



Michael J. Darcy, CAE  
EXECUTIVE DIRECTOR

Michael F. Cerra  
ASSISTANT EXECUTIVE DIRECTOR

Jon R. Moran  
SENIOR LEGISLATIVE ANALYST

Loretta Buckelew  
SENIOR LEGISLATIVE ANALYST

Frank Marshall  
LEAGUE STAFF ATTORNEY

## **Statement of Michael F. Cerra**

**Assistant Executive Director, NJ Jersey League of Municipalities,**

**Senate Community and Urban Affairs Committee**

**Thursday, September 19, 2019**

### **Comments on the Water Accountability Act**

Good morning Chairman Singleton and members of the Committee.

We commend this Committee for undertaking these efforts on this critical public policy issue. I will not restate or highlight the scope of the challenges faced or the future consequences if we fail to act. You have already heard experts speak of the enormity of the problem, the significant costs and the implications of doing nothing. We concur.

Instead, these comments focus on solutions and next steps. Considering the general state of affairs and the uncertain status and availability of federal funding, we recommend a concerted effort to preserve existing funding sources and identify new, creative solutions.

If you recall, the League supported the underlying intent of the “Water Quality Accountability Act,” which imposed certain testing, reporting, management, and infrastructure investment requirements on water purveyors. At the time we also concurred with the position of the Department of Environmental Protection (DEP), which recommended taking a phased-in approach to implementing such provisions.

The new law has helped, and will continue to help, better protect the state's water supplies and boost infrastructure investments. Among the provisions of the new law is required field testing of valves and hydrants, implementation of a cybersecurity program, development of an asset management plan, and annual written certification from a responsible corporate officer of the public water system or the mayor or chief executive officer of the municipality (if municipally owned) to confirm adherence to the requirements of the law.

The problem developed over decades. This law has been in effect for just under two years, so our results and analysis reflect that relatively short period of time. There has been significant progress made in short time, likely more than in previous years, thanks to the new law. One of your speakers last week, in response to a question, offered hope that the New Jersey law will serve as a model for the rest of the country. I'm sure we all hope that turns out to be the case. Of course, improvement and innovation should never cease. We can build upon the existing statutory framework to facilitate compliance and innovation. Thus, my focus is to bring to your attention additional resources and creative solutions to facilitate compliance for municipal systems.

### **Take Advantage of a Newly Favorable Municipal Bond Market**

The League, along with our counterparts nationwide, have long championed the preservation of the tax-exempt status of municipal bonds. For more than a century, states and local governments have depended on the issuance of municipal bonds for essential capital projects. The federal income tax exemption of the

interest earned on those bonds has kept the cost of issuance well below other investment options. It has allowed for vital investments in our public infrastructure, at a discount to our taxpayers.

This can be particularly useful now because we appear to be at the precipice of a particularly strong market for municipal bonds. Falling yields appear to be creating a greater demand for municipal bonds, which now may have greater yields than other bonds in the market.

Nearly two-thirds of core infrastructure investments in the United States are financed with municipal bonds. In 2015 alone, more than \$400 billion in municipal bonds were issued to finance these vital projects. These are the pro-growth investments, which spur job creation, help our economies grow, and strengthen our communities. A combination of local control and local responsibility makes municipal bonds an incredibly effective and efficient tool.

In New Jersey the parameters for municipalities to issue bonds are governed by the Local Bond Law (N.J.S.A. 40A:2), which was adopted in order to ensure effective and responsible local borrowing with appropriate checks and balances. However, when adopted in the early 1960s, the local bond law likely did not anticipate the breadth and scope of the current infrastructure problems we face today.

Current limitations in the local bond law, including bond maturity and borrowing capacity, limit a municipality's ability to access the critical funding necessary to undertake such large infrastructure projects.

We recommend looking for ways to take advantage of the favorable state of the municipal bond market as it is today. Responsible but meaningful changes to the Local Bond Law can help municipal water systems gain access to the resources needed to take on needed projects. For instance, if a municipality is funding a project in which the useful life will be over a century, than why not extend the debt service to beyond 40 years?

### **Water Trust Funds**

Local officials are understandably reluctant to raise water rates for public systems. Their ratepayers are also their taxpayers. Thus, we suggest consideration of legislation to authorize the creation of, upon voter approval, Water Infrastructure Trust Funds. As you know, municipalities and counties can now seek voter approval for the creation of Open Space Trust Funds, allowing for a nominal addition to the local assessment to create a lock box for open space funding.

We have witnessed throughout the State residents voting down proposed sales of waters systems to private entities, opting instead to keep these vital systems under public ownership and control. However, if offered an alternative, an affirmative opportunity to facilitate water infrastructure by creating a local trust fund, many of these same voters may look more favorably on this initiative. The Trust fund will also provide local officials with another mechanism to fund long-term infrastructure projects.

### **Cap Exception**

Municipalities operate under a hard 2% levy cap so any new requirements must fit under that cap, often at the expense of other local services. Budget constraints, expensive capital requirements and ongoing operating costs to address these issues can pose major financial challenges for local governments. Under current law, there are four exemptions to the levy cap, including debt service. We would suggest allowing infrastructure funding drawn from the local general fund, or so-called "pay as you go" projects, be eligible for a levy cap exception.

### **Clarify Municipal Authority over Lead Service Lines**

As was referenced in the hearing last week, the issue faced in Newark is not at the point of the water source, but rather the services lines which feed into residences and businesses.

The League is of the opinion that a municipality has the authority to require as a condition of the issuance of a certificate of occupancy certification of the testing of the lead services lines. It is, however, not explicitly stated in the Municipal Land Use Law (MLUL), which has resulted in differing opinions and uncertainty. A minor revision to the MLUL to eliminate any ambiguity and affirmatively state this authority would be beneficial.

Further, we suggest that quick passage of S-4110, sponsored by Senator Ruiz, which would allow municipalities to adopt ordinances to enter properties to perform lead service line replacements. This should be viewed as first step. Consideration should also be given to providing financial assistance to residents for such improvements, perhaps modeled on existing programs such as the funding for energy efficiency administered by the Department of Community Affairs.

### **Planning and Developing for the Future**

While swift action is needed now to address the current problems facing our communities we cannot simply rely on patching and repairing old systems. As we move forward we must focus on how to better these systems rather than relying on the technology and planning of the past. New Jersey is home to some of the finest universities and colleges in the world. Partnership with these institutions is crucial to developing the technology for water systems of the future.

We would further suggest that any future statutory requirements on municipalities should not be put in place until after the respective administrative agencies complete their rulemaking. When municipalities are forced to comply with new requirements before rulemaking is completed it runs the risk of the efforts made to comply with statutory requirements not meeting regulatory requirements. This can be costly to municipalities when the groundwork they are laying for compliance needs to be changed after rulemaking.

To conclude, I would like to reiterate that the goal of the Water Quality Accountability Act is working. It has focused the attention being paid to water systems, resulted in communities honestly and thoroughly examining the state of their system and begin planning to address any needs. With this, communities can and are beginning the process of improving their water systems. The next step is for State, Federal, and Local leaders to partner together to develop the additional tools to provide solutions and build an infrastructure for the 21<sup>st</sup> Century and beyond.

In addition to these comments, attached please a recent League Conference resolution expressing the League's continued support for the necessary investments in our water infrastructure.

Thank you.

**New Jersey State League of Municipalities Resolution No. 2016 – 10**

**Advocating for a 21<sup>st</sup> Century Water Infrastructure**

**Approved at the League Business Meeting, November 17, 2016**

**Approved at the League Resolutions Committee, November 15, 2016**

**WHEREAS**, water infrastructure is critical for the economic vitality, environmental health and quality of life within New Jersey municipalities; and

**WHEREAS**, inadequate sewer and stormwater systems generate stormwater runoff that pollutes streams, lakes rivers and bays, and causes localized flooding of streets and properties; and

**WHEREAS**, inadequate drinking water systems can rupture, interrupting service and causing flooding; and

**WHEREAS**, aging and degraded drinking water, wastewater and stormwater infrastructure threaten to disrupt daily life, commerce and industry in communities; and

**WHEREAS**, budget constraints and expensive capital requirements and ongoing operating costs to address these issues can pose major financial challenges; and

**WHEREAS**, critical investments in the State's water infrastructure will:

- **Protect public health and the environment** and enhance its attractiveness and livability while making it more resilient to extreme weather events and natural disasters; and
- **Enable economic growth** by delivering, reliably and efficiently, safe and adequate drinking water, wastewater and stormwater management services that meet the needs of local residents and businesses today and into the future; and
- **Leverage modern practices** by employing state-of-the-art technologies and best management practices that generate multiple benefits: economic, including but not limited to cost savings, job creation, and new business creation; environmental, including but not limited to improved water quality; and social, including but not limited to better quality of life; and
- **Reduce flooding and energy use**, including reduction of localized flooding from storms and water-main breaks, and enhancing energy efficiency in order to reduce water utility costs and air pollution; and
- **Draw on multiple funding sources and maintain affordability** by establishing adequate, sustainable funding streams to support improved water infrastructure and services while ensuring affordable rates over time for residents and businesses;

**NOW THEREFORE BE IT RESOLVED**, by the New Jersey State League of Municipalities in conference assembled, that we urge state and federal leaders to support our efforts to upgrade our drinking, sewer and stormwater systems and to promote investments in water infrastructure nationwide through financial and technical assistance; and

**BE IT FURTHER RESOLVED**, that local governments should share solutions, success stories and annual progress with the League Municipalities, other municipalities and sewer utilities; and

**BE IT FINALLY RESOLVED**, that copies of this Resolution be forwarded to the Governor of the State of New Jersey, the Lieutenant Governor of the State of New Jersey, the Commissioner of the Department of Environmental Protection, the Board of Public Utilities, the President of the New Jersey State Senate, the Speaker of the New Jersey General Assembly, all State Legislators and all members of the New Jersey Congressional Delegation.