works, or sewage disposal system company, projected to be leased to the utility as of the date certain, under a lease purchase agreement or a leaseback and not included under division (C)(3) of this section exclusive of any interest directly or

indirectly paid by the utility with respect thereto whether or not 84  
capitalized; 85

(6) The proper and adequate reserve for depreciation, as 86  
determined to be reasonable by the commission; 87

(7) Any sums of money or property that the company may have 88  
received, or, with respect to a natural gas, water-works, or 89  
sewage disposal system company, is projected to receive as of the 90  
date certain, as total or partial defrayal of the cost of its 91  
property; 92

(8) The valuation of the property of the company, which shall 93  
be the sum of the amounts contained in the report pursuant to 94  
divisions (C)(1) to (5) of this section, less the sum of the 95  
amounts contained in the report pursuant to divisions (C)(6) and 96  
(7) of this section. 97

The report shall show separately the property used and useful 98  
to such public utility or railroad in the furnishing of the 99  
service to the public, the property held by such public utility or 100  
railroad for other purposes, and the property projected to be used 101  
and useful to or held by a natural gas, water-works, or sewage 102  
disposal system company as of the date certain, and such other 103  
items as the commission considers proper. The commission may 104  
require an additional report showing the extent to which the 105  
property is used and useful, or, with respect to a natural gas, 106  
water-works, or sewage disposal system company, projected to be 107  
used and useful as of the date certain. Such reports shall be 108  
filed in the office of the commission for the information of the 109  
governor and the general assembly. 110

**Sec. 4909.06.** The investigation and report required by 111  
section 4909.05 of the Revised Code shall show, when the public 112  
utilities commission deems it necessary, the amounts, dates, and 113  
rates of interest of all bonds outstanding against each public 114

utility or railroad, the property upon which such bonds are a 115  
lien, the amounts paid for them, and, the original capital stock 116  
and the moneys received by any such public utility or railroad by 117  
reason of any issue of stock, bonds, or other securities. Such 118  
report shall also show the net and gross receipts of such public 119  
utility or railroad and the method by which moneys were expended 120  
or paid out and the purpose of such payments. The commission may 121  
prescribe the procedure to be followed in making the investigation 122  
and valuation, the form in which the results of the ascertainment 123  
of the value of each public utility or railroad shall be 124  
submitted, and the classifications of the elements that constitute 125  
the ascertained value. Such investigation shall also show the 126  
value of the property of every public utility or railroad as a 127  
whole, and if such property is in more than one county, the value 128  
of its property in each of such counties. 129

"Valuation" and "value," as used in this section, may 130  
include, with respect to a natural gas, water-works, or sewage 131  
disposal system company, projected valuation and value as of the 132  
date certain, if applicable because of a future date certain under 133  
section 4909.15 of the Revised Code. 134

**Sec. 4909.07.** The public utilities commission, during the 135  
making of the valuation provided for in sections 4909.04 to 136  
4909.13, ~~inclusive,~~ of the Revised Code, and after its completion, 137  
shall in like manner keep itself informed through its engineers, 138  
experts, and other assistants of all extensions, improvements, or 139  
other changes in the condition and value of the property of all 140  
public utilities or railroads and shall ascertain the value of 141  
such extensions, improvements, and changes. The commission shall, 142  
as is required for the proper regulation of such public utilities 143  
or railroads, revise and correct its valuations of property, 144  
showing such revisions and corrections as a whole and as to each 145  
county. Such revisions and corrections shall be filed in the same 146

manner as original reports. 147

"Valuation" and "value," as used in this section, may 148  
include, with respect to a natural gas, water-works, or sewage 149  
disposal system company, projected valuation and value as of the 150  
date certain, if applicable because of a future date certain under 151  
section 4909.15 of the Revised Code. 152

**Sec. 4909.08.** When the public utilities commission has 153  
completed the valuation of the property of any public utility or 154  
railroad and before such valuation becomes final, it shall give 155  
notice by registered letter to such public utility or railroad, 156  
and if a substantial portion of said public utility or railroad is 157  
situated in a municipal corporation, then to the mayor of such 158  
municipal corporation, stating the valuations placed upon the 159  
several kinds and classes of property of such public utility or 160  
railroad and upon the property as a whole and give such further 161  
notice by publication or otherwise as it shall deem necessary to 162  
apprise the public of such valuation. If, within thirty days after 163  
such notification, no protest has been filed with the commission, 164  
such valuation becomes final. If notice of protest has been filed 165  
by any public utility or railroad, the commission shall fix a time 166  
for hearing such protest and shall consider at such hearing any 167  
matter material thereto presented by such public utility, 168  
railroad, or municipal corporation, in support of its protest or 169  
by any representative of the public against such protest. If, 170  
after the hearing of any protest of any valuation so fixed, the 171  
commission is of the opinion that its inventory is incomplete or 172  
inaccurate or that its valuation is incorrect, it shall make such 173  
changes as are necessary and shall issue an order making such 174  
corrected valuations final. A final valuation by the commission 175  
and all classifications made for the ascertainment of such 176  
valuations shall be public and are prima-facie evidence relative 177  
to the value of the property. 178

"Valuation" and "value," as used in this section, may 179  
include, with respect to a natural gas, water-works, or sewage 180  
disposal system company, projected valuation and value as of the 181  
date certain, if applicable because of a future date certain under 182  
section 4909.15 of the Revised Code. 183

**Sec. 4909.15.** (A) The public utilities commission, when 184  
fixing and determining just and reasonable rates, fares, tolls, 185  
rentals, and charges, shall determine: 186

(1) The valuation as of the date certain of the property of 187  
the public utility used and useful or, with respect to a natural 188  
gas, water-works, or sewage disposal system company, projected to 189  
be used and useful as of the date certain, in rendering the public 190  
utility service for which rates are to be fixed and determined. 191  
The valuation so determined shall be the total value as set forth 192  
in division (C)(8) of section 4909.05 of the Revised Code, and a 193  
reasonable allowance for materials and supplies and cash working 194  
capital as determined by the commission. 195

The commission, in its discretion, may include in the 196  
valuation a reasonable allowance for construction work in progress 197  
but, in no event, may such an allowance be made by the commission 198  
until it has determined that the particular construction project 199  
is at least seventy-five per cent complete. 200

In determining the percentage completion of a particular 201  
construction project, the commission shall consider, among other 202  
relevant criteria, the per cent of time elapsed in construction; 203  
the per cent of construction funds, excluding allowance for funds 204  
used during construction, expended, or obligated to such 205  
construction funds budgeted where all such funds are adjusted to 206  
reflect current purchasing power; and any physical inspection 207  
performed by or on behalf of any party, including the commission's 208  
staff. 209

A reasonable allowance for construction work in progress 210  
shall not exceed ten per cent of the total valuation as stated in 211  
this division, not including such allowance for construction work 212  
in progress. 213

Where the commission permits an allowance for construction 214  
work in progress, the dollar value of the project or portion 215  
thereof included in the valuation as construction work in progress 216  
shall not be included in the valuation as plant in service until 217  
such time as the total revenue effect of the construction work in 218  
progress allowance is offset by the total revenue effect of the 219  
plant in service exclusion. Carrying charges calculated in a 220  
manner similar to allowance for funds used during construction 221  
shall accrue on that portion of the project in service but not 222  
reflected in rates as plant in service, and such accrued carrying 223  
charges shall be included in the valuation of the property at the 224  
conclusion of the offset period for purposes of division (C)(8) of 225  
section 4909.05 of the Revised Code. 226

From and after April 10, 1985, no allowance for construction 227  
work in progress as it relates to a particular construction 228  
project shall be reflected in rates for a period exceeding 229  
forty-eight consecutive months commencing on the date the initial 230  
rates reflecting such allowance become effective, except as 231  
otherwise provided in this division. 232

The applicable maximum period in rates for an allowance for 233  
construction work in progress as it relates to a particular 234  
construction project shall be tolled if, and to the extent, a 235  
delay in the in-service date of the project is caused by the 236  
action or inaction of any federal, state, county, or municipal 237  
agency having jurisdiction, where such action or inaction relates 238  
to a change in a rule, standard, or approval of such agency, and 239  
where such action or inaction is not the result of the failure of 240  
the utility to reasonably endeavor to comply with any rule, 241



standard, or approval prior to such change. 242

In the event that such period expires before the project goes 243  
into service, the commission shall exclude, from the date of 244  
expiration, the allowance for the project as construction work in 245  
progress from rates, except that the commission may extend the 246  
expiration date up to twelve months for good cause shown. 247

In the event that a utility has permanently canceled, 248  
abandoned, or terminated construction of a project for which it 249  
was previously permitted a construction work in progress 250  
allowance, the commission immediately shall exclude the allowance 251  
for the project from the valuation. 252

In the event that a construction work in progress project 253  
previously included in the valuation is removed from the valuation 254  
pursuant to this division, any revenues collected by the utility 255  
from its customers after April 10, 1985, that resulted from such 256  
prior inclusion shall be offset against future revenues over the 257  
same period of time as the project was included in the valuation 258  
as construction work in progress. The total revenue effect of such 259  
offset shall not exceed the total revenues previously collected. 260

In no event shall the total revenue effect of any offset or 261  
offsets provided under division (A)(1) of this section exceed the 262  
total revenue effect of any construction work in progress 263  
allowance. 264

(2) A fair and reasonable rate of return to the utility on 265  
the valuation as determined in division (A)(1) of this section; 266

(3) The dollar annual return to which the utility is entitled 267  
by applying the fair and reasonable rate of return as determined 268  
under division (A)(2) of this section to the valuation of the 269  
utility determined under division (A)(1) of this section; 270

(4) The cost to the utility of rendering the public utility 271  
service for the test period used for the determination under 272

division (C)(1) of this section, less the total of any interest on 273  
cash or credit refunds paid, pursuant to section 4909.42 of the 274  
Revised Code, by the utility during the test period. 275

(a) Federal, state, and local taxes imposed on or measured by 276  
net income may, in the discretion of the commission, be computed 277  
by the normalization method of accounting, provided the utility 278  
maintains accounting reserves that reflect differences between 279  
taxes actually payable and taxes on a normalized basis, provided 280  
that no determination as to the treatment in the rate-making 281  
process of such taxes shall be made that will result in loss of 282  
any tax depreciation or other tax benefit to which the utility 283  
would otherwise be entitled, and further provided that such tax 284  
benefit as redounds to the utility as a result of such a 285  
computation may not be retained by the company, used to fund any 286  
dividend or distribution, or utilized for any purpose other than 287  
the defrayal of the operating expenses of the utility and the 288  
defrayal of the expenses of the utility in connection with 289  
construction work. 290

(b) The amount of any tax credits granted to an electric 291  
light company under section 5727.391 of the Revised Code for Ohio 292  
coal burned prior to January 1, 2000, shall not be retained by the 293  
company, used to fund any dividend or distribution, or utilized 294  
for any purposes other than the defrayal of the allowable 295  
operating expenses of the company and the defrayal of the 296  
allowable expenses of the company in connection with the 297  
installation, acquisition, construction, or use of a compliance 298  
facility. The amount of the tax credits granted to an electric 299  
light company under that section for Ohio coal burned prior to 300  
January 1, 2000, shall be returned to its customers within three 301  
years after initially claiming the credit through an offset to the 302  
company's rates or fuel component, as determined by the 303  
commission, as set forth in schedules filed by the company under 304

section 4905.30 of the Revised Code. As used in division (A)(4)(b) 305  
of this section, "compliance facility" has the same meaning as in 306  
section 5727.391 of the Revised Code. 307

(B) The commission shall compute the gross annual revenues to 308  
which the utility is entitled by adding the dollar amount of 309  
return under division (A)(3) of this section to the cost, for the 310  
test period used for the determination under division (C)(1) of 311  
this section, of rendering the public utility service under 312  
division (A)(4) of this section. 313

(C)(1) Except as provided in division (D) of this section, 314  
the revenues and expenses of the utility shall be determined 315  
during a test period. The utility may propose a test period for 316  
this determination that is any twelve-month period beginning not 317  
more than six months prior to the date the application is filed 318  
and ending not more than nine months subsequent to that date. The 319  
test period for determining revenues and expenses of the utility 320  
shall be the test period proposed by the utility, unless otherwise 321  
ordered by the commission. 322

(2) The date certain shall be not later than the date of 323  
filing, except that it shall be, for a natural gas, water-works, 324  
or sewage disposal system company, not later than the end of the 325  
test period. 326

(D) A natural gas, water-works, or sewage disposal system 327  
company may propose adjustments to the revenues and expenses to be 328  
determined under division (C)(1) of this section for any changes 329  
that are, during the test period or the twelve-month period 330  
immediately following the test period, reasonably expected to 331  
occur. The natural gas, water-works, or sewage disposal system 332  
company shall identify and quantify, individually, any proposed 333  
adjustments. The commission shall incorporate the proposed 334  
adjustments into the determination if the adjustments are just and 335  
reasonable. 336

(E) When the commission is of the opinion, after hearing and 337  
after making the determinations under divisions (A) and (B) of 338  
this section, that any rate, fare, charge, toll, rental, schedule, 339  
classification, or service, or any joint rate, fare, charge, toll, 340  
rental, schedule, classification, or service rendered, charged, 341  
demanded, exacted, or proposed to be rendered, charged, demanded, 342  
or exacted, is, or will be, unjust, unreasonable, unjustly 343  
discriminatory, unjustly preferential, or in violation of law, 344  
that the service is, or will be, inadequate, or that the maximum 345  
rates, charges, tolls, or rentals chargeable by any such public 346  
utility are insufficient to yield reasonable compensation for the 347  
service rendered, and are unjust and unreasonable, the commission 348  
shall: 349

(1) With due regard among other things to the value of all 350  
property of the public utility actually used and useful for the 351  
convenience of the public as determined under division (A)(1) of 352  
this section, excluding from such value the value of any franchise 353  
or right to own, operate, or enjoy the same in excess of the 354  
amount, exclusive of any tax or annual charge, actually paid to 355  
any political subdivision of the state or county, as the 356  
consideration for the grant of such franchise or right, and 357  
excluding any value added to such property by reason of a monopoly 358  
or merger, with due regard in determining the dollar annual return 359  
under division (A)(3) of this section to the necessity of making 360  
reservation out of the income for surplus, depreciation, and 361  
contingencies, and; 362

(2) With due regard to all such other matters as are proper, 363  
according to the facts in each case, 364

(a) Including a fair and reasonable rate of return determined 365  
by the commission with reference to a cost of debt equal to the 366  
actual embedded cost of debt of such public utility, 367

(b) But not including the portion of any periodic rental or 368

use payments representing that cost of property that is included 369  
in the valuation report under divisions (C)(4) and (5) of section 370  
4909.05 of the Revised Code, fix and determine the just and 371  
reasonable rate, fare, charge, toll, rental, or service to be 372  
rendered, charged, demanded, exacted, or collected for the 373  
performance or rendition of the service that will provide the 374  
public utility the allowable gross annual revenues under division 375  
(B) of this section, and order such just and reasonable rate, 376  
fare, charge, toll, rental, or service to be substituted for the 377  
existing one. After such determination and order no change in the 378  
rate, fare, toll, charge, rental, schedule, classification, or 379  
service shall be made, rendered, charged, demanded, exacted, or 380  
changed by such public utility without the order of the 381  
commission, and any other rate, fare, toll, charge, rental, 382  
classification, or service is prohibited. 383

(F) Upon application of any person or any public utility, and 384  
after notice to the parties in interest and opportunity to be 385  
heard as provided in Chapters 4901., 4903., 4905., 4907., 4909., 386  
4921., and 4923. of the Revised Code for other hearings, has been 387  
given, the commission may rescind, alter, or amend an order fixing 388  
any rate, fare, toll, charge, rental, classification, or service, 389  
or any other order made by the commission. Certified copies of 390  
such orders shall be served and take effect as provided for 391  
original orders. 392

**Sec. 4909.156.** In fixing the just, reasonable, and 393  
compensatory rates, joint rates, tolls, classifications, charges, 394  
or rentals to be observed and charged for service by any public 395  
utility, the public utilities commission shall, in action upon an 396  
application filed pursuant to section 4909.18 of the Revised Code, 397  
require a public utility to file a report showing the 398  
proportionate amounts of the valuation of the property of the 399  
utility, as determined under section 4909.05 ~~ex~~ of the Revised 400

Code, and the proportionate amounts of the revenues and expenses 401  
of the utility that are proposed to be considered as attributable 402  
to the service area involved in the application. 403

"Valuation," as used in this section, may include, with 404  
respect to a natural gas, water-works, or sewage disposal system 405  
company, projected valuation as of the date certain, if applicable 406  
because of a future date certain under section 4909.15 of the 407  
Revised Code. 408

**Sec. 4909.172.** (A) A waterworks company, or a sewage disposal 409  
system company, that is a public utility may file an application 410  
with the public utilities commission for approval to collect an 411  
infrastructure improvement surcharge, determined in accordance 412  
with this section, from customers located in the company's 413  
affected service areas and subject to affected schedules filed by 414  
the company under section ~~4905.31~~ 4905.32 of the Revised Code. The 415  
application shall be in such form and contain such information as 416  
the commission prescribes. At the time of filing, the company 417  
shall serve a copy of the application upon the chief executive of 418  
each municipal corporation, the board of township trustees of each 419  
township, and the board of county commissioners of each county in 420  
which affected customers are located. A company for which a an 421  
infrastructure improvement surcharge is authorized under this 422  
section may file an application for another such surcharge not 423  
sooner than twelve months after the filing date of its most recent 424  
infrastructure improvement surcharge application. 425

(B) The commission shall provide an opportunity for the 426  
filing of comments on an application filed under division (A) of 427  
this section. After considering those comments, the commission may 428  
authorize a an infrastructure improvement surcharge for the 429  
company that is just and reasonable and is sufficient, but does 430  
not exceed, the revenue requirement necessary to do both of the 431

following: 432

(1) Cover such infrastructure plant costs of the company as 433  
are described in division (C) of this section, incurred after 434  
March 1, 2003, and before the date of filing, and not already 435  
reflected in the affected schedules filed by the company under 436  
section 4905.31 of the Revised Code; 437

(2) Provide a fair and reasonable rate of return on the 438  
filing date valuation of that particular infrastructure plant. 439

The infrastructure improvement surcharge chargeable to each 440  
affected customer class of the company shall not exceed ~~three~~ five 441  
per cent of the rates and charges applicable to the class and in 442  
effect on the date the application was filed and, as to the 443  
allowed percentage increase, shall be uniform for each such class. 444  
The commission shall not authorize a company to have more than 445  
three infrastructure improvement surcharges in effect at any time. 446

Additionally, the commission shall not authorize a an 447  
infrastructure improvement surcharge under this section if it 448  
determines that the surcharge causes the company to earn an 449  
excessive rate of return on its valuation under section 4909.15 of 450  
the Revised Code. 451

(C) For purposes of this section, a company's costs of 452  
infrastructure plant may include depreciation expenses. Such 453  
infrastructure plant ~~shall exclude any improvement providing the~~ 454  
~~company with additional revenue other than any minimal revenue~~ 455  
~~associated with the elimination of a dead end, and~~ may consist 456  
~~only~~ of the following capital improvements that the commission 457  
determines are used and useful in rendering public utility 458  
service: 459

(1) In the case of a waterworks company, replacement of 460  
existing plant including chemical feed systems, filters, pumps, 461  
motors, plant generators, meters, service lines for, and hydrants, 462

mains, and valves ~~installed as a part of, a replacement project~~ 463  
~~for an existing facility;~~ main extensions that eliminate dead 464  
ends to resolve documented water supply problems presenting 465  
significant health or safety issues to then existing customers; 466  
and main cleaning or relining; 467

(2) In the case of a sewage disposal system company, 468  
replacement of existing infrastructure including chemical feed 469  
systems, filters, pumps, motors, sludge-handling equipment, plant 470  
generators, mains and lift stations ~~installed as part of a~~ 471  
~~replacement project for an existing facility;~~ main extensions 472  
that resolve documented sewage disposal problems presenting 473  
significant health or safety issues to then existing customers; 474  
and main cleaning, inflow and infiltration elimination, or 475  
relining; 476

(3) Unreimbursed capital expenditures made by the waterworks 477  
company, or the sewage disposal system company, for waterworks, or 478  
sewage disposal, facility relocation required by a governmental 479  
entity due to a street or highway project; 480

(4) Minimum land or land rights acquired by the company as 481  
necessary for any service line, equipment, or facility ~~described~~ 482  
~~in divisions (A)(1) to (3) of this section.~~ 483

(D) During the period that an authorized infrastructure 484  
improvement surcharge is in effect, the commission, by order and 485  
on its own motion or upon good cause shown, may reduce the amount 486  
of or terminate a an infrastructure improvement surcharge if it 487  
determines that the surcharge causes the company to earn an 488  
excessive rate of return on its valuation under section 4909.15 of 489  
the Revised Code. 490

(E) An order issued by the commission deciding an application 491  
by a waterworks company or a sewage disposal system company for an 492  
increase in rates and charges pursuant to an application filed by 493



the company under section 4909.18 of the Revised Code shall 494  
provide for the termination, ~~as of the earlier of the effective~~ 495  
~~date of the increase or the date specified in division (F) of this~~ 496  
~~section,~~ of any infrastructure improvement surcharges of the 497  
company authorized under this section. 498

~~(F) All surcharges authorized under this section shall~~ 499  
~~terminate by operation of law not later than December 31, 2014.~~ 500

~~(G)~~ The company shall provide notice of any infrastructure 501  
improvement surcharge authorized under this section to each 502  
affected customer with or on the customer's first bill containing 503  
the surcharge. 504

~~(H)~~(G) The commission may adopt such rules as it considers 505  
necessary to carry out this section. 506

Sec. 4909.173. (A) A water-works company, or a sewage 507  
disposal system company, that is a public utility may file an 508  
application with the public utilities commission for approval to 509  
collect a tax adjustment surcharge, determined in accordance with 510  
this section, from customers located in the company's affected 511  
service areas and subject to affected schedules filed by the 512  
company under section 4905.32 of the Revised Code. An approved tax 513  
adjustment surcharge shall authorize the company to adjust the 514  
rates that the company charges to customers to recover or refund 515  
an actual increase or decrease in federal or state taxes that 516  
occurred since the most recent order establishing, modifying, 517  
amending, changing, increasing, or reducing the rates to be 518  
charged was issued by the commission under section 4909.18 or 519  
4909.19 of the Revised Code. 520

(B) After considering the company's application, the 521  
commission may authorize a tax adjustment surcharge that is just 522  
and reasonable. 523

(C) The surcharge shall be applied to each affected customer class of the company and, as to the allowed percentage increase or decrease, shall be uniform for each such affected customer class as prescribed by the commission. 524  
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(D) The surcharge shall be reconciled and updated on an annual basis pursuant to documentation submitted by the company and approved by the commission showing the federal or state tax increases or decreases that have occurred since the most recent order establishing, modifying, amending, changing, increasing, or reducing the rates to be charged was issued by the commission under section 4909.18 or 4909.19 of the Revised Code. 528  
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(E) During the period that an authorized tax adjustment surcharge is in effect, the commission, by order and on its own motion or upon good cause shown, may reduce the amount of or terminate a tax adjustment surcharge if it determines that the surcharge causes the company excessive recovery of the associated taxes. 535  
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(F) An order issued by the commission deciding an application by the company for an increase in rates filed under section 4909.18 of the Revised Code may provide for the termination of any tax adjustment surcharges of the company authorized under this section. 541  
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(G) The company shall provide notice of any tax adjustment surcharge authorized under this section to each affected customer with or on the customer's first bill containing the surcharge. 546  
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(H) The commission may adopt such rules as it considers necessary to carry out this section. 549  
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**Sec. 4909.18.** Any public utility desiring to establish any rate, joint rate, toll, classification, charge, or rental, or to modify, amend, change, increase, or reduce any existing rate, 551  
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joint rate, toll, classification, charge, or rental, or any 554  
regulation or practice affecting the same, shall file a written 555  
application with the public utilities commission. Except for 556  
actions under section 4909.16 of the Revised Code, no public 557  
utility may issue the notice of intent to file an application 558  
pursuant to division (B) of section 4909.43 of the Revised Code to 559  
increase any existing rate, joint rate, toll, classification, 560  
charge, or rental, until a final order under this section has been 561  
issued by the commission on any pending prior application to 562  
increase the same rate, joint rate, toll, classification, charge, 563  
or rental or until two hundred seventy-five days after filing such 564  
application, whichever is sooner. Such application shall be 565  
verified by the president or a vice-president and the secretary or 566  
treasurer of the applicant. Such application shall contain a 567  
schedule of the existing rate, joint rate, toll, classification, 568  
charge, or rental, or regulation or practice affecting the same, a 569  
schedule of the modification amendment, change, increase, or 570  
reduction sought to be established, and a statement of the facts 571  
and grounds upon which such application is based. If such 572  
application proposes a new service or the use of new equipment, or 573  
proposes the establishment or amendment of a regulation, the 574  
application shall fully describe the new service or equipment, or 575  
the regulation proposed to be established or amended, and shall 576  
explain how the proposed service or equipment differs from 577  
services or equipment presently offered or in use, or how the 578  
regulation proposed to be established or amended differs from 579  
regulations presently in effect. The application shall provide 580  
such additional information as the commission may require in its 581  
discretion. If the commission determines that such application is 582  
not for an increase in any rate, joint rate, toll, classification, 583  
charge, or rental, the commission may permit the filing of the 584  
schedule proposed in the application and fix the time when such 585  
schedule shall take effect. If it appears to the commission that 586

the proposals in the application may be unjust or unreasonable, 587  
the commission shall set the matter for hearing and shall give 588  
notice of such hearing by sending written notice of the date set 589  
for the hearing to the public utility and publishing notice of the 590  
hearing one time in a newspaper of general circulation in each 591  
county in the service area affected by the application. At such 592  
hearing, the burden of proof to show that the proposals in the 593  
application are just and reasonable shall be upon the public 594  
utility. After such hearing, the commission shall, where 595  
practicable, issue an appropriate order within six months from the 596  
date the application was filed. 597

If the commission determines that said application is for an 598  
increase in any rate, joint rate, toll, classification, charge, or 599  
rental there shall also, unless otherwise ordered by the 600  
commission, be filed with the application in duplicate the 601  
following exhibits: 602

(A) A report of its property used and useful, or, with 603  
respect to a natural gas, water-works, or sewage disposal system 604  
company, projected to be used and useful as of the date certain, 605  
in rendering the service referred to in such application, as 606  
provided in section 4909.05 of the Revised Code; 607

(B) A complete operating statement of its last fiscal year, 608  
showing in detail all its receipts, revenues, and incomes from all 609  
sources, all of its operating costs and other expenditures, and 610  
any analysis such public utility deems applicable to the matter 611  
referred to in said application; 612

(C) A statement of the income and expense anticipated under 613  
the application filed; 614

(D) A statement of financial condition summarizing assets, 615  
liabilities, and net worth; 616

(E) Such other information as the commission may require in 617

its discretion. 618

**Sec. 4909.191.** (A) If the public utilities commission, under 619  
division (D) of section 4909.15 of the Revised Code, incorporated 620  
proposed adjustments to revenues and expenses into the 621  
commission's determination under that section, the natural gas, 622  
water-works, or sewage disposal system company shall, not later 623  
than ninety days after actual data for all of the incorporated 624  
adjustments becomes known, submit to the commission proposed rate 625  
or charge adjustments that provide for the recalculation of rates 626  
or charges, reflective of customer-class responsibility, 627  
corresponding to the differences, if any, between the incorporated 628  
adjustments to revenues and expenses and the actual revenues and 629  
expenses associated with the incorporated adjustments. 630

(B) If the commission incorporated projected value or 631  
valuation of property into the commission's determination under 632  
division (A)(1) of section 4909.15 of the Revised Code, the 633  
natural gas, water-works, or sewage disposal system company shall, 634  
not later than ninety days after data for the actual value or 635  
valuation as of the date certain becomes known, submit to the 636  
commission proposed rate or charge adjustments that provide for 637  
the recalculation of rates or charges, reflective of 638  
customer-class responsibility, corresponding to the differences, 639  
if any, between the projected value or valuation incorporated into 640  
the commission's determination and the actual value or valuation 641  
as of the date certain. 642

(C) The commission shall review the proposed rate or charge 643  
adjustments submitted under divisions (A) and (B) of this section. 644  
The review shall not include a hearing unless the commission finds 645  
that the proposed rate or charge adjustments may be unreasonable, 646  
in which case the commission may, in its discretion, schedule the 647  
matter for a hearing. 648

(D) The commission shall issue, not later than one hundred 649  
fifty days after the date that any proposed rate or charge 650  
adjustments are submitted under division (A) or (B) of this 651  
section, a final order on the proposed rate or charge adjustments. 652  
Any rate or charge adjustments authorized under this division 653  
shall be limited to amounts that are not greater than those 654  
consistent with the proposed adjustments to revenues and expenses 655  
that were incorporated into the commission's determination under 656  
division (D) of section 4909.15 of the Revised Code, and not 657  
greater than those consistent with the incorporated projected 658  
value or valuation. In no event shall rate or charge adjustments 659  
authorized under this division be upward. 660

After the commission has issued such a final order, the 661  
natural gas, water-works, or sewage disposal system company, if 662  
applicable, shall submit to the commission proposed reconciliation 663  
adjustments that refund to customers the difference between the 664  
actual revenues collected by the natural gas, water-works, or 665  
sewage disposal system company, under the rates and charges 666  
determined by the commission under section 4909.15 of the Revised 667  
Code, and the rates or charges recalculated under the adjustments 668  
authorized under this division. The reconciliation adjustments 669  
shall be effective for a twelve-month period. 670

(E) The reconciliation adjustments ordered under division (D) 671  
of this section may be subject to a final reconciliation by the 672  
commission. Any such final reconciliation shall occur after the 673  
twelve-month period described in division (D) of this section. 674

**Sec. 4909.42.** If the proceeding on an application filed with 675  
the public utilities commission under section 4909.18 of the 676  
Revised Code by any public utility requesting an increase on any 677  
rate, joint rate, toll, classification, charge, or rental or 678  
requesting a change in a regulation or practice affecting the same 679

has not been concluded and an order entered pursuant to section 680  
4909.19 of the Revised Code at the expiration of two hundred 681  
seventy-five days from the date of filing the application, an 682  
increase not to exceed the proposed increase shall go into effect 683  
upon the filing of ~~an undertaking~~ a bond or a letter of credit by 684  
the public utility. The ~~undertaking~~ bond or letter of credit shall 685  
be filed with the commission and shall be payable to the state for 686  
the use and benefit of the customers affected by the proposed 687  
increase or change. 688

~~The undertaking~~ An affidavit attached to the bond or letter 689  
of credit must be signed by two of the officers of the utility, 690  
under oath, and must contain a promise on behalf of the utility to 691  
refund any amounts collected by the utility over the rate, joint 692  
rate, toll, classification, charge, or rental, as determined in 693  
the final order of the commission. All refunds shall include 694  
interest at the rate stated in section 1343.03 of the Revised 695  
Code. The refund shall be in the form of a temporary reduction in 696  
rates following the final order of the commission, and shall be 697  
accomplished in such manner as shall be prescribed by the 698  
commission in its final order. The commission shall exercise 699  
continuing and exclusive jurisdiction over such refunds. 700

If the public utilities commission has not entered a final 701  
order within five hundred forty-five days from the date of the 702  
filing of an application for an increase in rates under section 703  
4909.18 of the Revised Code, a public utility shall have no 704  
obligation to make a refund of amounts collected after the five 705  
hundred forty-fifth day which exceed the amounts authorized by the 706  
commission's final order. 707

Nothing in this section shall be construed to mitigate any 708  
duty of the commission to issue a final order under section 709  
4909.19 of the Revised Code. 710

<b>Section 2.</b> That existing sections 4909.05, 4909.06, 4909.07,	711
4909.08, 4909.15, 4909.156, 4909.172, 4909.18, 4909.191, and	712
4909.42 of the Revised Code are hereby repealed.	713