



Representative Tom Brinkman
Ohio's 27th House District

Chairman Callender, Vice Chair Wilkin, Ranking Member Holmes, and members of the committee, thank you for the opportunity to present sponsor testimony on H.B. 163, the Fair Water and Sewer Rates Act. This bill is similar to H.B. 602 (Rep. Duffey & Rep. Lanese) from last session, but has been skinned down to address the main problem—municipalities that charge suburban residents vastly excessive sums for water or sewer service that are not based on any recognized difference in the cost of serving those suburban residents.

Municipalities have the power under the Ohio Constitution to supply water to non-residents at prices of their choosing. However, that doesn't mean the State of Ohio needs to subsidize this monopolistic behavior via the local government fund or any of a broad range of grants or loans made by the Ohio Water Development Authority, The Department of Development Services, or The Ohio Public Works Commission.

While numerous instances of overreaching behavior can be cited, I will stick to one case in particular involving the City of Cincinnati. For over 100 years, the City has charged suburban residents more than its residents for water. For nearly 70 of those years, the surcharge was anywhere from 80-100% more. In the mid-1980s, the City and Hamilton County agreed to base water rates on the comparative cost of serving municipal and non-municipal residents. The City then claimed the right to a 63% surcharge. The County responded that its experts believed that over 90% of the 63% surcharge was based on the City's alleged entitlement to a "rate of return" on its municipal waterworks assets. In the ensuing litigation, the County discovered that the City's expert noted in response to the County's assertion that the rate of return factor accounted for "more nearly 100%" of the proposed surcharge, adding "but need not say."

"Rate of return" is not a cost at all. It is a profit, pure and simple. Because the City has always funded its waterworks with revenue bonds, in which it covenants that collected rates will cover the bond payments, no general obligation debt of the City is ever pledged and the City enjoys essentially zero risk. Moreover, as noted above, suburban residents in Hamilton County had already paid far more for water service than have city residents, for decades, by the mid-1980s, so in every meaningful sense the suburban ratepayers had fully paid for the expansion and capital cost of the Cincinnati Waterworks.

The 1980's litigation between Cincinnati and Hamilton County settled with a new 30 year contract that called for suburban rates to be no more than 25% higher than City residents paid, for most of the years of that contract. But when the contract recently expired, the City of Cincinnati demanded that the

suburban residents should now pay 40% more than city residents, once again based on nothing more than its asserted entitlement to “rate of return.” Now the parties are in court again.

Passage of this bill will provide a framework to resolve this and many other similar cases of municipal rate gouging in Ohio. It allows any township or city to file a civil action to declare that a municipal water or sewer supplier is “non-compliant.” A municipal water system is non-compliant if it charges suburban customers higher rates than similarly situated customers in the city, unless the municipal water or sewer supplier demonstrates that those higher rates are calculated based on generally accepted industry practices applicable to municipal-owned sewer and water systems. Noncompliance also includes requiring direct payments to the municipality providing the water or sewer service unless those direct payments are reasonably related to the cost of providing such services to the non-residents. If the court determines that the municipal water or sewer provider is non-compliant, the Ohio Tax Commissioner will be notified and the offending jurisdiction will lose eligibility for funding from the local government fund and funding from any water or sewer grant or loan programs offered through OWDA, OEPA, DSA or OPWC. Moneys otherwise payable to the offending jurisdiction will be redirected to the townships or cities that prevailed in the court action, to provide them relief against the excessive rate being charged by the offending jurisdiction to their residents. Eligibility will be restored once the offending jurisdiction becomes “compliant.”

It is indeed unfortunate that the state legislature must step in to referee these unneighborly acts of some municipal water and sewer providers, but it is nonetheless necessary that we do what we can to curb the abuse of dominant position that some of these providers are demonstrating. We do not need to subsidize bad behavior.

Thank you, and I would be happy to answer any questions you may have.