aomwa
association of ohio metropolitan wastewater agencies

Written Testimony of the Association of Ohio Metropolitan Wastewater Agencies
in Opposition to H.B. 602
Before the House Finance Committee
June 25, 2018

Chairman Ryan, Vice Chair Lipps, Ranking Member Cera, 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 602, which will reduce or eliminate a municipality's Local Government Fund allocation and prohibit a municipality from utilizing Ohio EPA revolving loan funds if the municipality charges non-resident customers more for water and sewer service or requires annexation in exchange for such service.

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. AOMWA members include Akron, Avon Lake, Butler County, Canton, City of Hamilton, Columbus, Dayton, Fairfield, Hamilton County, Lancaster, Lima, Marysville, Metropolitan Sewer District of Greater Cincinnati, Middletown, Newark, Northeast Ohio Regional Sewer District, Portsmouth, Springfield, and Warren. The fundamental purpose of our organization and its members is to protect the water resources on which Ohio's communities depend.

First, we oppose the penalties in H.B. 602 because they interfere with sound economic policy. For decades, Ohio municipalities, such as AOMWA's members, have charged nonresidents higher rates than residents. These rates are not arbitrary, but rather, are determined on a cost of service basis. 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 1.6 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.

Additionally, by requiring annexation to receive water and sewer services, Ohio municipalities have been able to fund infrastructure to support development both inside and outside of city limits. The policy of conditioning water and sewer service on annexation also allows municipalities to control infrastructure expansion and avoid uncontrolled growth.

Second, Ohio courts have repeatedly recognized municipal 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. *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.").

Furthermore, courts have repeatedly rejected constitutional challenges to ordinances that require annexation as a condition to providing service. *Clark v. Greene County Combined Health District*, 108 Ohio St.3d 427, 430 (2006) ("[A] municipality can require annexation agreements in exchange for providing water and sewer services"); *Bakies v. Perrysburg*, 108 Ohio St.3d 361, 365-66 (2006); *Shipman v. Lorain County Bd. of Health*, 64 Ohio App.2d 228, 233 (1979) ("Plaintiffs have not demonstrated either a federal or state constitutional prohibition against the ordinance [requiring annexation prior to use of city utilities]."). Consequently, the language in Sub. H.B. 49 unconstitutionally interferes with long-recognized municipal powers protected by Article XVIII of the Ohio Constitution.

In sum, the language in Sub. H.B. 602 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 based on service costs. These imprudent changes would be harmful for municipalities throughout the State.

Mr. Chairman, members of the committee, your attention and consideration in this matter are very much appreciated.

Cc: Members of House Finance Committee
Speaker Ryan Smith