aomwa
association of ohio metropolitan wastewater agencies

**Testimony in Opposition to Substitute HB 49 Language Imposing Local Government Fund Penalties on Municipal Wastewater Utilities and Creating a New Area-Wide Wastewater Treatment Planning Agency for Central Ohio**

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**Senate Finance Committee**
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Good morning, Chairman Oelslager, Vice Chair Manning, Ranking Member Skindell and members of the Senate Finance Committee. Thank you for the opportunity to present written testimony in opposition to certain proposed amendments included in HB 49 affecting municipal wastewater treatment systems in R.C. §§ 5747.504, 5747.51, 5747.53, 6111.61, 6111.62 and 6117.38. In particular, the proposed amendments would impose Local Government Fund (LGF) penalties on City of Columbus and establish a new area-wide wastewater treatment planning agency for Central Ohio.

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. 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. Indeed, our agencies are the front line of protection for these water resources and as a result of our efforts over the last 40 years, significant water quality improvements have occurred across Ohio.

We write to oppose these amendments, and note three fundamental objections. First, we oppose the proposed penalties directed at City of Columbus in R.C. Chapter 5747 because they interfere with sound economic policy. These penalties include a reduction in Local Government Fund payments by 20 percent for charging nonresidents a higher sewer rate than residents and an outright elimination of funding for municipalities that require annexation as a condition of providing water and sewer service, among other actions subject to a penalty. It is unfair to place these restrictions on any single city, and AOMWA is very concerned that passage of these amendments will lead to the imposition of similar such penalties on other municipalities in the State.

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

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service for customers inside the city limits—in Columbus' case, the cost is currently 1.2 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, these proposed amendments to R.C. Chapter 5747 unconstitutionally interfere with long-recognized municipal powers protected by Article XVIII of the Ohio Constitution.

Third, AOMWA's members are concerned about the establishment and structure of the proposed new regional wastewater treatment planning agency for Central Ohio in

R.C. Chapter 6111. This new planning agency is inconsistent with Section 208 of the Clean Water Act, which requires that Ohio EPA and U.S. EPA are involved in the establishment of regional wastewater planning agencies. Additionally, the proposed structure of representation provides 2:1 control to municipalities that have a total population of less than the City that owns the water and wastewater systems. This structure would create a disproportionate representation system and interfere with effective planning; a model which AOMWA's members are concerned could be repeated in other areas of the State.

In sum, AOMWA feels strongly that the proposed amendments to R.C. Chapter 5747 and R.C. Chapter 6111 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 not only for City of Columbus, but for municipalities throughout the State. AOMWA therefore requests that these proposed amendments be removed from HB 49.

Thank you, Chairman Oelslager and members of the Senate Finance 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.

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