

**House Public Utilities Committee
House Bill 163**

Opposition Testimony presented by:

**Cathy Bernardino Bailey, Executive Director
Greater Cincinnati Water Works
4747 Spring Grove Avenue
Cincinnati, OH 45232
513-591-7977
Cathy.bailey@gcww.cincinnati-oh.gov**

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Chairman Callender, Vice Chair Wilkin and Ranking Member Smith, thank you for the opportunity to testify in opposition to House Bill 163 (“HB 163”). My name is Cathy Bailey, and I am the Executive Director of the City of Cincinnati’s Greater Cincinnati Water Works (“GCWW”).

Since its inception over 200 years ago, GCWW has become a national leader in the water industry and a regional catalyst for economic growth and public health. GCWW treats and distributes more than 43 billion gallons a year of high-quality drinking water to businesses and over a million residents in over 44 townships and municipalities in Southwest Ohio and provides wholesale drinking water to more than ten jurisdictions in Ohio and Northern Kentucky.

GCWW strongly opposes HB 163 as it has the potential to pit customer jurisdictions against utility-owning jurisdictions in a zero-sum struggle for local government funds, burden Ohio courts with lengthy litigation around complex technical rate setting issues, and create financing uncertainty that may affect bond ratings, access to Ohio Environmental Protection Agency revolving loans, and utilities’ ability to meet operational, capital and regulatory requirements.

HB 163 creates the right for customer jurisdictions to sue for a court declaration that the utility owner is a “noncompliant municipal corporation” for charging a higher rate for water service outside the utility owning city (or village) than inside. Unless the utility can prove, by a preponderance of evidence, that the rate differential is calculated per generally accepted industry standards, it faces the dire consequence of having its local government funding divided up among all of its Ohio customer jurisdictions and losing its access to financial assistance from the state of Ohio Development Services Agencies, the Ohio Water Development Authority, Ohio Environmental Protection Agency, Ohio Public Works Commission and the Ohio Water Development Authority. Needless to say, the City of Cincinnati, and few, if any, Ohio cities and villages, are likely to take any action to risk losing these necessary sources of funding to meet their operating and capital needs and to serve their residents and businesses.

HB 163 would effectively stop any municipality from implementing any rate differential to account for the cost of service difference. It creates a perverse incentive for customer jurisdictions to increase their local government fund distributions at the expense of a municipal utility owner and represents an unconstitutional intrusion on the City of Cincinnati’s municipal home rule authority to own and operate a utility under Ohio Constitution Article XVIII.

As you are aware from your work on the House Public Utilities Committee, regulatory and industry standards for utility operation and rate setting are highly technical and involve complex forecasting and modelling. Water and sewer utilities require long-term infrastructure investments (often exceeding 75 years) and financing that may extend 20 years or more, but must also adjust to changing demands, market conditions and regulatory environment. GCWW regularly engages American Water Works Association (“AWWA”) affiliated experts in the extensive review of revenue and capital and operational expenses and cost allocation as part of its cost of service and rate setting studies. These studies are conducted according to AWWA’s Manual “Principals of Water Fees, Rates and Charges” and take into account the different costs and risks for different

portions of the utility service area in terms of consumption patterns, peak demand, storage, infrastructure age, pumpage, that may indicate different cost of service for serving customers in different areas.

For example, GCWW pumps water to over 800 square miles in size, while Cincinnati's area is only about 80 square miles, requiring additional pumping, storage infrastructure, energy and additional water treatment to serve outlying areas. This creates additional stress and decreases the useful life of mains in the more central area within City of Cincinnati boundaries. To appropriately allocate for these costs, GCWW's most recent rate study resulted in an extraterritorial multiplier of 1.43, which is well within the range of rate differentials in Ohio and across the country. It is simply untrue that the cost to serve customers outside of the City of Cincinnati is lower than the townships, as has been stated by proponent testimony. In fact, over the seventy plus years, numerous jurisdictions and smaller local water systems have requested to become part of GCWW's system with some contracted rate multipliers as high as 2.06.

This legislation would essentially prevent the City of Cincinnati, as the owner and provider of the water utility service, from using industry standard methods and risk mitigation methods to set water rates for political subdivisions to which it has made the long-term investment to extend water service in anticipation that the City would recover the costs over decades. It would allow courts to rewrite the terms of water service contracts in effect for years; and it would disincentivize utility owners from agreeing to expand service to areas that are in need of upgrade or other infrastructure investment. HB 163 will effectively ignore the rights and benefits, and the risk, of asset ownership for municipalities such as Cincinnati, which has operated GCWW for over 200 years.

HB 163 fails to recognize basic facts of water system expansion and operation outside the jurisdictional limits of a municipally owned utility. For Cincinnati, these facts include:

- GCWW has over 50 contracts with other jurisdictions that have required significant upfront investments to enable water service to these areas. GCWW recovers these costs through negotiated rates, which include the cost to extend and maintain the infrastructure. The outside jurisdiction then avoids upfront costs, additional debt burden, and the risk of water system construction, operation, and maintenance, while gaining the ability to attract residents and businesses to further their own economic development. With HB 163, all of these jurisdictions would have the ability to challenge their rate multiplier, which would create an enormous legal burden, and huge cost to the City, to defend itself. These costs would be borne by City residents.
- The investment necessary to extend water system infrastructure to outside-City areas requires significant ongoing replacement and renewal investment. It is not as simple as building the system once and then there is no more infrastructure cost. Proponent testimony wrongly states that extraterritorial customers have already paid for the infrastructure. The City paid for the infrastructure and now must maintain, renew, and replace pipes and water production and delivery facilities. Unless cities can recover the cost of service in extraterritorial areas, what incentive is there for municipal water

systems to maintain extraterritorial infrastructure if their own residents then have to subsidize it?

- GCWW operates a large and complex water system. The system was built to accommodate a vastly larger service area than the City of Cincinnati. In fact, GCWW built a plant near Fairfield in Butler County, Ohio mainly to service Hamilton County residents (who reside outside of the City). GCWW also extended infrastructure from this plant to areas in Western Hamilton County to provide a safe water supply to those areas. This infrastructure was constructed for Hamilton County and was sized to accommodate growth in that area, which has not occurred as projected. This has caused GCWW to have to periodically flush water from the system to avoid having water quality problems associated with water age. Additionally, GCWW has invested in infrastructure for which it is not able to recover revenue through rates due to a reduced customer base. It is ironic that proponent testimony would cite this situation when it is an example of the cost and risk that City of Cincinnati residents must bear to subsidize water system infrastructure and operation for which they do not benefit.
- If HB 163 passes, water rates will increase for residents of municipalities that operate water systems that serve extraterritorial customers. City ratepayers will be forced to subsidize water service to outside city customers through increased rates. City residents will therefore bear a disproportionate burden of the capital investment and operational costs. Outside City customers, however, would pay less than the cost to serve them. **A vote for HB 163 is a vote for increased water rates.**

HB 163 is punitive for City residents. The City will have no equitable way to recover the full cost of past and future infrastructure investment except to burden City residents who do not benefit from the investment. Furthermore, there will be absolutely no incentive to regionalize and extend water service to areas outside of the City. This is not in the best interest of public health and welfare, and directly contradicts a stated objective of the Ohio EPA. Finally, this bill totally dismisses consideration of the City of Cincinnati's proprietary ownership of water system assets, negates the City's ability to use the City-owned water assets in the best interest of the City, and obligates the City to invest money in infrastructure outside of its jurisdictional boundaries to the benefit of non-City residents.

Thank you for this opportunity to submit testimony. The City of Cincinnati urges you to vote no and requests that this bill not be passed out of Committee. I am happy to answer any questions.