Working with community wastewater treatment and stormwater management agencies across the state to protect Oregon's water quality since 1987
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March 16, 2021

Representative Lively, Chair
Members, House Committee on Economic Recovery and Prosperity

Subject: Testimony in Opposition of House Bill 3040-1 as amended – Relating to System Development Charges

Chair Lively and Committee Members:

The Oregon Association of Clean Water Agencies (ACWA) appreciates the opportunity to submit written and provide verbal testimony in opposition to House Bill 3040-1 as amended. ACWA is a not-for-profit organization of Oregon's wastewater treatment and stormwater management utilities, along with associated professional consulting firms, which are dedicated to protecting and enhancing Oregon's water quality. Our members provide wastewater and stormwater services to over 2.5 million Oregonians, serving over 70% of Oregon's homes and businesses.

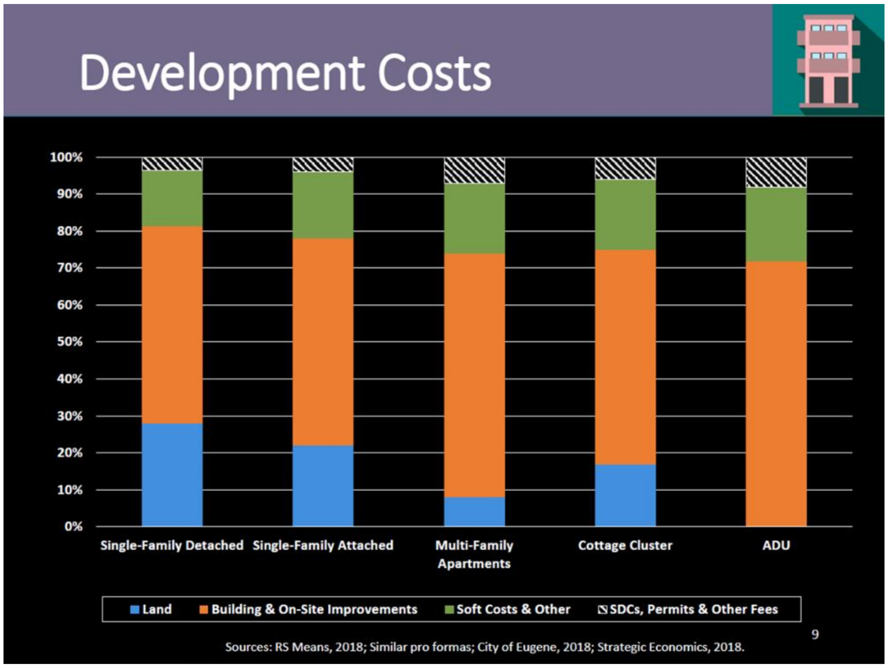
The issue of affordable housing is important and complex. One of the areas of common agreement is that we need appropriate infrastructure to support that housing and ensure that public health and the environment are protected. However, this is currently a battle utilities are losing. The American Society of Civil Engineers just released its national report card, and overall, infrastructure receives a C- grade. For wastewater, it was a D+. Timely and cost-effective investment is needed in Oregon to extend the life of existing wastewater infrastructure, provide for future community growth, and meet growing regulatory compliance requirements for water quality protection.

Reducing funding for wastewater infrastructure by constraining and increasing the cost of local government implementation of SDCs—a critical and necessary element of equitable and adequate capital funding—is not a viable or logical option. It may lead to restrictions to growth, including new housing, and most certainly will exacerbate the decline of infrastructure conditions, pose risks to human health and the environment, and increase the overall costs of providing wastewater utility services. In the end, shifting the infrastructure cost burden from development fees (SDCs) to user fees at a time when the costs of wastewater services will continue to rise makes it harder for people to afford to pay their bills, which is also an issue of housing affordability.

There are three main drivers in infrastructure costs experienced by utilities. The first is the construction market and availability of materials. The second is the regulatory framework imposed by the State under the federal Clean Water Act, which requires new facilities to meet an increasing set of water quality improvement requirements. The third is prevailing wage and other State mandates that purposefully and materially drive up costs. All of these factors are outside the control of wastewater utilities, which means that reducing the costs of wastewater infrastructure is not an option. The necessary funding must be provided through a combination of existing ratepayer fees and SDCs.

None of these issues is addressed by the proposed legislation. Rather, the approach included in HB 3040-1 seeks to transfer who pays for those costs from one group of people – developers of new buildings – to existing ratepayers. Remember, it is in essence a zero-sum game. We must build the infrastructure. If SDCs do not pay for the infrastructure, the ratepayers do.

While the language of HB 3040-1 calls for studies and for delaying the collection of the SDCs as a means of easing the burden on housing costs, both of these measures would actually serve to increase the overall costs of providing wastewater services without meaningful reduction in the cost of affordable housing. The following slide is taken from a recent (March 10, 2021) presentation to the Eugene City Council on Housing Tools and Strategies. This slide shows the actual cost components of a variety of affordable housing types in the city of Eugene. As you can see from the slide below, SDCs already are a small percentage of the overall cost of housing. We assert that the reduction a purchaser would see for one of these housing types resulting from the fee collection delays mandated by HB 3040-1 would not be noticeable, if it were even passed along to the purchaser at all.



There are three key points that give rise to ACWA members' very high level of concern over this bill. They include collection expenses and failures, timing of expenses vs. revenues, and negative impacts on social and economic equity, as described below.

Collection. By moving the timing of SDC collection to the time when the certificate of occupancy is issued, a significant number of variables and situations enter to increase the likelihood that it will not be collected. Many utilities do not issue certificates of occupancy, and they must coordinate with other jurisdictions for permitting. Many transactions do not go through escrow, and units can be temporarily occupied (and used) prior to occupancy. Having one entity issue the certificate of occupancy that is not responsible for the collection of the SDCs in question makes the collection process problematic. Utilities would have to add administrative program staff whose responsibility it would be to track and try to collect these items, at increased costs to ratepayers. This increases the likelihood that SDCs will not be collected because the point of collection is after permits are issued.

This leaves two options for the utility. The first is that the utility would have to pursue collection against the home purchaser by placing a lien and/or foreclosing against the property. This is unfair to the home purchasers since the cost of the SDC was already priced into the home – they will pay twice. It also adds costs to the overall equation. The second option is that the utility would write off the SDC as uncollectable, and would require ratepayers to make up the difference in lost income needed to construct the required infrastructure. SDCs will have failed to serve their stated purpose.

Expenses. It is our understanding that one of the reasons for this bill is an argument that developers have to pay SDCs early in the development process but do not realize the profit until they sell. While this may be partially the case, it paints a false picture of costs vs. benefits. It must be recognized that development is already benefiting from the subsidy from existing ratepayers that provides for timely construction of public infrastructure. Especially for wastewater and drinking water, the infrastructure must be in place and functioning before construction of the new development can proceed. Current ratepayers pay to construct the infrastructure needed, and the SDC is a cost recovery mechanism for monies already spent. It is unfair to ratepayers to pay to build and wait years to recover the costs advanced for building infrastructure for the benefit of developers.

Equity. It is important to acknowledge the impact of unintended consequences in this bill. While well intentioned, this bill would materially increase the likelihood that SDC funds will not be collected. If they are not collected, then ratepayers are subsidizing new homes. In Clackamas County, for example, the greatest development is occurring in the City of Happy Valley, which has the highest per capita income in the state. The supermajority of ratepayers in the area live in lower income areas. This means that SDCs that are uncollected are in essence a wealth transfer from low-income ratepayers to high income new purchasers. This is the opposite of equity. Pushing the burdens of infrastructure costs more on existing ratepayers exacerbates the negative impacts on seniors with fixed incomes and those struggling to stay in their current housing.

Finally, while HB 3040-1 would provide benefits to developers of all types of housing with an intended trickle-down effect on low-income housing prices, the costs of this developer benefit would be born by the same people who are struggling to afford food, shelter, utilities and other basic costs of living. There is a growing affordability crisis in water and wastewater utility services. It is a well-documented and increasing nation-wide trend, which should give pause to those who contemplate cost shifts to user rates as an idea to support housing affordability.

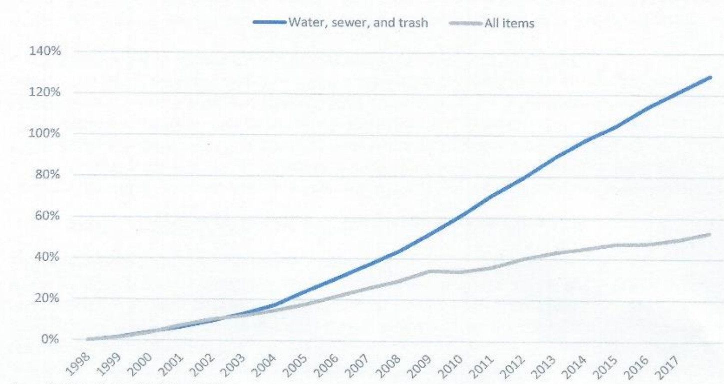
A study commissioned by the American Water Works Association, the National Association of Clean Water Agencies, and the Water Environment Foundation in 2019—"Developing a New Framework for Household Affordability and Financial Capability Assessment in the Water Sector"--documents this trend and excerpts are provided below.

Water, Wastewater, and Stormwater Bill Trends

"Over the past several decades, communities throughout the United States have experienced significant increases in the cost of providing water, sewer, and stormwater services. Factors contributing to this escalation in water sector rates have been well documented (e.g., Stratton et al. 2016, Mack et al. 2017); they include challenges associated with aging infrastructure, climate change, increasing regulatory mandates, population declines in urban centers, population growth and shifts to water-strapped areas, and declining demand resulting from conservation efforts.

"Increased utility costs have resulted in significant increases in water and sewer rates and associated household bills. From the mid-1980s through 2000, growth in household water and sewer costs outpaced the rate of general inflation (as measured by the Consumer Price Index (CPI)), by approximately 50%, likely reflecting increased costs associated with Safe Drinking Water Act (SDWA) and Clean Water Act (CWA) compliance (Van Abs and Evans, 2018). **Over the past two decades, household water and sewer costs have risen more steeply, increasing by close to 130% between 1997 and 2017. This compares to a 52% increase in CPI over the same period (Figure 1-1)** (Emphasis added).

Figure 1-1: Annual cumulative increase in household costs for water, sewer, and trash compared to increase in CPI for all items.



Source: Bureau of Labor Statistics, 2017
Note: BLS does not separately report costs for trash, water, and sewer in its summary tables/data.

"The trend of rising water, sewer, and stormwater rates is expected to continue. In many areas, rates are still too low to generate the revenues needed to upgrade, operate, and maintain community water, wastewater, and stormwater systems, much less meet emerging trends related to lead service lines or constituents of emerging concern. AWWA (2012) estimates that the cost to replace aging infrastructure alone in the United States will amount to $1 trillion dollars over the next 25 years. Other studies estimate that adaptations by water systems to deal with climate change will cost the United States more than $36 billion by 2050 (Jones and Moulton, 2016; as cited in Mack, 2017). Water and sewer utilities will need to further increase rates to address these and other needs.

Degree of Economic Hardship Across the U.S.

"In every community, there are customers who have difficulty paying their water and sewer bills (EPA 2016). Per the U.S. Census Bureau American Community Survey (ACS), nearly 43 million people in the United States (13.4% of the U.S. population) lived below the federal poverty level (FPL) in 2017 (ACS 2017). Research even shows that many households earning well above the FPL have trouble paying for basic expenses (Gould, Cooke, and Kimball 2015). Federal, state, and local governments frequently set eligibility for social assistance programs at 150% or even 200% of the FPL. Approximately 31% of the U.S. population live in households earning less than 200% of the FPL (ACS, 2017).

"At the same time, the cost of basic necessities continues to rise. While growth in household incomes has outpaced the general rate of inflation over the last several years (even at the lower end of the income spectrum), it has not kept pace with increases in costs for many non-discretionary items. **For example…the upper limit of the lowest income quintile (i.e., the 20th percentile household) increased by 60% over the last two decades. This is slightly greater than the increase in the CPI for all items, which grew by 52%. However, over the same period, costs for water and sewer increased by 129%, while the cost of rent, home energy and healthcare increased by 85%, 68%, and 103% respectively** (emphasis added)**.** This exacerbates the affordability challenge, as despite rising incomes, many households are finding it is increasingly difficult to make ends meet…."

(See pp. 1-3—1-5, Developing a New Framework for Household Affordability and Financial Capability Assessment in the Water Sector," 2019, R. Raucher, P.hD. and J. Clements, Corona Environmental Consulting; E. Rothstein, CPA, Galardi Rothstein Group; J. Mastracchio, CFA and Z. Green, Raftelis Financial Consultants; 2019)

In summary, HB 3040-1, while well intended, would result in increases in the total costs of providing safe and reliable wastewater and stormwater utilities to the public, and would increase the cost burden on existing rate payers for growth in the system that supports future customers. It would provide an economic benefit to developers of all types of residential development with no guarantee they would ever pass that benefit along to purchasers of projects that are intended to meet affordability criteria. Please do not support HB 3040-1. It is the wrong path to finding a solution to the housing affordability problem. It is a path that will make affordable housing and development worse, not better, and will worsen the struggle many people face to make ends meet.

Sincerely,

Susan L. Smith
Executive Director