

April 15, 2010

TO: Village President and Board of Trustees

FROM: David A. Hulseberg, Village Manager

SUBJECT: DuPage Water Commission

This memo is written to apprise the Village Board on the status of SB580 and its companion bill HB5552. As you may be aware, SB580 was introduced by Senator John Cullerton on February 6, 2009, but served only as a “shell bill”. Three amendments to SB580 have been introduced by Senator Dan Cronin. These subsequent amendments have contained provisions to dissolve the DuPage Water Commission (DWC) and transfer authority and assets of the DWC to DuPage County. I have provided a synopsis of the bill, as amended 4/13/10, for your consideration.

SB580 establishes the “Water Distribution Committee,” which shall have as its primary duties: direct administrative responsibility over the water distribution systems to municipal water systems. The Committee shall be comprised of an equal number of members from the County (7) and the municipalities (7) currently served by the DWC, as compared to the current composition of 7 county members and 6 municipal members. County representatives will be appointed by the County Board Chairman in accordance with County policies. Municipal representative from each county district shall be appointed by a majority vote by the Mayors of the municipalities within the county district. The County shall appoint the Chairman of the Water Distribution Committee and the Vice-Chair shall be selected by the municipal representatives. SB580 also has these new provisions: 1) that the County Clerk and County Treasurer shall perform all functions for the Water Distribution Committee, as provided to other county departments; and 2) that the County Auditor perform an annual audit of the Water Distribution Committee.

The bill further transfers governance of the DWC, as provided for in the Water Commission Act of 1985, to the county board. The proposed purpose of the merging and consolidation of authority is based upon the fact that, “The General Assembly also finds that the State has a compelling interest in reducing the economic and administrative inefficiencies resulting from multiple units of local government conducting related public services”. While the bill seeks to consolidate the governance of the regional water distribution system and county system, the bill provides for the continued independence of the municipal retail waterworks systems. This consolidation is intended to make the governance of the water system “more responsive to the electors and users” and “ensure the financial viability of the water distribution system”, as well as, “ensure that government services are delivered in a transparent and responsible manner”.

The bill provides that the transfer of all powers vested in the DWC for operation and maintenance, take effect on and after December 1, 2010. Included in this transfer are title to all land, property and funds held by the DWC at the time of transfer. The bill provides that the county establish a Water Distribution Enterprise Fund to set-aside all assets to be used for their intended purposes(s) prior to the transfer. Any surplus of funds would be maintained in the Water Distribution Enterprise Fund. SB580 also provides that the proceeds of any taxes or special assessments levied prior to the adoption of the amendatory act shall continue to be collected and applied to the purpose(s) for which they were levied. An issue of significant concern is whether the County will divert the 0.25% sales tax approved by referendum and in Water Commission Act of 1985 to other County uses. Finally, the bill provides that the water rate charged by DWC can not be less than the rate that DWC purchases the water for from the City of Chicago.

It should be pointed out that under this legislation, this operation will now reside under the County. Six years ago, the County removed \$75 million from the DuPage Water Commission, and used these funds for County operations, and not for improvements to the water system. While the municipalities received \$40 million in rebates three years ago, these rebates were used for water purposes. Lombard used this rebate to offset the rate increases associated with Chicago increasing their rates. So there seems to be a clear difference in intent between the County and municipalities.

While the bill provides a clear picture of how the operations and separation of funds will be managed in the event that DWC becomes an operating department of DuPage County, several questions remain. The bill contains three alarming provisions that are a concern to the municipalities served by DWC. While the bill articulates the concept that the funds received by DWC shall remain assets of the Water Distribution Committee, it is unclear what may become of any operational surplus. Will a capital budget be maintained that provides assurances that the system will continue to operate effectively? Or will any surplus that has not been designated be accessible for general county purposes? Additionally, while transferred funds must be maintained in the established enterprise fund, the county may include sub-funds for “any other purposes as deemed useful for management purposes”. As such, the county may be able to gain access to available funds by defining the expenses as management or oversight.

The area of greatest concern from an operational standpoint is the provision that states, “*Sec. 5-43055. Water service for unincorporated areas. A successor county may require as a condition of a new or existing water supply contract that a municipality provide water to unincorporated areas of the county that adjoin that municipality*”. This vague statement does not provide a funding mechanism or detail the means by which the municipality recoups its costs to provide or construct distribution systems to unincorporated areas. This provision may expose communities such as Lombard to the mandatory provision of water to unincorporated areas, without the ability to require annexation/pre-annexation as a condition.

In response to SB580, the customers of the DWC have been engaging in dialogue regarding a compromise bill that would be put forth to effectively halt SB580 and

HB5552. The “good government” law provides direction on how the DuPage Water Commission should be managed. The bill would incorporate the findings of the forensic audit recently conducted for the DWC. In order to move this process along, the staff of the DuPage Mayors and Managers Conference has served as facilitator. A plan has been developed to fund a lobbyist and public relations firm to assist the Customers in the mission to introduce the “good government” bill. The cost of these services is estimated at \$100,000, with assessments being based upon \$50,000 being split equally among the Customer group and the remaining \$50,000 based upon usage of water through the DWC. This is the same methodology that was used six years ago when the County previously tried taking over the DWC. The Village’s commitment to defend the municipal position would be \$4,649.87.

As of this morning, we received word from the DuPage Mayors and Managers Conference that there may be a compromise on this issue, which would include:

- Maintaining the current structure of the DuPage Water Commission
- The DWC Board would be reconstituted on 1/1/11, under the same process that is used currently for selecting Board members
- Effective immediately, the 0.25% DWC sales tax proceeds could only be used for infrastructure, capital projects and bond payments
- Effective 1/1/14, if the 0.25% sales tax is not being used entirely for these purposes, then it would go away

One issue that we are currently checking into is that under this compromise, we would want to make sure that the DWC has authority to provide water to unincorporated areas under its current authority in accordance with the infrastructure purposes identified above.

Information regarding this matter was contained in the Manager’s Notes on April 9, 2010. At that time, I requested Village Board direction on the Village of Lombard’s financial contribution to the efforts to introduce legislation that would be more agreeable to the Charter and Subsequent Customers of the DuPage Water Commission. This matter has been placed on the Village Board agenda for April 15, 2010 to seek direction from the Village Board. Based on the tentative compromise on this issue, these funds may not be needed. However, I would recommend that the Village Board authorize \$4,649.87 for the purpose stated, in case the compromise does not bear out and we need to proceed with pursuing the alternative with other DWC communities.

Please contact me if you have any questions. Thank you for your time and attention to this matter.