

**Written Testimony of the City of Columbus in Opposition to Language Included In  
the House Substitute Version of HB 49 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 House Finance Committee**

**April 27, 2017**

Chairman Smith, Vice Chair Ryan, Ranking Member Cera, members of the committee, 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 here to today to state the City of Columbus' opposition to language included in the House Substitute Version of HB 49 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 primary services provided by the Water System include raw water supply, water treatment, storage, distribution and pumping services. We pump approximately 48.7 billion gallons of water, or approximately 133.4 million gallons per day. We have twenty-six booster stations used to pump and distribute treated water through nearly 3,530 miles of water line, 2,520 of which are owned by the Water System, ranging in size from 2 inches to 66 inches in diameter. The Water System also maintains 25,611 hydrants within the City limits for fire protection and 39 elevated water tanks that provide approximately 81 million gallons of on-line storage. We operate 3 water plants that have a combined Ohio EPA approved treatment design capacity of approximately 240 million gallons per day. Major improvements are currently under way at all three plants to

enhance treatment capabilities, improve reliability, expand capacity and extend the life of these facilities.

The primary services provided by the Sanitary Sewer System include the collection and treatment of wastewater and programs for maintenance, repair, improvement, and expansion of physical facilities. The wastewater treatment program is designed to meet environmental requirements on returning water to local rivers after treatment. The Sanitary Sewer System operates two wastewater treatment plants and combined the two plants serve a population of nearly 1 million with the capacity to process an average of 179.4 million gallons per day of wastewater with a maximum capacity of 480 MGD. The sewer system maintains 4,009 miles of sanitary sewers, 155 miles of combined sewers, and 3,128 miles of storm sewers. The sewage collection system includes 16 sanitary pump stations, 15 storm pump stations, 18 regulators, 21 detention/retention basins, 5 bio-filters and 7.2 miles of floodwall.

The Department has a broad customer base with over 276,000 water and sewer accounts. We consider customers within the city limits as "inside customers" and those outside the city limits and in the county as "outside customers". Columbus has outside agreements with outside-city customers specifying the terms of water and sewer service, collection of surcharges, and infrastructure maintenance agreements. Overall, outside customers have no legal responsibilities to own and operate the system, they have no responsibility to repay debts incurred by the City, they are not liable for the performance or quality of the products produced, and they have no governance responsibility over the city or the Department.

**II. Language included in the House Substitute Version of HB 49 that imposes a Local Government Fund penalty -Proposed Ohio Revised Code Section 5747.504**

The substitute bill (beginning on line 98769 of Sub. H.B. 49 LSC version 132 0001-3) 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 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. I will briefly address Columbus' constitutionally protected utility power and the rationale for these activities.

A. Municipal Utility Power 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 can 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. This includes the condition of annexation. Andres v. Perrysburg, 47 Ohio App.3d 51, 56, 546 N.E.2d 1377 (6th Dist.1988). Finally, the General Assembly cannot limit the price that a municipality can charge noninhabitants for utility services. State ex rel. McCann v. Defiance, 167 Ohio St. 313, 313, 148 N.E.2d 221 (1958).

B. Columbus' Water and Sewer Rate Differential is Rationally Related to the Cost of Water and Sewer Service and is Based in Sound Public Policy

Most major municipal water and wastewater utilities charge non-residents higher rates than residents and have done so for the better part of a century. Section 120 of the Columbus City Charter empowers the City Council to establish sanitary sewer rates in an "equitable manner and in such amounts as will fully cover the costs of services." Rates include the cost of maintenance, operation and supply, and debt service and depreciation. Per City Code rates are designed to cover the cost of rendering water and sewer services and to maintain adequate funding reserves to provide for reasonable expected variations in the cost of providing services, as well as variations in the demand for services. Columbus' rates are reviewed annually by the Sewer and Water Advisory Board, which includes industry, suburban community, low-income, residential, and senior citizen representatives. As part of the annual water and sanitary rate adjustment procedure, the City projects water and sewer system revenues and expenditures for a ten-year period. The Advisory Board is empowered to make a recommendation to the City Council regarding the appropriateness of a rate change for the next fiscal year.

The City of Columbus' water rates consist of a billing/service charge that varies by meter size and tiered commodity rates. Pursuant to section 1105.05 of the Columbus City Code, water billing/service charges for outside-city customers are higher than inside-city customers by a factor of 1.3 times for contract customers and 1.5 times for non-contract customers. The Department's sewer rates consist of a billing charge, uniform commodity charges, a wet weather charge and extra strength charges. The sewer billing charge is the same for all customers of the system. Sewer commodity charges are higher for outside city customers than for inside city customers. The sewer Wet Weather charge recovers the cost of the City's Wet Weather program is based on customers' total amount of impervious surface area. Consistent with the rational approach Columbus takes to establishing rates, the wet weather charge is higher for Columbus residents than for non-residents because the city contains more impervious surfaces than suburban areas.

The City periodically prepares a Cost of Service Study to validate these multipliers being used to establish the rates for outside-city customers. The last study was conducted in 2015 and we are currently engaged in a 2017 Cost of Service Study. These studies determine our rate revenue requirements, assign costs, and design rates to generate revenue in an equitable manner. Our 2015 Cost of Service Study results indicate that the cost of serving outside-city water customers is between 1.3 and 1.6 times the cost of serving inside-city customers. This aligns with our ability per City Code to charge outside-city customers a factor of 1.3 times for contract customers and 1.5 times for non-contract (County) customers, above inside-city customer rates. On the sewer side, our Cost of Service study shows that the cost of serving outside-city customers is approximately 1.2 times inside-city customer rates. This aligns well with the current commodity rate differential charge to outside-city residents which is approximately 1.1 times inside-city customer rates.

This study considers the total costs of the system and a distribution of those costs to each of our customer classifications. The study reviews capital costs, fixed asset records, as well as daily treatment, operations and maintenance costs associated with meeting daily consumption needs, billing requirements, meter service, and fire protection. These costs are divided by inside-city customers and outside city customers the projected future consumption demand to determine the cost of service rate for each customer (or \$/CCF).

As previously noted, it is very common for outside customers of a municipally owned utility system to be charged rates more than inside customers. This is the case for many public utility systems across the country. In these cases the inside customers (i.e. City of Columbus residents and businesses) are ultimately the "owners" of the system, with the outside customers benefiting from the service(s) at a lower risk. When the City agrees to provide services to customers outside its service area it takes on some additional risks.

For example, within the terms of their agreement, outside customers could potentially leave the city and contract with a private water and sewer provider, obtain alternative water sources, or place special demands on the system. This could result in a loss to the City due to assets that were upsized or added to accommodate the outside customer, such as treatment plant capacity increases and upgraded pumping systems or storage capacity. The City also has to secure all the capital financing using its bonding capacity and credit rating to provide the capital investment in system distribution lines, treatment plant upgrades, and new capacity needs. When issuing General Obligation bonds to fund infrastructure improvements, the City pledges its full faith and credit for the prompt payment of the bonds, and if necessary, has the authority to levy a property tax only on City residents to fulfill this pledge. No property tax would be levied on outside city customers. Furthermore, the City is ultimately responsible

compliance with state and federal regulatory requirements, such as water quality regulations and consent order requirements. The city bears the burden of complying with these regulations and dedicating significant resources, plans, and projects, to meet these requirements. Ultimately the City of Columbus is entitled to a reasonable and fair return from outside customers for the City's investment and delivery of services.

The committee should note that suburban communities and the county add surcharges of their own to Columbus' rates. Accordingly, the increased water and sewer charges paid by non-residents are not entirely due to Columbus' differential rates.

C. Columbus' Annexation Policy

As I noted perviously, Columbus' policy of conditioning the provision of water and sewer service upon annexation is a valid exercise of Columbus' utility power under Article XVIII of the Ohio Constitution and is based in sound public policy. Since the 1950s Columbus has required annexation or to suburban municipalities in exchange for water and sewer service. Columbus size and fiscal integrity give it the resources and the highest possible bond rating in the financial markets (which significantly reduces costs to water and sewer ratepayers) to fund infrastructure projects and to provide services that make Columbus one of the engines of economic growth for the state of Ohio. Moreover, these policies have resulted in controlled infrastructure expansion and have avoided the inefficiencies associated with uncontrolled growth. Examples of such infrastructure projects are the \$100 million trunk sewer supporting growth in northeastern Franklin County and the water and sewer infrastructure in southern Franklin County and northern Pickaway County that supports the Rickenbacker Intermodal Transportation Facility. These projects have provided support for development inside and outside Columbus and demonstrate Columbus' efforts to be a good partner with other jurisdictions in furthering economic development in Central Ohio.

D. 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.

III. Language Included in the House Substitute Version of HB 49 that would Create a New Area-Wide Waste Treatment Management Planning Agency for Central Ohio.

The substitute bill (beginning on line 101765 of Sub. H.B. 49 LSC version 132 0001-3) 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. Finally, proposed Section 6111.61 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 if not absurd result. No government entity would find such an arrangement satisfactory. 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. Finally, Ohio EPA has already reached an agreement with the Mid-Ohio Regional Planning Commission to provide some section 208 planning services for Central Ohio.

#### **IV. Conclusion**

Mr. Chairman, members of the committee, your attention and consideration in this matter are very much appreciated. I would be happy to take any questions you may have at this time.