



JUSTICE FOR ALL

MARYLAND SENATE EDUCATION, ENERGY, AND THE ENVIRONMENT COMMITTEE
TESTIMONY OF MARYLAND VOLUNTEER LAWYERS SERVICE
IN SUPPORT OF SB880 WITH AMENDMENTS: BALTIMORE REGIONAL WATER GOVERNANCE TASK FORCE

Susan Francis
EXECUTIVE DIRECTOR

WEDNESDAY, MARCH 15, 2023

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My name is Rianna Eckel and I am a Baltimore Water Outreach Coordinator with Maryland Volunteer Lawyers Service (MVLS), and the convener of the Baltimore Right to Water Coalition. I have been working on water justice in Baltimore in various capacities for nearly seven years.

MVLS is the oldest and largest provider of pro bono civil legal services to low-income Marylanders. Since MVLS' founding in 1981, our statewide panel of over 1,700 volunteers has provided free legal services to over 100,000 Marylanders in a wide range of civil legal matters. In FY22, MVLS volunteers and staff lawyers provided legal services to 3,458 people across the state.

MVLS first became involved with helping clients with their water bill issues through our work in tax sale and housing. As part of our housing work, we see tenants facing the threat of eviction, and homeowners facing the threat of tax sale due to unaffordable water bills. We have been working with the Baltimore Right to Water Coalition to win meaningful protections for Baltimore City residents and improve the Baltimore City Department of Public Works' customer service operations for years, and fear that regionalizing the Department of Public Works would threaten these hard-fought victories; therefore **we recommend SB 880 only be moved favorably with the incorporation of the Baltimore Right to Water Coalition amendments.**

Water is a human right and a basic necessity, but the Task Force process outlined in the legislation as-is does not treat the task at hand with enough deference. The rushed timeline of less than 11-months to produce an analysis and recommendations for a massive, 200-year-old water system, no requirements for public participation and input, and the lack of guardrails around the recommendations are wholly inadequate. The taskforce must be given adequate time to do a thorough job, the ratepayers must be included, and there must be protections in place to ensure that the Task Force will focus on public sector solutions, preserve democratic decision making, and protect the rights of water customers established under local laws.

Additionally, if the Task Force were to recommend regionalization and that form of governance were to move forward, this new authority established under state law would preempt local laws and protections. This change would

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Maryland Volunteer Lawyers Service (MVLS) removes barriers to justice through free civil legal help, community engagement, and advocacy for equitable laws. Our vision is for a fair legal system that is free of injustice and equitably serves underrepresented Marylanders.

take away control from the Baltimore City Council to set local protection and it would eliminate existing protections established under local laws.

Key protections that could be eliminated:

- City Charter protections that establish the water and sewer systems as inalienable assets of the city and banning privatization;
- Worker protections established under existing collective bargaining agreements with local jurisdictions;
- Ratepayer protections established by the Water Accountability and Equity Act, including the Water4All water affordability program, water shutoff protections for vulnerable populations, rights of renters to receive information about their water bills, the Customer Advocate's Office, and dispute procedures; and
- Sewage backup reimbursement programs established by the City.

Water/sewer regionalization is part of a broader national trend that disparately impacts majority Black cities and raises serious concerns for racial equity, accountability, and water affordability: "In the last decade, especially after the 2008 financial crisis, the urban centers of the Midwest such as Chicago and Detroit, but also in the Northeast, such as Baltimore and Philadelphia, have developed a new dynamic: the use of the state (in the form of local or regional governments) to transfer infrastructural resources and their control out of or away from marginalized urban populations, which are predominantly Black, brown, and immigrant."¹

In other jurisdictions that have regionalized their water systems by state statute, the water authority decision making powers about rates and services are given to a board of directors appointed by local elected officials. Protections for water customers would have to be passed through the General Assembly in the more limited 90-day window of the Maryland legislative session. Additionally, as the members of the board would not be elected by the people, it would strip democratic authority from the majority-Black voters in Baltimore City. Regionalization in cities like Detroit, Birmingham, and Pittsburgh has led to skyrocketing water rates, mass shutoffs, lost jobs for workers, and worse service for water utility customers.

The protections and improvements that Baltimoreans have fought hard for must be protected, as must democratic authority. In 2018, 77% of Baltimore's voters voted in favor of Question E, which instructed the water and sewer system to be an inalienable asset of the City. Establishing a regional water authority would be effectively disenfranchising the voters of Baltimore, further eroding trust in the government to work in our interest. Regionalizing and circumventing the will of the people could facilitate privatization and outsourcing, which leads to substantially higher water rates and a further erosion of public control.

More than half of Baltimoreans are already being billed more than the United Nations definition of affordable water service, no more than 3% of household income. The impacts of the recommendations of this Task Force have the potential to dramatically impact low-wealth and BIPOC (Black, Indigenous and other people of color) communities. While we want to be a partner in

ensuring the water system works better for all customers regardless of their jurisdiction, we must not act hastily and must consider the needs and consequences for our most vulnerable communities. For these reasons, we recommend a favorable report with the incorporations of the amendments offered by the Baltimore Right to Water Coalition.

¹ Cramer, Jon. "Race, Class, and Social Reproduction in the Urban Present: The Case of the Detroit Water and Sewage System." *Viewpoint Magazine*. October 31, 2015.

COALITION AMENDMENTS TO HB 843 | SB 880

BALTIMORE REGIONAL WATER GOVERNANCE TASK FORCE

AMENDMENT 1. LOW-INCOME RATEPAYER AND LABOR REPRESENTATION ON THE TASKFORCE.

This amendment would require (1) the County Executive and Mayor to each appoint one labor representative, (2) the Governor's appointees to include one low-income ratepayer and one representative from a local community organization representing low-income ratepayers; and (3) all Task Force members to be either ratepayers or representatives of ratepayers.

AMENDMENT 2. RACIAL AND ECONOMIC EQUITY.

This amendment would require racial equity and economic equity impact assessments of each alternative governing structures.

AMENDMENT 3: LOW-INCOME RATEPAYER AND LABOR PROTECTIONS.

This amendment would direct the Task Force to limit their recommendation to governing models that adhere to local ratepayer and worker protections, including (1) Ballot Question E of 2018 that banned private for-profit ownership, operation or management of the systems, (2) the Water Accountability and Equity Act, which established a local water affordability program and other ratepayer protections, (3) collective bargaining

rights of workers, and (4) the sewage backup reimbursement programs.

AMENDMENT 4: PUBLIC INPUT.

This amendment would require public input at public hearings throughout the City and County. It would require a public comment period on a draft report.

AMENDMENT 5: TIMELINE.

This amendment would extend the timeline from January 2024 to June 2027 to allow sufficient time to conduct the review and due-diligence and solicit public feedback.

COALITION CONCERNS WITH HB 843 | SB 880

BALTIMORE REGIONAL WATER GOVERNANCE TASK FORCE

Under this emergency legislation, the Baltimore Regional Water Governance Task Force must recommend a new governance model for the Baltimore water and sewer system in less than a year for the purpose of informing state legislation.

The future of our water/sewer system is far too important for such rushed assessment that provides no opportunity for public participation and engagement.

The ratepayers and workers of the water/sewer system deserve to have their voices heard and a seat at the table.

A Rushed Timeline: The Task Force must produce a recommendation by January 30, 2024. This is far too short a period for a meaningful analysis of our 200-year-old system.

Lack of Any Public Participation: The legislation requires no public hearings, public input, public comments, labor or ratepayer representation, or any public participation at all.

Inequitable City Representation: Baltimore City owns the systems, but it has minority representation: only 5 out of 13 members will



be appointed by Baltimore City to recommend the future of the City assets.

No Guardrails: The legislation provides no guardrails to ensure that the Task Force will focus on public sector solutions, preserve democratic decision making, and protect the rights of workers and the ratepayers established under local laws.

Lack of Due Diligence and Limited Scope of Study: The Task Force will look at one section of a single consultant's report on this issue. The Task Force lacks the information necessary to properly assess the alternative governing models included as examples in that report. Case studies can be useful but they should not be

generalized because water and sewer systems have high asset-specificity. No effort has been made to cost out any of the alternatives examined. Instead, the legislation would put the onus of additional analyses on an all-volunteer Task Force. These studies cannot be reasonably completed by volunteer members of any Task Force or under the time limit established in the legislation.

Any move to a new governance structure in absence of these analyses opens up the City and County to substantial harm. It would render any Task Force recommendation incomplete and inadequate to the design of future legislation.

RISKS OF A REGIONAL WATER AUTHORITY

WATER IS A HUMAN RIGHT

In July 2021, Baltimore County and Baltimore City issued a [comprehensive business process review](#) of the water and sewer services. The review documents the existing service agreements, outlines numerous issues including high staff turnover and vacancies, and advocates for the city and county to consolidate the water system into a single entity that could be overseen by a new regional authority. Such a process could be damaging for the people of Baltimore, and any analysis of the future of the systems must be done through a lens of racial and economic equity. Lessons must be learned from the experiences in Detroit, Pittsburgh, and Birmingham.

LOSS OF LOCAL DEMOCRATIC CONTROL

A regional authority would likely be established by state statute and overseen by a board of directors appointed by the Mayor, County Executives, and/or other

state officials. Immediate decision making about rates and services would be set by those appointed officials, and any protections would have to be established by the General Assembly. Because the board members are unelected officials, residents would not be able to exercise ballot box accountability over their decisions.

A new authority established by state law would preempt local laws and protections. This change would take away control from the Baltimore City Council to set local protection and it would eliminate existing protections established under local laws. Moreover, the City Council could struggle to get constituent concerns answered because the water/sewer system would be moved outside of City government.

Key protections that could be eliminated:

- City Charter protections that establish the water and sewer systems as

inalienable assets of the city and banning privatization;

- Worker protections established under existing collective bargaining agreements with local jurisdictions;

- Ratepayer protections established by the Water Accountability and Equity Act, including the Water4All water affordability program, water shutoff protections for vulnerable populations, rights of renters to receive information about their water bills, the Customer Advocate's Office, and dispute procedures; and

- Sewage backup reimbursement programs established by the City.

Notably, Baltimore residents overwhelmingly affirmed their desire to control their water and sewer system, when more than three-quarters of voters approved Ballot Question E in 2018. Baltimore City residents declared their water and sewer system to be an inalienable asset of the City. State legislation to establish a regional authority would circumvent the City Charter, effectively disenfranchising City residents from decisions about their water/sewer system. This process bypassing the City Charter and public accountability could facilitate privatization and outsourcing of services, leading to substantially higher water rates and further erosion of public control.

CASE STUDIES

Detroit: A state-appointed emergency manager leased the Detroit regional water and sewer system to a new Great Lakes Water Authority. While the city retained nominal ownership of the system, all major decisions are now made by the six-member water authority board, only two of whom are from the city. The city lost control over rates setting and project prioritization, among other key decisions.¹

Birmingham: In Birmingham after a settlement with the State in 2001, the Attorney General of the state now has control over the Regional Water Authority called the Birmingham Water Works Board. The Attorney General specifically reserves the right to take whatever actions they deem necessary or advisable to protect the interests of the ratepayers during the terms of the Agreement, including, but not limited to matters involving rate, service, facilities or equipment issues.²

Pittsburgh: Pittsburgh Water and Sewer Authority is overseen by an appointed board of directors, who unilaterally made the decision to privatize the system's management to Veolia. During the deal, 23 workers, including water quality staff, were laid off, and the utility violated water quality regulations by switching treatment chemicals to save money. The more corrosive chemical caused lead to leach from lead service lines into people's drinking water.³ Pittsburgh City Council Member Deborah Gross, who served on PWSA's board for six years, has called for the authority to return to city control. Her driving reason: When there were problems with Veolia, she heard about it immediately first hand from her residents, unlike the other unelected members of the board: "It took a while for my fellow board members, because they don't interface with citizens directly, to really trust what the people were saying and not what Veolia was telling them, at all levels."⁴

RACIAL AND ECONOMIC EQUITY IMPLICATIONS

Baltimore's water/sewer system was built out by generations of City residents through not only water

bills but also through taxes historically. In 1854, after 50 years of private water provision, the City bought the private Baltimore Water Company for [\\$1.4 million](#). It wasn't until 1979 that the

City's Bureau of Water and Wastewater was established as self-sustaining enterprise funds operated without profit or loss to the city's general fund.

The water and sewer systems are the City's biggest assets. In 2021, the water and wastewater system had total capital assets worth \$5.4 billion⁵—this is more than \$2 billion more than the capital asset value of the rest of the entire city government (\$3.2 billion).⁶ Even though the city charter requires that all water/sewer bill revenue go to the water/sewer funds and prohibits transfers to the general fund, the water and sewer systems are still assets listed on the City's books.

If a new water authority is established, a key decision will be whether Baltimore City is compensated for the loss of these assets, and if so, how will the new authority recover that cost. If the City is not compensated for the loss of assets, the transfer could cause substantial harm to the City and its majority Black population. If the new Authority does pay for the assets, then it must recover that cost through rate hikes on all customers, deepening the regional water affordability crisis that disproportionately impacts Black households.

Water/sewer regionalization is part of a broader national

trend that disparately impacts majority Black cities and raises serious concerns for racial equity: “In the last decade, especially after the 2008 financial crisis, the urban centers of the Midwest such as Chicago and Detroit, but also in the Northeast, such as Baltimore and Philadelphia, have developed a new dynamic: the use of the state (in the form of local or regional governments) to transfer infrastructural resources and their control out of or away from marginalized urban populations, which are predominantly Black, brown, and immigrant.”⁷

The City must question any analysis about the future of the water/sewer system that fails to incorporate racial and economic equity.

CASE STUDIES

Detroit: Hundreds of thousands of Detroit residents had their water shutoff during the forced regionalization of the Detroit water system by an emergency manager, disproportionately harming Black City residents.⁸ In 2014, a state-appointed emergency manager used bankruptcy proceedings to bypass the City Charter’s requirement for voter approval to lease the regional assets to the newly established Great Lakes Water Authority. This process disenfranchised Detroit residents and left the city’s majority Black population out of key decision making about the future of their water system. There is substantial research about how the regionalization of Detroit’s utility system deepened regional water and sewer insecurity and racial inequities.⁹

Birmingham: Since Birmingham has moved to a regional based water authority, billing disputes and increased water bills have plagued the city and had a disproportionate impact on Black residents.¹⁰ In 2015, 1 in 8 customers in Birmingham had their water shutoff.¹¹ In a city that is over 68% black, residents have repeatedly tried to regain local control over their water utility to have greater influence over more accountability and transparency at their water utility.¹² The process of regionalization has left Black Birmingham residents looking to an Attorney General living 90 miles away for answers to problems that affect their daily lives.

CITATIONS

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- 9 For example, see: Haas Institute at the University of Berkley et al. “Water Equity and Security in Detroit’s Water and Sewer District.” January 2019, Available at https://haasinstitute.berkeley.edu/sites/default/files/detroit_water_equity_full_report_jan_11_2019.pdf; Mesmer K., Aniss M., Mitra R. (2020). Naturalizing environmental justice: How privileged residents make sense of Detroit’s water shutoffs. In Schmitt C. R., Castor T. R., Thomas C. S. (Eds.), Water, rhetoric, and social justice: A critical confluence (pp. 149–170). Lexington Books.
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