

PLANNING AND DEVELOPMENT COMMITTEE
February 17, 2023

HB 5888 - AAC THE METROPOLITAN DISTRICT COMMISSION

Amended Testimony Submitted By:

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Senator Rahman, Representative Kavros DeGraw, Senator Fazio, Representative Zullo and distinguished members of the Planning and Development Committee, my name is Chris Stone, and I am the District Counsel at the Metropolitan District (the “MDC”). The MDC, a specially-chartered municipal corporation which includes the municipalities of Bloomfield, East Hartford, Hartford, Newington, Rocky Hill, West Hartford, Wethersfield and Windsor, is the provider of potable water services to over 400,000 people located within the eight-member towns and parts of East Granby, Farmington, Glastonbury, Portland, South Windsor and Windsor Locks. In addition, the MDC provides wastewater treatment services to the customers located and residing within its eight member towns with four water pollution control facilities located throughout the MDC region.

The MDC submits this testimony in respectful opposition to HB 5888, entitled “An Act Concerning the Metropolitan District Commission,” which would: i) amend the MDC Charter to require that the Auditors of Public Accounts perform the annual audits of the MDC’s books and records; ii) establish a task force to examine the organization and operations of the MDC and make recommendations for revisions to the MDC Charter; iii) mandate that the MDC Board adopt, administer and enforce the model code of ethics for municipalities and special districts; and iv) permit commissioners from non-member municipalities to vote on water rates applicable to nonmember municipalities. Although there is no detailed language available to review for HB 5888, the MDC presumes that, when detailed language is made available, it will be similar, if not identical, to SB 966 which was raised in the 2021 regular session.

With regard to the requirement that the State Auditors of Public Accounts conduct annual audits of the MDC’s books and records, it is important to note that the MDC is subject to a rigorous annual audit that is conducted by an outside, independent auditing firm. This independent audit is required to assure the 33-member MDC Board of Commissioners that the MDC is adhering to the highest standards in the industry. In addition, as some members of the Committee may appreciate, the MDC is required to make significant capital improvements every year and is amid a \$2.5 billion capital improvement project within the eight member towns. Bondholders hold up to \$2 billion in MDC bonded indebtedness, and the MDC has committed to these bondholders that these independent audits will be performed in a timely manner so that they may rely upon these examinations to ensure that their investments are sound. It is possible that, if these provisions regarding the State Auditors of Public Accounts are implemented,

commitments that have been made to bondholders via bond covenants will be violated or placed in jeopardy. The result of such a breach will be an uncertainty in the bond markets that could lead to an increase in the cost of borrowing funds to complete these mandated projects, a cost that will be borne by the eight-member towns and their taxpayers.

If there is a suggestion that an outside, independent auditing firm would not be impartial when it examines the books and records of the MDC, the MDC, as well as every single auditing firm, respectfully takes issue with that suggestion. These audits are independent, exhaustive and thoroughly done and the conclusions are objective.

Regarding the creation of a task force to examine the organization and operations of the MDC and make recommendations for changes to the MDC Charter, the MDC also opposes this initiative. MDC does not understand what prompts the need for such a task force and potential changes to the Charter. Over the course of the last 10 years, several legislative changes have been made that affect both the MDC as well as its Charter. Some of these changes have been made at the request of the MDC and some others have been made despite the MDC's expression of concern.

For example, in 2011, the General Assembly passed P.A. 11-51 which deemed the MDC to be a "State agency" for purposes of developing an affirmative action plan on an annual basis, which is subject to the review and approval of the Department of Administrative Services and the Commission on Human Rights and Opportunities. The MDC is the only municipality that submits its affirmative action plan to CHRO. In addition, in the same legislation, the MDC was specifically excluded from representation by the AG's office in the event of a challenge or action based on the plan. Every other State agency is afforded this representation.

In 2014, Special Act 14-21 was passed which made several significant changes: the MDC is required to post its budget conspicuously on its website; the MDC Board of Commissioners was expanded to add four (4) members to represent the non-member Towns; the MDC is required to develop an Annual Report that contains a list of all bond issues which identifies financial advisor utilized, the underwriters involved and whether it was a competitive, negotiated or privately placed transaction and what the face value of the sale was and the net proceeds, a list of all projects receiving financial assistance including its purpose, location and the amount of funding provided by the MDC, the cumulative value of all bonds issued by the MDC, the value of all outstanding bonds and the capital projects associated with such bonds, no later than February 15 every year, the MDC must submit an accounting showing all water revenue and expenditures by source, category, and type, an affirmative action policy statement that provides a description of the composition of MDC's work force by race, sex, and occupation. This extensive report is filed with the Governor, the Auditors of Public Accounts, the Office of Fiscal Analysis (OFA), the Legislative Program Review Office and this Committee! Not once has the MDC been notified of any deficiency in these reports. In addition to that report, the MDC also must prepare a Personnel Status Report and file with the OFA on an annual basis which includes the total number of employees at the end of each quarter, the number of positions vacated, and the positions filled; and estimates of positions to be vacated and anticipated to be filled. Finally, the MDC must provide a copy of the independent annual audit to the OFA every year.

In 2017, P.A. 17-1 was passed by the General Assembly which established the Office of the Independent Consumer Advocate for the MDC. The Office of the Consumer Counsel selected and appointed Attorney David Silverstone to the position shortly after the effective date, and Attorney Silverstone continues to serve in this position. MDC has worked cooperatively with Attorney Silverstone since he has occupied the position, and, at his request, the MDC has increased his minimum compensation so that he is able to dedicate the appropriate personal resources to this important position.

The Committee must take note of these changes that have occurred over the last 10 years and inquire as to what other matters could possibly require further examination by a 19-member task force. Given these substantive changes, the MDC is at a loss as to why the Committee would pursue this course of action.

HB 5888 also issues a mandate to the thirty-three volunteer members of the MDC Board of Commissioners that they shall adopt, administer and enforce the model code of ethics developed by the Office of State Ethics. This mandate implies that the MDC does not have a Code of Ethics, which is false. The MDC By-Laws contain a Code of Ethics which binds every member of the Board, every officer of the MDC and every employee of the MDC. When comparing the MDC's Code of Ethics with the Model Code, it is important to note that the MDC's current Code of Ethics contains approximately ninety-five percent of the provisions that are contained in the Model Code. Additionally, in 2022, the MDC Board of Commissioners added an additional requirement that Commissioners and Citizen members annually acknowledge the MDC Code of Ethics and disclose any known actual or potential conflicts of interests. Pursuant to this new self-imposed requirement, the MDC requested and received conflict of interest training from the Executive Director of the Office of State Ethics for the purposes of their government ethics education and to assist in their good faith identification and disclosure of any potential conflicts of interest. The MDC respectfully submits that its overall ethics program and its Code of Ethics is as comprehensive, if not more so, than other municipalities and special districts. Based upon the research that the MDC has done, it appears that the General Assembly has never mandated that any other municipality adopt the Model Code. In fact, it is the MDC's understanding that, although other municipalities may have adopted portions of the Model Code on their own volition, there is not one municipality or special district that has adopted the entire Model Code as would be required in HB 5888.

Therefore, the MDC opposes this unreasonable and unnecessary mandate. The legislation fails to recognize that the MDC has a Code of Ethics in place and, in fact, in addition to the recent requirements it has placed on itself as discussed above, the MDC historically has recognized the importance of ensuring the integrity, efficiency, and efficacy of the functions of the MDC. In 2007, the MDC established an Internal Audit Committee that consists of nine Commissioners that has the authority to perform activities such as, but not limited to: i) ascertaining the extent of compliance with established policies, plans, procedures and legal requirements; ii) reviewing and appraising the soundness, adequacy and application of accounting, financial, operating and systems controls; iii) ascertaining the extent to which District assets are accounted for and safeguarded from losses of all kinds; and iv) ascertaining the reliability of management data developed within the District departments and offices.

Finally, HB 5888 permits commissioners from nonmember towns to vote on water rates. Although the bill provides that a nonmember commissioner may vote on water rates applicable to nonmember towns, there is a single water rate that is applied throughout the district. The MDC's concern with respect to the proposal is that there are only four commissioners from nonmember towns who represent approximately 10,000 ratepayers and twenty-nine commissioners who represent approximately 92,000 ratepayers. It is not equitable that a commissioner from a nonmember town who may represent a super-minority of ratepayers should have a vote equal in weight to a commissioner who represents a super-majority of ratepayers.

For these reasons, the MDC respectfully requests that the Planning & Development Committee reject HB 5888. The provisions of the bill are unreasonable, unnecessary and have the potential to cause significant harm.

Thank you for your attention to these important issues.