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HB 602 Clean Water Fair Pricing Act Proponent Testimony House Finance Committee May 23, 2018

Good morning Mr. Chairman and members of the House Finance Committee. My name is Matthew DeTemple and I am the Executive Director of the Ohio Township Association (OTA). On behalf of the OTA, I appreciate the opportunity to testify before you as a proponent of House Bill 602. House Bill 602 seeks to bring equity to an essential element of life: water. As the noted author W.H. Auden observed:

“Thousands have lived without love, but not one without water.”

At issue here are the strings that are often attached to water and sewer services extended beyond a municipal border and the discrepancy in rates charged for these services. There is no state law or constitutional right to utility services, whether provided by a private company, regulated utility or a municipal corporation.

Rather, municipalities are authorized, through home rule powers, to provide utility services to residents and to properties that lie beyond their borders. Municipalities that choose to extend their utility services are doing so voluntarily and non-residents that choose to accept the utility services are doing so voluntarily. Today, only townships that have enacted limited home rule government pursuant to R.C. Ch. 504 may provide water and sewer services to their residents, thus the growth of townships depends on the availability of septic systems.

All local governments should have the authority to offer water and sewer services to their residents or, at the very least, facilities built wholly or partially with federal or state funds should be available to all people who live in the service area regardless of the jurisdiction in which they reside.

Why this is so important to townships is that roads and utility infrastructure are the driving forces of development and annexation. Many townships will work with developers on commercial and industrial development only to have municipalities threaten to shut off water or sewer services if the property owners do not annex. The OTA strongly believes that municipalities should not be able to force annexation in exchange for services.

Additionally, the OTA strongly believes that residents of townships should not be forced to pay excessive charges for those services. Rates charged by municipalities in Ohio vary widely based on population density, size, number of customers served, and complexity of geography of the region they serve. According to an American Water Works Association report published in 2013:

“The ideal solution to developing rates for water utility customers is to assign cost responsibility to each individual customer served and to develop rates that reflect that cost. Unfortunately, it is neither economically practical nor often possible to determine the cost responsibility and applicable rates for each individual customer served. However, the cost of providing service can reasonably be determined for groups or classes of customers that have similar water-use or service requirements.”

There is a gap in municipal utility oversight in Ohio. Curious as to why this isn't already illegal, the sponsors met with the Ohio EPA to find out what, if any, consumer protections exist for Ohioans serviced by another city's utility system. They learned that the Ohio EPA does not regulate pricing for these services or provide any complaint process. Similarly, the Public Utilities Commission of Ohio (PUCO) does not have jurisdiction over municipal utilities - mostly as a result of Ohio's constitutional home rule.

Non-resident water and sewer customers do not have any avenue to challenge rates like residents who get to vote for elected officials that are generally in control of the utility services. In fact, in *Fairway Manor, Inc. v. Board of Commissioners of Summit County*, the Ohio Supreme Court opined that rates charged to non-residents is not a matter for judicial review.

“[w]here water rates are set forth in a contract, the fact that the rates contained therein are higher than those charged similar situated customers in the same class does not constitute a basis for judicial reform of the contract...[I]t will be presumed that the higher rates were arrived at through the normal give and take of contractual negotiations.”

But how much price negotiation can really occur when the local municipality is the only game in town to provide water or sewer?

House Bill 602 would penalize a municipal corporation for charging higher fees for water and sewer services outside of its boundaries or requiring annexation in return for water and sewer services. The legislation would reduce or withhold LGF money the municipal corporation would otherwise receive and would forbid the municipal corporation from receiving water and sewer development funds from the state.

Municipalities should not be able to use water, a necessity for living, as leverage to force annexation or charge exorbitant rates to non-residents. The Ohio Township Association strongly supports House Bill 602 and urge your favorable consideration.

Thank you, Mr. Chairman for the opportunity to testify and I would be happy to try and answer any questions you or committee members may have.