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HB1509 - Baltimore Regional Water Governance Model Workgroup - Established

March 12, 2024

Environment and Transportation

FAVORABLE WITH AMENDMENTS

On behalf of Food & Water Watch and our 44,000 supporters in Maryland, **we recommend that you amend HB1509 to ensure adequate protections for Baltimore area residents and workers.** The recommended list of amendments is included at the end of this testimony.

HB1509 establishes a workgroup to continue the study of the similarly named task force created last session to explore alternative governance models for the Baltimore water and sewer utilities. The task force recommended that this workgroup attempt to resolve what it called “threshold issues” of a governance change; these are the risks and dangers associated with a regional authority, including debt refinancing costs and employee transition and pension costs.

Turning control over to a regional water authority could result in up to **\$2 billion** in transaction costs, based on consultant estimates and experience from Detroit, and it could lead to large water bill hikes, water shutoffs, water privatization, and the loss of potentially thousands of unionized positions within city and county government. Please see the attachments for more information.

We strongly believe that HB1509 should include additional guardrails to protect the public, and these guardrails must be written into HB1509 because the previous Task Force limited its scope of study to the letter of the law that established it. We propose a set of amendments as follows:

- 1) Include “disparate impacts on particular racial groups” in the equity study.
- 2) Provide for adequate compensation to the City for loss of any assets.
- 3) Preserve existing worker and low-income ratepayer protections, including the Water4All program, shutoff protections, the Customer Advocate’s office, the City’s sewage onsite support program and expedited reimbursement program, and Ballot Question E that banned water privatization.
- 4) Provide for robust public input.
- 5) Clearly prohibit all forms privatization.
- 6) Include low-income advocate and labor representation in the workgroup.

I urge you to incorporate the following amendments in HB1509.

Thank you for your time and consideration,
Jorge Aguilar
Southern Region Director
Food & Water Watch

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Proposed Amendments To HB1509

Amendment 1 - Include racial equity in equity study

On page 2, in line 27, after “area,” insert “**AND COULD CAUSE DISPARATE IMPACTS ON PARTICULAR RACIAL GROUPS**”

Amendment 2 – Provide for compensation to City

On page 3, in line 5, after “service” insert “, **TO PROVIDE ADEQUATE COMPENSATION TO THE CITY FOR TRANSFER, SALE, OR CAPITAL LEASE OF ANY CITY-OWNED ASSETS,**”

Amendment 3 - Rate board correction

On page 3, in line 15, after “Board” Strike “is necessary to” and insert “**WILL**”

Amendment 4 - Direct the workgroup to limit their study to public sector solutions that will (1) exclude private for-profit ownership, operation or management of the systems as prohibited by the Baltimore City Charter, (2) protect democratic decision-making and the rights of workers and residents, and (3) not undermine or conflict with local water affordability laws and charter protections approved by voters. And provide for public input.

On page 4, in line 1 before (h), insert

“(5) CONSIDER ONLY ALTERNATIVE GOVERNANCE MODELS THAT ADHERE TO RATEPAYER AND LABOR PROTECTIONS ESTABLISHED BY LOCAL JURISDICTIONS, INCLUDING: (i) BALTIMORE CITY BALLOT QUESTION E OF 2018, WHICH WAS APPROVED BY VOTERS, TO AMEND THE CITY CHARTER TO PROHIBIT PRIVATE, FOR-PROFIT OWNERSHIP, OPERATION OR MANAGEMENT OF THE WATER SUPPLY AND WASTEWATER SYSTEM; (ii) THE WATER ACCOUNTABILITY AND EQUITY ACT OF BALTIMORE CITY, WHICH ESTABLISHED A LOW-INCOME WATER AFFORDABILITY PROGRAM, WHICH CONTAINED: WATER SHUTOFF PROTECTIONS FOR VULNERABLE HOUSEHOLDS, A DISPUTE RESOLUTION PROCESS, RIGHTS OF TENANTS TO RECEIVE THEIR BILLS, ACCESS ASSISTANCE, AND

DISPUTE RESOLUTION, AND AN OFFICE OF CUSTOMER ADVOCACY AND APPEALS; (iii) COLLECTIVE BARGAINING AGREEMENTS, WORKER PENSIONS, AND BENEFITS FOR WORKERS IN THE CITY AND THE COUNTY; AND (IV) BALTIMORE CITY'S SEWAGE ONSITE SUPPORT PROGRAM AND EXPEDITED REIMBURSEMENT PROGRAM;

(i) THE WORKGROUP SHALL PROVIDE OPPORTUNITIES FOR PUBLIC INPUT BY: (1) PUBLISHING A DRAFT OF ITS FINDINGS AND RECOMMENDATIONS FOR PUBLIC REVIEW ON THE WEBSITES OF THE CITY AND COUNTY; (2) HOLDING PUBLIC HEARINGS: (I) PRIOR TO THE DEVELOPMENT OF A DRAFT REPORT; (II) AFTER THE ISSUANCE OF A DRAFT REPORT; (III) WITH HEARINGS HELD ONLINE AND IN PERSON AT DIFFERENT TIMES OF DAY LOCATED AT: 1. SEVEN EARLY VOTING SITES LOCATED WITHIN THE CITY, AND 2. FIVE LOCATIONS IN THE COUNTY AT SITES WITHIN THE WATER SYSTEM SERVICE AREA THAT ARE CONVENIENT FOR PUBLIC TRANSPORTATION; 3. ONE LOCATION IN EACH OF THE FOUR OTHER JURISDICTIONS OF THE AFFECTED COUNTIES. (3) PROVIDING A PUBLIC COMMENT PERIOD OF AT LEAST 90 DAYS ON THE DRAFT REPORT PRIOR TO FINALIZING THE FINDINGS AND RECOMMENDATIONS; (4) ASSESSING THE PUBLIC INPUT IN THE FINAL REPORT BY (I) SUMMARIZING THE PUBLIC HEARINGS, PUBLIC COMMENTS, AND OTHER FEEDBACK; (II) ADDRESSING HOW THAT INFORMATION WAS INCORPORATED INTO THE FINAL REPORT AND RECOMMENDATIONS; AND (III) EXPLAINING THE REASONS WHY ANY PUBLIC FEEDBACK WAS NOT INCORPORATED INTO THE FINAL REPORT AND RECOMMENDATIONS; (5) ADVERTISING ALL WORKGROUP MEETINGS ON THE WEBSITES OF ALL AFFECTED JURISDICTIONS AND THE MARYLAND DEPARTMENT OF ENVIRONMENT, AND ON AT LEAST ONE SOCIAL MEDIA ACCOUNT, AND (6) HOLDING MEETINGS OPEN TO THE PUBLIC ONLINE AND IN-PERSON, PURSUANT TO MARYLAND PUBLIC MEETINGS ACT."

Amendment 5 - Clear prohibition on all forms of privatization

On page 4 in line 14, after "(j)" insert "**It is the intent of the General Assembly that the workgroup will strengthen the governance of the Baltimore region's water and wastewater utility under public ownership, management and operation.**"

Amendment 6 - Labor and low-income ratepayer representation

On page 1, line 15, after "Governor" insert ", including one representative from an organization representing low-income rate payers in Baltimore City;"

On page 1, line 15, after "City" insert ", including one representative from a labor union who is the certified exclusive representative for a bargaining unit of employees working within the water and wastewater utility for the city;"

On page 1, line 18, after "County" insert ", including one representative from a labor union who is the certified exclusive representative for a bargaining unit of employees working within the water and wastewater utility for the county; and"

On page 1, after line 21, insert "(vii) The labor union representatives listed in parts (iv) and (v) must not be from the same international union."

Problems with a Regional Water Authority in Baltimore

A regional water authority would lead to loss of local democratic control.

A regional authority would take away decision making from the City's majority Black elected officials. The consultant's report, for example, recommended that control transfer to a new board of directors appointed by the city, county, and Governor. Because these board members are unelected officials, Baltimore City's majority Black population would lose ballot box accountability over the people who make the big decisions about rates and services. While there are certainly flaws with the archaic Board of Estimates, elected officials still directly control the decision making.

A regional water authority could deepen racial inequities.

For years, city residents have raised concerns that they are subsidizing the growth and water bills of county residents. Per-capita capital costs and per-capita usage rates are higher in the county, and one key finding from the Task Force process was to confirm what city residents have long known: city residents pay higher water and sewer bills than county residents pay for the equivalent service. To what extent will a new authority continue this inequity and force city residents to subsidize growth in the County?

There is [substantial academic research](#) about how the creation of a regional water authority in Detroit resulted in inequitable cost allocations and deepened regional water insecurity and racial inequities. A change in governance will not alter the underlying reality of poverty and financial hardship facing many Baltimore City residents, and rather, that underlying reality means that Baltimore City residents, particularly its low-income Black families and seniors, are especially vulnerable to a governance change that seizes control of their utility away from elected officials.

Baltimore's water and sewer system faces many difficulties and challenges, but the hard truth is that there will be no quick fix or silver bullet. This process must proceed with caution and care, rooted in the region's complex histories of redlining and disinvestment in Black communities.

A regional water authority could lead to mass water shutoffs.

Baltimore has not shut off any household from water service over unaffordable bills since 2017. The Water Accountability and Equity Act codified water shutoff protections for vulnerable households, including those with seniors, infants, and individuals with serious medical conditions. A regional water authority would overturn the internal policies and it could be established in such a way that it would not have to abide by local laws. It could lead to mass water shutoffs of vulnerable households in Baltimore.

This is no idle threat. Hundreds of thousands of Detroit residents had their water shutoff after a regional authority took over their treatment systems, disproportionately harming Black residents. Other residential protections could be at risk under a regional authority:

- The Water4All water affordability program income water affordability program – this is administered through the Mayor's Office of Children and Family Services and involves nascent partnerships with the City Housing Authority. Officials have indicated that data

sharing is far easier within City government than with other governmental jurisdictions. The creation of a regional water authority outside city government could undermine the administration of the program and undercut enrollment efforts.

- The Office of the Customer Advocacy and Appeals, which already serves the county customers as well as city customers; and
- Baltimore City’s Sewage Onsite Support Program and Expedited Reimbursement Program.

The loss of these protections would cause substantial harm to the residents.

A regional authority could be expensive to stand up and lead to massive water rate hikes.

A regional authority itself could deepen the affordability crisis facing the region, while undermining existing programs that address it. The Task Force members and consultants identified potentially large transaction costs associated with a regional authority, including:

- \$370 million to \$725 million in refinancing costs, if debt needs to be defeased;
- \$15 million in general transition costs; and
- Unquantified pension plan contributions and employee transition costs.

The previous task force did not contemplate a lease payment to the city nor did it provide an estimated cost of transitioning the workforce, which should be factored into a cost analysis. Based on the lease in Detroit, the most similar case study to Baltimore, we add in these estimated costs:

- \$976 million for lease payments (NPV of \$50M a year over 40 years)
- \$343 million for pension contributions to the city’s plan due to loss of workers paying in (\$42.9 million a year for 8 years)

That would bring the total transaction cost with debt refinancing to **around \$2 billion**. These transaction costs would be recovered through rate hikes on households and local businesses, deepening the existing water affordability crisis that disproportionately harms Black households. A [study](#) from utility affordability expert Roger Colton found that water bills are already unaffordable for low-income households in every part of the city.

A regional authority would harm workers.

The workers could lose their existing collective bargaining agreements, and new agreements would have to be negotiated with the new authority. The new authority board would be inoculated from public pressure eroding workers’ bargaining position.

Workers’ pensions are also considered a “threshold issue” to be resolved during the transition. This can create fear among current workers and retirees, and the process could end up in workers losing retirement benefits that they negotiated and perhaps accepted lower wages in exchange for. This would be in bad faith from the city and county.

The transfer to a new authority would lead to job loss and create a hostile work environment. It will likely lead to more vacancies and lost institutional knowledge. The process of creating a new regional authority is highly disruptive and can lead to job loss, as workers leave due to the hostile environment and job insecurity. Local unions have already testified that Baltimore's water workers are fearful of this process and looking to find other employment.

The best way to attract and retain a qualified workforce is to offer better compensation packages. A regional authority does not facilitate pay raises, and there is no reason why the city and county cannot offer them directly on their own. They should.

A regional authority could cause fiscal harm for the local governments.

If a new water authority takes over the water and sewer system through a capital asset lease, a key decision will be whether the city and county are compensated for the loss of these assets, and if so, how will the new authority recover that cost. Baltimore City owns the water and sewer treatment systems, and the water and sewer systems are the city's largest capital assets. In 2021, the water and wastewater systems had combined total capital asset value of about \$5.5 billion — more than \$2 billion more than the capital asset value of the rest of the entire city government (\$3.2 billion).

At no point did the Task Force have time to discuss how the city and county will be compensated for loss of their assets. Lease payments are standard in these arrangements. 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 customers, deepening the water affordability crisis that disproportionately impacts Black households.

A regional authority can open the door to future water privatization and could entail privatization in and of itself.

Baltimore City residents overwhelmingly declared the water and sewer system to be an inalienable asset of the city, when more than three-quarters of voters approved Ballot Question E in 2018. The task force's report identifies this charter provision as a key legal "threshold issue" to be addressed as it prohibits asset leases. It proposes amending the charter to overturn this protection to allow a lease. This opens the door to water privatization.

Moreover, if the new authority is established as a private nonprofit, a lease to the authority would be privatization in and of itself. Even if the authority is established as governmental entity, unelected officials would oversee the new authority and have broad decision-making powers including control of contracts. This would facilitate future privatizations in absence of the Charter protection.

Case Study: Detroit and Great Lakes Water Authority - Mass Water Shutoffs

Service population: 3.9 million, or 38% of Michigan’s population

- Suburban wholesale customers = 82%
- Detroit retail customers = 18%

Transaction costs: more than \$1.3 billion

- \$5.7M one-time employee termination buyouts
- \$344M pension contributions (\$43M a year for 8 years)
- \$975M lease payments (NPV of \$50M a year for 40 years)
- \$2M in training, bills, finance, bank fees and additional transition costs

Key outcomes:

- **Mass shutoffs:** [More than 140,000 Detroit households](#) were shut off from water service for unaffordable bills from 2014 to 2020, disproportionately harming Black city residents and bringing international [condemnation from the United Nations](#).
- **Racial Inequity:** Substantial research demonstrates how the lease of Detroit’s utility system to GLWA deepened regional water and sewer insecurity and racial inequities.
- **Inequitable compensation:** Detroit was not compensated equitably for loss of the asset and should have received [\\$5.4 billion](#).
- **Cost inequity:** City customers pay higher water and sewer rates because suburban users are charged wholesale rates, while city users pay retail rates. In addition, Detroit customers must pay 83 percent of improvement costs to the regional sewer system, even though only 30 percent of sewer lines are within the city.

Process: In 2014, an emergency manager appointed by former Gov. Rick Snyder sent Detroit into bankruptcy and used those proceedings to bypass the City Charter to lease its regional water and sewer systems without required voter approval. That year, an MOU was signed with a newly created Great Lakes Water Authority (GLWA), and GLWA took control of the regional assets in 2016. The process disenfranchised Detroit residents and left the city’s majority Black population out of key decision making about the future of their water system.

Transaction Type: 40-Year Lease but effectively an acquisition: “In acquiring the Leased Facilities, GLWA also acquired, and the City absolutely and irrevocably assigned, transferred and conveyed to GLWA, and GLWA purchased and acquired from the City, all of the City’s right, title and interest in the regional and local retail revenues of each of the Water System and the Sewer System in existence on the Effective Date and through the end of the term of the Leases.”

Case Study: Tampa Bay Water – Water Privatization

Service population: 2.5 million

Type: Bulk water provider

Transaction Type: Sale of assets from West Coast Regional Water Supply Authority to Tampa Bay Water, another type of regional water authority, to provide bulk water to member jurisdictions. Tampa Water Department and other bulk buyers provide retail service to their residents

Current privatization deals include:

- **Surface water treatment plant**

Company: Veolia

Type: Design, build, operate, maintain, and manage agreement

Date: 2000

- **Desalination plant**

Company: American Water-Pridesa LLC

Type: 20-year operation, maintenance, and management agreement

Date: 2004

A Cautionary Privatization Tale in Tampa Bay, Fla.

In 1999, Tampa Bay Water gave a conglomerate of Poseidon Water Resources and Stone & Webster a 30-year contract to build, own, and manage what was to be the largest desalination plant in the United States at the time.

Bankrupt contractors: Within a year, the engineering firm declared bankruptcy and dropped out of the project. In 2001, Poseidon Resources hired Covanta to finish the job, but a year later, Covanta too was in bankruptcy reorganization.

Public ownership: In 2002, Tampa Bay Water bought the partially finished plant for nearly \$9 million. While the takeover saved millions on financing, it failed to resolve the problems with the privately run project. In 2005, after the plant was shut down for repeated equipment failures, Tampa Bay Water hired American Water-Pridesa to fix the plant and experienced more delays.

Cost overruns: In 1999, Tampa Bay Water projected that the plant would be built in three years for up to \$110 million. In 2007, years later, the plant finally opened at a much higher cost of \$158 million — nearly 44 percent more than promised.

Rate hikes: Ratepayers were on the hook for higher costs. The desalinated water rates ballooned from a promised \$1.71 per 1,000 gallons to \$3.19 per 1,000 gallons by 2007, when the plant began operations. That's an 87 percent increase.