



American Water Works
Association

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Legislative Alert

Action requested: Be prepared to voice opposition to proposed state legislation that would take infrastructure design and construction decisions away from water professionals and design engineers.

Background: The AWWA Water Utility Council has been made aware of efforts in several states and municipalities to enact legislation, often called “Open Procurement” bills, that would effectively force communities or utilities to seek bids for materials, particularly pipes, of all types and materials, and then to accept the lowest bid for materials in a drinking water, wastewater or stormwater infrastructure project. This has the effect of forcing the selection of materials, to be based solely on price. Consequently, the decisions of utility project managers and design engineers in choosing specific materials for a particular site or function may be overridden.

Efforts to move this type of legislation have failed so far at the federal level, so proponents are looking at state and local governments as possible vehicles for enacting it.

Last year, state legislation was introduced in Indiana, Ohio and Tennessee. It immediately met opposition from a broad coalition of utilities, engineers, contractors, business groups and public entities, and was defeated in all three states. This year, the legislation has been introduced in Oklahoma, Arkansas, South Carolina and North Carolina. So far, it has not passed due to similar, strong opposition.

State-based proposals for “open procurement” often are loosely based on a 2012 policy coming from the U.S. Department of Agriculture (USDA) that prohibits the specification of a particular material for USDA water and wastewater projects without USDA approval. Prior to 2012, the USDA allowed the specification of specific materials, but not specific brands. The USDA policy is not specific to pipe, but it appears that much of the focus of the policy is on pipe. The practical effect of this policy is that there are utilities that are being forced to specify pipe materials that were not included in the original project design – and which the utility may think unsuited for a particular application - as a condition of receiving USDA money. Certain interest groups have expressed interest in legislation to expand the USDA policy to the State Revolving Funds, although such legislation has not moved yet.

AWWA is neutral as to which materials utilities select for infrastructure projects. While AWWA believes that there is an application for all types of material, we also know that

not all materials are equally suitable for all applications. We have members who feel very strongly (both positively and negatively) about the different pipe materials that are available. The WUC's opposition to the legislation, however, is based on the negative effect that this effort would have on the ability of utilities and design professionals to continue to best serve their communities by maintaining control over material selection.

Further actions requested

AWWA staff is engaged on this issue and offers its assistance to Section WUCs or government affairs committees. To help us work together, we ask for your additional help in a few key ways:

1. Inform the AWWA Washington Government Affairs office of any activities associated with this effort in your state or community; and
2. Educate your fellow water works professionals and other key groups and associations about this effort and about your opposition to it. We have found that this effort generally loses its appeal once elected officials and others understand the technical and project-specific considerations involved in material selection decisions.

Attached is a template letter and a set of talking points that you may use in communicating with elected officials.

Thank you in advance for your assistance on this issue.