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Testimony Before the Senate Democratic Policy Committee

Policy Considerations Regarding the Impact of Act 12 of 2016

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Members of the Senate Democratic Policy Committee, thank you for the invitation to provide comments today on water and sewer system sales under Act 12 of 2016. I am Amy Sturges, Deputy Executive Director for Advocacy for the PA Municipal League (The League).

The League has a growing member base of cities, boroughs, and townships. We currently have 142 members. Membership is based on common interests and issues, rather than on form of government. Our members are full-service, urban, and suburban core communities.

As various committees of the General Assembly consider the impact of Act 12 and whether action should be taken to repeal or put parameters around sales of public water and sewer systems to investor-owned companies, The League appreciates the opportunity to relay the following points for your consideration:

The PA Municipal League is not an advocate for the sale of assets; however, we are an advocate for local decision-making.

As an association, The League would caution any of our members considering the sale of an asset. The short-term revenue gain comes with a permanent loss of control over that asset. Anecdotally, we do have members that have sold an asset only to find the benefit short-lived.

On the other hand, The League believes the decision to sell is ultimately up to each elected governing body following careful and transparent consideration of the pros and cons. As this topic unfolds, The League will advocate for the decision-making authority of local elected officials to remain intact and will oppose action that limits municipal officials making the final decision to sell a water or sewer system.

Why is selling an asset attractive to local elected officials?

It is important for the General Assembly and the public to recognize why selling an asset can be attractive to local elected officials. Each municipality is different therefore motivations to sell vary, but there are common themes across all forms of local government that make selling attractive. Today, local officials are faced with challenging decisions as they work to effectively manage their municipalities with numerous systemic fiscal hurdles.

Many factors put negative fiscal pressures on the day-to-day operation of municipalities. Therefore, if an opportunity presents itself to ease some of these pressures, local officials will, in all likelihood, give serious consideration to the opportunity.

These pressures do not exist in a vacuum, they are layers that taken together create very tough choices for local officials. Some of these common fiscal pressures are:

Inflexible Local Taxing Structure: The local taxing structure is over 55 years old, inefficient, and over-reliant on property taxes for revenue. Oftentimes, and even when levied at the highest allowable rates, tax revenue does not cover the cost of core services provided by a municipality. This is especially true of full-service communities. Please see the PA Economy's Report: [It's Not 1965 Anymore: State Laws Fail to Meet Municipal Revenue Needs](#) for a detailed report and eight municipal case studies.

Limited Tax Base: Older, core communities have a limited tax base in which to raise revenue. The housing stock is older; there is little or no room for new growth; tax exempt entities tend to be more numerous; and a declining, less affluent, and senior population make up the base of taxpayers.

Unfunded Mandates: Unfunded mandates come in many forms, large and small. They place a required action on local government with no source of funding to cover the cost. Therefore, taxpayers become responsible. A few examples include: collective bargaining, pension funding and other personnel matters related to public safety personnel; EPA and DEP regulations regarding stormwater management; recycling; and public advertising requirements.

Property Tax Reassessment is not Routine: Reassessment is not routinely undertaken by counties because it is expensive and will result in tax increases for some residents and businesses. As a result, the lack of regular reassessment has a direct impact on a municipality's ability to raise sufficient revenue for services provided. Routine reassessment would create predictability and lessen the financial impact.

Municipal Debt: Municipally owned systems may be carrying debt that impacts their ability to invest properly in system upgrades. Other debt may also exist, such as pension debt, that takes funds away from capital investments.

Exorbitant Infrastructure Costs: In addition to operation and maintenance costs, the staggering costs of upgrading aging water and sewer infrastructure can result in lagging investment. Aside from the recent federal investment in infrastructure, federal and state assistance has been minimal.

As stated earlier, these pressures do not exist in a vacuum. It is not uncommon for a community to be faced with all of these factors at once. Therefore, balancing costs with the ability of taxpayers to support services can be a significant challenge. It's little wonder why selling a system and getting out from under federal and state mandates and infrastructure costs is attractive to local officials. Action on the part of the General Assembly is needed to ease these systemic pressures and allow for the modernization of local government operations to meet today's challenges. The General Assembly must also not ignore the impact of unfunded mandates on taxpayers.

Limiting Act 12's Impact

At this point in time, The League's position is that placing parameters around the impacts of Act 12 is the best way forward. The December hearing by the House Consumer Protection Committee discussed a few concepts that limit the impact of Act 12.

Removing the requirement that the PUC rule on an application in 6 months.

Requiring the PUC to rule on an application within 6 months seems to be an arbitrary timeframe that has impacted the ability for all interested parties to thoroughly weigh-in on a sale. Furthermore, the 6-month deadline is not a factor in other applications before the PUC for approval. House Bill 1863 removes the 6-month limit on PUC consideration of an application.

Limiting and spreading out rate increases.

Limiting the amount of the purchase price that can be put into the calculation of the first requested rate increase; and spreading out the remaining purchase price over the next several rate cases would slow down the rate increases while still allowing the investor-owned company to recoup their investment. This concept is found in House Bill 1864.

Capping the amount of purchase price used in rate making when the system is not troubled.

For systems not in trouble, House Bill 1865 limits the amount of purchase price that can be factored into a requested rate increase. This does not prevent sales under Act 12 but also does not reward the investor-owned utility with the ability to recoup full purchase price above the depreciated original cost.

Local Transparency and PUC Hearings

The League supports local efforts to make the decision to sell transparent. House Bill 1862 would require a local RFP process when a utility is for sale under Act 12. It also requires the PUC to hold two local public hearings. We believe some clarification of the purpose behind this language is necessary in regards to the use of an RFP process, but generally support the concept of transparency and public input.

Other Considerations

Affordability Programs

Low-income consumers that find themselves with unaffordable rate increases following a sale under Act 12 should be offered programs from the investor-owned utility, as well as the state.

State Resources to Assist with Local Decision Making

As an association, The League will be looking at what it can do to provide resources to our members considering the sale of an asset under Act 12. Perhaps there is also more that can be done at the state level through DCED, the PUC and the Office of Consumer Advocate in terms of guidance and best practices.

To conclude, every municipality is different and has different motivations for selling a system. Every local governing body also has the responsibility to make the most informed and transparent decision possible.

Whether publicly or privately held, increased investment in our water and sewer systems is inescapable as systems age and environmental challenges emerge that require system upgrades.

Addressing the on-going systemic issues facing local governments; increasing state infrastructure assistance; and limiting the impacts of Act 12 can ease both the need to privatize, as well as the impact on ratepayers.