

**Written Testimony Of The City Of Columbus In Opposition To Language Included
In HB 49 As Passed By The House Of Representatives That Would Impose A
Local Government Fund Penalty On The City of Columbus And That Would Create
A New Area-Wide Wastewater Treatment Management Planning Agency For
Central Ohio, Before The Senate Finance Committee-General Government and
Agency Review Subcommittee
Tuesday May**

Chairman Jordan, Vice Chair O'Brien, members of the subcommittee, my name is John Newsome and I am Administrator of the Columbus Department of Public Utilities Division of Sewerage and Drainage, which is the regional wastewater utility for Central Ohio providing wastewater collection and treatment for over one million people. I am submitting written testimony on behalf of the City of Columbus in opposition to language included in the Substitute House Bill 49 as passed by the House that would impose a Local Government Fund penalty on the city of Columbus and that would create a new area-wide wastewater treatment management planning agency for Central Ohio. On behalf of the city of Columbus and Mayor Andrew J. Ginther, I request that this language be removed from the bill.

I. Background

The City of Columbus, Department of Public Utilities' mission to is to provide clean, quality drinking water, maintain a sound sanitary sewer system, manage storm water flow, and provide reliable electric power and street lights to our customers. The city serves over 1 million residential customers, and commercial businesses, industries, and institutions both inside the city and outside the city limits in suburban communities and areas of surrounding counties. The Department manages an annual operating budget of over \$631 million and a 6-year capital improvements plan of over \$2.1 billion. The Department maintains a staff of over 1,161 employees. Services provided by the water and sewer system, and debt service on all general obligation and revenue bonds, are funded solely from user fees charged to our customers. The Department has a broad customer base with over 276,000 water and sewer accounts. Columbus considers customers within the city limits as "inside customers" and those outside the city limits and in the county as "outside customers".

II. Proposed Ohio Revised Code Section 5747.504

H.B. 49 as passed by the House creates Ohio Revised Code Section 5747.504, which would penalize the city of Columbus by reducing by 20 percent or eliminating entirely Columbus' allocation from the Local Government Fund if Columbus engages in activities that are within the lawful exercise its plenary power to operate water and

wastewater utilities under Article XVIII of the Ohio Constitution. Proposed Section 5747.504 would reduce Columbus Local Government Fund allocation by 20 percent if Columbus does the following:

1. Charges non-residents more for water and sewer service than it charges for Columbus residents, or
2. Fails to develop a plan to equalize rates between resident and non-residents within the time prescribed in the bill.

Proposed Section 5747.504 would eliminate Columbus' Local Government Fund allocation entirely if Columbus does any of the following:

1. Requires annexation as a condition of providing water and sewer service,
2. Requires direct payments by other municipalities or townships in excess of those related to the cost of providing sewer and water service as a condition of providing such service,
3. Requires other municipalities or townships to comply with requirements unrelated to the cost of sewer and water service as a condition of providing such service,
4. Withdraws or threatens to withdraw sewer and water service from other municipalities or townships if such entities fail to comply with requirements unrelated to the provision of such service or for failure to make direct payments unrelated to such service.

These penalties could cost Columbus up to \$20 million per year in Local Government Fund distributions from the state.

All of these actions are within the plenary power of municipalities under Article XVIII to operate water and wastewater utilities and are based in sound public policy. Except for withdrawing or threatening to withdraw water and sewer service, Columbus engages in all of these activities, as does nearly every other major municipal water and wastewater utility in the state of Ohio.

A. The Higher Rates Columbus Charges To Customers Outside The City Are Not Arbitrary But Are Rationally Based Upon The Cost of Serving Those Customers.

Most major municipal water and wastewater utilities in Ohio charge non-residents higher rates than residents and have done so for the better part of a century. Columbus' water and sewer rates are not arbitrary but are determined on a cost of service basis. Outside the city customer rates are higher than inside the city customer rates because the capital and operating costs of providing service to outside customers results in higher unit costs to those customers. Columbus' methodology for calculating the cost of

service rate differentials for inside the city and outside the city customers is consistent with the *Principals of Water Rates, Fees and Charges, American Water Works Association, M1 Manual* (AWWA 2012).

The costs allocated to outside customers include: the debt service incurred by Columbus to build and maintain the portion of its treatment, distribution, and collection infrastructure necessary to serve outside customers; capital, operating, and maintenance costs related to the treatment, distribution, and collection capacity necessary to meet peak demand from outside customers; recovery of the net asset value of treatment, distribution, and collection infrastructure that serves outside customers; and compensation to Columbus for the risk of constructing assets that provide service to outside customers (full faith and credit of Columbus is at stake in financing assets that provide outside service. Outside customers do not bear that risk.)

B. Columbus' Policy of Annexation In Exchange For Water And Sewer Service Has Resulted In Substantial Economic Development That Has Benefited Not Just Columbus But All Of Central Ohio.

Columbus is a growing, dynamic, economically sustainable city managed with fiscal integrity and with a AAA bond rating in large part because for the past 60 years it has required annexation in exchange for water and sewer service. Because of its size and borrowing capacity in the financial markets, Columbus has been able to construct in cost effective manner large scale sewer and water projects that enabled economic development in Central Ohio that has provided thousands of jobs and benefited all of Central Ohio. An example of such a development project is the Rickenbacker Intermodal Transportation Facility Joint Economic Development District in Southern Franklin and Northern Pickaway Counties

In addition to supporting Columbus' growth, the City's annexation policy has also supported the substantial growth of our suburban municipal partners by allowing them to annex in exchange for water and sewer service provided by Columbus. Columbus believes that its investments in water and wastewater treatment, distribution, and collection infrastructure to serve outside customers are more secure when they are provided in a municipal context. Due to the inherent powers of municipalities, development projects within cities are better planned, more desirable, provide more return on community investment, and are more likely to provide a stable ratepayer base generating sufficient revenue to fund Columbus' construction of water and sewer infrastructure necessary to serve the project. Accordingly, Columbus has reached agreements with its suburban municipal partners under which adjacent unincorporated areas are assigned either to Columbus or the suburban municipal partner for future annexation where water and sewer service will be provided.

Under these agreements, suburban municipalities have reaped substantial economic development benefits where Columbus provides water and sewer service for a project that is annexed to the suburban community. Examples of these projects include the three Amazon Web Services data centers built inside three of Columbus' suburban municipal partners- New Albany, Dublin, and Hilliard. Only Columbus could provide the data centers with the very large quantities of cooling water that they need to operate. The location of these data centers has not only provided jobs for these suburban communities, but has provided Central Ohio companies who use Amazon Web Services with a significant data processing speed advantage over their competitors located elsewhere because of the proximity of local companies to these data centers. Finally, pursuant to Amazon's policy, because Amazon now has a physical presence in Ohio in the form of the Columbus data centers, it is now collecting sales tax on all Amazon web-based transactions in Ohio, a significant benefit to the state of Ohio and Ohio's Counties. Columbus is also undertaking a \$109 million trunk sewer project that will serve future development not just in Columbus but in Northeastern Franklin County generally. The longstanding and effective regional economic development efforts resulting from Columbus' annexation policy are at risk as a result of this unwarranted and unnecessary legislation.

C. Proposed Ohio Revised Code Section 5747.504 is Unconstitutional.

Proposed Ohio Revised Code Section 5747.504 is not merely an exercise in the General Assembly's power of the purse, but would compel Columbus to stop engaging in activities that are authorized and protected under the municipal utility provisions of Article XVIII of the Ohio Constitution. Moreover, proposed Ohio Revised Code Section 5747.504 would penalize Columbus for engaging in such activities. As such, proposed section 5747.504 constitutes an unconstitutional interference with Columbus' utility powers protected under Article XVIII of the Ohio Constitution.

The Ohio Supreme Court and lower courts have long held that under Article XVIII of the Ohio Constitution municipalities enjoy broad and plenary authority to operate water and wastewater utilities. These powers are self-executing and are derived directly from the people pursuant to the constitution, not from the General Assembly, which has no power to restrict them. State ex rel. McCann v. Defiance, 167 Ohio St. 313, 315-316, 148 N.E.2d 221 (1958). Specifically, the General Assembly cannot require municipalities to furnish water to non-inhabitants or limit the price a municipality can charge to non-inhabitants. State ex rel. McCann v. Defiance, 167 Ohio St. 313, 315, 148 N.E.2d 221 (1958). The municipality has the sole authority to decide whether to sell its water to extraterritorial purchasers. Fairway Manor, Inc. v. Bd. of Comm'rs, 36 Ohio St.3d 85, 89, 521 N.E.2d 818 (1988); State ex rel. Indian Hill Acres, Inc. v. Kellogg, 149 Ohio St. 461, 474, 79 N.E.2d 319 (1948). A municipality has no duty to sell utility services extraterritorially absent a contract and cannot be forced to sell utility services

on terms other than those bargained for by the parties to that contract. There is no duty to continue providing service that was previously provided. Fairway Manor, Inc. v. Bd. of Comm'rs, 36 Ohio St.3d 85, 89, 521 N.E.2d 818 (1988). A municipality may impose whatever limitations it deems necessary on the extraterritorial provision of utility service provided that they are not unreasonable, arbitrary, or capricious and bear a legitimate and rational relationship to health, safety, and welfare. *State ex rel. McCann v. Defiance*, 167 Ohio St. 313, 315-316, 148 N.E.2d 221 (1958). This includes the condition of annexation. Andres v. Perrysburg, 47 Ohio App.3d 51, 56, 546 N.E.2d 1377 (6th Dist.1988).

III. Language Included in the Substitute HB 49 That Would Create A New Area-Wide Waste Treatment Management Planning Agency For Central Ohio Is Unfair And Is Inconsistent With Section 208 Of The Clean Water Act.

H.B. 49 creates Ohio Revised Code Section 6111.61, which would create a new regional wastewater treatment planning agency for Central Ohio. Proposed Ohio Revised Code Section 6111.61 is patently unfair and is inconsistent with the provisions of section 208 of the Clean Water Act, which governs wastewater planning. Proposed Section 6111.61 also is inconsistent with Ohio EPA's agreement with the Mid-Ohio Regional Planning Commission under which the commission will conduct some section 208 wastewater treatment planning.

The planning agency created under proposed section 6111.61 has a board consisting of nine members made up of the largest municipalities in Central Ohio. Only three board seats are given to Columbus and six are given to the next six most populous municipalities in Central Ohio. Under this arrangement Columbus, with a population of over 800,000, and which owns and operates the wastewater treatment and collection system for Central Ohio, cedes control of wastewater treatment planning to six municipalities whose combined population is a small fraction of Columbus' total population. This is an unfair result. Moreover, proposed section 6111.61 ignores the requirements of section 208 of the federal Clean Water Act to involve Ohio EPA and US EPA in the process to establish regional wastewater treatment planning agencies. **IV.**

IV. Conclusion

Mr. Chairman, members of the committee, your attention and consideration in this matter are very much appreciated. I request that you remove proposed sections 5747.504 and 6111.61 from the bill.