

OHIO GENERAL ASSEMBLY  
**JOINT COMMITTEE ON AGENCY RULE REVIEW**

**SENATE MEMBERS**

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**March 26, 2018**

Chairman Uecker called the meeting to order at 1:34 p.m.

Deputy Director Fouche called the roll. Senators Uecker, Balderson, Kunze, Skindell, Thomas and Representatives Duffey, Manning, Gavarone, Boggs, and Ramos were in attendance. Deputy Director Fouche stated a quorum was present. Chairman Uecker asked the Committee members to review the March 5, 2018 minutes. The minutes were approved as presented.

Director Wolpert read the No Change Agenda. Chairman Uecker called for questions or comments on the No Change Agenda. There were no questions from the Committee or public. Director Wolpert read the Regular Agenda. Items 22, 23, and 24 were moved to the review portion of the agenda. Chairman Uecker called for questions or comments on the Regular Agenda. There were no questions from the Committee or public. The Committee was temporarily recessed at 1:39 p.m.

The Committee was called back to order at 1:42 p.m. to discuss the review portion of the agenda. Chairman Uecker called Todd Danielson, Ohio Section of the American Water Works Association, to provide opponent testimony on item 23 of the Regular Agenda. Mr. Danielson believes proposed rule 3745-81-84 conflicts with legislative intent, the OEPA did not prepare a complete and accurate Rule Summary and Fiscal Analysis (RSFA), and the adverse impact is not justified in the Business Impact Analysis (BIA) or the agency's response to comments.

Representative Manning asked if Mr. Danielson thought the proposed rule was not necessary for the safety of residents. Mr. Danielson believed the filters would improve safety, but the cost for this improvement was not justified. Chairman Uecker stated that the OEPA has broad rule writing authority in O.R.C. 6109.04 and believes the OEPA has the statutory authority for the proposed rule. Chairman Uecker stated he understood Mr. Danielson's concern with the cost, but the safety of the public would impose a more conservative view from the Committee.

Chairman Uecker called Craig Butler, Director of the OEPA, to provide comments and answer questions from the Committee. Director Butler stated current research shows that a repair, replacement, or other type of service to a water line creates an increased risk that lead will become present in the drinking water particularly in areas of lead service lines. Director Butler stated that the proposed rule requires a public water system to temporarily offer NSF 53 certified lead filters to residents in the impacted area.

Director Butler stated lead filters provide consumers with the certainty that the health risk has been eliminated to protect public health and welfare. Director Butler stated that due to feedback received from stakeholders, the OEPA has agreed to delay certain requirements of this proposed rule until October 1, 2018. Director Butler stated the proposed rule does not require delivery or installation of the filters by the public water system. Director Butler believes the proposed rules accurately reflect the legislative intent and

is within the statutory authority of HB 512 and O.R.C. sections 6109.04 and 6109.121. Director Butler also believes the OEPA has justified the impact on business in a complete and accurate fiscal analysis.

Senator Thomas asked Director Butler to break down the cost estimate for the filter. Director Butler stated the information the OEPA provided in the RSFA was based on a pilot program in Cincinnati. Director Butler stated the OEPA wants the public water system to offer a filtration system to the customer and make the filtration system available to the customer if the customer chooses to use the filter. Senator Thomas asked who would bear the cost. Director Butler stated the public water system would bear the cost.

Senator Thomas asked how much it would cost the resident. Director Butler stated the Agency does not know how or if it would affect the resident's rate. Senator Thomas asked how many houses would be impacted due to lead service lines. Director Butler stated typically the lead service line is restricted to the individual residence or building. Director Butler stated there was an issue at a hospital where sedimentation was stirred up after a replacement and it took weeks to flush the lead out of the water system. Director Butler stated the OEPA wants to make sure there are filtration systems set up before the water gets turned back on so that no one suffers the fate of having to go back to re-flush the residents, businesses, or hospital's water system.

Senator Thomas asked if there was a substantial amount of residents that have the lead lines that need repaired. Director Butler stated the number of lead service lines was unknown. Senator Thomas asked how a resident would know that was happening to their water. Director Butler stated there is information that the Department of Health, the OEPA, and others have released so residents can recognize a lead service line coming into their home. Director Butler stated HB 512 requires the public water systems to map out where the lead service lines are and to provide the maps to the OEPA.

Senator Thomas asked if it was up to the resident to have their water tested or if it was up to the public water system to test the resident's water. Director Butler stated the public water system is required to test for lead as it leaves the water treatment system. Representative Duffey asked if Director Butler believed OEPA complied with the requirements located in part B of the RSFA. Director Butler believes the OEPA complied with the requirements found in part B of the RSFA.

Representative Duffey stated in the RSFA there is a requirement to list all the interested parties that were contacted. Representative Duffey stated the OEPA answered that the list may be furnished upon request. Representative Duffey asked why the OEPA thought the answer was compliant when the RSFA specifically asks for the list of contacts. Director Butler believes the interested party list is extensive enough that it was not compiled in the filing. Director Butler stated the list could be provided. Representative Duffey stated he would not propose an invalidation or action from the Committee on this basis. Representative Duffey stated that if the question is to provide information "x", then the agency is to provide that information.

Chairman Uecker asked if the OEPA had an inventory of where all the lead service lines were located. Director Butler stated the OEPA does not know the exact amount of lead service lines. Chairman Uecker asked what percentage of the State Director Butler could guess that had service lead lines. Director Butler stated he did not know. Chairman Uecker stated he could understand why there was no definite cost amount when the OEPA does not have all the information needed to provide that number.

Representative Ramos asked what type of filter would be provided and gave examples. Director Butler stated the filter could be all of the examples Representative Ramos provided with the NSF 53 designation. Representative Ramos expressed his concerns for pitcher filters. Representative Ramos stated a pitcher filter would not provide a lead-free area in the bathroom when a child is brushing their teeth, taking a shower, or opening their mouth in the bath. Representative Ramos stated he wanted to make sure the intent of the legislation was being followed. Director Butler stated there were approved devices that are post water system. Director Butler stated some residents may choose not to accept the filtration system.

Representative Ramos stated there may not be a one size fits all solution but he suggests to be a little more careful with what would be offered. Director Butler stated there is a lot of guidance that the OEPA and the public water systems provide for when these disruptions happen. Senator Thomas asked why a filter could not be attached at the water meter that way the whole house is covered. Director Butler stated the filtration systems are not meant to be permanent.

Representative Manning asked if Director Butler disagreed with Mr. Danielson's testimony that the filters were not necessary for the safety of the public. Director Butler stated he had a high level of confidence that the public water systems were providing safe drinking water across the State because of other regulatory requirements they must adhere to. Director Butler stated the issue was very narrow dealing with water line replacements that cause a disruption in that part of the system. Director Butler stated the OEPA was trying to provide one more layer of protection during that time.

Representative Manning asked if it would be necessary to provide a filtration system to a resident on the line that did not have a lead service line leading into the home. Director Butler believes it would be necessary to offer a resident a filter without a lead service line because they could still have a potential issue if other parts of the system that contain lead are being worked on. There were no further questions for the witness.

Chairman Uecker called Lori Criss, Ohio Council of Behavioral Health Providers, to provide opponent testimony on item 22 of the Regular Agenda. Ms. Criss believes there are three rule/policy conflicts within the proposed rules. Ms. Criss recommended JCARR oversee an interested party process that would resolve the rule/payment policy conflicts in the Ohio Administrative Code (O.A.C.) and establish a timeline to complete the work. The proposed Ohio Department of Medicaid rules were not for five year review.

Senator Skindell asked if there was any indication as to whether the Department would continue to work with The Ohio Council. Ms. Criss stated the Department indicated they would work with The Ohio Council, but were unwilling to commit to a timeline. There were no further questions for the witness.

Chairman Uecker called James Tassie, Ohio Department of Medicaid, to provide comments and answer questions from the Committee. Mr. Tassie stated the behavioral health redesign rules were filed last year with JCARR and finalized on October 1, 2017 as required under the budget bill. Mr. Tassie stated immediately after October 1, 2017, stakeholders expressed issues that the Department agreed to address via the emergency rule making process.

Mr. Tassie stated the proposed changes the Committee was hearing about today are not part of the package and represent policy changes that would be invalid if inserted into the rules now because they would not have been subject to proper notice or review. Mr. Tassie stated the Department did commit to continue conversations about the issues raised. Senator Skindell encouraged the Department to continue further discussions to try and resolve the payment issues. Mr. Tassie stated the Department would not ignore the issues after the JCARR meeting. There were no further questions for the witness.

Chairman Uecker called Terrence O'Donnell, Dickenson Wright PLLC, to provide proponent testimony on item 24 of the Regular Agenda. Mr. O'Donnell stated support, on behalf of the Mid-Atlantic Renewable Energy Coalition (MAREC), for the proposed Power Siting Board rules. Representative Duffey asked if it was correct to assume this particular project is under the energy mandate goals of the State of Ohio and AEP is purchasing power and it's ultimately being paid for by consumers. Mr. O'Donnell believes the answer to the question is "yes." Mr. O'Donnell stated AEP not only buys the power from that project, but buys the renewable energy credits and puts them towards their compliance requirement. Representative Duffey noted to the Committee that if the pink areas in Mr. O'Donnell's testimony would have been included, the overall cost

would have increased for Ohio AEP consumers. Mr. O'Donnell agreed. There were no further questions for the witness.

Chairman Uecker reminded the public of the next JCARR meeting on Monday, March 26, 2018 at 1:30 p.m. in the Senate Finance Hearing Room.

Chairman Uecker adjourned the meeting at 2:39 p.m.



Joseph Uecker, Chair



Larry Wolpert, Director