Water Affordability in Maryland

Maryland Advisory Committee
to the U.S. Commission on Civil Rights

July 2022

The United States Commission on Civil Rights

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Letter of Transmittal

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The Maryland Advisory Committee, as part of its responsibility to advise the Commission on civil rights issues within the state, submits this report, “Water Affordability in Maryland.” The report was approved by the Advisory Committee on July 26, 2022.

Sincerely,

Kendra Brown, *Chairperson*

Maryland Advisory Committee to the U.S. Commission on Civil Rights

Acknowledgments

The Maryland Advisory Committee thanks all of the briefing participants, listed in Appendix A, for sharing their expertise. The Committee extends special recognition and appreciation for the excellent support and work of intern Rebecca Dudley.

* No longer with Committee

Table of Contents

Executive Summary

Access to clean affordable water is essential to life and is a fundamental human right, as the U.N. General Assembly recognized in 2010, but it is not guaranteed in Maryland or by federal law. In the state of Maryland, water is becoming increasingly unaffordable, and consequently, inaccessible. Rates are predicted to continue rising, perhaps unsustainably, given decreased local and state revenues. Shut-offs may increase while infrastructure maintenance declines. Low-income communities and communities of color will be hardest hit.

Despite these looming crises, Maryland has no uniform, statewide standards or programs governing water access and affordability. Some communities offer no assistance to low-income residents, some offer discounts to low-income seniors and people with disabilities, but any discounts are available only to owner-occupants. No state law or program mandates or provides water assistance to all residents who need it, whether they own or rent their homes.

In part, the variable array of water assistance programs reflects the state's patchwork system of providing water through an assortment of private, public, or private/public entities. Local rates can and do vary wildly, as do policies regarding water shut-offs and other punitive practices. Some policy variation is necessary, since the water needs of rural communities can be very different than those of large cities, and each deserve water policies that address their unique concerns.

However, a highly localized system governing water distribution and costs, combined with the absence of an enforceable state constitutional or statutory right to affordable water, allows for inconsistencies and inequalities, as does the virtually exclusive focus on owner-occupants in allocating water discounts. Landlords are not, for example, required to pass on any discounted water rates to tenants, who have little recourse if their water is shut off because the landlord failed to pay water bills. While tenants enjoy a right to potable water and a warranty of habitability, and while they may enforce water rights against their landlord, these enforcement actions are unlikely to provide essential, immediate relief. Tenants have no ability to enjoin water shut-offs, lacking causes of action against the water authority or state and local officials.

Racial inequity is often an unacknowledged product of any policy that disadvantages tenants. After decades of discrimination in home ownership opportunities, people of color are now more likely to rent than to own their homes. Additionally, the legacy of historical policies promoting White middle-class flight out of cities, such as redlining and suburbanization, has directly contributed to failing water infrastructure in communities of color, and to the lack of investment in maintaining or improving that infrastructure.

While historical housing discrimination is a contributing factor, it is not the only factor at play. Water providers may opt for one-size-fits-all discount programs that are simple to administer, since they do not account for various degrees of need, but such programs embed discriminatory patterns into the water rate system and do nothing to address inequities. Maryland law provides no cause of action for disparate impacts in housing and water service, which are difficult to quantify. Generally, local governing bodies do not collect data on shut-offs, liens, and payment plans. Without adequate data, policy makers are not able to document or remedy inequities.

Introduction

The Maryland Advisory Committee to the U.S. Commission on Civil Rights is concerned about rising water prices in the state and their impact on access to household water. Water is a fundamental human need, recognized by the U.N. as a human right.[1] The access to clean, safe, and affordable water is essential for human health and economic survival. In the midst of a pandemic, access to water for handwashing and hygiene are especially critical in curbing the spread of disease. The pandemic's disproportionate effects on vulnerable communities have also underscored the urgency of providing equal access to water. The Committee explored the disparate impacts of the state's highly localized water policies and rates on members of protected classes, with a particular focus on racial disparities in the city of Baltimore.

National Context

Across the United States, the cost of water has increased at three times the rate of inflation over the past decade, faster than increases in income.[2] As a result, water is becoming increasingly unaffordable for US residents.[3] Non-payment of water bills results in water services being disconnected from people's homes or the imposition of a tax lien on their properties. There is little data tracking the number of disconnections and liens on residential properties, but one national study by Food and Water Watch found that in 2016, at least 15 million U.S. residents had their water shut off due to non-payment of bills.[4]

Increased water costs are generally attributable to rising infrastructure improvement costs for utility companies, a significant decrease in federal investment, and increasing frequency of extreme weather events that contribute to flooding and infrastructure stress.[5] Because of the high costs of repairs, water companies have put off replacing degrading infrastructure for many years – a decision that may have kept water costs for consumers artificially low.[6]

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[1] The Human Right to Water and Sanitation, Media Brief, https://www.un.org/waterforlifedecade/pdf/human_right_to_water_and_sanitation_media_brief.pdf.

[2] David Harrison, *Why Your Water Bill is Rising Much Faster than Inflation*, WALL ST. J. (Mar. 15, 2018), https://www.wsj.com/articles/who-is-paying-to-fix-outdated-water-and-sewer-systems-you-are-1521106201.

[3] *See* ROGER COLTON, THE AFFORDABILITY OF WATER AND WASTEWATER SERVICE IN TWELVE U.S. CITIES: A SOCIAL, BUSINESS AND ENVIRONMENTAL CONCERN, May 2020, https://www.scribd.com/document/465846248/Water-Report?secret_password=T6F6aUH8JqAPtTg5J1aW#fullscreen&from_embed.

[4] Food and Water Watch, AMERICA'S SECRET WATER CRISIS (2018), https://www.foodandwaterwatch.org/sites/default/files/rpt_1810_watershutoffs-web2.pdf.

[5] *See* American Water Works Association, BURIED NO LONGER: CONFRONTING AMERICA'S WATER INFRASTRUCTURE CHALLENGE (2020), http://www.climateneeds.umd.edu/reports/American-Water-Works.pdf; *see also* KAVITA HEYN & WHITNEY WINSOR, PORTLAND WATER BUREAU, CLIMATE RISKS TO WATER UTILITY BUILT ASSETS AND INFRASTRUCTURE, Sept. 30, 2015, https://www.wucaonline.org/assets/pdf/pubs-asset-infrastructure.pdf.

[6] Meron Yohannes, *Providing Critical Water Services Through the COVID-19 Crisis*, BIPARTISAN POL'Y CTR. INFRASTRUCTURE BLOG (Apr. 17, 2020), https://bipartisanpolicy.org/blog/providing-critical-water-services-through-

In an earlier era, the federal government provided significant grants to water utilities to help maintain or repair water infrastructure.[7] But, between 1977 and 2017, federal funding for water infrastructure fell by 77 percent,[8] while the need for infrastructure investment grew.[9] The Environmental Protection Agency (EPA) estimates that meeting the national water sector's capital improvement needs over the next 20 years will cost $472.6 billion.[10]

Because of decreased federal support, local water utilities now shoulder a greater share of infrastructure maintenance, repair, and replacement costs. These costs are passed on to consumers, leading to higher household water rates.[11] EPA offers general guidelines for affordable water pricing, but utility adherence is voluntary.[12] There are no federal assistance programs subsidizing water bills for low-income households when water becomes unaffordable.[13] For gas and electric utility bills, households with incomes below 150 percent of the federal poverty level qualify for assistance through the Low Income Home Energy Assistance program,[14] but no such program exists for water.

Constitutional Protections and Statutory Rights

The United States Constitution does not explicitly recognize a right to affordable water access for all. Some have argued that water has a near-constitutional status, and there may be legal protections to ensure continued access to water services.[15] Denial of water for inability to pay infringes other fundamental rights, such as the right to life and the right to family.[16] The United Nations has

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the-covid-19-crisis/; Maria Zamudo and Will Craft, *A Water Crisis is Growing in a Place You'd Least Expect It*, February 8, 2019 https://www.npr.org/2019/02/08/691409795/a-water-crisis-is-growing-in-a-place-youd-least-expect-it.

[7] Georgetown Law Human Rights Institute; Amirhadji, Jason; Burcat, Leah; Halpert, Samuel; Lam, Natalie; McAleer, David; Schur, Catherine; Smith, Daniel; and Sperling, Erik, "TAPPED OUT: THREATS TO THE HUMAN RIGHT TO WATER IN THE URBAN UNITED STATES" (2013). HRI Papers & Reports. 7, at 21. https://scholarship.law.georgetown.edu/hri_papers/7

[8] Yohannes, *supra* n. 6.

[9] American Society of Civil Engineers, THE ECONOMIC BENEFITS OF INVESTING IN WATER INFRASTRUCTURE, at 10 (2020), https://www.asce.org/uploadedFiles/Issues_and_Advocacy/Infrastructure/Content_Pieces/Failure%20to%20Act%20Water%20Wastewater%202020%20Final.pdf.

[10] Environmental Protection Agency, *Drinking Water Infrastructure Needs Survey and Assessment, Sixth Report to Congress*, 2018, https://www.epa.gov/sites/production/files/2018-10/documents/corrected_sixth_drinking_water_infrastructure_needs_survey_and_assessment.pdf

[11] Georgetown Law, *supra* note 7.

[12] Environmental Protection Agency, *Affordability Considerations*, https://www.epa.gov/sustainable-water-infrastructure/pricing-and-affordability-water-services#affordability.

[13] PATRICIA A. JONES & AMBER MOULTON, THE INVISIBLE CRISIS: WATER UNAFFORDABILITY IN THE UNITED STATES, at 11, Unitarian Universalist Service Committee (May 2016), http://uswateralliance.org/sites/uswateralliance.org/files/Invisible%20Crisis%20-%20Water%20Affordability%20in%20the%20US.pdf.

[14] U.S. Department of Health and Human Services, Office of Community Services, *Low Income Home Energy Assistance Program Fact Sheet*, https://www.acf.hhs.gov/ocs/resource/liheap-fact-sheet-0.

[15] *See* Sharmila Murthy, *A New Constitutive Commitment to Water*, 36 BOSTON C. J. OF LAW & SOC. JUST. 159 (2016).http://lawdigitalcommons.bc.edu/jlsj/vol36/iss2/2.

[16] *Id*.

explicitly recognized a human right to water and sanitation.[17]

Civil rights and anti-discrimination laws may protect against water deprivation in some instances. If African American and Hispanic populations are more likely to be poor, poor people more likely to fall behind on water bills, and people who do not pay their water bills are more likely to suffer water shutoffs, then it is likely that facially neutral policies impact households differently depending on race.[18] One study in 2014 suggested that water shutoffs in Boston may have a disproportionate impact on communities of color, even when controlling for income and other variables.[19] Although many constitutional provisions and civil rights laws require the hurdle of proving intentional discrimination,[20] claims under the Fair Housing Act (FHA) – which encompasses household water – do not.[21] If the administration of water affordability policies such as water shutoffs, liens, or payment plans disparately impacts members of any protected class, there may be actionable claims under the FHA.[22]

Water Discount Programs in Other States

The regulation of water services is highly localized in the United States. With no mandatory federal or state guidelines regarding affordability,[23] municipalities establish their own systems to provide water and determine its costs.[24]

Some municipalities in other states offer affordability programs, basing eligibility for discounted water rates on household income. Philadelphia has a comprehensive affordability program, the Tiered Assistance Program, which provides assistance to customers whose income is below 150

[17] UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, 20 January 2003, E/C.12/2002/11, available at: https://www.refworld.org/docid/4538838d11.html [accessed 15 January 2021]

[18] Martha F. Davis, *Let Justice Roll Down: A Case Study of the Infrastructure for Water Equality and Affordability,* 23 Georgetown J. on Poverty Law & Pol'y. 355 (2016), cited in Northeastern University School of Law Research Paper No. 270-2016, Available at SSRN: https://ssrn.com/abstract=2814666

[19] Massachusetts Global Action. The Color of Water: A Report on the Human Right to Water in the City of Boston. (2014). Retrieved from http://massglobalaction.org/projects/colorofwater/primary_report_shutoffs_pre-pub.pdf.

[20] *See, e.g.*, Title VII of the Civil Rights Act of 1964, U.S.C. §§ 2000e et seq.

[21] See *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project*, 576 U.S. 519 (2015) (holding the FHA recognizes disparate impact claims); See also *Kennedy v. City of Zanesville, 505* F.Supp.2d 456 (S.D. Ohio, Eastern Division 2007*)* (holding that government denial of water access in housing units was a violation of FHA).

[22] The federal district court in Massachusetts recently enjoined implementation of federal regulations that would have cut back on the availability of disparate impact claims under the FHA. *Massachusetts Fair Housing Center v. United States Department of Housing and Urban Development*, 496 F.Supp.3d 600 (D. Mass Oct. 25, 2020).

[23] Federal legislation concerning matters of quality include the1972 Clean Water Act, 33 U.S.C. §§ 1251–1387, and the 1974 Safe Drinking Water Act, P.L. 93-523; *see also* Kevin Murray and Sara Kominers, *The Human Right to Water in the United States*, https://www.northeastern.edu/law/pdfs/academics/phrge/water-primer.pdf

[24] *See* Food and Water Watch. THE STATE OF PUBLIC WATER IN THE UNITED STATES at 6, https://www.foodandwaterwatch.org/sites/default/files/report_state_of_public_water.pdf

percent of the federal poverty level or who have special hardships.[25] Program participants may also receive forgiveness of arrears, so long as they continue paying current charges.[26] This initiative was implemented in 2017 in an effort to increase bill collections while also preventing low-income residents from losing their homes to foreclosures because of unpaid water bills.[27]

Some municipalities offer low-income tenants discounts on water bills. Eligibility criteria for such discounts vary, as some cities like Baltimore and Detroit require that the tenant be responsible for paying the water bill.[28] In Seattle, water utilities partner with other utilities to implement discounts for income-eligible tenants even if their landlords pay water bills,[29] reasoning that the landlord's water costs are reflected in rents.[30] Baltimore recently passed a new water affordability plan, Water4All that allows tenants whose annual income is below 200 percent of the federal poverty level to receive rate assistance if they pay their landlord for their water bill separately from rent.[31] However, as will be discussed in greater detail later in this report, implementation of the Water4All program has been repeatedly delayed.

The Maryland Context

Water services in Maryland are generally provided in three ways: (1) by municipal government authorities or the Washington Suburban Sanitation Commission (WSSC), a quasi-governmental Commission providing water to residents of Prince George's and Montgomery counties, (2) by privately-owned utility providers, or (3) through well systems.[32] Privately-owned utility companies are regulated by the Maryland Public Services Commission Water Division (PSC), while municipal authorities and the WSSC are not subject to PSC regulations.[33]

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[25] Press Release, Office of the Mayor, *Philadelphia Launches New, Income-Based Tiered Assistance Program*, June 20, 2017, https://www.phila.gov/press-releases/mayor/philadelphia-launches-new-income-based-tiered-assistance-program/.

[26] Rejane Frederick, *Water as a Human Right: How Philadelphia Is Preventing Shut-Offs and Ensuring Affordability*, Center for American Progress, November 8, 2017, https://www.americanprogress.org/issues/poverty/news/2017/11/08/441834/water-human-right-philadelphia-preventing-shut-offs-ensuring-affordability/.

[27] Martha F. Davis, A Drop in the Bucket: Water Affordability Policies in Twelve Massachusetts Communities (Northeastern University School of Law: Program on Human Rights and the Global Economy, Boston 2019), at 12.

[28] Baltimore, Md. Code art. 24, §§ 2-6(b)(1), 1-11(n), 2-7(b)(3)(iii); Water Residential Assistance Program, City of Detroit (2019), https://detroitmi.gov/sites/detroitmi.localhost/files/2019-05/WRAP%20Detroit%20-%20English.pdf.

[29] *Utility Discount Program*, City of Seattle, https://www.seattle.gov/humanservices/services-and-programs/supporting-affordability-and-livability/utility-discount-program.

[30] Stacey Berahzer, *Four Factors that Allow One Utility to Provide Financial Assistance to People Who Don't Even Have a Water Account*, Envtl. Fin. Blog (Sept. 15, 2016), http://efc.web.unc.edu/2016/09/15/financial-assistance-people-without-water-account/.

[31] Baltimore, Md. Code art. 24, §2-6(b)(1).

[32] Maryland Office of People's Counsel, "Regulatory Activities – Water/Sewer," https://opc.maryland.gov/Regulatory-Activities/Water-Sewer

[33] Maryland Public Service Commission, "The Water Division," https://www.psc.state.md.us/water/#

Privately-owned companies make up a small fraction of water utilities in the state, servicing approximately 11,000 residents, primarily in rural and suburban parts of the state.[34] These privately-owned companies operate 22 water and water/sewage systems in Maryland, all of which are regulated by PSC. PSC oversees the infrastructure, rates, management, and billing for water systems in its jurisdiction.[35] The primary providers of water in the state—municipal governments and the WSSC—however, are not subject to such state regulation and generally have the authority to oversee the supply, infrastructure, customer care, and rates of their own water systems,[36] subject only to a broad "reasonableness" requirement.[37]

Water access needs can vary greatly throughout Maryland, and a system of localized services has its advantages. Policies that are relevant to a rural homeowner on well water may be very different than the policies needed to address water issues in a multi-family apartment complex in Baltimore. The Committee recognizes that many concerns raised in this report are centered on the needs of urban residents and those who are connected to publicly-run water systems, and that these concerns may not be shared by Marylanders statewide. This diversity of needs is a key reason for the state's current highly localized method of regulation.

However, a patchwork regulation system can also contribute to inconsistencies and inequalities in access to affordable water. For example, Maryland has no uniform, statewide mandate to provide assistance to residents in need of help, whether they own or rent their homes. Thus, residents of some jurisdictions would qualify for assistance, while comparable residents in another jurisdiction would not. Further, there is no constitutional or statutory right to affordable water in Maryland, and thus, many Marylanders continue to be confronted with rising, unaffordable utility costs that hinder access to one of the most basic human necessities.

According to EPA, water is unaffordable if it costs more than 2 percent of household income.[38] Under this definition, water is unaffordable across the state of Maryland. In fact, for households at 50 percent of the federal poverty rate, water is only affordable in three of the state's 38 PUMAs (Public Use Microdata Areas).[39] Punitive practices and collection procedures can vary widely depending on municipality, county, or even neighborhood. Some residents may never receive written notice that their water is going to be shut off, as only 53 percent of municipalities require notices to be sent.[40] Nearly half of the municipalities that allow water shutoffs charge a disconnection fee, and even more charge a reconnection fee, further increasing the financial burden

[34] https://www.psc.state.md.us/water/#
[35] https://www.psc.state.md.us/water/#
[36] https://www.psc.state.md.us/water/#
[37] Montag, C. *Water/Color: A Study of Race and the Water Affordability Crisis in America's Cities*. Thurgood Marshall Institute at the NAACP Legal Defense and Educational Fund, Inc., pg. 33. https://tminstituteldf.org/wp-content/uploads/2019/12/Water_Report_FULL_12_20_19.pdf.
[38] https://www.awwa.org/Portals/0/AWWA/ETS/Resources/AffordabilityAssessmentTool.pdf , pg. 6.
[39] Roger Colton, testimony before the Maryland Advisory Committee to the U.S. Commission on Civil Rights, web briefing, November 2, 2021, transcript, pg. 9, lines 37-42 (hereafter cited as Hearing Transcript).
[40] Campbell-Ferrari Testimony, Nov. 16 Hearing Transcript, p. 10, lines 4-5.

for those who struggle to afford water services.[41] And although the practice of placing houses in tax sale for unpaid water bills was recently banned within the city of Baltimore,[42] residents of 87 percent of Maryland's other municipalities could still lose their homes if they are unable to afford water.[43] Furthermore, only a fraction of municipalities offer water bill assistance for low-income residents, so there is no safety net in place for the vast majority of the state.[44] More research is needed on water access and affordability for the state of Maryland, particularly with regards to racial and socioeconomic data that could inform equitable policies.[45] Much of the research that is available concentrates on the city of Baltimore.

Current Efforts in the City of Baltimore

Like many older cities, Baltimore's water infrastructure is aging. The cost of maintenance, repairs, and environmental improvements,[46] [47] coupled with a decrease in federal funding,[48] has caused water bills to increase by 500 percent in the last two decades. Baltimore's median household income has only increased by 60 percent in that same timeframe.[49]

In 2019, more than half of city residents could not afford their water bill, a problem that was especially concentrated in low-income, majority-Black neighborhoods.[50] The NAACP projected that water rates that year would be unaffordable based on Black median income in 118 of Baltimore's 200 census tracts, and that would worsen to 131 in 2020.[51] These neighborhoods also experienced the highest concentrations of water shutoffs and tax sales.[52] In 2016 and 2017, the majority of clients in tax sale prevention clinics identified as Black and were from households with incomes below $30,000.[53] A direct line can be drawn from Baltimore's present-day inequities to historical policies such as redlining, in which the Federal Housing Authority demarcated majority-Black and immigrant neighborhoods as "unsafe" for mortgage lending, enacting a policy of

[41] Campbell-Ferrari Testimony, Nov. 16 Hearing Transcript, p. 10, lines 7-15.
[42] Washington Testimony, Nov. 2 Hearing Transcript, Pg. 4, lines 30-36.
[43] Campbell-Ferrari Testimony, Nov. 16 Hearing Transcript, p. 10, lines 18-20.
[44] Campbell-Ferrari Testimony, Nov. 16 Hearing Transcript, p. 10, lines 33-34.
[45] Campbell-Ferrari Testimony, Nov. 16 Hearing Transcript, p. 13, lines 20-23.
[46] Grant Testimony, Nov. 2 Hearing Transcript, Pg. 5, lines 33-37.
[47] Lee Testimony, Nov. 9 Hearing Transcript, p. 12, lines 19-21.
[48] Lee Testimony, Nov. 9 Hearing Transcript, p. 12, lines 20-21.
[49] Grant Testimony, Nov. 2 Hearing Transcript, Pg. 6, lines 5-8.
[50] Grant Testimony, Nov. 2 Hearing Transcript, Pg. 6, lines 11-15.
[51] Coty Montag, *Water/Color: A Study of Race and the Water Affordability Crisis in America's Cities*. Thurgood Marshall Institute at the NAACP Legal Defense and Educational Fund, Inc., pg. 35-36. https://tminstituteldf.org/wp-content/uploads/2019/12/Water_Report_FULL_12_20_19.pdf.
[52] Grant Testimony, Nov. 2 Hearing Transcript, Pg. 6, lines 18-21.
[53] Montag, *Water/Color: A Study of Race and the Water Affordability Crisis in America's Cities*, pg. 39.

divestment with wide-reaching and long-lasting effects.[54] [55] [56] Research from the Baltimore City Department of Planning shows that the city continues to spend more capital investment dollars in low-poverty, predominantly-White neighborhoods than it does in high-poverty, majority-Black or -Brown neighborhoods.[57] These patterns of divestment are directly tied to failing water infrastructure, increasingly unaffordable rates, water debt, and subsequent punitive actions.[58]

In an attempt to prevent further price increases and profit-seeking behavior, Baltimore banned privatization of its water utilities in 2018.[59] The following year, the Maryland General Assembly passed the Water Taxpayer Protection Act, repealing Baltimore City's authority to seize homes or places of worship due to unpaid water bills.[60] [61] Soon after, the Baltimore City Council introduced the Water Accountability and Equity Act, which was signed into law in January 2020. The legislation established permanent water shutoff protections for certain categories of residents,[62] including seniors, families with young children, individuals with medical conditions, and tenants.[63] Tenants are vulnerable water consumers in Baltimore because they are not direct customers of the utility. Water accounts are held by property owners and landlords. Tenants are not listed on the account, therefore, without landlord consent, tenants are unable to dispute erroneous charges, or even view their water bills to ensure that they are paying an accurate amount. [64] If they were unable to afford their water bill, tenants could not receive water assistance,[65] but could still be subject to punitive actions, such as eviction.[66]

The Water Accountability and Equity Act attempted to address this and other concerns by creating the Water4All Affordability Program and the Office of Water Customer Advocacy and Appeals.[67] The latter is a semi-independent office to address water billing errors and program denials, increase transparency and accountability, and streamline the appeal process.[68] [69] The former would cap

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[54] Lee Testimony, Nov. 9 Hearing Transcript, p. 12, lines 26-29.
[55] Ashley Van Slyke, "America's Legacy of Redlining: State-Sponsored Segregation and Disenfranchisement of Urban Minority Communities," Lerner Center for Public Health Promotion (Issue Brief #35, July 13, 2020) https://surface.syr.edu/cgi/viewcontent.cgi?article=1027&context=lerner.
[56] Colton Testimony, Nov. 2 Hearing Transcript, Pg. 12, lines 8-19.
[57] Baltimore Neighborhood Indicator Alliance, "Equity Analysis of Baltimore City's Capital Improvement Plan, FY2014-FY2020," August 2019. Final Report - CIP Analysis August 2019.pdf (baltimorecity.gov).
[58] Lee Testimony, Nov. 9 Hearing Transcript, p. 12, lines 26-29.
[59] Grant Testimony, Nov. 2 Hearing Transcript, Pg. 6, lines 33-38.
[60] Washington Testimony, Nov. 2 Hearing Transcript, Pg. 4, lines 30-36.
[61] Water Taxpayer Protection Act, HB0161 (2019). https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/sb0096/?ys=2019rs.
[62] Grant Testimony, Nov. 2 Hearing Transcript, Pg. 7, lines 13-14.
[63] Grant Testimony, Nov. 2 Hearing Transcript, Pg. 8, lines 16-24.
[64] Grant Testimony, Nov. 2 Hearing Transcript, Pg. 8, lines 5-10.
[65] Hennen Testimony, Nov. 9 Hearing Transcript, p. 8, lines 32-36.
[66] CASA, "New CASA Lawsuit: Maryland Landlord Illegally Overcharges Tenants for Water," 2022. https://wearecasa.org/new-casa-lawsuit-maryland-landlord-illegally-overcharges-tenants-for-water/.
[67] Grant Testimony, Nov. 2 Hearing Transcript, Pg. 7, lines 3-9.
[68] Grant Testimony, Nov. 2 Hearing Transcript, Pg. 7, lines 11-12.
[69] Grant Testimony, Nov. 2 Hearing Transcript, Pg. 8, lines 2-4.

water bills of low-income households at a level they can afford to pay, based on their income.[70] Households at or below 200 percent of the federal poverty rate would be eligible to pay discounted rates along a sliding scale.[71] The program would also provide a pathway out of water debt and an incentive to stay current on payments.[72]

While Water4All is more comprehensive than previous water assistance programs,[73] and more targeted at addressing equity concerns,[74] advocates and city officials alike are dissatisfied with the program's current method of providing water assistance to tenants.[75] [76] Since tenants are still not direct customers of the water utility, water discounts cannot be directly applied to their bills. Instead, tenants who qualify for Water4All would receive direct payments from the city, in the form of a prepaid debit card, for the amount needed to make their water bill affordable.[77] The issue is that this form of financial assistance would be classified as self-employment income, and thus taxable income, by both state and federal regulators.[78] Low-income tenants would be responsible for paying taxes on the assistance they receive, and could lose as much as a quarter of the benefit to taxes.[79] The assistance would also be factored into their total annual income and could potentially disqualify them for other means-tested financial benefits they receive, such as subsidized housing,[80] SNAP,[81] Social Security, or disability benefits.[82]

The Water Accountability and Equity Act was scheduled to be implemented on July 13, 2020, but was delayed by executive order due to the COVID-19 pandemic.[83] A new deadline was set for July 1, 2021, and this date also passed with no new measures in place. As of the writing of this report, the programs and protections of the bill have still not been implemented.[84] In the two years that have passed since the bill became law, however, Baltimore's water rates have increased twice.[85]

COVID Response

On March 16, 2020, at the onset of the COVID-19 pandemic, Governor Larry Hogan issued an

[70] Grant Testimony, Nov. 2 Hearing Transcript, Pg. 7, lines 9-11.
[71] Grant Testimony, Nov. 2 Hearing Transcript, Pg. 7, lines 28-30.
[72] Grant Testimony, Nov. 2 Hearing Transcript, Pg. 7, lines 31-35.
[73] Day Testimony, Nov. 9 Hearing Transcript, p. 3, lines 15-18.
[74] Colton Testimony, Nov. 2 Hearing Transcript, Pg. 11, lines 8-14.
[75] Hennen Testimony, Nov. 9 Hearing Transcript, p. 10, lines 9-12.
[76] Day Testimony, Nov. 9 Hearing Transcript, p. 5, lines 8-11.
[77] Day Testimony, Nov. 9 Hearing Transcript, p. 4, lines 27-33.
[78] Hennen Testimony, Nov. 9 Hearing Transcript, p. 18, lines 34-37.
[79] Hennen Testimony, Nov. 9 Hearing Transcript, p. 9, lines 38-39.
[80] Hennen Testimony, Nov. 9 Hearing Transcript, p. 10, lines 3-5.
[81] Hennen Testimony, Nov. 9 Hearing Transcript, p. 10, line 6.
[82] Hennen Testimony, Nov. 9 Hearing Transcript, p. 10, lines 7-8.
[83] Grant Testimony, Nov. 2 Hearing Transcript, Pg. 8, lines 27-29.
[84] Grant Testimony, Nov. 2 Hearing Transcript, Pg. 8, lines 32-37.
[85] Baltimore City Department of Public Works, "Water Billing Rates and Fees," accessed March 7, 2022, https://publicworks.baltimorecity.gov/Water-Bill-Rates-and-Fees.

executive order prohibiting the termination of water services and other utilities for any residential unit in Maryland, as a matter of public health, welfare, and safety. The order also prohibited the collection of late fees, citing widespread loss of work and income for Maryland residents.[86] This moratorium was renewed multiple times before expiring on September 1, 2020.[87]

Findings and Recommendations of the Maryland Advisory Committee

Among their duties, advisory committees of the U.S. Commission on Civil Rights are authorized to advise the Commission (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.[88] The Maryland Advisory Committee submits the following findings and recommendations to the Commission for review:

Findings

1) **Water equity is a matter of civil rights because protected groups are disproportionately impacted by rising water costs and punitive practices.**

Rising water costs can be attributed to aging water infrastructure and inadequate or delayed investments in maintenance and repair. In Baltimore, low-income majority-Black neighborhoods are disproportionately impacted by both divestment and failing infrastructure. In fact, a direct line can be drawn from today's water rate crises to historical policies that promoted White middle-class flight out of cities, such as redlining and suburbanization. Maps of where shutoffs and tax sales occurred show that they are typically in the lowest-income census tracks, in redlined majority-Black neighborhoods. Furthermore, after decades of discrimination in home ownership opportunities, people of color are now more likely to rent than to own their homes. Since tenants are not considered direct water customers, they face unaffordable water bills with no ability to access bill assistance.

While historical housing discrimination is a contributing factor, it is not the only factor at play. Water providers may opt for uniform discount programs that are simple to administer, since they do not account for individual household income or need, but such programs embed discriminatory patterns into the water rate system and do nothing to address inequities. The city of Baltimore continues to spend more capital investment dollars in low-poverty, predominantly-White

[86] Executive Order of the Governor of the State of Maryland (March 16, 2020), https://governor.maryland.gov/wp-content/uploads/2020/03/Executive-Order-Prohibit-Termination-of-Residential.pdf.
[87] Executive Order of the Governor of the State of Maryland, No. 20-07-31-01 (July 31, 2020), https://governor.maryland.gov/wp-content/uploads/2020/07/Utility-Shutoffs-and-Late-Fees-4th-Amended-7.31.20.pdf.
[88] 45 C.F.R. § 703.2.

neighborhoods than it does in high-poverty, majority-Black or Brown neighborhoods. While there is limited equity data available for the rest of the state of Maryland, national data suggests that these patterns can be seen in more jurisdictions than not. In fact, on a national level, race is the strongest predictor of water and sanitation access, drinking water quality and safety, and enforcement of drinking water laws, even after controlling for income. More data is needed in order to fully understand the disproportionate impacts on protected classes in the state of Maryland.

2) A decades-long decrease in federal funding has contributed to rising household water costs.

In 1972, the federal Clean Water Act established a grant program to fund construction of wastewater and water treatment facilities. The Reagan administration replaced this grant program with a revolving loan fund in 1987, upending an essential source of federal funding for local water suppliers and creating additional interest expenses. Without adequate federal funding, the costs to maintain, repair, and improve water infrastructure are being passed on to households.

The recently-passed Infrastructure Investment and Jobs Act includes federal funding for water infrastructure improvements, specifically through revolving loan funds and Water Infrastructure Improvements for the Nation (WIIN) grants. If this funding is sustained, it may begin to address the decades-long dearth of federal assistance.

3) Income-based rate structures are essential for water equity.

Water affordability is best measured as a percentage of household income. A $50 water bill may be considered affordable for one household, and may be a tremendous financial burden for another. In order for water to be truly affordable for families at all income levels, providers must account for household income when determining a household's billing rate. Income-based rate structures are not as simple to administer as a one-size-fits-all system, but they are essential for ensuring that vulnerable residents are able to afford their bills.

4) Punitive practices, such as water shutoffs and liens, are a threat to public health and safety, and are wielded disproportionately depending on the jurisdiction.

Clean running water is essential to health, so much so that not having running water can be grounds for the removal of children from a family. And yet, the majority of Maryland's municipalities and counties allow for water services to be terminated. Some residents may never receive written notice that their water is going to be shut off, as only 53 percent of municipalities require notices to be sent. Nearly half of the municipalities that allow water shutoffs charge a disconnection fee, and even more charge a reconnection fee, further increasing the financial burden for those who struggle to afford water services. And although the practice of placing houses in tax sale for unpaid water bills was recently banned within the city of Baltimore, residents of 87 percent of Maryland's other municipalities could still lose their homes if they are unable to afford water.

5) Classifying water assistance as taxable income can jeopardize the economic security of recipients.

Baltimore's Water4All program will address what previous iterations did not—assistance for tenants who are not listed on the water account, such as tenants in multi-family buildings. However, classifying this assistance as self-employment income, and thus taxable income, can have harmful impacts on some of the most vulnerable program participants. This classification means that recipients must pay taxes on their water discount, something that homeowners and tenants who are listed on the water account are not required to do. The assistance would also be factored into their total annual income and could potentially disqualify low-income residents for other means-tested financial benefits they receive, such as subsidized housing, SNAP, Social Security, or disability benefits.

6) The delayed implementation of Baltimore's Water Accountability and Equity Act is causing harm to the city's most vulnerable populations.

The Water Accountability and Equity Act was scheduled to be implemented on July 13, 2020, but was delayed by executive order due to the COVID-19 pandemic. A new deadline was set for July 1, 2021, and this date also passed with no new measures in place. As of the writing of this report, the programs and protections of the bill have still not been implemented.

Residents who were enrolled in prior water assistance programs (BH2O Assists/BH2O Plus) are able to continue receiving assistance until Water4All is operational. However, tenants of multi-family apartment buildings and others who were excluded from these programs continue to face punitive measures for unaffordable water bills. In the two years that have passed since the bill became law, Baltimore's water rates have increased twice, while the city's most vulnerable residents have received no protections or assistance.

Recommendations

1. The U.S. Commission on Civil Rights should conduct a national study of water affordability disparities, including (a) a review of available data and identification of areas where data may be missing or insufficient; (b) the impact of federal funding delivered in the Infrastructure Investment and Jobs Act; (c) policy changes and best practices with the potential to remediate water equity concerns identified in this report.

2. The U.S. Commission on Civil Rights should send this report to the U.S. Congress and the President and issue the following recommendations:

    a. Congress should increase funding for local water infrastructure, through grants rather than loans, to reduce interest expenditures for local and state water utilities.

b. Congress should pass the Water Affordability, Transparency, Equity, and Reliability Act, which would create a trust fund for water infrastructure and provide $35 billion each year for water and sewer systems across the country.

c. Water assistance should be deemed nontaxable income.

3. The U.S. Commission on Civil Rights should send this report to the Maryland Governor and State Legislature and issue the following recommendations:

   a. Public water providers in the state of Maryland should incorporate income-based rate structures.

   b. Public water providers in the state of Maryland should end the use of punitive practices, including, but not limited to, water shut-offs and tax liens.

   c. The state of Maryland should declare water assistance nontaxable income.

4. The U.S. Commission on Civil Rights should send this report to the Baltimore Mayor and Baltimore City Council and issue the following recommendations:

   a. Baltimore's Water Accountability and Equity Act should be fully implemented immediately.

Appendix A – Briefing Panelists

Robert Ballenger
Director of Energy Unit, Community Legal Services of Philadelphia

Alexandra Campbell-Ferrari
Executive Director, Center for Water Security and Cooperation

Roger Colton
Partner, Fisher, Sheehan, & Colton

Julie Day
Chief Administrative Officer, Baltimore City Department of Public Works

Jeffrey Fretwell
Director of Water Quality Financing Administration, Maryland Department of the Environment

Mary Grant
Campaign Director, Food & Water Watch

Steve Hanke
Professor, Johns Hopkins University

Amy Hennen
Director of Advocacy and Financial Stabilization, Maryland Volunteer Lawyers Servic

Jaime Lee
Professor, University of Baltimore

Jeremy Orr
Senior Attorney, Natural Resources Defense Council

Adam Schempp
Director of Western Water Program, Environmental Law Institute

Mary Washington
State Senator, Maryland General Assembly

Appendix B – Briefing Transcripts Links

Web Briefing - November 2, 2021

Web Briefing - November 4, 2021

Web Briefing - November 9, 2021

Web Briefing - November 16, 2021

Appendix C – Written Testimony and Submitted Materials Links

i. Testimony of Robert Ballenger

ii. Testimony of Julie Day

iii. Testimony of Jeffrey Fretwell

iv. Testimony of Steve Hanke

v. Testimony of Adam Schempp