



**Written Testimony of the Association of Ohio Metropolitan Wastewater Agencies
in Opposition to H.B. 163
Before the House Public Utilities Committee
May 29, 2019**

Chairman Callender, Vice Chair Wilkin, Ranking Member Smith, members of the committee, thank you for the opportunity to present written testimony on behalf of the Association of Ohio Metropolitan Wastewater Agencies (“AOMWA”). AOMWA opposes House Bill 163, which will eliminate a municipality’s Local Government Fund allocation and prohibit a municipality from utilizing Ohio EPA revolving loan funds if the municipality charges (1) non-resident customers higher rates for water and sewer service than residents, and the higher rates are not calculated pursuant to generally accepted industry practices consistent with industry guidance; and/or (2) requires payments from other political subdivisions for water and sewer service to those political subdivisions, and the payments are unrelated to the cost of service.

The Association of Ohio Metropolitan Wastewater Agencies (“AOMWA”) represents the interests of Ohio’s public wastewater agencies, serving more than 4 million Ohioans and successfully treating more than 300 billion gallons of wastewater each year.¹ The fundamental purpose of our organization and its members is to protect the water resources on which Ohio’s communities depend. Many of AOMWA’s members make use of local government funding as well as Ohio EPA revolving loan funds, which are often the most affordable option to fund the sewer and water infrastructure projects necessary to ensure that our utilities can serve their communities. Therefore, AOMWA and its member communities have a keen interest in ensuring that such funding is not unduly restricted and/or eliminated.

For decades, Ohio municipalities, such as AOMWA’s members, have charged nonresidents higher rates than residents. As noted by the City of Columbus, the total cost of service for customers outside of the city limits is typically higher than the total cost of service for customers inside the city limits—in Columbus’ case, the cost is currently 1.3 to 1.5 times higher for customers outside the city limits. Furthermore, city residents ultimately own the system, while nonresidents have flexibility to leave the system and contract with a private water and sewer provider. Additionally, municipalities are responsible for securing funding through bonds. If necessary, municipalities would be forced to levy a tax on residents to fulfill its obligations, while nonresidents would not be subject to this tax. Finally, municipalities are responsible for complying with state and federal environmental laws, and bear the burden of compliance with these regulations. Consequently, higher rates for nonresidents reflect the additional risk taken by municipalities in providing these services.

¹ AOMWA members include Akron, Avon Lake, Bowling Green, Butler County, Canton, City of Hamilton, Columbus, Dayton, City of Fairfield, Hamilton County, Lancaster, Lima, Metropolitan Sewer District of Greater Cincinnati, Middletown, Newark, Portsmouth, Solon, Springfield, Wadsworth and Warren.



By requiring differing rates to extend water and sewer services to non-service areas, Ohio municipalities have been able to fund infrastructure to support development both inside and outside of city limits. As set forth in the testimony of City of Akron and City of Columbus, this also has allowed for cooperative agreements (which serve as the basis for Joint Economic Development Districts with neighboring townships), under which municipalities extend utility extensions to support new development in growth areas outside the city in exchange for shared tax revenues generated within the expansion areas. These agreements, which are not based on cost of service, have been used to promote significant economic development projects in areas that could not have supported such development without the aid of municipalities that have the water and sewer infrastructure capacity to serve them. Moreover, such agreements help to protect and encourage municipalities' water and sewer infrastructure investment while at the same time allowing developing areas the opportunity to contract for infrastructure services necessary for them to attract new development. Cooperative agreements such as these would be severely curtailed, if not eliminated, by the changes contemplated in H.B. 163.

Further, courts have long recognized that municipalities' use of a differential rate structure approach falls within their utility power under Article XVIII of the Ohio Constitution. *State ex rel. McCann v. Defiance*, 167 Ohio St. 313, 315, (1958). In fact, the Ohio Supreme Court has held that the General Assembly cannot limit the price that can be charged to nonresidents, because to do so would conflict with Article XVIII. *Id.* Additionally, municipalities have sole authority to decide whether to sell its water to nonresidents at all. See, e.g., *State ex rel. Indian Hill Acres, Inc. v. Kellogg*, 149 Ohio St. 461 (1948), paragraph three of the syllabus ("In the absence of contract, the municipality, in selling and delivering any surplus product to others than the inhabitants thereof, does not become such a public utility as to be bound to serve indiscriminately all who may demand such service, but the municipality may sell and dispose of its surplus products in such quantities and in such manner as the council thereof determines to be in the best interest of the municipality and its inhabitants."). Consequently, H.B. 163 as drafted threatens to unconstitutionally interfere with well-established municipal powers protected by Article XVIII of the Ohio Constitution.

We therefore oppose H.B. 163 and feel that it would severely undermine long-standing public policy designed to promote beneficial, controlled urban and suburban economic growth as well as reasonable water and sewer rates. These imprudent changes would be harmful not only for City of Akron and City of Columbus, but for municipalities throughout the State.



Thank you, Chairman Callender and members of the House Public Utilities Committee for the opportunity to submit this written opposition testimony. If you have any questions or wish to discuss any of these issues with our organization, please do not hesitate to contact Andrew Etter at andrew.etter@squirepb.com or Nathanael Jonhenry at nathanael.jonhenry@squirepb.com.

Sincerely,

Brian Gresser
President, AOMWA