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May 9, 2017

TO: Representative Marlene Anielski
Chairman of the House State and Local Government

FROM: Ohio Municipal League

RE: Opposition to HB 121
Plastic Piping Bill

Dear Mrs. Chairman and Committee Members,

The Ohio Municipal League is writing today to express our opposition to HB 121 which would restrict when a public authority may disallow bid from certain piping material companies.

The bill is unnecessary special interest legislation and is harmful to achieving a fair and competitive process in public water and wastewater utility bidding and contracting. We will not repeat the arguments expressed on this point by dozens of other opponents to this bill. Rather, we are writing today to express two main arguments against the bill in addition: that this bill addresses issues that the General Assembly should not attempt to micromanage and that the General Assembly does not have the constitutional authority to micromanage in this context.

First, governance of local issues is best left to local leaders. Municipal water utility bidding is a wholly local government issue, the dynamics of which vary dramatically from one community to the next and the effects of which are isolated to the individual municipality that chooses what kind of pipe to use.

- Dynamics: The engineers and various other professionals who provide public water utilities are highly trained and experience professionals, who are fully capable of deciding what kind of pipe is necessary in their jurisdictions without state bureaucratic or political involvement. Further, they know their communities' needs better than anyone. Federal and state regulation is already very intense, particularly when dealing with the state and federal EPA.
- Effects: When piping problems arise, the municipal utility and municipality itself are wholly liable for any problems that arise from inappropriate piping—municipalities do not have sovereign immunity when engaging in “proprietary” functions, which specifically includes the operation of a water utility. Also, municipalities are liable for engaging in proper bidding procedures. Besides infringing on home rule powers, HB 214 needlessly gives several unpredictable potential causes of action to plastic piping companies, which would greatly increase the cost and difficulty of the bidding process.

Secondly, Ohio's constitution makes Ohio a home-rule state. Consequently, HB 121 will undoubtedly lead to unnecessary, laborious, and expensive litigation. Under Article 18 of the Ohio Constitution, Ohio's municipalities are entitled to write their own rules governing issues of “substantive local self-government.” The state cannot, by law, restrict a municipality's general power of contract. Article XVIII, Sections 4 and 5 of the Ohio Constitution state that municipalities may provide public utility service for village residents directly or by contracting with others within specified limits.

For questions and comments, please contact Josh Brown, Esq. representative for the OML at (614) 284-4394 or email at jbrown@omlohio.org