



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

Water affordability in Maryland - policy gaps threaten water access for vulnerable communities

Water access is a fundamental human right, essential to sustaining life. The cost of water across the country has risen at three times the rate of inflation over the past decade and faster than increases in income.¹ 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.²

A report³ by the Maryland Advisory Committee to the United States Commission on Civil Rights addresses the gap threatening clean water access for vulnerable communities in the state. The committee provides a bipartisan assessment of the testimony received over several briefings held by the committee.

Why are water costs rising?

Between 1977 and 2017, federal funding for water infrastructure fell by 77 percent,⁴ while the need for infrastructure investment grew.⁵ Increased water costs are generally attributable to decreases in federal investment, rising infrastructure improvement costs for utility companies, and increasing frequency of extreme weather events that contribute to flooding and infrastructure stress.⁶ 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.⁷

Key points:

- Access to clean, affordable water is a fundamental human right recognized by the U.N. General Assembly in 2010.
- Despite this recognition, there are no state or national standards to guarantee affordable access to clean water.
- A decades-long decrease in federal funding has contributed to rising household water costs, while decreasing local and state revenues have led to declining infrastructure maintenance.
- Water assistance programs are inconsistently allocated throughout the state, and nearly exclusively focused on supporting owner-occupants.
- The ongoing impact of historic racial segregation in housing has concentrated these concerns in low-income neighborhoods and communities of color.
- There is not enough data on shutoffs, liens, and payment plans for policy makers to document or remedy inequities.

¹ 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https://www.wsj.com/articles/who-is-paying-to-fix-outdated-water-and-sewer-systems-you-are-1521106201>.

² Food and Water Watch, AMERICA'S SECRET WATER CRISIS (2018), https://www.foodandwaterwatch.org/sites/default/files/rpt_1810_water-shutoffs-web2.pdf.

³ Available at: <https://www.usccr.gov/reports/2022/water-affordability-maryland>.

⁴ 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-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-you-d-least-expect-it>.

⁵ 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.

⁶ 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.wuonline.org/assets/pdf/pubs-asset-infrastructure.pdf>.

⁷ 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.

How does this water crisis impact Maryland residents?

Maryland has no uniform, statewide mandate to provide assistance to residents in need of help paying their water bills, whether they own or rent their homes. Although 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, a majority of Maryland's municipalities and counties allow for water services to be terminated for lack of payment.

Currently only 53 percent of municipalities require written notices to be sent to residents before water is shut off.⁸ 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. 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.⁹

What protections are available to ensure universal water access?

While the U.S. Constitution does not explicitly recognize a right to affordable water access for all, denial of water for inability to pay may infringe on other fundamental rights, such as the right to life.¹⁰ Some other civil rights and anti-discrimination laws may protect against water deprivation in some instances. For example, 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 Fair Housing Act.¹¹

What can the Maryland legislature do?

The Maryland legislature can declare water assistance as a non-taxable income. Currently, Baltimore City residents receiving water assistance receive a debit card to pay their

water bill, and the assistance is calculated as self-employment income and taxed by state and federal governments. This jeopardizes recipients' income qualifications for other benefits such as SNAP, social security, and disability benefits.

The State can also require public water providers to incorporate income-based rate structures, and end the use of punitive practices, including, but not limited to, water shut-offs, and tax liens by water providers.

Recommendations (selected)

- The U.S. 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.
- Public water providers should incorporate income-based rate structures and discontinue punitive practices such as tax liens and water shut offs.
- The State of Maryland should declare water assistance as nontaxable income.
- Baltimore's *Water Accountability and Equity Act* should be fully implemented immediately.

For more information:

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[survey and assessment.pdf](#)

⁸ Campbell-Ferrari Testimony, Nov. 16 Hearing Transcript, p. 10.

⁹ Campbell-Ferrari Testimony, Nov. 16 Hearing Transcript, p. 10.

¹⁰ 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>.

¹¹ 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).

The United States Commission on Civil Rights maintains 56 Advisory Committees, one for each state and territory, and the District of Columbia. Each committee is composed of citizen volunteers familiar with local and state civil rights issues. The members assist the Commission with its factfinding, investigative, and information dissemination functions.

This research brief is the work of the Maryland Advisory Committee to the U.S. Commission on Civil Rights. The brief may rely on testimony, studies, and data generated from third parties. Advisory reports are reviewed by Commission staff only for legal sufficiency and procedural compliance with Commission policies. The views, findings, and recommendations expressed in this report are those of a majority of the Nebraska Advisory Committee, and do not necessarily represent the views of the Commission, nor do they represent the policies of the U.S. Government.