



**House Consumer Protection, Technology and Utilities Committee
Public Hearing on HB 1862 P.N. 2340, HB 1863 P.N. 2341, HB 1864 P.N. 2342, and HB 1865 P.N. 2343**

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Good morning, Chairman Matzie, Chairman Marshall and members of the House Consumer Protection, Technology and Utilities Committee. Thank you for your invitation to provide testimony on HB 1862 P.N. 2340, HB 1863 P.N. 2341, HB 1864 P.N. 2342, and HB 1865 P.N. 2343.

We are testifying on behalf of the Pennsylvania Municipal Authorities Association (PMAA) which represents over 700 municipal authorities across the Commonwealth, the vast majority of which provide drinking water and wastewater treatment services to more than six million citizens. If you live in Pennsylvania, you are likely within the service area of at least one authority. In addition, PMAA has over 500 associate members, such as certified public accountants, engineers, and solicitors, who provide services to authorities.

To provide some background, an authority, by virtue of the Municipality Authorities Act (MAA), is an alternate vehicle for accomplishing public purposes rather than through direct action of local governments, such as boroughs, cities, and townships. Municipal authorities may provide services to the community and finance its services by means of user fees. Authorities also commonly serve more than one municipality and in so doing provide operational efficiencies and economies of scale by serving beyond political boundaries. Irrespective of how many communities they serve, the mission of municipal authorities is to provide excellent quality, reliable, and safe services at an affordable cost to the customers of their local community, whether that be large or small. Furthermore, the operation of authority projects and services does not compete with other traditional components and associated costs of local government. To reiterate, for these reasons, the authority model is perfectly suited for providing services on a regional level.

To bolster this viewpoint, it is important to understand the governing structure of a municipal authority. Authorities can be created by any county, borough, city, or township, functioning singly or jointly with one or more other local governments. Once created, the authority manages all aspects of the authority's operation, freeing the municipality of these critical and complex responsibilities. Authorities are governed by a municipally appointed board of directors, and authority meetings are conducted in public, complying with the open meeting requirements of the Sunshine Act. It is also important to note that in the MAA, an authority cannot "duplicate or compete with existing enterprises serving substantially the same purposes." These features ensure that authorities act in a transparent manner, separated from local political influences, but governed

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locally with full public access, and operate only in the best interests of the communities they serve.

Aside from the MAA, municipal authorities are governed and regulated under numerous other state and federal laws including, but not limited to:

- Safe Drinking Water Act
- Clean Water Act
- Clean Streams Law
- Sewage Facilities Act
- Plumbing System Lead Ban and Notification Act
- Terrorism Infrastructure Disclosure Protection Act
- Public Health Security and Bioterrorism Preparedness and Response Act
- Water Resources Planning Act
- Underground Utility Line Protection Law (PA One Call)
- Water and Wastewater Systems Operators' Certification Act
- Storage Tank and Spill Prevention Act
- Construction Code Act
- Municipalities Planning Code
- Procurement Code
- Prevailing Wage Act
- Separations Act
- Public Official and Employee Ethics Law
- Public Employee Relations Act
- Right-to-Know Law
- Sunshine Act
- Municipal Records Act
- Intergovernmental Cooperation Act

In addition to state and federal laws, authorities must meet all current regulatory requirements as well as plan, prepare, and budget for future requirements once identified by state and federal agencies.

In 2016, the Pennsylvania General Assembly passed Act 12 which added Section 1329 to Title 66 (Public Utilities). Section 1329 established a system called "fair market value" for the acquisition of municipal water and wastewater systems by investor-owned utilities. Act 12 contained no provisions that provided for any limitations on municipal acquisitions. As a result, "fair market value" allows for both negotiating parties to increase the purchase price as high as possible. To date, almost all approved acquisitions far exceeded the net original cost of the system. As these acquisitions continue under Section 1329, the most prevalent impact to Pennsylvania ratepayers is increased rates. Because of this, any tightening or further restrictions to Act 12 is a step in the right direction and so PMAA generally supports Chairman Matzie's legislative package.

HB 1862 amends Title 66 (Public Utilities), in rates and distribution systems, further providing for acquisition of water and sewer utilities by imposing new enhanced and increased public notification and participation requirements on all parties.

We particularly like this attempt to engage the community by requiring public advertisement of the proposed sale, and public participation in the process, publishing proposed rate adjustments prior to a sale, holding public hearings, establishing a public comment period on the request for proposals and imposing associated timeframes.

HB 1863 amends Title 66 (Public Utilities), in rates and distribution systems, further providing for valuation of acquired water and wastewater systems by eliminating the Public Utility Commission (PUC) six-month evaluation deadline.

We support this language as it provides the PUC with more time to consider the substantial implications of an acquisition.

HB 1864 amends Title 66 (Public Utilities), in rates and distribution systems, further providing for valuation of acquired water and wastewater systems by requiring any rate increase after an acquisition be incorporated into the rate base over three separate base rate cases.

Section 1329 (c)(4) in the proposed legislation requires the acquiring entity to incorporate its proposed rate increases between the depreciated original cost and the rate base of the selling utility over three rate base cases. Although this may slow down the proposed rate shock to the customers, it would only minimally impact the investor-owned utilities because once the sale is finalized, the revenue is going to be perpetual and eventually they will recoup their investment. Although delayed, ultimately, they recognize their initial investment, and the customer shock of the new rate is deferred for a short time until rates can be increased, which will continue indefinitely.

HB 1865 amends Title 66 (Public Utilities), in rates and distribution systems, further providing for valuation of acquired water and wastewater systems by capping any purchase price for a system at 125% of the depreciated original cost.

While we appreciate the intent, the 125% valuation cap gives us some pause. First, it appears to be somewhat of a compromise between the old depreciated original cost concept and the Act 12 “fair market value” analysis. More importantly, however, is the reliance on Section 1327(a)(3) of the Public Utility Code in determining whether a system is indeed distressed. This particular section provides for too much unfettered discretion in determining whether a system is distressed.

In conclusion, it is important to note that Section 1327, the previously and still used acquisition law, includes a provision for acquisitions above depreciated cost. Key features in Section 1327 are protections from rate increases to existing customers, burden of proof of distress on the investor-owned utility, and statutory amortization of purchase price in excess of depreciated cost. Under Section 1329, for-profit utilities can presumably keep these high purchase prices in their rate base forever. As a result, there has been a shift from acquisitions of distressed systems to those systems that are well funded and have excellent system integrity.

Again, thank you for the opportunity to testify before you today. We are happy to answer any questions.