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# WATERWORKS IN PROGRESS

*Reassessing the Sewerage & Water Board's  
Governance Problems and Potential Paths  
to Long-Term Improvement*



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## EXECUTIVE SUMMARY

For more than 120 years, the Sewerage and Water Board (S&WB) has delivered drinking water, handled wastewater and managed drainage for New Orleans. Given these responsibilities, it is hard to overstate the S&WB's impact on quality-of-life issues and the city's overall sustainability.

In recent years, the S&WB has embarked on several planning initiatives to improve its business practices and guide future infrastructure investments. It has also started key capital projects to improve long-standing performance deficiencies.

However, the S&WB still faces significant challenges on the financial, operational and infrastructure fronts. BGR finds that many of these problems are connected to the S&WB's complex governance structure, which consists of the laws, rules, policies and procedures that establish the powers, roles and responsibilities of the S&WB and those involved in its operations. While BGR recognizes the efforts of the utility's current leadership and the progress made in recent years, the flawed governance structure of the S&WB makes it difficult for even capable leaders to achieve successful outcomes that the public needs.

In this report, BGR identifies major weaknesses in the S&WB's governance structure and how they undermine

efforts to put the utility on a sustainable path to success. The report also explores governance reform options to resolve these problems and provide long-term improvement.

## AN OVERVIEW OF WATER UTILITY GOVERNANCE IN LARGE U.S. CITIES

A well-designed governance structure is closely connected to a water utility's ability to perform at a high level. A structure that promotes "good governance" can guide decision makers to achieve effective operations, meet performance objectives, manage risks and use public resources responsibly. This is particularly important for public water utilities and other governmental agencies because the services they provide often cannot be obtained from another source.

BGR found that water utilities in the 75 largest U.S. cities (including New Orleans) deliver services through a variety of governance structures. Most function as city departments or agencies (59). Others function as separate public agencies (12, including the S&WB) or as private water utilities (4). One governance structure is not inherently superior to another. Rather, each has its own benefits and drawbacks that must be weighed by the municipality, the water utility and the community.



## S&WB GOVERNANCE

The S&WB has a hybrid governance model. In some respects, the S&WB functions as a stand-alone utility, created by the State of Louisiana (State) and separated from the City of New Orleans (City) government. Its laws are mostly controlled by the Louisiana Legislature, and it operates with its own board of directors, workforce and funding sources. On the other hand, the S&WB shares features of a municipal utility. The mayor, as president of the S&WB's board of directors, can exercise significant influence over S&WB decisions, while the New Orleans City Council (City Council) controls the S&WB's water and sewer rates, as well as the utility's drainage property taxes.

The utility is governed by an 11-member board of directors. Besides the mayor, the board includes a council member and nine citizens appointed by the mayor. An executive director, who is appointed by the board of directors and serves at the board's pleasure, oversees the day-to-day operations of the S&WB and the utility's more than 1,300 employees.

The S&WB is responsible for operating, maintaining and managing the city's water, sewer and drainage infrastructure, although it shares responsibility for drainage with the Department of Public Works (Public Works). The S&WB also generates part of the electrical power necessary to carry out its operations.

The S&WB relies on user fees to support the water and sewer systems and three property taxes to fund its portion of the drainage system. It must obtain approval for all fees and taxes from the City Council.

The council also provides some oversight of the S&WB. It receives periodic reports from the S&WB on operational, personnel, financial and infrastructure matters, as well as regular updates from the S&WB and Public Works regarding joint infrastructure efforts. Last year, the council's oversight authority expanded to include audits, investigations and billing dispute processes.

Finally, the Legislature maintains substantial control over S&WB matters. More than 80 State laws establish the leadership, authority, operations, responsibilities, duties and functions of the S&WB and other entities involved with the utility.

## PROBLEMS WITH THE S&WB'S GOVERNANCE STRUCTURE

BGR's examination of the S&WB's governance structure reveals several significant problems.

**Threats to the long-term financial sustainability of the city's water, sewer and drainage infrastructure.** The S&WB relies almost entirely on the revenue generated by rates and taxes to carry out its functions relative to the three systems. However, the S&WB has little control in setting rates and levying taxes. That authority lies primarily with the City Council, which has faced political pressure from constituents to keep rates and taxes low. Past councils have delayed or killed proposals to increase water and sewer rates because of political concerns despite the systems' needs. This practice has resulted in historical underfunding, contributing to today's deteriorated infrastructure and shifting S&WB costs to current and future ratepayers.

The challenges in achieving financial sustainability for the water, sewer and drainage systems are compounded by the lack of a formal process for the City Council to objectively evaluate S&WB funding requests. The absence of a formal process invites politically driven council decisions on S&WB funding proposals.

Further, while the City Council has some oversight of the S&WB, it lacks clear mechanisms to fully carry out this function. As a result, the council typically relies on the main tool it does have – control over S&WB funding – as leverage to promote accountability and change. This was most recently demonstrated when the council told S&WB officials that it would not consider increasing water or sewer rates until the utility improved its billing practices.

**Divided responsibility for New Orleans' drainage system.** The S&WB is responsible for the major drainage system, which includes larger pipes (at least 36 inches in diameter), canals and pumps. Public Works manages the minor drainage system, consisting of catch basins and smaller pipes that feed into the S&WB's system. The S&WB has agreed to maintain the entire drainage system if it has sufficient funding, but its only property tax available for that work expired in the 1990s.

Following a series of significant flooding events in 2017, two reports determined that the division of drain-

**The S&WB has a hybrid governance model. In some respects, it functions as a stand-alone utility, created by the State of Louisiana and separated from the City of New Orleans government. On the other hand, the S&WB shares features of a municipal utility.**





## BGR finds two paths forward that could strengthen the long-term governance and performance of the city's water, sewer and drainage systems.

age responsibilities was a root cause of system failures. This fragmented approach to drainage also impedes a holistic strategy for stormwater management, which is crucial for a flood-prone, coastal city such as New Orleans. Compared to 51 peer cities, New Orleans is the only city that divides responsibility for a single drainage system between a municipal department (Public Works) and a stand-alone utility (S&WB).

**Inadequate coordination of infrastructure work between the S&WB and City government.** The S&WB and Public Works have related functions and responsibilities when it comes to streets and subsurface infrastructure work. However, they have struggled to effectively coordinate their work for decades. Failure to adopt adequate mechanisms to promote coordination has contributed to inefficiencies, provided opportunities for the S&WB and Public Works to blame the other for poor performance, and diminished public confidence in both.

**Concerns about accountability and the long-term effectiveness of the S&WB's board of directors.** The mayor's prominent role as president of the S&WB's board of directors can blur the lines of accountability by creating uncertainty in the public's mind as to whether the mayor or the board should be accountable for the utility's performance. The presence of the city's most powerful elected official can also discourage the free-flowing exchange of ideas on the board, limiting the board's effectiveness.

In addition, the participation of a City Council member on the board creates a conflict of interest. The council member must act in the best interest of the S&WB, which includes ensuring that rates and taxes are set at sufficient levels to properly fund operations, maintenance and capital improvements for the water, sewer and drainage systems. At the same time, the council member is responsible for overseeing actions personally taken as a board member and representing constituent interests as a member of the full council. These could include a political desire to keep S&WB rates and taxes low. The presence of a City Council member on the board is also unusual. Of the 22 other public water utilities serving large cities that are governed by a board of directors, only three include a city council member on the board.

Finally, the potential difficulty in finding qualified individuals to serve as board members raises concerns about the reliance on volunteer citizens to guide the S&WB's work. By law, citizens appointed to serve must collectively meet geographic, professional experience and other requirements to ensure that the board is comprised of a representative and diverse mix of qualified individuals. They also face a steep learning curve. In the past, the demanding nature of the job contributed to board turnover and instability.

**The Louisiana Legislature's control of local utility matters.** It is impossible to address most S&WB problems without making a trip to Baton Rouge. The Legislature's au-



thority over the S&WB gives lawmakers statewide broad control over New Orleans' water utility issues. These legislators typically have little or no connection to New Orleans, making it difficult to explain the S&WB's complexity and win support for its needs. They also do not use the services provided by the water, sewer and drainage systems, nor do they pay the S&WB's user fees and property taxes. Yet, they cast votes on numerous issues that affect only New Orleans residents and businesses.

The Legislature's control over the S&WB's laws also makes it difficult to implement reforms in a timely fashion. Success depends on mustering support from City and State officials, and the process to enact new laws or amend existing ones typically occurs just once a year.

## ANALYZING OPTIONS FOR GOVERNANCE REFORM

BGR finds two paths forward that could strengthen the long-term governance and performance of the city's water, sewer and drainage systems:

- 1. Keep, but improve, the S&WB as a State-created, stand-alone utility that operates separately from City government.** A key distinction of stand-alone water utilities is that they tend to be more insulated from election-cycle politics, enabling a focus on long-term strategic improvements and decision-making that is in the utility's best interest. However, for the S&WB to realize these benefits and improve performance, changes to the current governance structure would be necessary.
- 2. Replace the S&WB with a City-created municipal utility.** The hallmark of a municipal utility is that it aligns operational responsibility, financial control and accountability for water utility functions with a city government. This approach can streamline processes, encourage coordination with other city departments and agencies, and give the public a clear avenue to hold officials accountable – through the election process – for a municipal utility's performance.

Under this approach, the City would become solely responsible for the operations, maintenance, capital investment and other actions necessary to achieve effective and efficient performance of the water, sewer and drainage systems. The City would also assume other functions currently carried out by the S&WB to support utility operations, such as general administration, human resources, contracting, customer service and public engagement. The City could create a municipal utility that functions as a City department led by an appointee of the mayor or as a City agency governed by an appointed board.

BGR's analysis of these two options explores their potential benefits over the status quo, complications and other considerations.

**Improving Financial Sustainability.** Reducing the impact of politics on funding decisions is fundamental to achieving financial sustainability for New Orleans' water, sewer and drainage systems. This is true regardless of whether the S&WB remains a stand-alone utility or transitions to a municipal utility.

Under either governance approach, the creation of a formal process for the City Council to objectively evaluate funding proposals could help improve the financial sustainability of the three systems. More than a decade ago, BGR called for the creation of such a process. BGR recommended that the council's process include independent expert analysis of funding requests, offer opportunities for public comment, and establish clear timelines, requirements and criteria for evaluating and approving proposals.

Implementing this governance reform could help the City Council avoid politically motivated decision-making, balance the needs of the water, sewer and drainage systems with the interests of customers, and build public trust and confidence. Coupled with more robust, ongoing council oversight, it could also help New Orleans achieve more stable and modest rate adjustments over time, while taking into consideration infrastructure needs and customer affordability.

**Consolidate Drainage System Responsibilities.** Having one entity in charge of drainage would likely improve the performance of the entire system and foster a more holistic approach to stormwater management.

BGR previously recommended that the City transfer responsibility for maintenance and repair of the minor drainage system from Public Works to the S&WB. The S&WB already maintains the most complex parts of the drainage system, including larger pipes, canals, and pumps. Thus, adding subsurface drainage pipes and catch basins to the S&WB's current responsibilities would be the easier approach. However, it would likely require new funding. In 2017, BGR recommended that the S&WB and the City consider a stormwater fee, rather than a new property tax, as a potential recurring source of drainage system funding.

Consolidating drainage responsibilities with the S&WB – along with providing sufficient funding – could help address drainage system deficiencies in the near term. It would also not preclude an eventual transfer of drainage responsibilities to a municipal utility. Rather, it would give City government time to prepare for the long-term move of bringing the drainage system under City control. In addition, because the S&WB generates electric power that





is shared among the water, sewer and drainage systems, the City would need to accept responsibility for all three systems at the same time.

**Strengthening Coordination.** Effective coordination of street and subsurface infrastructure work depends on, among other things: a clear allocation of responsibilities and accountability; clear funding arrangements; systems and processes to share information and track project progress; and collaboration among infrastructure agencies, utilities and other stakeholders for continuous improvement.

If the S&WB continues as a stand-alone utility, it would need to work with City government to resolve their historical coordination difficulties. In 2008, BGR recommended creating a utility coordination council to facilitate joint infrastructure work between the two. The coordination council, supported by a shared technology platform and staffed with administrators possessing the necessary expertise and decision-making authority, could track repairs, work orders and project status, share information, and establish a work plan for upcoming projects.

By comparison, a municipal utility offers the opportunity to promote coordination more effectively. A mu-

nicipal utility would operate alongside other municipal departments and agencies under the umbrella of City government. This could foster a more collaborative approach to tackling long-standing infrastructure problems. It could also help achieve efficiencies by eliminating redundant administrative functions currently carried out by both the S&WB and the City.

**Addressing Concerns with the S&WB's Board of Directors.** If the S&WB continues as a stand-alone utility, the mayor's leadership role as board president would continue, but its potential impacts could be reduced. Ways to rebalance the mayor's power on the board include giving the president pro-tem, who is elected by the board as a whole, the authority to lead board meetings, or giving the collective board the authority to determine who serves on board committees, instead of by mayoral appointment. However, the mayor's participation on the board would still blur the lines of public accountability.

Governance reforms could also minimize, but not eliminate, the conflict of interest for the City Council. State law gives the council's Public Works Committee chair the authority to appoint a civil engineer to serve as the council's designee on the S&WB's board of di-



rectors. This would mitigate the conflict of interest by removing a council member from directly serving on the board, while also ensuring that the designee has relevant experience that could benefit both the S&WB and the council. Even with these reforms, however, concerns about finding qualified citizen members and the board's long-term effectiveness would persist.

The alternative of a municipal utility that operates as a City department would eliminate the board of directors and resolve current problems. The mayor would become directly responsible for operating the water, sewer and drainage systems, and voters could hold the mayor accountable through the electoral process. The mayor would appoint a director to oversee the utility department's day-to-day activities. The appointment could also be subject to City Council confirmation, a process recently approved by voters.

**Increasing Local Control Over Water Utility Matters.** In keeping the S&WB as a State-created, stand-alone utility, the Louisiana Legislature would retain control over the utility's laws. City and S&WB leaders would continue the cumbersome process of building statewide support to fix local utility matters.

On the other hand, the City Council would have legislative authority over a municipal utility because it would primarily be governed by the City's home rule charter and code of ordinances. This governance change would place New Orleans' water utility matters in the hands of elected officials who share a vested interest in the success of the city's water, sewer and drainage systems. It would also streamline the legislative process.

## KEY TAKEAWAYS AND OTHER CONSIDERATIONS

Both paths toward governance reform have their own potential benefits and complications.

Keeping, but improving, the S&WB as a State-created, stand-alone utility would be the easier approach to implement. Targeted reforms could improve the financial sustainability of the water, sewer and drainage systems, as well as improve drainage performance. However, other governance problems would persist, such as coordination challenges between the S&WB and City government and concerns surrounding the utility's board of directors. In addition, the Louisiana Legislature would retain substantial control over S&WB matters.

Alternatively, a municipal utility could substantially resolve the S&WB's current governance problems identified in this report. However, replacing the S&WB with a municipal utility would be a substantial effort that would require cooperation and approval from the Legis-

lature, City policymakers and New Orleans voters. This approach would also raise new considerations, including the City's readiness to move forward with such a significant undertaking given its current struggles to maintain public safety, deliver essential services and properly manage the infrastructure it already controls. Thus, the City would need to demonstrate its competency, fiscal capacity and overall ability to assume the S&WB's functions and responsibilities for the water, sewer and drainage systems.

In addition, other considerations associated with the municipal utility option would require further study and analysis. These include, but are not limited to, the City's ability to meet the S&WB's debt obligations to current bondholders and the effect transitioning S&WB employees to City employees may have on civil service rules, employee benefits and pensions. While BGR's initial review and consultation with experts on these issues did not reveal any obstacles to folding the functions of the S&WB into City government, policymakers should develop specific plans to address them.

## CONCLUSION

The S&WB operates and maintains New Orleans' water, sewer and major drainage systems within a complex governance structure. Weaknesses in the governance structure threaten the financial sustainability of the three systems and their infrastructure, impede the performance of the drainage system, hamper the S&WB's ability to effectively coordinate with City government on infrastructure work, make it difficult to hold officials accountable for the S&WB's performance, and create concerns about the long-term effectiveness of the S&WB's board of directors. The Legislature's control over the S&WB's laws increases the difficulty of addressing these and other problems.

Given the S&WB's control and management of vital infrastructure systems, the status quo governance structure should not be maintained. Inaction enables these problems to persist and worsen, diminishing the quality of life of citizens and jeopardizing the sustainability of the city.

BGR's report identifies two paths forward with potential to improve governance of the water, sewer and drainage systems: 1) keeping, but improving, the S&WB as a State-created, stand-alone utility that functions separately from City government, or 2) replacing the S&WB with a municipal utility that functions as part of City government. Each offers significant benefits over the current governance structure, but also introduces complications that must be carefully addressed.

## RECOMMENDATIONS

**To determine an ultimate governance path for the S&WB, BGR recommends that the mayor, as the leader of City government and president of the S&WB's board of directors, use this report to further study how an improved S&WB or a new municipal utility can address current governance problems and select a path forward that significantly improves upon the status quo. The mayor should coordinate these efforts with the City Council and the S&WB, as well as seek public input.**

As that process unfolds, BGR urges City and S&WB policymakers, with the assistance of the Louisiana Legislature as needed, to implement several reforms that could yield significant improvements regardless of whether the S&WB remains a stand-alone water utility or is replaced by a municipal utility.

To strengthen the **financial sustainability** of the water, sewer and drainage systems, the City Council should:

- Create a formal process to objectively evaluate funding proposals for the three systems. At a minimum, the council's process should provide for independent expert analysis of funding requests, offer opportunities for public comment, and establish clear timelines, requirements and criteria for evaluating and approving proposals.
- Develop, with the assistance of the council's Utilities Regulatory Office, a comprehensive oversight process that relies on accountability mechanisms, instead of funding control, to improve performance. This process should include, among other things, a review of strategic and financial plans and reports, updates on operations, and regular monitoring of system performance. It should also enable the council to maintain objectivity and act with transparency.

To improve the **performance of the drainage system**, the mayor and City Council should:

- Work with the S&WB to verify the existence and size of the funding shortfall for the entire drainage system and develop a new funding source, such as a [stormwater fee](#).
- Once a sufficient source of recurring funding has been secured, transfer responsibility for the maintenance and repair of subsurface drainage from the Department of Public Works to the S&WB. This would give the S&WB, which already maintains the most complex parts of the drainage system, full

control of the entire system to address pressing deficiencies. It would also not preclude an eventual transfer of drainage system responsibilities to a municipal utility.

To help achieve **effective coordination** for infrastructure work, the administrations of the S&WB and the City should:

- Enhance their existing practices and processes to improve workflow, which could include implementing a shared information management system. Either the S&WB or a municipal utility would need to effectively coordinate with other City departments and agencies, particularly concerning street and subsurface work.





## INTRODUCTION

For more than 120 years, the Sewerage and Water Board (S&WB) has delivered drinking water, handled wastewater and managed drainage for New Orleans. The Louisiana Legislature (Legislature) created the S&WB in 1899 on behalf of a progressive coalition of citizens, businesses and City of New Orleans (City) officials seeking to address unsanitary conditions and a growing public health crisis.<sup>1</sup> Upon its creation, the S&WB became responsible for constructing a new sewer system, as well as building out the city's existing water system.<sup>2</sup> A few years later, in 1902, the S&WB became responsible for developing the city's major drainage pipes, canals and pumps.

Today, the S&WB carries out these functions for approximately 377,000 residents who call New Orleans home, as well as thousands of commercial and industrial customers. Collectively, they depend solely on the S&WB to provide reliable, high-quality drinking water and proper wastewater management. The S&WB's drainage responsibilities also remain critical to protect people and property given the city's vulnerability to flooding. With these functions in mind, it is hard to overstate the S&WB's importance to quality-of-life issues and the city's overall sustainability.

In recent years, the S&WB has launched several initiatives to improve its infrastructure and performance. One

is a 50-year master plan that will address, among other things, current infrastructure capabilities, future capital needs, performance goals and outcomes, and utility resiliency. The S&WB will rely on consultants, industry experts and community input to create the plan through an 18-month process projected to kick off later this year.<sup>3</sup>

The S&WB has also adopted a five-year strategic plan to improve its business practices. The strategic plan focuses on financial stability, technology modernization, workforce development, customer service, infrastructure reliability and operational improvement.<sup>4</sup>

Further, the S&WB expects two key infrastructure investments to significantly improve its operations. In coordination with Entergy New Orleans, the S&WB has begun building a \$250 million electricity substation to provide more reliable power to operate the water, sewer and drainage systems. The first phase of construction is estimated for completion in 2024.<sup>5</sup> The S&WB is also preparing to replace its manual-read meters with “smart” meters for all customers that will allow for remote, digital measurement of water usage.<sup>6</sup> It expects the \$60 million project, planned for implementation in 2024, to result in more accurate readings and significantly decrease customer billing problems.

Leading these improvements is an executive director with more than 30 years of water utility experience who was appointed in 2018 to turn the S&WB around. The executive director joined the S&WB roughly one year after a series of flooding events exposed significant problems in management, operations and infrastructure maintenance. Also guiding the S&WB’s recent wave of progress is its 11-member board of directors led by the mayor.

Even with these positive steps toward greater reliability and sustainability, the S&WB still faces substantial challenges, many of which relate to its governance structure. This refers to the laws, rules, policies and procedures that establish the powers, roles and responsibilities of the S&WB and those involved in its operations. Problems with the S&WB’s governance structure have contributed to historical underfunding of the water, sewer and drainage systems. In addition, fragmented responsibilities and ineffective coordination have contributed to poor performance and make it difficult to hold S&WB and City officials accountable.

BGR last conducted a comprehensive analysis of the S&WB’s governance problems in a 2011 report called *Making the Waterworks Work*.<sup>7</sup> Since then, policymakers and voters have made some governance changes, but weaknesses in the current structure persist.

In this report, *Waterworks in Progress*, BGR dives back into the topic of S&WB governance. It begins with an overview of water utility governance in large U.S. cities and the S&WB’s unique structure when compared to its peers. The report then analyzes major weaknesses in the S&WB’s governance structure that affect the utility’s financial sustainability, drainage system performance and ability to effectively coordinate with City government on infrastructure work. The report also discusses concerns surrounding the S&WB’s board of directors and the control exercised by the Louisiana Legislature over S&WB matters.

Next, the report explores governance reform options that could produce substantive, sustainable improvements. BGR finds two potential paths forward: 1) keeping, but improving, the S&WB as a State-created, stand-alone utility that operates separately from City government, or 2) replacing the S&WB with a City-created municipal utility that functions as part of City government.

Shifting the S&WB onto either path would improve upon the status quo, but each option has complications that must be carefully addressed. Further, replacing the S&WB with a municipal utility raises additional questions, including the City’s readiness and long-term ability to carry out the S&WB’s functions and responsibilities.

While further analysis and study will be needed to determine the ultimate governance path forward, BGR calls on policymakers and the public to use this report to guide future conversations about S&WB governance problems and develop potential solutions. In the meantime, BGR offers several reforms to the current governance structure that, regardless of the ultimate path chosen, could strengthen the performance of the water, sewer and drainage systems in the near term.



# BACKGROUND

## WATER UTILITY GOVERNANCE IN LARGE U.S. CITIES

A well-designed governance structure is closely connected to a water utility’s ability to perform at a high level. A structure that promotes “good governance” can guide decision makers to achieve effective operations, meet performance objectives, manage risks and use public resources responsibly. This is particularly important for public water utilities and other governmental agencies because the services they provide often cannot be obtained from another source.<sup>8</sup>

Water utilities serving large U.S. cities deliver water services through a variety of governance structures. One structure is not inherently superior to another. Rather, each has its own benefits and drawbacks that must be weighed by the municipality, the water utility and the community.

As illustrated in Table 1, most water utilities in large cities function as city departments that provide multiple utility services. However, there are significant numbers of city- and state-created agencies, regional water utilities and private utilities.

**TABLE 1. WATER UTILITY GOVERNANCE STRUCTURES IN THE 75 LARGEST U.S. CITIES**

	Governance Structure (Number of Cities)	Description	Primary Operational Control (Number of Cities)	Utility Example
<b>CITY CONTROL</b>	<b>CITY DEPARTMENT OR AGENCY (59)</b>			
	Stand-alone water department (6)	Municipal department that provides drinking water as its only service	City executive (e.g., a mayor or city manager) (6)	Milwaukee Water Works (WI)
	Consolidated public works department (7)	Municipal department that provides one or more utility services and streets	City executive (e.g., a mayor or city manager) (7)	City of Houston Dept. of Public Works and Engineering (TX)
	Multiple-utility department (39)	Municipal department that provides multiple utility services, most commonly water and wastewater	City executive (e.g., a mayor or city manager) (31) or a public board of directors established by municipal law (8)	Charlotte Water (NC) Memphis Light, Gas and Water (TN)
	City-created agency (7)	Stand-alone utility established by municipal law to serve the city	A public board of directors established by municipal law (7)	El Paso Water (TX)
<b>NO CITY CONTROL</b>	<b>SEPARATE ENTITY (16)</b>			
	State-created agency (8)	Stand-alone utility established by state law to serve a city; agencies vary in legal organization and include commissions, corporations and trusts	A public board of directors established by state law (8)	<b>Sewerage and Water Board of New Orleans (LA)</b> Boston Water and Sewer Commission (MA)
	Regional water utility (4)	Stand-alone utility established by state law to serve a regional area, including the city.	A state-created public board of directors drawn from the regional service area (4)	Las Vegas Valley Water District (NV)
	Private water company (4)	A corporation with private shareholders operating for profit	A privately established board of directors (4)	San Jose Water (CA)

## S&WB GOVERNANCE

The S&WB has a hybrid governance model. In some respects, the S&WB functions as a stand-alone utility, created by the State of Louisiana (State) and separated from City government. Its laws are largely controlled by the Louisiana Legislature, and it operates with its own board of directors, workforce and funding sources. On the other hand, the S&WB shares features of a municipal utility. The mayor, as president of the S&WB's board of directors, can exercise significant influence over S&WB decisions, while the City Council controls the S&WB's water and sewer rates, as well as the utility's drainage property taxes.

The S&WB is governed by an 11-member board of directors. Besides the mayor, it includes a member of the City Council and nine citizens appointed by the mayor.<sup>9</sup> The board establishes the S&WB's vision, strategic plans for operations and long-term capital improvements. It also oversees the S&WB's organizational processes, approves the annual operating and capital budgets, and authorizes large-scale spending and contracts. The board typically meets monthly, while the board's committees, where the bulk of its deliberations occur, also meet regularly. The full board and its committees conduct their business in public meetings.

An executive director, who is appointed by the S&WB's board of directors and serves at the board's pleasure, oversees the utility's more than 1,300 employ-

In this report, BGR uses the term "water utility" to refer to an organization that provides drinking water, manages the treatment of wastewater, provides drainage and stormwater management services, or any combination of these functions. A water utility may deliver the services through one or more water, sewer or drainage infrastructure systems.

ees.<sup>10</sup> Nearly all the S&WB's workforce, except for the executive director and a handful of top administrators, are civil service employees. This means that the S&WB must follow personnel policies and rules set by the New Orleans Civil Service Commission and work with the commission on various personnel matters, such as hiring processes, establishing new or modifying existing job positions, and setting pay rates.<sup>11</sup> In addition, the commission exercises a quasi-judicial role in hearing S&WB employee appeals of disciplinary actions.<sup>12</sup>

As shown in Table 2, the S&WB is primarily responsible for operating, maintaining and managing the water, sewer and drainage systems, although it shares responsibility for drainage with the City's Department of Public Works (Public Works).<sup>13</sup> The S&WB also generates part of the electrical power necessary to carry out its operations.





**TABLE 2. AN OVERVIEW OF NEW ORLEANS’ WATER, SEWER AND DRAINAGE SYSTEMS**

System	Key Infrastructure	Function	Responsibility
<p><b>Water System</b> Provides safe drinking water in accordance with federal and state environmental and health regulations</p>	<ul style="list-style-type: none"> <li>• Two water purification plants</li> <li>• Distribution pumps</li> <li>• Two water towers</li> <li>• 1,610 miles of water mains</li> <li>• Approximately 136,000 customer meters</li> <li>• 17,000 fire hydrants</li> </ul>	Construction, operation and maintenance	<b>S&amp;WB</b>
<p><b>Sewer System</b> Collects, treats and disposes of wastewater in accordance with federal and state environmental and health regulations</p>	<ul style="list-style-type: none"> <li>• Two wastewater treatment facilities on the East Bank and West Bank</li> </ul>	Operation and maintenance	<b>S&amp;WB</b> (contracts with private operator for treatment facilities)
	<ul style="list-style-type: none"> <li>• 1,450 miles of gravity collection sewers</li> <li>• 82 pump stations</li> </ul>	Construction, operation and maintenance	<b>S&amp;WB</b>
<p><b>Major Drainage System</b> Carries stormwater from the “minor” drainage system operated by Public Works through larger pipes and drainage canals to pumping stations</p>	<ul style="list-style-type: none"> <li>• 100 miles of open canals</li> <li>• 100 miles of closed canals and drain lines 36” and larger in diameter</li> <li>• 24 major drainage pumping stations with 120 drainage pumps</li> <li>• 11 underpass pumping stations</li> </ul>	Construction, operation and maintenance	<b>S&amp;WB</b>
	<ul style="list-style-type: none"> <li>• Three canal closures and lakefront pumping stations</li> </ul>	<p>Construction</p> <hr/> <p>Operation and maintenance</p>	<p>U.S. Army Corps of Engineers</p> <hr/> <p>Southeast Louisiana Flood Protection Authority-East <b>with S&amp;WB financial contribution</b></p>
<p><b>Minor Drainage System</b> Captures stormwater through catch basins and carries it through small subsurface pipes to the “major” drainage system operated by the S&amp;WB</p>	<ul style="list-style-type: none"> <li>• 1,287 miles of drain lines less than 36” in diameter</li> <li>• 46,350 drainage manholes</li> <li>• 65,000 catch basins</li> </ul>	Construction	City Department of Public Works
		Operation and maintenance	<b>S&amp;WB, if funding is available.* But due to insufficient funding, Public Works is currently responsible</b>
<p><b>Electrical Power System</b> Generates power primarily to support S&amp;WB drainage pumping, but also water distribution and wastewater collection; this supplements electricity purchased from Entergy New Orleans</p>	<ul style="list-style-type: none"> <li>• Power generation plant located at East Bank water purification complex</li> <li>• Will become backup power source after new power complex is operational</li> </ul>	Operation and maintenance	<b>S&amp;WB</b>
	<ul style="list-style-type: none"> <li>• Entergy New Orleans and S&amp;WB are building a \$250 million electrical power complex that will draw electricity directly from Entergy Corp.’s transmission grid</li> </ul>	Construction, operation and maintenance	Entergy New Orleans and <b>S&amp;WB</b>

Source: Information provided by S&WB and City of New Orleans Department of Public Works; Agreement between City of New Orleans Department of Streets and Sewerage and Water Board of New Orleans, July 1, 1992; Cooperative Endeavor Agreement between the Coastal Protection and Restoration Flood Protection Authority Board, the Southeast Louisiana Flood Protection Authority East and S&WB.

The S&WB relies on user fees to support the water and sewer systems and three dedicated property taxes totaling 16.23 mills and generate approximately \$60 million a year to fund its portion of the drainage system.<sup>14</sup> While the City has no obligation to fund the operations and maintenance of these systems, it plays a major role in approving their funding.<sup>15</sup> The S&WB can propose water and sewer rates, but it must obtain approval from the City Council and the Board of Liquidation, City Debt (Board of Liquidation) – the agency that manages the S&WB’s bonds – before it can charge those rates to customers.<sup>16</sup> The council and the Board of Liquidation can accept or reject the S&WB’s proposed rates but cannot modify them. The council also levies the S&WB’s drainage property taxes, subject to New Orleans voter approval.<sup>17</sup>

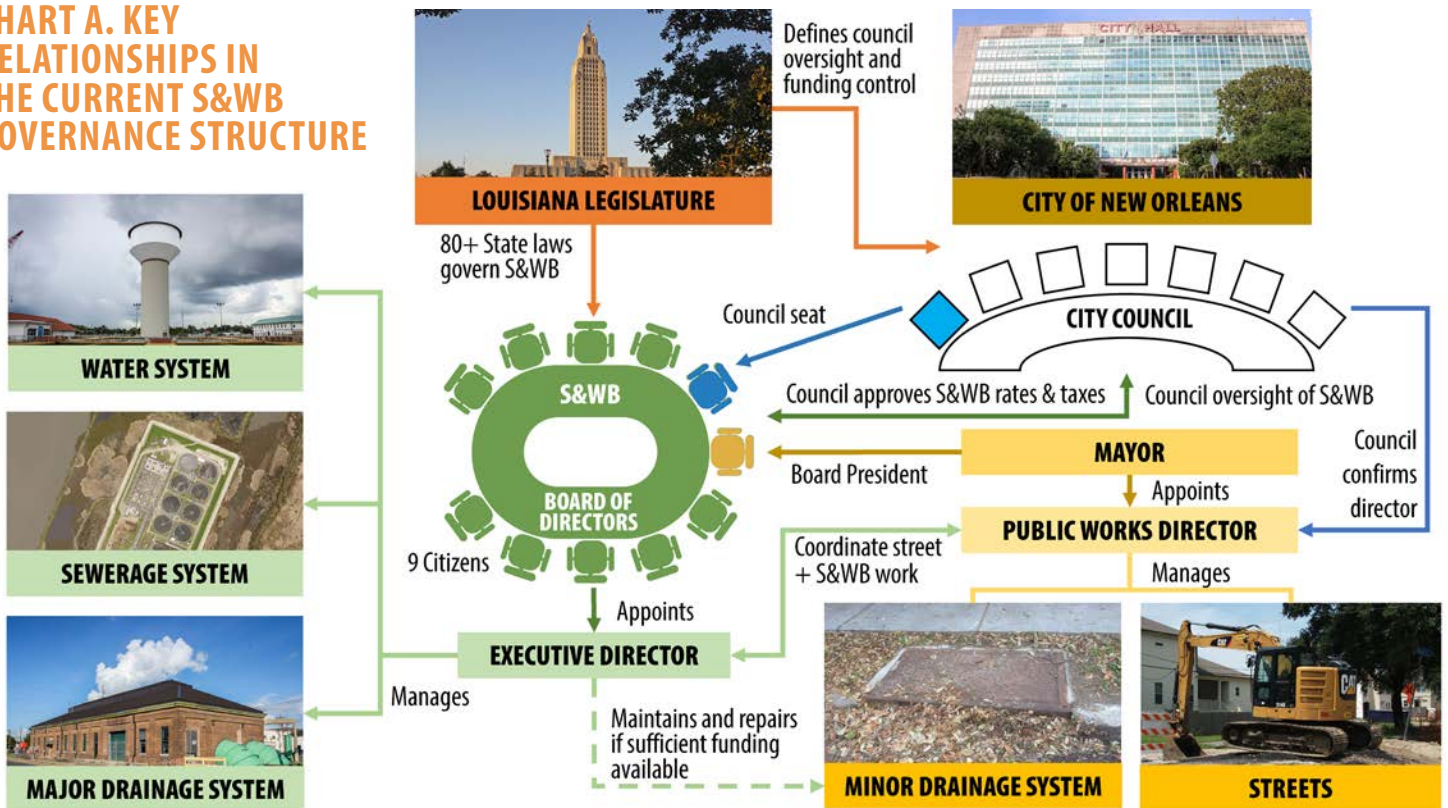
In addition, the City Council and the Board of Liquidation must approve the S&WB’s bond issues. If they approve water and sewer rates insufficient to meet the S&WB’s existing bond obligations, only in this limited instance can the S&WB unilaterally raise rates.<sup>18</sup>

Aside from financial matters, the City Council provides some oversight of the S&WB. For example, its Public Works Committee receives periodic reports from the S&WB on, among other things, operational, financial and infrastructure-related matters, as well as regular updates from the S&WB and Public Works regarding coordination and joint infrastructure efforts.<sup>19</sup>

Finally, the Louisiana Legislature maintains substantial control over S&WB matters. More than 80 State laws establish the leadership, authority, operations, responsibilities, duties and functions of the S&WB and other entities involved with the utility.<sup>20</sup> While the City’s home rule charter sets a few parameters for the S&WB, it recognizes that the S&WB derives its powers and duties primarily from State law.<sup>21</sup> The extent of the City Council’s oversight of the S&WB is also set forth in State law.

Chart A illustrates important relationships within the current hybrid approach to S&WB governance, while Table 3 summarizes roles and responsibilities.

**CHART A. KEY RELATIONSHIPS IN THE CURRENT S&WB GOVERNANCE STRUCTURE**



BGR Analysis



### TABLE 3. AN OVERVIEW OF S&WB GOVERNANCE

Governance Feature	Decision Makers	Description of Roles and Responsibilities
<b>Water and Sewer Rates</b>	S&WB Board of Directors Board of Liquidation, City Debt City Council	<ul style="list-style-type: none"> <li>S&amp;WB proposes water and sewer rates to the Board of Liquidation and City Council</li> <li>All bodies must approve rates</li> </ul>
<b>Drainage Property Taxes</b>	S&WB Board of Directors City Council New Orleans voters	<ul style="list-style-type: none"> <li>S&amp;WB recommends drainage property tax millage rates annually to City Council</li> <li>City Council levies taxes authorized by New Orleans voters</li> </ul>
<b>Operations and Budget</b>	S&WB Board of Directors	<ul style="list-style-type: none"> <li>S&amp;WB receives rate and tax revenues and uses them to fund the budgets for the water, sewer and drainage systems</li> <li>S&amp;WB makes operational and budget decisions separate from City government, although the mayor is president of the S&amp;WB's board of directors. A City Council member also serves on the board, but the council itself does not approve S&amp;WB operations or budgets.</li> </ul>
<b>Personnel Management</b>	S&WB Board of Directors S&WB Management New Orleans Civil Service Commission City Council	<ul style="list-style-type: none"> <li>S&amp;WB board of directors appoints executive director</li> <li>S&amp;WB management hires, supervises and terminates employees, subject to civil service rules and policies</li> <li>New Orleans Civil Service Commission, with City Council approval, creates positions and sets pay rates for most S&amp;WB employees</li> <li>Commission hears S&amp;WB employee appeals of disciplinary actions</li> <li>Commission and the S&amp;WB share control of hiring process for certain S&amp;WB employees</li> </ul>
<b>Oversight and Accountability</b>	S&WB Board of Directors City Council New Orleans Office of Inspector General	<ul style="list-style-type: none"> <li>S&amp;WB board of directors provides internal oversight of executive management, operations, finances and capital projects</li> <li>City Council exercises some oversight of S&amp;WB, but only as allowed by Louisiana law</li> <li>New Orleans Office of Inspector General can also audit and investigate the utility</li> </ul>
<b>Legislative Authority</b>	Louisiana Legislature	<ul style="list-style-type: none"> <li>Legislators statewide control the laws that create and govern the S&amp;WB</li> <li>S&amp;WB follows the State's legislative process in Baton Rouge to adopt new laws or modify existing ones</li> </ul>

# PROBLEMS WITH THE S&WB'S GOVERNANCE STRUCTURE

BGR's examination of the S&WB's current structure reveals several significant problems. Specifically, the governance structure:

- Threatens the long-term financial sustainability of water, sewer and drainage system infrastructure
- Impedes the performance of the drainage system
- Hampers coordination of infrastructure work between the S&WB and City government
- Makes it difficult to hold officials accountable and creates concerns regarding the utility's board of directors
- Gives the Louisiana Legislature substantial control over S&WB matters

BGR identified these structural problems by focusing on three general governance principles that are connected to a water utility's performance – financial sustainability, effective coordination and accountability. To learn more about the connections between these governance principles and performance, see Appendix A.

BGR recognizes that each governance principle has leadership elements – the “soft skills” of governance – that are essential to a water utility's performance. However, even a talented and capable leader will have trouble achieving successful outcomes if a water utility is poorly structured in law and policy. This report focuses on the structural components of governance and does not delve into S&WB leadership or management-level issues.

Further, this report does not analyze the complicated question of whether the S&WB should continue to participate in the New Orleans civil service system. While civil service participation is part of the S&WB's governance structure, the civil service system also affects most aspects of City government. Thus, assessing its effectiveness goes beyond the scope of this report and would require looking at the City-wide efficiency, effectiveness and impact of civil service rules, policies and procedures on the S&WB, as well as other agencies and departments. The S&WB recently initiated a year-long study of its workforce model and participation in the civil service system.<sup>22</sup>

## THREATS TO LONG-TERM FINANCIAL SUSTAINABILITY

Financial sustainability means that a water utility can recover its full costs (i.e., operations, maintenance, capital investment and debt) associated with providing and maintaining safe, reliable services that promote public and environmental health. Key to achieving financial sustainability is establishing a long-term strategic vision, carefully planning for capital improvements and life-cycle infrastructure costs, developing a competent workforce and creating a performance-based organizational culture. This is balanced by keeping customer rates, taxes and fees as fair and affordable as possible, periodically assessing operational and infrastructure needs, and creating an objective process to evaluate and approve funding proposals.<sup>23</sup>

Further, when a water utility and its leaders demonstrate ethical and reliable performance, public confidence in the utility can grow. This can increase public support for funding requests. Competent stewardship of public funds, which requires ongoing oversight and attention to procedures, is also essential.<sup>24</sup>

BGR finds three significant governance problems that threaten the long-term financial sustainability of the water, sewer and drainage systems: (1) a misalignment of operational responsibility and funding control that has led to historical underfunding; (2) the absence of a City Council process to objectively evaluate funding proposals; and (3) the council's tendency to use its control of S&WB funding to hold the utility accountable.

While these governance problems are significant, they are not the sole causes of financial sustainability concerns. As the sidebar on the S&WB's billing problems shows, other issues can affect financial sustainability.



## Billing Problems: How Non-Governance Issues Can Impact the S&WB's Financial Sustainability

Many in the public view customer billing as one of the S&WB's most problematic areas. In 2016, the S&WB rolled out a new billing system that should have streamlined billing processes and improved billing services. Instead, the new system was fraught with problems and contributed to inaccurate billing for thousands of customers. S&WB officials acknowledged that the utility failed to properly test the new system and ensure that staff received adequate training.\*

The S&WB's reliance on estimated meter readings further contributes to the billing challenges.\*\* Due to high turnover and long-standing vacancies for meter reading staff, the S&WB issues some bills based on estimated, instead of actual, meter readings. While the S&WB is in the process of updating its technology to allow for actual, remote meter reading by next year, it will continue to rely on estimated reads in the meantime.

These and other problems associated with billing have eroded the public's trust and confidence in the S&WB. They have also made it more difficult for the S&WB to obtain funding increases. In October 2022, the S&WB considered asking the City Council to increase water and sewer rates to help pay for ongoing maintenance and unfunded capital needs. However, before a formal request was made, the council publicly stated that it would not support any rate increases until the S&WB resolved its customer billing problems.\*\*\* Several months later, the S&WB agreed to pause its plans to seek new rate increases until it makes improvements.\*\*\*\*

While the S&WB's billing problems can affect its ability to strive toward "good governance" principles, such as achieving financial sustainability, these challenges must largely be resolved by factors that fall outside of the structural elements of governance, such as effective leadership from top management, improved technology, trained staff and internal administration.

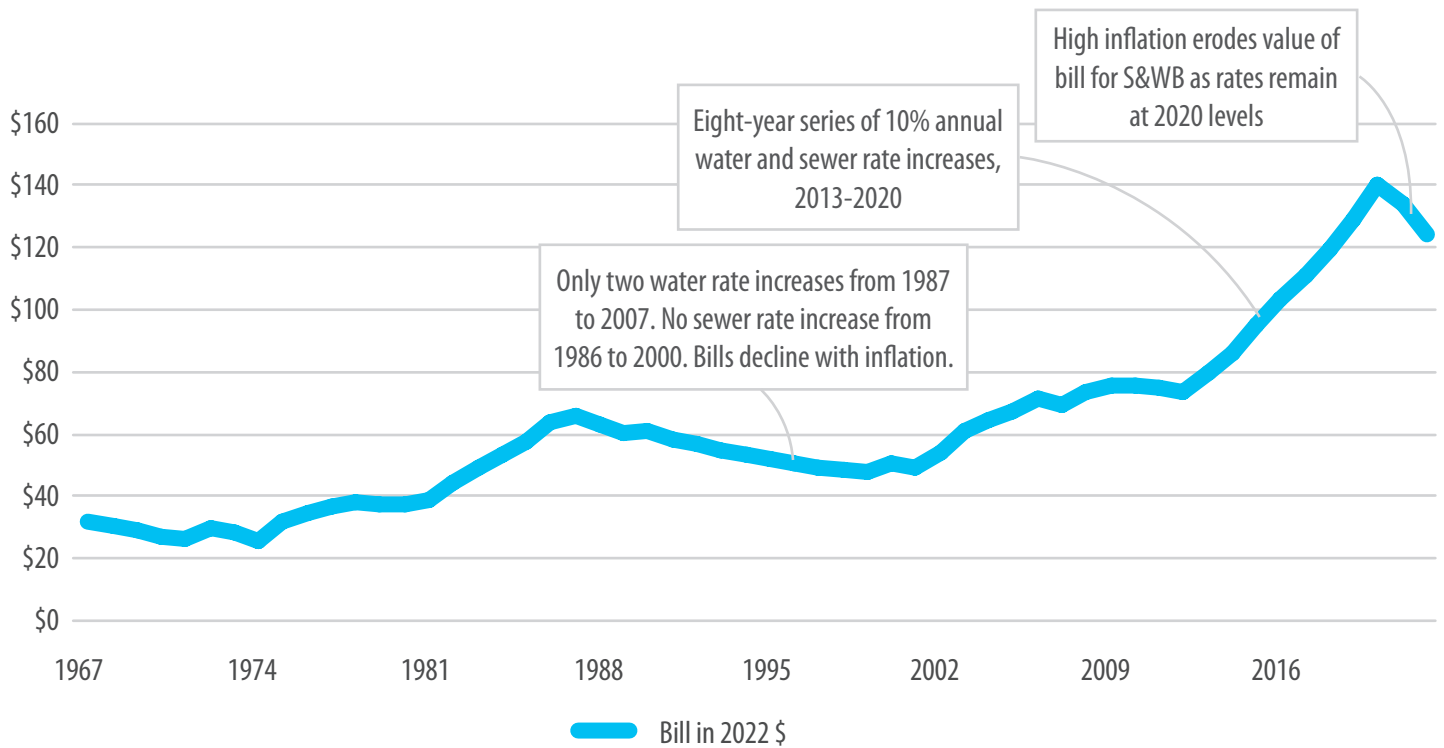
\* Evans, Beau, "[Sewerage & Water Board's \\$10 million billing system wasn't properly tested](#)," *The Times-Picayune* | *NOLA.com*, July 12, 2019.

\*\* Desselle, Sherman, "[Sewerage & Water Board New Orleans customers hit with \\$9,000 bills](#)," *WWL-TV*, May 13, 2022; Monteverde, Danny, "[Billing, power still problems for Sewerage & Water Board](#)," *WWL-TV*, July 29, 2021; "[S&WB billing issues are bubbling up again during coronavirus: 'It's craziness'](#)," *The Times-Picayune* | *NOLA.com*, July 21, 2020.

\*\*\* Myers, Ben, "[S&WB considering Cantrell-backed rate hikes, setting up fight with City Council](#)," *The Times-Picayune* | *NOLA.com*, October 26, 2022; Myers, Ben, "[New Orleans City Council members united against possible S&WB rate hikes](#)," *The Times-Picayune* | *NOLA.com*, October 28, 2022. See also, New Orleans City Council, *New Orleans City Council Responds to SWBNO's Proposed Rate Increase*, Press Release, October 28, 2022.

\*\*\*\* Lenten, Morgan, "[Sewerage and Water Board halting effort to seek a rate hike](#)," *WDSU*, March 15, 2023.

## CHART B. INFLATION-ADJUSTED S&WB WATER AND SEWER CHARGES FOR AN AVERAGE RESIDENTIAL CUSTOMER, 1967 TO 2022 (Figures in 2022 dollars)



Note: The chart assumes a residential customer using a 5/8" meter and consuming 6,000 gallons a month. The water and sewer bill figures reflect only user fees for those systems and do not include any other charges, such as sanitation fees, that may be assessed on customer bills.

BGR calculations based on historical S&WB water and sewer rate schedules and inflation adjustment factors calculated based on average annual figures for the Bureau of Labor Statistics' U.S. Consumer Price Index for All Urban Consumers (CPI-U), 1967 to 2022.

**Historical Underfunding of the Water, Sewer and Drainage Systems.** A history of insufficient funding for the S&WB has contributed to decades of deferred repairs and maintenance and affects the performance of the water, sewer and drainage systems today.<sup>25</sup> While recent years of rate increases have helped bolster water and sewer system finances, many residents continue to live with infrastructure that is decades overdue for replacement. Most of the city's water mains, for example, are more than 80 years old.<sup>26</sup>

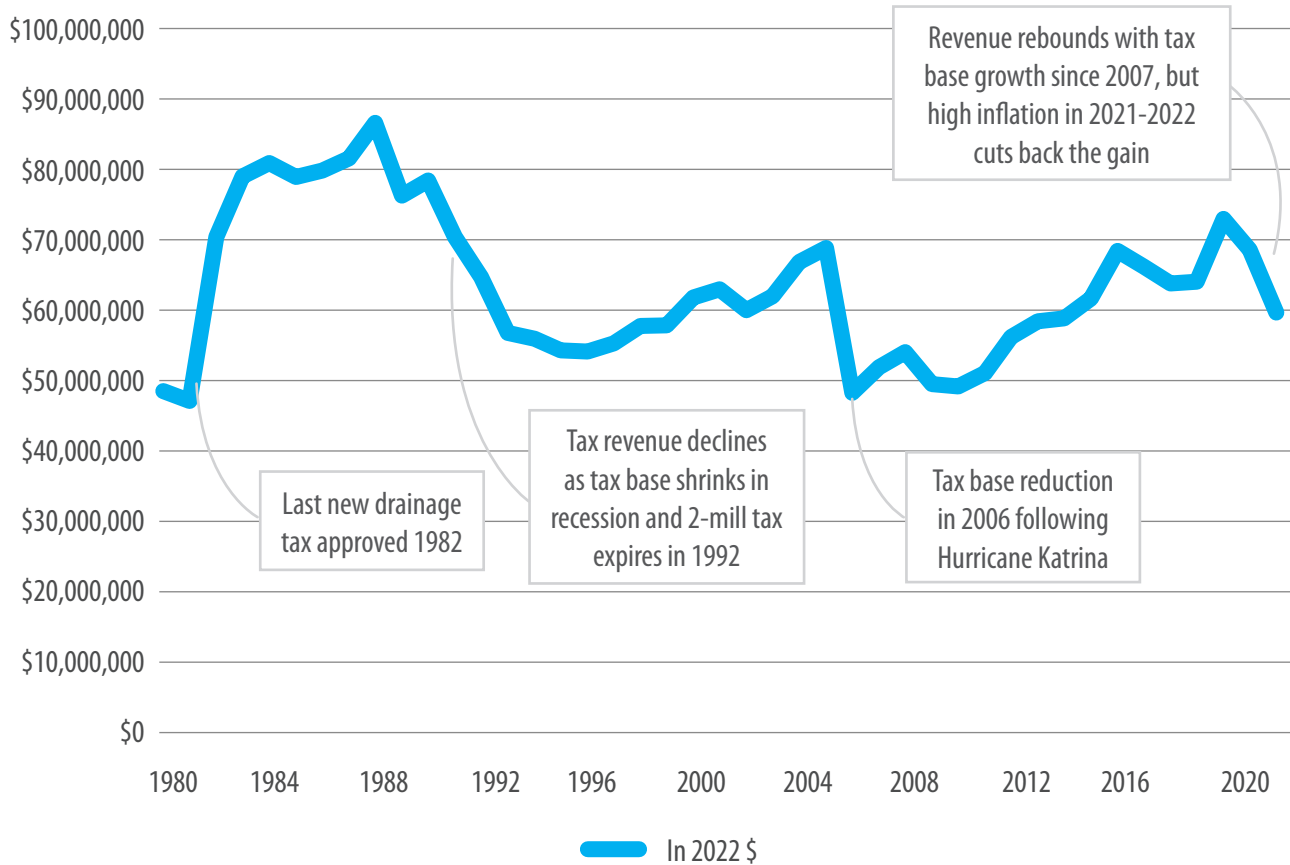
The basic drivers of this chronic underfunding problem are directly related to the S&WB's governance structure. The S&WB relies almost entirely on the revenue generated by rates and taxes to carry out its functions relative to the three systems. However, the S&WB has little control in setting rates and levying taxes. That authority lies primarily with the City Council, which has faced political pressure from constituents to keep rates and taxes low.

Indeed, past councils have delayed or killed proposals to increase water and sewer rates because of political concerns despite the systems' needs.<sup>27</sup> This has led to a reactive, crisis-driven funding approach and an unfair distribution of system costs across generations of ratepayers.

For example, in 2012, the S&WB proposed and the City Council approved water and sewer rate increases over an eight-year period, with rates doubling by 2020. While the rate increases were necessary to address decades of underfunding and the deterioration of infrastructure and operations, they effectively shifted the accumulated cost burden onto current and future ratepayers. Chart B illustrates the effect of this funding practice and the intergenerational cost transfer on the average residential customer over the years. In 2020, for example, the average customer paid nearly seven times what was charged in 1970.



### CHART C. INFLATION-ADJUSTED REVENUE FROM S&WB DRAINAGE PROPERTY TAXES, 1980 TO 2022 (Figures in 2022 dollars)



BGR calculations based on S&WB annual comprehensive financial reports available through 2021, the agency’s adopted 2022 budget, and inflation adjustment factors calculated based on average annual figures for the Bureau of Labor Statistics’ U.S. Consumer Price Index for All Urban Consumers (CPI-U), 1980-2022.

The drainage system, supported primarily by property taxes, has suffered from its own funding constraints. The drainage system has historically relied on property taxes for its revenues. In 1992, following an economic recession that decreased New Orleans’ property tax base, the S&WB lost one of its drainage taxes when voters opposed the tax’s renewal. This was the lone tax used to maintain the “minor” part of the system, which includes catch basins and the smaller subsurface pipe network. As shown in Chart C, after adjusting for inflation, the S&WB’s drainage taxes currently produce less revenue than they did in the early 1980s.

**Lack of a Formal Process to Evaluate Funding Proposals.** The challenges in achieving financial sustainability for the water, sewer and drainage systems are compounded by the lack of a formal process for the City Council to objectively evaluate S&WB funding requests. State law does not offer much direction to the City Council in evaluating and approving the S&WB’s rate propos-

als. It requires that the S&WB hold at least three public hearings to discuss the new rates and provide transcripts of each hearing to the City Council.<sup>28</sup> But it does not set forth the information that the S&WB should provide to the council, how the council should evaluate it, or how the council should reach a decision. Nor does State law establish a process for ongoing City Council monitoring of the S&WB’s finances, except for a list of periodic S&WB reporting requirements.<sup>29</sup>

In addition, State law does not offer much guidance to the S&WB in devising water and sewer rate schedules. Rather, it provides broad directives that, when possible, rates should be based on use and consumption and should not exceed the actual costs to operate and maintain the systems. In practice, the S&WB has traditionally retained outside consultants to help it examine system costs, project revenue requirements and develop a rate structure.<sup>30</sup>

**City Council Uses Control Over Funding as Leverage to Hold the S&WB Accountable.** In general, public utilities, unlike profit-oriented private utilities, do not have financial incentives to motivate their performance. But effective oversight can keep a public utility focused on efficient and effective operations, promote sound decision making, balance the interests of ratepayers and build trust in the utility's management.<sup>31</sup> Effective oversight can also encourage a cooperative effort between the oversight body and the public utility that focuses on setting standards of behavior and holding the utility accountable for performance.<sup>32</sup>

The City Council has some oversight of the S&WB; however, it lacks clear mechanisms to fully carry out this function. Because Louisiana law governs the S&WB, the City Council's oversight and ability to hold the S&WB accountable is limited to those areas specified in State statutes. Thus, unless the council has specific power in State law, it cannot mandate that the S&WB comply with a council decision or force the S&WB to make specific changes.

Since 2013, the Legislature has taken a piecemeal approach to strengthen the council's oversight of and authority over the S&WB. For example, the Legislature has added requirements for the S&WB to provide the council with quarterly updates on operations, contracting activities, system performance, performance metrics of employees and contractors, and coordination efforts with Public Works.<sup>33</sup>

From 2014 to August 2017, however, the S&WB did little to fulfill the new requirements, and the council received criticism for its lax oversight. During the same period, the council's Public Works Committee held only a handful of meetings relative to the S&WB.<sup>34</sup>

The City Council played a more active role in overseeing the S&WB after the 2017 flooding events. Council members reinforced the S&WB's existing reporting requirements, outlined what information the reports should contain and demanded their timely submission.<sup>35</sup> And in 2018, the Legislature significantly expanded the content of the quarterly reports and clarified the S&WB's obligation to present its reports to the council's Public Works Committee. The committee, which also hears presentations from the City's Department of Public Works, can request additional information from the S&WB and require S&WB top management to appear before the council.

Last year, the Legislature, at the request of the City Council, granted the council new powers to audit the S&WB's finances and accounts, issue subpoenas for S&WB documents, and open investigations into any catastrophic failure of the city's sewerage and drainage

infrastructure.<sup>36</sup> The Legislature also gave the council authority to establish billing dispute procedures, reduce or modify a S&WB bill, as well as waive late charges or accrued interest. While the City Council passed an ordinance last fall to establish a billing dispute resolution procedure, the S&WB informed the council of problems implementing the ordinance and requested a discussion of amendments.<sup>37</sup>

Thus, while the City Council's oversight of the S&WB has increased in recent years, it still lacks a comprehensive framework to hold the utility accountable. As a result, the council typically relies on the main tool it does have – control over S&WB funding – as leverage to promote accountability and change. This was most recently demonstrated when the council advised S&WB officials that it would not consider increasing water or sewer rates until the utility improved its billing practices. In addition, even though the council exercises control over S&WB funding, it has no control over how the S&WB spends its revenue, further complicating this problem.

In sum, several governance problems threaten the financial sustainability of the water, sewer and drainage systems. The misalignment between operational responsibility (S&WB) and funding control (City Council) elevates politics in funding decisions and has resulted in an unfair distribution of S&WB costs across generations of ratepayers. The absence of a formal process for the City Council to objectively evaluate funding proposals exacerbates these problems. At the same time, the current governance structure limits the council's ability to oversee the S&WB without using its control over S&WB funding as leverage to hold the utility accountable.

## **DIVIDED RESPONSIBILITY FOR DRAINAGE INFRASTRUCTURE**

The S&WB is responsible for the major drainage system, which includes larger pipes (at least 36 inches in diameter), canals and pumps. Public Works manages the minor drainage system, consisting of catch basins and smaller pipes that feed into the S&WB's system.

The division of responsibilities dates to the development of the drainage system more than a century ago and is currently spelled out in an agreement between the S&WB and the City.<sup>38</sup> It became a prominent governance issue in the 1990s after voters rejected the renewal of a two-mill property tax that the S&WB used to maintain the minor drainage system on the City's behalf. Lacking sufficient funds to oversee the entire system, the S&WB transferred responsibility for the minor drainage system to the City in accordance with their agreement. While the City assumed this maintenance responsibility, it did so without securing adequate funding for effective up-



keep and repair. Further, State law explicitly prohibits the S&WB from using its drainage property taxes for the minor, “subsurface drainage” network.<sup>39</sup>

The severe flooding in 2017 exposed problems created by New Orleans’ divided and underfunded drainage system. An independent study determined that divided governance was a root cause of the drainage system failures that led to the flooding.<sup>40</sup> The report found that separate budgeting processes, oversight, performance standards and public communications hinder the S&WB and Public Works from effectively addressing the needs and vulnerabilities of the entire system.

A separate study found that the disrepair of catch basins and an aging subsurface pipe network managed by Public Works may have reduced the ability to transfer stormwater runoff into the S&WB’s larger drainage system by 16%.<sup>41</sup> The fact that most drainage infrastructure is located underground increases the difficulty in pinpointing problems and assigning responsibility.

The division of drainage responsibilities also impedes a holistic approach to the broader concept of stormwater management, which is crucial for a flood-prone, coastal city such as New Orleans. For example, neither City government nor the S&WB has taken up the mantle to manage groundwater levels or address the city’s problems with subsidence, both of which complicate drainage. A lack of action in these areas leaves the city and

its residents without clear stewardship of critical government functions.

Comparing New Orleans to 51 peer cities, BGR found that New Orleans is the only city that divides responsibility for a single drainage system between a municipal department (Public Works) and a separate, stand-alone utility (S&WB). By contrast, BGR found that most other peer cities take a more integrated approach and handle drainage and other stormwater management functions through a municipal utility department.<sup>42</sup>

## INADEQUATE COORDINATION WITH CITY ON INFRASTRUCTURE PROJECTS

Effective coordination ensures that a water utility works well with other entities and agencies that share related functions. It also promotes efficient use of public resources. Regarding infrastructure work, effective coordination depends on, among other things: a clear allocation of responsibilities and accountability; clear funding arrangements; systems and processes to share information and track project progress; and collaboration among infrastructure agencies, utilities and other stakeholders for continuous improvement.<sup>43</sup> Further, coordination that occurs during open meetings encourages transparency and public accountability.

The S&WB and Public Works have related functions

**Comparing New Orleans to 51 peer cities, BGR found that New Orleans is the only city that divides responsibility for a single drainage system between a municipal department (Public Works) and a separate, stand-alone utility (S&WB).**





and responsibilities when it comes to streets and subsurface infrastructure work. However, they have struggled to effectively coordinate their work for decades. Inadequate mechanisms to promote coordination have resulted in administrative redundancies and inefficiencies and diminished public confidence in both the S&WB and Public Works.

For example, the City uses its 311 system to address and manage non-emergency requests from the public, including reporting infrastructure problems, while the S&WB separately manages a 24-hour repair hotline. Running separate systems is not only inefficient, but it places the burden on the public to know which entity to contact. It also creates opportunities for the S&WB and Public Works to blame the other for infrastructure-related problems.<sup>44</sup>

Further, the inability of the S&WB and the City to coordinate subsurface and street repairs could jeopardize hundreds of millions of dollars designated by the federal government to help pay for such repairs.<sup>45</sup> In a recent au-

dit, the New Orleans Office of Inspector General found that the S&WB and the City lack coordination policies and procedures to guide the execution of the federal program.<sup>46</sup>

The need for effective coordination is increasing as more funds for infrastructure repairs become available. In 2020, the S&WB and Public Works began receiving funds from the City's "fair share" initiative, which dedicates tax revenue generated by the City's hospitality industry for infrastructure maintenance.<sup>47</sup> The City has also started issuing bonds – part of the \$500 million authorized by voters in 2019 – to fund new street improvements.<sup>48</sup> In addition, the S&WB and the City are closely monitoring federal funding that will be made available through the Infrastructure Investment and Jobs Act that Congress approved in 2021. And as the S&WB contemplates a long-term plan to rebuild essential infrastructure, it will require careful, sustained coordination with any street projects carried out by the City to avoid wasting public resources.





## CONCERNS WITH THE BOARD OF DIRECTORS

**Accountability Concerns Related to the Mayoral Leadership Role.** Accountability builds public trust and confidence. It shows whether a water utility is a good steward of public resources that delivers services effectively. Avenues to strengthen accountability include clearly defining who has decision-making authority, operating with transparency, responding to scrutiny and valid criticism, and providing regular operational and financial updates to the public and policymakers.<sup>49</sup>

The mayor's participation on the S&WB's board of directors is a double-edged sword. On one hand, a mayor who is fully committed to the role of board president can offer important advantages. A seat on the board gives the mayor detailed knowledge of the S&WB's systems and needs. This allows the mayor to effectively advocate for the water utility and urge cost savings and other efficiencies. In addition, mayoral support of S&WB rate proposals can be crucial for their success before the City Council. Further, the mayor often takes the lead in external actions, including lobbying for funding in Baton Rouge and Washington, D.C. And an engaged mayor can build consensus among the other board members and public and private stakeholders on key decisions.

On the other hand, the prominent role of the mayor on the board can create distinct disadvantages. As both the City's top executive and S&WB board president, the mayor can overshadow other board members and create a disproportionate level of influence over S&WB decisions. The presence of the city's most powerful elected official can also discourage the free-flowing exchange of ideas on the board, limiting the board's effectiveness. Some past mayors have used their political influence to delay or prevent S&WB funding proposals from coming forward to the board of directors, further contributing to the utility's historical underfunding.<sup>50</sup> A mayor's elevated position can also diminish a key benefit for water utilities that are led by a board of directors: the mix of perspectives, experiences and insights shared by individual members. When board members hold equal standing, their combined contributions can strengthen the collective decisions of the full board.

In addition, mayoral leadership of the S&WB's board of directors can blur the lines of accountability by creating uncertainty in the public's mind as to whether the mayor or the board should be accountable for the S&WB's performance. It can also provide the mayor, other board members and S&WB executive management with an opportunity to shift blame for problems or poor performance. For example, following the significant flooding events of 2017, the previous mayor and some citizen board members fought over whose lack of oversight led to the crisis.<sup>51</sup>

**Problems with the City Council's Participation on the Board.** The current governance structure creates a conflict of interest for the City Council member who serves on both the S&WB's board of directors and the full council. As a member of the board, the council member must act in the best interest of the S&WB, which includes ensuring that rates and taxes are set at sufficient levels to properly fund operations, maintenance and capital improvements for the water, sewer and drainage systems. At the same time, the council member is responsible for overseeing actions personally taken as a board member and representing constituent interests as a member of the full council. These could include a political desire to keep S&WB rates and taxes low.<sup>52</sup> The disagreement in recent months between the S&WB and the City Council regarding potential increases for water and sewer rates illustrates this problem.

In addition, the City Council member's seat on the board is unusual among similarly situated large cities. Of the 22 other public water utilities serving large cities and governed by a board of directors, only three include a city council member on the board.<sup>53</sup>

**Potential Difficulty Sustaining Effective Citizen Representation.** In 2013, the Legislature adopted new requirements designed to ensure that citizens appointed to serve on the S&WB's board of directors are qualified individuals with a diverse mix of experience, expertise and skills.<sup>54</sup> This aligns with recommended practices for corporate governing boards.<sup>55</sup> These new requirements were added to the pre-existing mandate that the board of directors includes at least one resident from each council district. Appendix B tracks the changes in the board's composition and eligibility requirements over time.

Having relevant experience or expertise is important because citizens who volunteer to serve as board members face a steep learning curve. They must develop a strong understanding of the S&WB's operations, infrastructure, capital projects, finances, contracting, legal issues, personnel matters and customer service. They also need to understand the S&WB's complex governance structure and how the S&WB functions relative to other public bodies.

Building that knowledge takes time, but the demanding nature of the job has contributed to significant board turnover. From June 2014 until July 2022, 22 citizen members served on the board with an average tenure of 3.3 years, which is less than a single 4-year term. Further, for more than half of that time, the board had at least one vacant position.<sup>56</sup> A low point occurred in 2017 when four board members resigned amid the S&WB's post-flood crisis and left the board at risk of not having a quorum to conduct business.<sup>57</sup>

While board turnover and vacancies were highest between 2014 and 2018, they have stabilized since then. Since mid-2019, the composition of the board's citizen



**BGR recognizes that in recent years the S&WB's board of directors has become a stronger body, which can improve its overall effectiveness. ... However, the S&WB has not always benefited from strong board service and the ability to continue with such leadership in the future is not guaranteed.**

members has remained largely unchanged, and the average tenure of the board's recent and current citizen members now exceeds five years.<sup>58</sup> In addition, board attendance has improved. Several best practice guidelines for corporate governance indicate that board members should attend at least 75% of meetings.<sup>59</sup> While their average meeting attendance rate dropped to 71% in 2017, the S&WB's citizen members have exceeded this attendance threshold since then. In 2020 and 2021, citizen board members attended 94% and 98%, respectively, of all regular, monthly meetings.

BGR recognizes that in recent years the S&WB's board of directors has become a stronger body, which can improve its overall effectiveness. Current board members also bring a diverse set of skills to the table and represent a variety of fields, including business, finance, law, healthcare, public policy, consumer advocacy and technology. However, the S&WB has not always benefited from strong board service and the ability to continue with such leadership in the future is not guaranteed. This raises longevity and sustainability concerns about the heavy reliance on volunteer citizens to guide the S&WB's work.

## **FIXING THE S&WB'S PROBLEMS DEPENDS ON THE LOUISIANA LEGISLATURE**

It is impossible to address most S&WB governance problems without making a trip to Baton Rouge. While State laws define the S&WB's powers, responsibilities and accountability measures, they also are the source of many governance misalignments.

The Legislature's control over the S&WB's legal framework creates two major obstacles. First, it gives legislators who represent areas outside of New Orleans broad control over local utility issues. These legislators typically have little or no connection to New Orleans, making it difficult to explain the S&WB's complexity and win support for

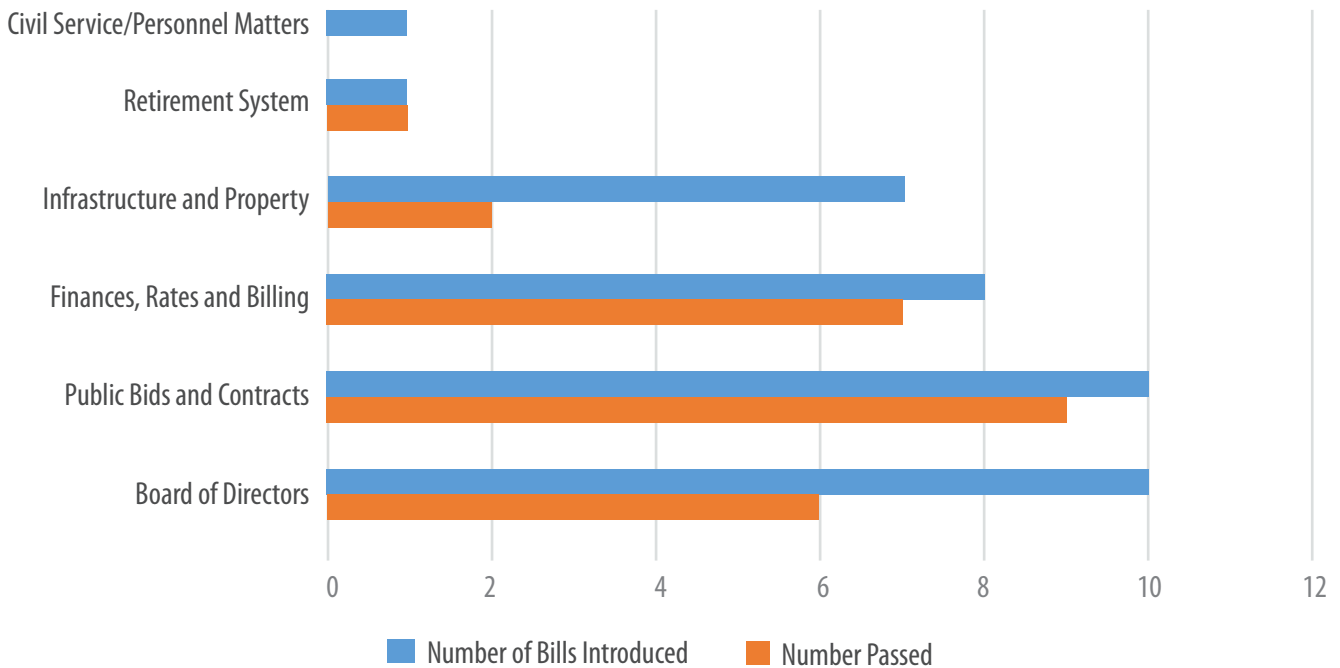
its needs. They also do not use the services provided by the water, sewer and drainage systems, nor do they pay the S&WB's user fees and property taxes. Yet, they cast votes on numerous issues that affect only New Orleans residents and businesses. The State's legislative control of the S&WB dates to the creation of the utility more than 120 years ago.<sup>60</sup>

Second, the Legislature's control makes it difficult to implement reforms in a timely fashion. The State's legislative process is lengthy and involves a review by various committees, as well as review and debate by the full House of Representatives and Senate. Success depends on mustering support from City officials, the New Orleans legislative delegation and the Legislature as a whole. In addition, the Legislature's process to enact new laws or amend existing ones typically occurs only once a year. Compounding this problem is the fact that addressing S&WB issues is largely reactive. Historically, local officials have been most likely to petition the Legislature to address S&WB problems after a significant event of poor performance or in response to public outcry.

As shown in Chart D, the New Orleans legislative delegation introduced 37 bills or resolutions from 2010 to 2022 to address a variety of S&WB issues. Nearly one-third of the proposed legislation sought to implement substantive governance changes, such as changes to the board of directors. While these efforts were generally successful, with a 67% passage rate, each piece of legislation required a commitment of time and resources from City officials, S&WB leadership and legislators.

Last year, the Legislature, upon request by a New Orleans representative, formed a task force to examine the inclusion of S&WB statutes in State law and the Legislature's control over them. The task force was asked to provide its findings and recommendations on potentially revising or repealing the S&WB's statutes in early 2023.<sup>61</sup> Its work is still pending.

## CHART D. STATE LEGISLATION RELATED TO THE S&WB, 2010-2022



BGR Analysis

### KEY TAKEAWAYS

The S&WB's complex governance structure does not effectively align key roles and responsibilities for the benefit of the water, sewer and drainage systems and their customers. The structure offers little support to objectively evaluate the financial needs of the three systems. Instead, it invites political considerations from City officials to fill the void and influence key decision making and funding. At the same time, the governance structure impedes effective coordination of infrastructure work and makes it difficult to hold S&WB and City officials accountable.

The governance structure also has contributed to decades of underfunding, the deterioration of critical infrastructure and a shift in infrastructure costs to current and future ratepayers. And because the Louisiana Legislature controls the laws that govern the S&WB, outside lawmakers exercise broad control over New Orleans' water utility issues and it is difficult to implement reforms in a timely manner.

To strengthen governance of New Orleans' water, sewer and drainage systems, BGR finds that the following key deficiencies should be addressed:

1. The City Council lacks a formal process to objectively evaluate funding proposals for the water, sewer and drainage systems, which elevates political concerns in funding decisions and threatens the financial sustainability of the systems.
2. The division of drainage responsibilities between the S&WB and the City's Department of Public Works undermines the performance of the entire system and impedes a holistic approach to the broader concept of stormwater management.
3. The S&WB and City government generally lack sufficient mechanisms to effectively coordinate infrastructure projects.
4. The composition of the S&WB's board of directors creates accountability concerns related to the mayor's prominent leadership role, a conflict of interest due to the City Council's participation on the board and challenges in sustaining effective citizen representation.
5. The Louisiana Legislature's control over the S&WB's laws creates additional challenges when trying to address problems and implement reforms.

## CHART E. SIGNIFICANT S&WB GOVERNANCE REFORM EFFORTS IN THE PAST 35 YEARS (Approved Changes Highlighted in Bold)

**1988**

Mayor Sidney Barthelemy proposes a charter amendment to merge the S&WB, Streets and Utilities departments into a new Department of Public Works. However, due to statewide political concerns, the administration does not move forward with the amendment.

**1993**

The City Council proposes making all future changes to the S&WB subject to a charter amendment. Voters reject the proposal.

**1999**

Legislature does not adopt proposed changes to State law that would alter the composition of the S&WB's board of directors, impose term limits and establish a process to fill vacancies.

**2002**

**New Orleans voters respond to privatization efforts by approving a charter amendment that significantly limits the transfer of S&WB core operations to private hands without a public vote.**

**1992**

Mayor Barthelemy proposes a charter amendment that would give the mayor more direct control over the S&WB. The City Council rejects the proposed change, and the amendment is not presented to voters.

**1996**

**Voters approve a charter amendment that requires the S&WB to coordinate with the newly created Department of Public Works.**

**2001**

As privatization gains attention nationally with promises of more efficient and effective water utility operations, S&WB seeks proposals from private companies to manage, operate and maintain the water and sewer systems. Mayor Marc Morial supports the effort.

**2002**

Louisiana Senate approves a study on consolidating and merging the S&WB, Public Works, and Parks and Parkways into a new City department.

**2013**

**New Orleans voters approve the companion charter amendment to change the composition of the S&WB's board of directors.**

**2012**

City Council approves an eight-year series of water and sewer rate increases to help address historical underfunding of the systems. It resolves to support future legislative changes to strengthen S&WB governance.

**2004-2008**

Legislature does not adopt a variety of proposed governance changes that include establishing an independent nominating process for S&WB citizen board members, adjusting their terms, setting member qualifications, and adding a City Council seat.

**2004**

Legislature does not adopt proposed changes to State law to remove the mayor and three City Council seats from the S&WB board of directors.

**2013**

**Legislature changes State law to remove three City Council seats from the S&WB board of directors and increase the number of citizen members; establish qualifications and a nominating process for citizen members; and establish S&WB reporting requirements to the City Council.**

**2011**

**Legislature changes State law to allow the mayor to appoint a designee to attend S&WB board of director meetings.**

**2004**

Legislature does not adopt proposed changes to State law to abolish the S&WB and replace it with a municipal water and sewer agency. Mayor Ray Nagin supports the change.

**2004**

S&WB board of directors, on the initiative of its citizen members, officially ends effort to privatize water and sewer operations.

**2014**

**Mayor Mitch Landrieu appoints an individual to serve as the administration's deputy mayor of infrastructure and, in his capacity as S&WB board president, leads the full board to appoint the same individual as the utility's executive director.**

**2018**

Louisiana House of Representatives creates a task force to study S&WB water and drainage issues for potential governance and operational improvements.

**2022**

Louisiana House of Representatives creates a task force to study the S&WB's inclusion in State law and the Legislature's control over them.

**2014**

**Legislature changes State law to allow the mayor's designee on the S&WB's board of directors to also be an employee of the S&WB.**

**2018**

**Following widespread public concern about S&WB oversight during the 2017 flooding events, the Legislature changes State law to restore a City Council seat back to the S&WB's board of directors. New Orleans voters also amend the City charter to approve the change.**

**2020**

Louisiana House of Representatives does not approve a request to create a task force to study the feasibility of giving control of the water, sewer and drainage systems to the City.

**2022**

City Council creates a task force to evaluate drainage system operations and provide recommendations on consolidation.



# ANALYZING OPTIONS FOR GOVERNANCE REFORM: WHERE DO WE GO FROM HERE?

As shown on the timeline in Chart E, nearly every mayoral administration in recent decades has proposed some sort of S&WB governance reform. Past reform efforts ran the gamut from giving City government full control over the water, sewer and drainage systems to outsourcing core S&WB operations to a private company. Despite these efforts, the only substantive reforms occurred in 2013, when New Orleans voters and the Legislature approved a package of measures designed to improve the quality of the S&WB's board of directors.

These past attempts at S&WB governance reform, along with the governance structures used by water utilities in other large U.S. cities, highlight a variety of possible reform options. However, some structures may be a better fit for New Orleans than others.

Creating a regional water utility that serves multiple jurisdictions, for example, is an unlikely option given the city's geography and established water systems in neighboring parishes. In addition, as discussed more in the sidebar on the next page, privatizing S&WB operations was unsuccessfully attempted in the past and would likely be even more difficult to accomplish today. Neither policymakers nor the public have voiced support for a major outsourcing of S&WB functions and responsibilities to solve current problems and obtaining approval from New Orleans voters would be a major hurdle to overcome. The federal debt currently owed by the S&WB for drainage projects and the billions of dollars in capital funding needed to repair or replace water, sewer and drainage infrastructure would also likely discourage private investors.

However, other governance structures show real potential for improving the long-term performance of the city's water, sewer and drainage systems. BGR finds two such options.

**1. Keep, but improve, the S&WB as a State-created, stand-alone utility that functions separately from City government.** A key distinction of stand-alone water utilities is that they tend to be more insulated from election-cycle politics, enabling a focus on long-term strategic improvements and decision-making

that is in the utility's best interest. However, for the S&WB to realize these benefits and improve performance, changes to the current governance structure would be necessary.

**2. Replace the S&WB with a City-created municipal utility.** The hallmark of a municipal utility is that it aligns operational responsibility, financial control and accountability for water utility functions with a city government. This approach can streamline processes, encourage coordination with other city departments and agencies, and give the public a clear avenue to hold officials accountable – through the election process – for a municipal utility's performance.

In applying this governance structure to New Orleans, the City would assume the responsibilities of the S&WB. As such, City government would become solely responsible for all operations, maintenance, capital investment and other actions necessary to achieve effective and efficient performance of the water, sewer and drainage systems. The City would also assume other functions currently carried out by the S&WB to support utility operations, such as general administration, human resources, contracting, customer service and public engagement.

Under this approach, the City could create a municipal utility as a City department led by an appointee of the mayor or as a board-governed City agency. The City has some board-governed agencies today, such as the New Orleans Public Library and the New Orleans Recreation Development Commission, although with varying board structures and powers.

In the remainder of this section, BGR analyzes and compares the extent to which retaining, but improving, the S&WB as a stand-alone utility or replacing the S&WB with a municipal utility could resolve persistent governance problems. As part of the analysis, BGR explores the potential benefits, complications and other considerations associated with each approach.

## IMPROVING FINANCIAL SUSTAINABILITY

### Creating a Formal Process to Evaluate Funding Proposals.

Reducing the impact of politics on funding decisions is fundamental to achieving financial sustainability for New Orleans' water, sewer and drainage systems. This is true regardless of whether the S&WB remains a stand-alone utility or transitions to a municipal utility. In addition, the creation of a formal process to evaluate funding proposals, coupled with more frequent evaluations, could help New Orleans achieve more stable and modest adjustments over time that take into consideration system needs and customer affordability.

In 2011, BGR called for the City Council to create such a process. BGR recommended that the council's process include independent expert analysis of funding requests, offer opportunities for public comment, and establish clear timelines, requirements and criteria for evaluating and approving funding proposals.<sup>62</sup> However, shortly after BGR published its report, the City Council approved an eight-year series of water and sewer rate increases. Some argued that the council's action essentially rendered the creation of a formal review process moot. Since then, the council has not revisited the idea. However, the issue has re-emerged as the S&WB recently considered asking the council for an increase in water and sewer rates to pay for operational and infrastructure needs.

Despite the City Council's inaction to create a formal process to review funding proposals, it is well positioned to do so. In recent years, the council has expanded the capabilities and expertise of its Council Utilities Regulatory Office. Continuing to enhance these in-house functions could help the council carry out funding, oversight and other responsibilities associated with either the S&WB or a newly created municipal utility.

As shown in Table 4, other cities that require city council approval of water utility rates follow formal processes to evaluate funding proposals. These processes include an annual review of system finances against performance criteria, a periodic assessment of the adequacy of current rates and future needs, an independent review of the utility's funding requests, and opportunities for public input.

In some cases, city councils have established an advisory board of citizens to review funding requests and offer recommendations. While BGR did not find specific requirements for either council members or citizen advisors to obtain specific training or expert advice in best practices for water utility ratemaking, these would appear to be essential to have a meaningful, objective review of any funding proposal. Further study would be needed to determine whether any of the processes used by other cities to evaluate and approve rates could be a model for New Orleans to follow.

## Limitations on Privatizing S&WB Operations

In the early 2000s, the City's administration sought to privatize some of the S&WB's functions for the water and sewer systems. The effort would have given a private company control of the operations and maintenance of the water and sewer systems, while responsibility to maintain the systems' infrastructure would have remained with the S&WB. If approved, the 20-year contract would have been the largest outsourcing of public water and wastewater operations in U.S. history.

BGR followed the privatization effort closely. While some benefits and costs savings could have been realized, the procurement process and the proposed deal raised significant concerns.\*

In March 2002, New Orleans voters approved a charter amendment to limit the S&WB's authority to privatize operations and functions. The charter now requires voter approval for the privatization of any S&WB management, administrative or operational function valued at more than \$5 million.\*\* State legislators also enacted a similar limitation.\*\*\*

In 2004, the S&WB's board of directors officially terminated the procurement process. This move was led by the board's citizen members who outvoted the elected officials on the board.\*\*\*\*

\* See BGR, [Outlook on Orleans: Privatization of Sewerage and Water Board Operations](#), April 2000; [Privatization of Water and Wastewater Systems in New Orleans: BGR Analysis of the Sewerage & Water Board of New Orleans Proposal](#), June 15, 2001; [Sewerage & Water Board Privatization at a Critical Stage](#), June 2002.

\*\* City of New Orleans, Home Rule Charter, Sec. 5-303.

\*\*\* La. R.S. 33:4159.10.

\*\*\*\* Carr, Martha, "New Orleans Private Partnership Dead," *The Times-Picayune*, April 20, 2004.

**TABLE 4. RATE REVIEW PROCESSES USED BY OTHER CITY COUNCILS**

<b>Dallas</b>	<ul style="list-style-type: none"> <li>• The city council establishes financial management performance criteria for a municipal utility department. These are reviewed annually, along with cost-of-service studies that the council requires every two years.</li> <li>• The council considers rate adjustments as part of the annual budgeting process.</li> </ul>
<b>San Diego</b>	<ul style="list-style-type: none"> <li>• The city council created an Independent Rates Oversight Committee to provide non-binding recommendations on policy issues related to oversight of utility department operations.</li> </ul>
<b>Los Angeles</b>	<ul style="list-style-type: none"> <li>• The city’s Office of Public Accountability independently evaluates rates proposed by the city-created governing board for the utility, prior to city council approval.</li> </ul>
<b>Columbus (OH)</b>	<ul style="list-style-type: none"> <li>• The council-established Sewer and Water Advisory Board reviews rates annually and makes recommendations to the city council.</li> </ul>
<b>Portland (OR)</b>	<ul style="list-style-type: none"> <li>• The city council established a public oversight panel, consisting of 11 community members. It advises the council on utility operations, budgets and financial plans, capital spending, rate setting and other topics.</li> <li>• The panel is staffed by employees of the City Budget Office to ensure timely and independently managed access to information.</li> </ul>
<b>Sacramento</b>	<ul style="list-style-type: none"> <li>• A Utility Rate Advisory Commission recommends rates to the city council for approval.</li> </ul>

While creating a formal process to objectively evaluate funding proposals could reduce political influence, it would not alleviate all pressure on the City Council to keep water and sewer rates low. This raises an important question: Why not give the S&WB ratemaking authority like other state-created, stand-alone water utilities?

In its examination of water utilities serving the 75 largest U.S. cities, BGR found that New Orleans is the only one with a state-created water utility led by a board of directors that must obtain approval from the local government (i.e., City Council) to set rates. Six of the other seven state-created water utilities have authority to set their own rates, while one is subject to state utility regulation. For more information on the rate approval processes used in other large cities, see Appendix C.

Ratemaking authority can enable a water utility to obtain sufficient funding for its operations, infrastructure and capital projects. It can also reduce the influence of outside politics on funding decisions. However, ratemak-

ing authority can decrease a water utility’s incentive to control costs and implement reforms. And when a water utility is governed by an appointed board, the public has no direct recourse through the election process to hold decision makers accountable.

In its 2011 report, BGR recommended giving the S&WB limited ratemaking authority. This would have enabled the S&WB to increase water and sewer rates annually, with increases tied to a suitable price index or other measure.<sup>63</sup> However, today’s circumstances – which include rising housing costs, inflation and other affordability concerns – may warrant a different approach. Not only could annual rate increases exacerbate current affordability issues, but they could also be insufficient to fund unmet needs.<sup>64</sup> In Jefferson Parish, for example, reliance on a consumer price index adjustment each year was still insufficient to meet the needs of the water and sewer systems. As a result, the Parish Council recently approved a larger rate adjustment to increase funding for the systems.<sup>65</sup>



Finding a revenue-raising solution that responds to both customer affordability and operational and infrastructure needs may be more effectively addressed through careful, ongoing examinations of the water and sewer rate structures, rather than an index-based approach. While it is beyond the scope of this report to re-examine current rate structures, BGR notes that industry practices demonstrate various ways for water utilities to recover costs from customers while considering affordability, including the creation of tiers based on water usage or type of property.<sup>66</sup>

**Using Stronger Oversight, not Funding Control, to Improve Accountability and Performance.** The creation of a formal process to evaluate funding proposals, coupled with a stronger framework for oversight, would enable the City Council to rely more on accountability mechanisms – and less on control over funding sources – to promote improvement of the water, sewer and drainage systems

Based on general practices used by other bodies that oversee water utilities, the council’s oversight framework could include a clear statement of its mission, objectives and functions to:<sup>67</sup>

- Maintain a degree of independence from the S&WB or a new municipal utility so that decisions by the council would be objective and impartial.<sup>68</sup>
- Maintain accountability to the City administration, the S&WB or a municipal utility, and the public

for effective outcomes. This includes transparency in council policies and the reasons for its decision-making.<sup>69</sup>

- Engage with stakeholders, while protecting against potential conflicts of interest.<sup>70</sup>
- Periodically measure and evaluate its performance as an oversight body.<sup>71</sup>

Incorporating these elements into an oversight framework for the City Council would benefit either the S&WB, as a stand-alone utility, or a municipal utility. There would, however, be differences in other areas of financial oversight and accountability between the two governance structures.

If the stand-alone utility model continues, the S&WB would retain sole control over its budget, which is approved annually by its board of directors. While the City Council can request and review the S&WB’s budget and other financial documents, the council has no control over the S&WB’s budget processes or spending. The council’s control is primarily limited to approving the S&WB’s rates, taxes and fees.

This part of the current governance structure raises questions as to whether another State agency, rather than the City Council, should oversee the S&WB. However, as explained in the sidebar, BGR finds several advantages to keeping S&WB oversight in the council’s hands.

**The creation of a formal process to evaluate funding proposals, coupled with a stronger framework for oversight, would enable the City Council to rely more on accountability mechanisms – and less on control over funding sources – to promote improvement of the water, sewer and drainage systems.**



## S&WB Oversight: State vs. Local Control

While Louisiana law creates and primarily controls the S&WB, no State agency is charged with direct oversight of the utility. The Louisiana Public Service Commission, an independent regulator of private water and sewer companies that operate in Louisiana, would appear qualified for the job. The commission and its rate approval processes are governed by a five-member board of commissioners elected state-wide. In addition, an experienced staff carry out the work of the commission. However, there would be some drawbacks to giving another State-created agency authority over the S&WB.

First, oversight by the Public Service Commission would take place in Baton Rouge. This would make it more difficult for New Orleans residents and businesses to voice their concerns regarding the water utility.

Second, placing the S&WB under the authority of the Public Service Commission would give five elected commissioners, three of whom represent areas outside of New Orleans, significant control over S&WB matters. In addition, based on the boundaries of the commission's districts, New Orleans would be represented by two independently elected commissioners. This would require additional collaboration between the two to ensure that the needs of the S&WB and the New Orleans community at-large are accurately represented.

Finally, pursuant to the Louisiana constitution, giving the Public Service Commission authority to regulate the S&WB would first require approval from New Orleans voters.\* This would require the difficult task of convincing voters to remove oversight from their directly elected City Council members, whom they regularly contact with S&WB complaints.

For these reasons, BGR finds that the City Council is in a better position to oversee the S&WB and hold it accountable for its performance.

\* La. Const. Art. 4, Sec. 21(C).

By contrast, the municipal utility model could promote greater financial oversight and accountability. A municipal utility would operate under a more traditional checks-and-balances approach between the City's executive and legislative branches. The mayor, as chief architect of the City's budget, would propose an annual operating budget and multi-year capital plans. This would make the mayor more directly responsible for a municipal utility's financial stability, rather than as the leader of the S&WB's board of directors. Further, requiring a municipal utility to produce multi-year strategic and capital plans, as the S&WB does today, could help avoid short-sighted planning tied to election cycles.

The City Council would retain its authority to set rates and levy taxes and gain more financial oversight. Through the City's existing annual budget process, the

council would hold public meetings to review and approve a municipal utility's operating budget and capital plans. This would increase the council's stake in a municipal utility's performance and give the council more direct responsibility for the fiscal health of the utility. In addition, the budget process would replace S&WB meetings as the forum for the public to voice concerns or comment on financial issues facing the municipal utility.

Following a more traditional budget approach would not guarantee financial sustainability for a municipal utility. However, it would enable the administration and the City Council to use their respective roles as a springboard to create a self-sustaining municipal utility with consistent funding to deliver services, safeguard system assets and achieve long-term goals.

## CONSOLIDATING DRAINAGE RESPONSIBILITY

Having one entity in charge of drainage would likely improve the performance of the entire system and foster a more holistic and comprehensive approach to stormwater management and funding.

In 2011, BGR recommended that the City transfer responsibility for maintenance and repair of the minor drainage system from Public Works to the S&WB. BGR also recommended that policymakers develop a new funding source to support that work.<sup>72</sup> Nearly a decade later, in 2019, a task force created by the Legislature also recommended making the S&WB responsible for the entire drainage system.<sup>73</sup>

Furthermore, in 2022, the City Council created a working group, comprised primarily of City and S&WB officials, to evaluate drainage system operations and provide recommendations on consolidation.<sup>74</sup> In early 2023, the group's preliminary report affirmed past findings that consolidation under the S&WB could improve drainage system performance. But the report also found that the S&WB would require additional funding to conduct necessary repair and replacement of key drainage infrastructure.<sup>75</sup>

BGR continues to view drainage consolidation with the S&WB as an effective near-term solution to address pressing system deficiencies. Giving the S&WB, as a stand-alone utility, total control over the drainage system now also would not preclude an eventual transfer of drainage system responsibilities to a municipal utility. Rather, it would give City government time to prepare for the long-term move of bringing the drainage system under City control.

In addition, because the S&WB centrally generates electric power that is shared among the water, sewer and drainage systems, it would be problematic for the City to



assume responsibility for the systems at different times. Thus, giving City government control over the drainage system should take place only when the City is also ready to accept responsibility for the water and sewer systems as well.

Under either the S&WB or a municipal utility, the drainage system would need additional revenue to cover the entire system's operations, maintenance and capital investments. In 2017, BGR recommended that the S&WB and the City consider a stormwater fee, rather than a new property tax, as a potential source of funding. A carefully crafted stormwater fee would create a strong nexus between the impact a property places on the drainage system and the amount of the fee. It could also apply to a broader payer base, including properties owned by governments, nonprofit organizations and others that are exempt from taxes. As a preliminary step, BGR recommended that policymakers develop an accurate picture of the drainage system's needs, determine the total funding shortfall and clearly justify the expenditures that would be funded by a proposed stormwater fee. BGR also provided guidance on fairly and effectively structuring a fee.<sup>76</sup>

## STRENGTHENING COORDINATION FOR INFRASTRUCTURE PROJECTS

The coordination problems that have persisted between the S&WB, as a stand-alone utility, and City government would likely continue without mutual efforts to improve. In 2008, BGR recommended creating a utility coordination council to facilitate joint infrastructure work, particularly regarding street projects. BGR found that this approach was successfully used in other cities to coordinate public and private utilities that work in public rights-of-way. BGR recommended that the coordination council require participation by officials who have the necessary expertise and decision-making power and direct the members to share project information.<sup>77</sup> The coordination council, working from a common technology platform, could track repairs, work orders and project status, anticipate and resolve problems, and establish a work plan for upcoming projects.

Continuing under the stand-alone utility approach, the S&WB and City government could collaborate on the creation of a coordination council. The City Council could also encourage greater cooperation between the S&WB and Public Works.

By contrast, a municipal utility offers the opportunity to promote coordination more effectively. A municipal utility would operate with other municipal departments and agencies under the umbrella of City government. This could foster a more collaborative approach to tack-

ling long-standing infrastructure problems. It could also help achieve efficiencies by eliminating redundant administrative functions currently carried out by both the S&WB and the City. These efficiencies would not only positively affect City government, but they could also benefit citizens by promoting a more effective and responsive municipal government.

Whether the S&WB is improved as a stand-alone utility or replaced with a municipal utility, the implementation of a system that integrates orders for street and subsurface infrastructure work is likely needed to truly achieve effective coordination. Such a system could handle, among other things, reporting of infrastructure problems, coordinating project responsibilities, managing infrastructure funding and tracking the progress of repairs. Indeed, Public Works and the S&WB recently agreed that a shared management system could improve workflow and the sharing of information. Along these lines, the City is working to move construction data for the City and the S&WB to the same software platform.<sup>78</sup> In addition, S&WB officials say that the utility is seeking proposals for a new asset management system that will help track and prioritize projects. The new system, which is projected for implementation in late 2023, should improve coordination and the sharing of information between the S&WB and the City for federally funded infrastructure projects and possibly others.

## ADDRESSING CONCERNS WITH THE BOARD OF DIRECTORS

**Improving the Balance of Power and Accountability.** The mayor's elevated role as both the City's top executive and president of the S&WB's board of directors can overshadow other board members. It can also blur the lines of accountability by creating uncertainty in the public's mind as to whether the mayor or the board as whole should be accountable for the S&WB's performance. Of the 75 largest U.S. cities, BGR found 22 besides New Orleans that have public water utilities governed by a board. Of those, only five include the mayor as a board member.<sup>79</sup>

To fully reap the benefits of the board of directors approach for a public utility, the composition of the S&WB's board of directors would not include elected officials. However, policymakers and the public have not favored removing all elected officials from the board, making the ideal scenario an unlikely outcome in New Orleans.<sup>80</sup>

In 2011, BGR recommended, among other things, removing all elected officials from the S&WB's board of directors, which at the time consisted of the mayor and three City Council members. In 2012, the City's admin-



istration proposed its own S&WB governance reforms. While most of the administration's proposed reforms largely followed BGR's recommendations, the mayor wanted to continue leading the board of directors. Ultimately, BGR supported the administration's reforms, noting that, by removing all City Council members from the board, responsibility for the S&WB would fall squarely on the mayor.<sup>81</sup>

If the S&WB continues as a stand-alone utility, governance problems caused by the mayor's participation on the board of directors would remain. However, some could be mitigated. For example, while the mayor remains board president, the president pro-tem, who is elected by a majority of the board, could regularly lead board meetings.<sup>82</sup> Having this citizen member lead the S&WB's public meetings on a regular basis could serve as a strong reminder that the full board is responsible for the S&WB's performance. In addition, the board of directors could make committee assignments, instead of relying on assignments by the mayor.<sup>83</sup> While these reforms could help rebalance the mayor's power on the board, they may not fully eliminate the blurred lines of accountability in the public's view.

By comparison, the municipal utility model could better align decision-making functions and accountability. Most municipal utilities surveyed by BGR function as departments of city government.

In following this model for New Orleans, a municipal utility would function as a department within the City's administration, and the mayor would become directly responsible and accountable to voters for operating, maintaining and properly funding the water, sewer and drainage systems. In practice, the mayor would appoint a director to oversee a utility department's day-to-day activities, a role like the S&WB's executive director position. The appointment could also be subject to City Council approval, a process recently approved by voters.<sup>84</sup> Given the magnitude of responsibilities, the department head should be an experienced industry professional. Policymakers could establish eligibility requirements, such as minimum years of utility leadership experience and industry certifications, to ensure that only qualified individuals are considered for appointment. Like other department leaders, the head of a utility department would likely report to the City's chief administrative officer.

Another option would be creating a municipal utility that functions as a City agency and is governed by an appointed board of directors. However, this approach could diminish the potential benefits of clearly aligning decision-making responsibility and accountability with the mayor. In addition, it could create a municipal utility board of directors with even less independence than the

S&WB's board of directors, but with the same concerns about relying on volunteer citizens to guide core water functions. For utilities that follow this approach, BGR found that most do not include the mayor as a member of the board.<sup>85</sup>

**Resolving City Council Conflict of Interest.** The current governance structure creates a conflict of interest by having a member of the City Council oversee actions personally taken as a member of the S&WB's board of directors.

In its 2011 report, BGR recommended removing three seats from the S&WB's board of directors held by members of the City Council.<sup>86</sup> In 2013, New Orleans voters agreed and approved a charter amendment that removed all council members from the board and, in their place, increased the number of citizens appointed to the board. The Legislature adopted a companion bill so State law would reflect the changes to the board's composition.<sup>87</sup>

However, the removal of City Council members from the S&WB's board of directors was short-lived. A series of flooding events in 2017 prompted State lawmakers to propose restoring a single City Council seat back on the board. According to policymakers, giving the City Council a seat on the S&WB's board of directors was in response to the public's demand to increase accountability for the S&WB's performance. The following year, New Orleans voters supported a charter amendment to accomplish this in municipal law, although BGR opposed the amendment.<sup>88</sup>

If the S&WB remains a stand-alone utility, the City Council member's conflict of interest would also remain. However, Louisiana law and the City's charter already provide an avenue to minimize its impact. They give the City Council, acting through the chair of the Public Works Committee, authority to appoint a civil engineer to serve as the council's designee on the S&WB's board of directors.<sup>89</sup> This would address the problem of having a council member serve directly on the S&WB's board of directors, while also ensuring that the council's appointed designee has relevant experience that could benefit the board's decision making. While this appointment option has been available since 2018, no chair of the Public Works Committee has used it.

By contrast, the creation of a municipal utility could completely resolve the conflict of interest. A municipal utility that operates as a City department would eliminate the S&WB's board of directors. And while a municipal utility that functions like a City agency could be governed by an appointed board of directors, BGR's survey work revealed that most municipal utilities governed by an appointed board do not include city council members.<sup>90</sup>

**Addressing Concerns Surrounding Citizen Board Members.** Maintaining consistency and stability in the quality of citizen board members has proven to be difficult over time. These concerns would continue under the S&WB’s current structure as a stand-alone utility. While policy-makers have adopted governance reforms to improve the quality of citizen members, it may not always be easy to find qualified citizens willing to serve.

The utility department model would streamline the decision-making process. As a part of the City’s administration, department leadership and top staff could make decisions without having to convene a board of directors or satisfy board quorum requirements to conduct business, as is currently required for certain S&WB decisions.

The City Council, however, would need to offset the loss of transparency caused by the elimination of the board. The council could require a utility department to report to the Council Utilities Regulatory Office and Public Works Committee on important matters, such as operations, maintenance, budget, billing processes and customer service. In addition, the council could require a utility department to make budget documents, capital plans and reports available online for public review.

Policymakers could create a municipal utility that is governed by an appointed board of citizens. However, the longevity and sustainability concerns about relying on volunteer citizens would persist.

## INCREASING LOCAL CONTROL OVER WATER UTILITY MATTERS

One of the key differences between the S&WB as a stand-alone utility and the municipal utility model is the exercise of legislative authority. Because the S&WB is a State-created entity, the Louisiana Legislature exercises control over the utility’s laws. As a result, if policymakers keep the S&WB’s current governance structure, the problems of giving state lawmakers broad control over S&WB matters and requiring local officials to navigate a complex legislative process would not be resolved.

On the other hand, the creation of a municipal utility would solve the governance problem of having local utility matters decided and managed at the State level. A municipal utility that operates as part of City government would be controlled by municipal law, i.e., the City’s home rule charter and code of ordinances. That means the City Council would be responsible for creating a legal framework for a new municipal utility, with any charter changes subject to voter approval. Essentially, the council would give the S&WB’s existing operations, functions and responsibilities a “place” to land in munic-

ipal law and enable them to continue to function within City government without interruption.<sup>91</sup>

The municipal utility approach would also give City Council members – who live in New Orleans and have a vested interest in the effective performance of the water, sewer and drainage systems – legislative authority over a new utility. The City Council could enact a comprehensive set of laws focused on municipal utility operations, finances, personnel, oversight and accountability.

The municipal utility approach would also streamline the legislative process. Instead of following the Legislature’s process that typically takes place once a year in Baton Rouge, the City Council could handle municipal utility business at any of its regularly scheduled public meetings, which generally occur twice a month, or at any special meeting it chose to schedule. This would enable the council to be more responsive to a municipal utility’s needs.

## KEY TAKEAWAYS AND OTHER CONSIDERATIONS

Keeping, but improving, the S&WB as a State-created, stand-alone utility would be the easier governance path and the implementation of targeted reforms could yield substantial improvement in some areas.

Creating a formal process for the City Council to objectively evaluate S&WB funding proposals could reduce the impact of politics on funding decisions. And with improved oversight mechanisms, the council could rely more on its oversight authority – and less on its control over S&WB funding – to hold the S&WB accountable for performance. Combined, these reforms could help achieve financial sustainability for the water, sewer and drainage systems. In addition, consolidating drainage responsibilities with the S&WB, along with finding revenue to cover the additional responsibilities, could improve the performance of the entire system and encourage a more holistic approach to stormwater management.

However, other governance problems would persist. As a stand-alone utility, the problems historically caused by ineffective coordination between the S&WB and City government, particularly concerning infrastructure work, would remain in the absence of a proactive, concerted effort by both sides to improve. The creation of a coordination council, staffed by both S&WB and Public Works administrators with decision-making authority, could provide a strong starting point. Improved processes and practices to share information, track projects and monitor progress would also help.

Concerns about the S&WB’s board of directors would also remain – i.e., the mayor’s leadership role that blurs

the lines of accountability, the conflict of interest for the member of the City Council who serves on the board, and the difficulty finding qualified citizen members to serve. However, rebalancing some of the mayor's board duties and having the City Council appoint a civil engineer to serve on the board could mitigate some of these concerns.

Finally, in maintaining the S&WB as a stand-alone utility, the Louisiana Legislature would retain its control over the S&WB's laws and the utility's legislative process.

Alternatively, a municipal utility could substantially resolve the S&WB's current governance problems identified in this report. The governance reforms to improve financial sustainability of the water, sewer and drainage systems could also be achieved under a municipal utility. And the municipal utility structure would provide a more traditional checks-and-balances approach toward budgeting and spending for the systems between the administration and City Council. Further, implementing reforms to consolidate drainage system responsibilities with the S&WB could provide a near-term solution to address pressing problems, while giving the City time to prepare for the long-term plan of folding responsibility for the drainage system, along with the water and sewer systems, into City government.

The municipal utility approach could also promote more effective coordination with other municipal departments and agencies as all would function under the umbrella of City government. In addition, if the City opted to create a traditional department, it would eliminate the S&WB's board of directors. This would address the concerns surrounding the mayor's prominent role on the board, the City Council member's conflict of interest and the ability to find qualified citizens to serve. Further, the creation of a municipal utility would replace the Legislature's control of the S&WB's laws with the City Council's ability to shape municipal utility governance and function.

As an important first step, City officials would need to carefully craft a transition plan. The plan could explain, among other things, the role of a new municipal utility, the benefits associated with the change in governance and the appropriate placement of the utility in City government. It could also be the primary document used to educate State legislators, other stakeholders and the public on the proposed new governance model and the State legislation and City charter amendment required to implement it. In addition, the plan could address the many questions associated with the creation of a municipal utility, several of which are discussed below.

In creating a municipal utility, the City would also need to assure the public that it could handle full control of the

operations, finances and infrastructure of the water, sewer and drainage systems. This would include demonstrating its ability and competency to proceed with such an undertaking.<sup>92</sup> BGR recognizes the City's current struggles to maintain public safety, deliver essential services and properly manage the infrastructure it already controls. And this issue is not a new one. BGR's concerns about the readiness of the City to absorb the S&WB factored into its 2011 recommendations to strengthen the S&WB as a stand-alone utility rather than fold it into City government.

Other issues would require further study and analysis to fully assess the City's readiness to absorb the S&WB. They include, but are not limited to, City government's ability to:

- Assume the S&WB's revenue sources and assets without an interruption in the operation and management of the water, sewer and drainage systems.<sup>93</sup> This would include the S&WB's nearly \$453 million annual operating budget, which would grow the City's annual operating budget, which most recently totaled \$1.5 billion, by more than 30%.<sup>94</sup>
- Preserve current S&WB revenue sources to ensure that revenue generated by water rates, sewer rates, drainage property taxes or any other future revenue sources would be used only to support their respective systems, not unrelated City purposes.
- Assume the debt and financial obligations of the S&WB, including the ability to meet the S&WB's debt repayment obligations to current bondholders, as discussed more in Appendix D. The S&WB has \$517 million in outstanding bonded debt, compared to the City's \$630 million, as of 2020. The Board of Liquidation, which currently approves bond matters for both the City and the S&WB, would continue to play this role if the City assumed the bonded debt of the S&WB.<sup>95</sup>
- Continue the S&WB's capital improvement plan. The City would take over the S&WB's 10-year, \$2.5 billion capital improvement plan. The City currently has its own five-year, \$420 million capital plan.<sup>96</sup>
- Expand its current fiscal capacity to pay for the costs associated with creating and supporting a new municipal utility.<sup>97</sup>
- Transition S&WB employees to City government employees. This includes the impact such a transition would have on civil service rules, employee health benefits and pension benefits, as discussed in Appendix E. Such a transition would also need to consider the concerns of S&WB leadership



about the need for greater flexibility to attract and retain the workforce necessary to perform the work of the utility.

- Improve its Public Works Department to operate alongside and support a municipal utility. This would include retaining qualified leadership for the department and finding additional funding to maintain the city's streets. It would also include taking up the relevant parts of the S&WB's strategic plan for improving operations, as well as its prospective, long-term master plan for capital investments and infrastructure rebuilding.

While BGR's initial review and consultation with experts on bond and personnel issues did not reveal any obstacles to folding the functions of the S&WB into City government, further study by policymakers and specific plans to address these issues would remain necessary.

Table 5 summarizes how each of the two alternative paths forward could respond to the current governance problems facing the utility.



**TABLE 5. A COMPARISON OF GOVERNANCE REFORM OPTIONS:  
A STRONGER S&WB VS. A MUNICIPAL UTILITY**

Areas in Need of Governance Reform	Problems with the Current Governance Structure	A Stronger S&WB (Stand-Alone Utility)	Municipal Utility
<b>Financial Sustainability</b>	<ul style="list-style-type: none"> <li>• Misalignment between operational responsibility (S&amp;WB) and control over funding (City Council) invites political decisions on S&amp;WB funding proposals</li> <li>• City Council lacks a formal process to objectively evaluate funding proposals</li> </ul>	<ul style="list-style-type: none"> <li>• Create a formal process for the City Council to objectively evaluate S&amp;WB funding proposals, although misalignment between operational responsibility and control over funding would remain</li> <li>• Improve City Council oversight processes</li> </ul>	<ul style="list-style-type: none"> <li>• Create a formal process for the City Council to objectively evaluate municipal utility funding proposals</li> <li>• Align operational responsibility and funding control with City government</li> <li>• Give the administration and City Council more direct responsibility and accountability for operations and financial sustainability</li> <li>• But officials must demonstrate City government’s readiness to absorb the S&amp;WB’s responsibilities and exercise financial stewardship</li> </ul>
<b>Drainage System Responsibilities</b>	<ul style="list-style-type: none"> <li>• Divided responsibilities between the S&amp;WB and the City’s Department of Public Works impede drainage system performance</li> </ul>	<ul style="list-style-type: none"> <li>• Determine system needs, identify additional funding and consolidate responsibilities with the S&amp;WB</li> </ul>	<ul style="list-style-type: none"> <li>• Determine system needs, identify additional funding and consolidate responsibilities with the S&amp;WB</li> <li>• Near-term consolidation with the S&amp;WB would not preclude an eventual transfer to a municipal utility</li> </ul>
<b>Coordination</b>	<ul style="list-style-type: none"> <li>• S&amp;WB operates separately from City government which complicates coordination of infrastructure projects</li> </ul>	<ul style="list-style-type: none"> <li>• Develop a structure to increase collaboration between the S&amp;WB and the City, such as a coordination council</li> </ul>	<ul style="list-style-type: none"> <li>• Enable greater coordination by working alongside other City departments and agencies, all collectively reporting to the mayor and following the administration’s agenda</li> </ul>
<b>Board of Directors Concerns</b>	<ul style="list-style-type: none"> <li>• Mayor’s role as S&amp;WB board president can overshadow other board members and blur the lines of public accountability</li> <li>• City Council member’s participation on the board creates a conflict of interest</li> <li>• Difficult to find qualified citizens willing to serve</li> </ul>	<ul style="list-style-type: none"> <li>• Retain the mayor as board president, but rebalance power by allowing the board-selected president pro-tem to lead meetings and the board as a whole to assign members to committees</li> <li>• Appoint a civil engineer to serve in the council member’s place to mitigate the conflict of interest</li> <li>• However, blurred lines of accountability to the public would remain</li> <li>• Concerns about relying on volunteer citizens to manage critical water functions would remain</li> </ul>	<p>Eliminate the board of directors, which would:</p> <ul style="list-style-type: none"> <li>• Place decision-making authority and accountability squarely with the mayor</li> <li>• Resolve the council member’s conflict of interest</li> <li>• Address concerns about the sustainability of the current governing board approach</li> </ul>
<b>Legislative Authority and Processes</b>	<ul style="list-style-type: none"> <li>• S&amp;WB statutes found in Louisiana Law and controlled by State lawmakers</li> <li>• S&amp;WB follows the State’s legislative process, which typically occurs once a year</li> </ul>	<ul style="list-style-type: none"> <li>• Keep the S&amp;WB subject to State control and the State’s legislative process</li> </ul>	<ul style="list-style-type: none"> <li>• Shift control to municipal utility laws in the City’s home rule charter and code of ordinances</li> <li>• Follow the City Council’s legislative process, which typically occurs twice a month</li> </ul>

# CONCLUSION

The S&WB operates and maintains New Orleans' water, sewer and major drainage systems within a complex governance structure. Weaknesses in the governance structure threaten the financial sustainability of the three systems and their infrastructure, impede the performance of the drainage system, hamper the S&WB's ability to effectively coordinate with City government on infrastructure work, make it difficult to hold officials accountable for the S&WB's performance, and create concerns about the long-term effectiveness of the S&WB's board of directors. The Legislature's control over the S&WB's laws increases the difficulty of addressing these and other problems.

Given the S&WB's control and management of vital

infrastructure systems, the status quo governance structure should not be maintained. Inaction enables these problems to persist and worsen, diminishing the quality of life of citizens and jeopardizing the sustainability of the city.

BGR's report identifies two paths forward with potential to improve governance of the water, sewer and drainage systems: 1) keeping, but improving, the S&WB as a State-created, stand-alone utility that functions separately from City government, or 2) replacing the S&WB with a municipal utility that functions as part of City government. Each offers significant benefits over the current governance structure, but also introduces complications that must be carefully addressed.

# RECOMMENDATIONS

**To determine an ultimate governance path for the S&WB, BGR recommends that the mayor, as the leader of City government and president of the S&WB's board of directors, use this report to further study how an improved S&WB or a new municipal utility can address current governance problems and select a path forward that significantly improves upon the status quo. The mayor should coordinate these efforts with the City Council and the S&WB, as well as seek public input.**

As that process unfolds, BGR urges City and S&WB policymakers, with the assistance of the Louisiana Legislature as needed, to implement several reforms that could yield significant improvements regardless of whether the S&WB remains a stand-alone water utility or is replaced by a municipal utility.

To strengthen the **financial sustainability** of the water, sewer and drainage systems, the City Council should:

- Create a formal process to objectively evaluate funding proposals for the three systems. At a minimum, the council's process should provide for independent expert analysis of funding requests, offer opportunities for public comment, and establish clear timelines, requirements and criteria for evaluating and approving proposals.
- Develop, with the assistance of the council's Utilities Regulatory Office, a comprehensive oversight process that relies on accountability mechanisms, instead of funding control, to improve performance. This process should include, among other things, a review of strategic and financial plans

and reports, updates on operations, and regular monitoring of system performance. It should also enable the council to maintain objectivity and act with transparency.

To improve the **performance of the drainage system**, the mayor and City Council should:

- Work with the S&WB to verify the existence and size of the funding shortfall for the entire drainage system and develop a new funding source, such as a [stormwater fee](#).
- Once a sufficient source of recurring funding has been secured, transfer responsibility for the maintenance and repair of subsurface drainage from the Department of Public Works to the S&WB. This would give the S&WB, which already maintains the most complex parts of the drainage system, full control of the entire system to address pressing deficiencies. It would also not preclude an eventual transfer of drainage system responsibilities to a municipal utility.

To help achieve **effective coordination** for infrastructure work, the administrations of the S&WB and the City should:

- Enhance their existing practices and processes to improve workflow, which could include implementing a shared information management system. Either the S&WB or a municipal utility would need to effectively coordinate with other City departments and agencies, particularly concerning street and subsurface work.



# APPENDICES

## APPENDIX A. CONNECTING WATER UTILITY GOVERNANCE TO PERFORMANCE

BGR compiled the following summary of local water utility governance principles to clarify their connection to performance outcomes. Generally, the connection has two components, both of which are essential for achieving effective performance. One is the governance structure: the laws, regulations, policies and practices that guide water utility leaders and other stakeholders toward achieving high performance. The other covers leadership elements that the structure supports, including the vision, motivation and professional judgment of the water utility's governing body and management.

Governance Principle	Recommended Structural Components	Recommended Leadership Elements	Desired Water Utility Performance Outcomes
<b>Financial Sustainability</b>	<ul style="list-style-type: none"> <li>• Long-term strategic and capital planning processes with stakeholder participation</li> <li>• Periodic updates on infrastructure and operational needs</li> <li>• Periodic studies to set rates adequate to recover costs, provide for reserves, maintain support for bonds, and invest for future needs</li> <li>• A clear review and approval process for rates and other funding sources based on established principles for water utility regulation</li> <li>• Effective ratepayer billing, collection and dispute resolution processes</li> </ul>	<ul style="list-style-type: none"> <li>• Clear strategic vision</li> <li>• Performance-based culture</li> <li>• Commitment to employee training and leadership development</li> <li>• Responsiveness to scrutiny and valid criticism</li> </ul>	<ul style="list-style-type: none"> <li>• Focus on continuous improvement</li> <li>• Safe, reliable water services at fair, affordable and stable customer rates</li> <li>• Plans for life cycle operating and maintenance costs for infrastructure assets</li> <li>• Timely and right-sized improvements to systems and processes</li> <li>• Regular, moderate rate increases to keep up with cost recovery and avoid intergenerational cost transfer</li> <li>• Ratepayer tolerance for funding requests</li> <li>• Effective balance of funding sources and uses, including debt</li> <li>• Opportunities to diversify revenue and raise capital</li> <li>• Management of risk and business continuity</li> <li>• Competent and motivated workforce, with opportunities for advancement and engaged leadership</li> </ul>
<b>Effective Coordination</b>	<ul style="list-style-type: none"> <li>• Utility coordinating council or similar process to facilitate work among multiple utilities in public rights of way</li> <li>• Holistic strategy for stormwater and groundwater management</li> </ul>	<ul style="list-style-type: none"> <li>• Communication and collaboration with other utilities and government jurisdictions in service area</li> <li>• Shared focus on continuous improvement</li> </ul>	<ul style="list-style-type: none"> <li>• Cross-agency information sharing</li> <li>• Efficient completion of repairs</li> <li>• Limited waste of ratepayer and taxpayer funds</li> <li>• Sustainable water resources, minimizing loss and waste</li> </ul>
<b>Accountability</b>	<ul style="list-style-type: none"> <li>• Minimum qualifications for the utility executive and public input in selection process</li> <li>• Regular executive performance reviews</li> <li>• Regular financial and performance monitoring</li> <li>• Public budget process</li> <li>• Annual financial audit</li> <li>• "Ring-fencing" of system funds and accounts to prevent diversion to other uses</li> <li>• Financial oversight entity to periodically review spending and make investigations</li> <li>• Federal and state environmental compliance reporting</li> <li>• Public reporting to citizens</li> </ul>	<ul style="list-style-type: none"> <li>• Ethical behavior / "tone at the top"</li> <li>• Responsiveness to scrutiny and valid criticism</li> <li>• Regular public communications to customers and other stakeholders</li> </ul>	<ul style="list-style-type: none"> <li>• Public trust and confidence / customer satisfaction</li> <li>• Transparency in operations and management</li> <li>• Operates as a "good neighbor" in the community</li> <li>• Support for community's economic and environmental health and resilience</li> </ul>

BGR concept adapted from a review of water governance literature including the U.S. EPA's 2017 *Effective Utility Management* primer, the U.S. Water Alliance's 2017 *One Water for America Policy Framework*, and bond rating agency performance criteria.

## APPENDIX B. GOVERNANCE REFORMS TO THE S&WB'S BOARD OF DIRECTORS, 2014-2022

	Prior to 2014*	2014-2018	2019-2020	2021-Present
<b>Number of Board Members</b>	13	11	Same	Same
<b>Board Composition</b>	Mayor 3 City Council Members 2 Board of Liquidation 7 Citizen Members	Mayor No City Council Members 2 Board of Liquidation 8 Citizen Members	Mayor 1 Council Member or Designee 2 Board of Liquidation 7 Citizen Members	Same
<b>Method of Appointment of Citizen Members</b>	Appointed by mayor with advice and consent of City Council	Same, but mayor must select from among nominees proposed by an independent selection committee	Same	Same
<b>Terms and Term Limits of Citizen Members</b>	9 years with no term limits	4 years with a limit of two consecutive terms	Same	Same
<b>Experience Requirements of Citizen Members</b>	None	Experience required in architecture, environmental quality, finance, accounting, business administration, engineering, law, public health, urban planning, facilities management, public administration, science, construction, business management, community or consumer advocacy, or other pertinent disciplines	Same	Same
<b>Additional Requirements of All Appointed Members</b>	At least one appointee must represent each of the five City Council districts	Same, with additional requirement that two appointees must be consumer advocates with community advocacy or consumer protection experience or experience in a related field	Same, with additional requirement that one appointed member must be a retired civil engineer	Same, but removes the requirement that one appointed member must be a retired civil engineer

\* New Orleans voters approved an amendment to New Orleans' home rule charter in October 2013, triggering all reforms to state and city law effective January 1, 2014.

BGR analysis of various legislative acts amending La. R.S. 33:4071.



## APPENDIX C. WHO APPROVES RATE INCREASES IN THE 75 LARGEST U.S. CITIES?

Type of Water Utility (Primary Governing Entity)	City council	City-created governing board	City-created local ratemaking board	State-created governing board	State- created local ratemaking board	State utility regulator	Regional utility governing board	Totals
<b>City Department or Agency (59):</b>								
Stand-alone water department (City executive*)	5					1		<b>6</b>
Consolidated public works department (City executive)	7							<b>7</b>
Multiple-utility department (City executive)	27		2		1	1		<b>31</b>
Multiple-utility department (City-created governing board)	6	2						<b>8</b>
City-created agency (City-created governing board)	1	5				1		<b>7</b>
<b>Separate Entity (16):</b>								
State-created agency (State-created board of directors)	1			6		1		<b>8</b>
Regional water utility (Regional utility governing board)							4	<b>4</b>
Private water company (Private utility governing board)						4		<b>4</b>
<b>Totals</b>	<b>47</b>	<b>7</b>	<b>2</b>	<b>6</b>	<b>1</b>	<b>8</b>	<b>4</b>	<b>75</b>

\* City executive includes mayors and city managers.  
Note: The orange highlighted cell is S&WB.

BGR analysis

## APPENDIX D. REPLACING THE S&WB WITH A MUNICIPAL UTILITY: REQUIREMENTS TO PROTECT CURRENT BONDHOLDERS

Under the municipal utility model, the City of New Orleans would assume the bonded debt of the S&WB. While City and S&WB bond attorneys would need to conduct a comprehensive analysis of replacing the S&WB with a municipal utility and its potential benefits and risks to bondholders, BGR found that the S&WB's bond covenants do not explicitly prohibit it. Instead, they set forth several criteria that would need to be met before this change in governance could be implemented:<sup>98</sup>

- An independent consultant would need to evaluate the change from the S&WB's current governance as a stand-alone utility to a municipal utility and determine that it would not impact the viability of the water, sewer and drainage systems. BGR consulted with government finance experts who did not identify any impediments to undertaking this evaluation.

- The City would need to assume the indebtedness of the S&WB and comply with the S&WB's existing bond covenants. This means that the creation of a municipal utility would need to preserve existing water and sewer rates and drainage property taxes at levels that generate enough revenue to cover each system's bond repayments.
- The S&WB's bond counsel would need to determine that the change from the current governance structure to a municipal utility would not negatively affect the current tax-exempt status of S&WB bonds. According to a government finance expert, the City or a new municipal utility department would not lose its tax-exempt status for bonds unless it executed a management contract or arrangement with a private entity in violation of certain federal tax requirements.<sup>99</sup>



## APPENDIX E: REPLACING THE S&WB WITH A MUNICIPAL UTILITY: PERSONNEL CONSIDERATIONS

To staff a new municipal utility, the S&WB's more than 1,300 employees would become employees of City government. This could increase the number of employees working for the City by nearly 33%, from roughly 4,000 to 5,300.<sup>100</sup>

Currently, S&WB and City employees are part of the same civil service system. Accordingly, S&WB employees who transition to City employees would likely see little change in their positions, pay scales, employment status or civil service rules. While the creation of a new municipal utility may require a review of unclassified positions (i.e., positions that fall outside of the purview of civil service rules) and reorganization of job titles, this type of work is commonly conducted when a new City administration takes office.

However, policymakers analyzing the potential creation of a municipal utility should carefully consider:

- Whether the civil service system should be more broadly reformed to improve City personnel management. There may be general improvements to the system that could benefit not just the new municipal utility, but also the broader range of City departments and agencies. With more than 1,000 vacant positions in City government, examining the overall system and its ability to support effective hiring, promotion and supervision of employ-

ees is essential.

- Whether a municipal utility would retain the S&WB's current authority to directly manage certain hiring practices and positions. The City's administrative department directors do not hold such authority.<sup>101</sup>
- Whether S&WB employees would be required to participate in the health insurance and pension system that is available for City employees. Currently, S&WB and City employees have different health insurance benefits and participate in different pension systems. The pension systems allow employees who transfer between the S&WB and the City to switch from one pension system to the other while maintaining their vested years of service. But policymakers would need to determine whether S&WB employees who become City employees would stay in their current pension system or be required to transfer into the pension system for City employees. If they remain in the S&WB's pension system, policymakers also will need to address changes to the system's board of trustees, which currently includes the S&WB's board of directors plus representatives of S&WB employees and retirees.



# ENDNOTES

- 1 Kolb, Carolyn Goldsby, *At the Confluence of Science and Power: Water Struggles of New Orleans in the Nineteenth Century*, a dissertation submitted to the graduate faculty of the University of New Orleans, May 2006, pp. 215-216.
- 2 When the Louisiana Legislature created the S&WB (Act 6 of 1899), it also authorized the New Orleans City Council to levy a tax that allowed the S&WB to finance construction of the city's sewerage system; acquire the pre-existing, privately-owned and operated but poorly-run water infrastructure; and build out the city's water system. See also *State ex rel. Saunders v. Kohnke, et al.*, 109 La. 838, 33 So. 793 (La. 1/19/1903).
- 3 A summary of the master plan is available [here](#) on the S&WB's website.
- 4 The strategic plan is available [here](#) on the S&WB's website.
- 5 The new power complex will include a new electrical substation, three frequency changers to transform the 60Hz power to 25Hz power so it aligns with the drainage system's pumps, a new gas turbine, and all electrical and operational equipment necessary to connect the entire complex to the water, sewer and drainage systems. See S&WB, [Entergy New Orleans, Sewerage and Water Board Break Ground on West Power Complex, Phase I](#), press release, December 5, 2022.
- 6 More about the smart metering program can be found [here](#) on the S&WB's website.
- 7 BGR, [Making the Waterworks Work: Fixing the Sewerage & Water Board's Governance Problems](#), October 2011.
- 8 To guide its governance analysis for this report, BGR reviewed industry literature, books and reports on water utility management and governance practices for public entities, including: Grigg, Neil S., *Water, Wastewater, and Stormwater Infrastructure Management*, 2nd Ed. (Boca Raton, FL: CRC Press, 2012); Rouse, Michael, *Institutional Governance and Regulation of Water Services: The Essential Elements*, (London, UK: IWA Publishing, 2007); American Water Works Association, *Water Utility Management, Manual of Water Supply Practices*, 2nd Ed. (Denver, CO: American Water Works Association, 2005); American Water Works Association, *AWWA Standard, Utility Management System*, 1st Ed. (Denver, Co: American Water Works Association, 2009). See also Beecher, Janice A., "What matters to performance? Structural and institutional dimensions of water utility governance," *International Review of Applied Economics* (April 2013); International Federation of Accountants (IFAC) and The Chartered Institute of Public Finance & Accountability (CIPFA), *International Framework: Good Governance in the Public Sector*, July 2014; Keping, Yu, *Governance and Good Governance: A New Framework for Political Analysis*, October 2017; United States Environmental Protection Agency et al., *Effective Utility Management, A Primer for Water and Wastewater Utilities*, January 2017.
- 9 La. R.S. 33:4071. The City Council confirms seven of the mayor's nine appointments. The other two are also appointed by the mayor but based on recommendations from the Board of Liquidation, City Debt.
- 10 La. R.S. 33:4073.
- 11 Establishing or modifying S&WB job positions, as well as setting S&WB employee pay rates, affect the City's overall pay plan and, therefore, require City Council approval.
- 12 More information on the civil service system can be found [here](#) on the City of New Orleans website.
- 13 *Agreement Between City of New Orleans, Department of Streets, and Sewerage and Water Board of New Orleans*, July 1, 1992.
- 14 La. R.S. 33:4121, 33:4124, 33:4137 and 33:4147.
- 15 The S&WB records the assets of the water, sewer and drainage systems and their depreciation on its separate financial statements, although the City of New Orleans appears to have title to its property. La. R.S. 33:4078 states in pertinent part: "The title to all the public works constructed by the board, and to all the property acquired by the board shall be vested in the city of New Orleans."
- 16 La. 33:4121. The Board of Liquidation, City Debt, is a State agency that has control over the issuance and repayment of the City's general obligation bonds, as well as bond issuances for other agencies, including the S&WB.
- 17 In Louisiana, as property valuations rise, taxing bodies must lower, or "roll back," millage rates following a parishwide reassessment to keep the fiscal impact revenue neutral. Taxing bodies may then "roll forward" millage rates to reap the additional revenue, but only after a public hearing and a two-thirds majority vote. In New Orleans, the City Council is the taxing body for the City and the S&WB.
- 18 La. R.S. 33:4096 and 33:4121.
- 19 La. R.S. 33:4159.1, et seq.
- 20 La. R.S. 33:4071, et seq.

- 21 City of New Orleans Home Rule Charter, Sec. 5-301, et seq.
- 22 In January 2023, the Greater New Orleans Foundation issued the request for proposals on behalf of the S&WB. The study, which is being privately funded, is expected to be completed in 2024.
- 23 See EPA, *Effective Utility Management, A Primer for Water and Wastewater Utilities*, January 2017. See also, U.S. Water Alliance, *One Water for America Policy Framework*, 2017.
- 24 Ibid.
- 25 BGR, *Making the Waterworks Work*, p. 6.
- 26 For a map of aging infrastructure, see the S&WB’s website [here](#).
- 27 BGR, *Making the Waterworks Work*, p. 6.
- 28 La. R.S. 33:4096(A)(2). A similar provision exists for sewer rates at La. R.S. 33:4121(A)(2).
- 29 La. R.S. 33:4091.
- 30 La. R.S. 33:4096(A)(3) provides that “[t]hese rates shall be based as far as possible on the actual amount of water consumed, shall be equal and uniform for each grade or class of customers, and shall be framed so as to never exceed the actual cost of maintenance and operation of the public water system, the public and private supply therefrom, the cost of improvements, extensions, betterments, and repairs to said system, the establishment and maintenance of a replacement fund, and the revenues herein required to be raised annually to insure the proper development of said water system and the payment of the interest on and principal of Water Revenue Bonds, including payments required to be made into sinking funds and debt service reserve funds.” A similar provision exists for sewer rates at La. R.S. 33:4121(A)(3).
- 31 Beecher, Janice A., *Economic Regulation of Utility Infrastructure*, prepared for the Lincoln Institute of Land Policy, May 2013.
- 32 Ibid.
- 33 La. R.S. 33:4091.
- 34 See BGR, [On the Ballot: Sewerage & Water Board Governance Change, December 8, 2018](#), p. 6.
- 35 New Orleans City Council, Ord. 27,654 M.C.S., adopted January 11, 2018; Joint Letter from New Orleans City Council members to the Sewerage and Water Board, May 10, 2018; New Orleans City Council, R-18-182, adopted May 24, 2018.
- 36 La. Acts 2022, Reg. Sess., No. 711.
- 37 New Orleans City Council, Ord. 29,278 M.C.S., adopted October 6, 2022. See also Stein, Michael Isaac, [“Sewerage and Water Board not following all new billing laws,”](#) *Verite News*, March 15, 2023.
- 38 In 1902, the Louisiana Legislature merged a pre-existing drainage commission with the S&WB. At the time, the commission’s “drainage” consisted only of open and covered canals and pumping stations, either built or planned to be built. Street subsurface drainage did not exist; instead, stormwater ran into ditches maintained by the city. Ultimately, the subsurface drainage was built later as part of street construction by the City. See Sewerage & Water Board, *Opinion/Research on Responsibilities of Board as to Drainage: What Constitutes Drainage; Who is Responsible for Sub-Surface Drainage*, August 3, 1998, p. 2. See also *Agreement Between City of New Orleans, Department of Streets, and Sewerage and Water Board of New Orleans*, July 1, 1992.
- 39 La. R.S. 33:4124, 33:4137 and 33:4147.
- 40 ABS Group, *City of New Orleans Stormwater Drainage System Root Cause Analysis Final Report*, October 2018, pp. 129-136.
- 41 Veolia, *Drainage System Condition Assessment Final Report*, March 15, 2018, p. 6.
- 42 BGR reviewed the stormwater management practices of 51 peer cities, including 15 coastal cities. All cities have a population of 250,000 or more and, like New Orleans, operate a Municipal Storm Sewer System (MS4) that collects and conveys rainwater through a separate system and discharges it into a local body of water (as opposed to a Combined Sewer System that routes rainwater into the sewer system and treats it before discharge). Of the 51 peer cities, BGR found that 49 manage stormwater through a municipal department, one through a city-county utility and another through a regional stormwater utility.
- 43 IFAC and CIPFA, *International Framework: Good Governance in the Public Sector*, p. 17.
- 44 Myers, Ben, [“In taut relations with LaToya Cantrell, New Orleans council members move to freeze money,”](#) *The Times-Picayune | NOLA.com*, March 17, 2022.
- 45 Stein, Michael Isaac, [“Government watchdogs probing \\$2B Katrina roadwork project as city faces federal deadline,”](#) *The Lens*, May 10, 2022; [“Council says city will likely forfeit millions in post-Katrina roadwork funds without FEMA extension,”](#) *The Lens*, May 19, 2022; [“City won’t meet deadline to spend \\$2B in Katrina roadwork funds, Cantrell admin says,”](#) *The Lens*, May 26, 2022.
- 46 New Orleans Office of Inspector General, [Final Re-](#)

- [port, City of New Orleans and Sewerage & Water Board Repair Coordination Audit](#), September 29, 2022.
- 47 *Cooperative Endeavor Agreement Between the City of New Orleans and Sewerage and Water Board of New Orleans, Infrastructure Maintenance Fund*, July 7, 2020.
- 48 Williams, Jessica, “[Here’s how New Orleans plans to spend \\$200M this year to cover ‘the city’s highest priority needs.’](#)” *The Times-Picayune* | *NOLA.com*, July 15, 2020.
- 49 See EPA, *Effective Utility Management*, and U.S. Water Alliance, *One Water for America Policy Framework*.
- 50 BGR, *Making the Waterworks Work*, pp. 7-8.
- 51 Litten, Kevin, “[New Orleans S&WB member resigns, says mayor using employees as scapegoats.](#)” *The Times-Picayune* | *NOLA.com*, August 10, 2017; See also, Adelson, Jeff, “[S&WB member resigns, blasts Mitch Landrieu for scapegoating employees for New Orleans infrastructure problems.](#)” *The Times-Picayune* | *NOLA.com*, August 10, 2017.
- 52 BGR, *On the Ballot: Sewerage & Water Board Governance Change: December 8, 2018*.
- 53 BGR analysis. This figure includes both state-created and city-created boards, but not the governing boards of regional water utilities because they serve multiple jurisdictions.
- 54 La. Acts 2013, Reg. Sess., No. 345.
- 55 Gregory, Holly J., and Rebecca C. Grapsas, *Comparison of Corporate Governance Guidelines and Codes of Best Practice: United States*, September 2010, pp. 15-17; Brancato, Carolyn Kay, and Christian A. Plath, *Corporate Governance Best Practices: A Blueprint for the Post-Enron Era*, The Conference Board Special Report No. SR-03-05, 2003, p. 16.
- 56 BGR analysis based on a review of S&WB meeting minutes from June 2014 to July 2022.
- 57 Perlstein, Mike, “[Without new members, S&WB board of directors may not be able to function due to resignations.](#)” *WWL-TV*, August 24, 2017.
- 58 BGR analysis of S&WB minutes from June 2014 to July 2022. BGR’s calculations include the tenure of a citizen board member who served from July 2016 to May 2022, but do not include the tenure of his successor, who was appointed to the board in August 2022.
- 59 Gregory and Grapsas, p. 19.
- 60 In 1899, the Louisiana Legislature passed a special act to create the S&WB. Shortly thereafter, the Legislature presented the special act to voters statewide in the form of a constitutional amendment. Voters approved the amendment, which incorporated the S&WB into the Louisiana constitution. In 1974, voters approved a new Louisiana constitution. This constitution, which remains in effect today, transferred the S&WB’s constitutional provisions to State statutes. With this transition, changes affecting the S&WB no longer require statewide voter approval of a constitutional amendment, but still need approval by the Louisiana Legislature. See La. Const. Art. 14, Sec. 16.
- 61 La. Acts 2022, Reg. Sess., House Res. No 168.
- 62 BGR, *Making the Waterworks Work*, p. 20.
- 63 BGR, *Making the Waterworks Work*, p. 11.
- 64 See BGR, [On the Ballot: New Orleans Property Tax Propositions](#), November 2020; [On the Ballot: Housing Tax Exemptions in New Orleans](#), October 2019. See also, *FitchRatings*, [Fitch Affirms New Orleans, LA’s Water and Sewerage Revs at ‘BBB+’; Outlook Stable](#), April 4, 2022.
- 65 Paterson, Blake, “[Jefferson Parish water, sewer rates are going up in 2023. Here’s why.](#)” *The Times-Picayune* | *NOLA.com*, February 26, 2023.
- 66 For example, while the S&WB sets four tiers of rates for water usage and a single tier for sewer usage that apply to all customers, other cities subdivide their rate structure by class of customer to provide more tailored rates for single-family residential, multifamily, and commercial and industrial customers. The city of Austin takes the additional step of establishing a set of reduced rates for residential customers who qualify based on income. Austin charges the lowest rates on the first 2,000 gallons used per month, with a higher rate on the next 4,000 gallons. City of Austin, Texas, Official Statement, Water and Wastewater System Revenue Refunding Bonds, Series 2023, October 6, 2022, pp. 42-43.
- 67 Beecher, 2013, p. 164; OECD, *The Governance of Regulators*, 2014, p. 15.
- 68 OECD, p. 47.
- 69 *Ibid.*, pp. 79-80.
- 70 *Ibid.*, pp. 89-90.
- 71 *Ibid.*, pp. 105-106.
- 72 BGR, *Making the Waterworks Work*, p. 21.
- 73 Task Force on New Orleans Sewerage, Water and Drainage Utilities, *Final Report of Findings and Recommendations*, January 1, 2019.



- 74 New Orleans City Council, M-22-148, adopted March 24, 2022. See also Sledge, Matt, “[City Council requests plan on merging S&WB, public works drainage; official warns of ‘heavy lift.’](#)” *The Times-Picayune* | *NOLA.com*, March 31, 2022.
- 75 Memorandum from Gilbert Montaña, Chief Administrative Officer, City of New Orleans, to the New Orleans City Council, January 31, 2023.
- 76 BGR, [Beneath the Surface: A Primer on Stormwater Fees in New Orleans](#), February 2017.
- 77 BGR, [Street Smarts: Maintaining and Managing New Orleans’ Road Network](#), October 2008, p. 11.
- 78 New Orleans Office of Inspector General, *Final Report, City of New Orleans and Sewerage & Water Board Repair Coordination Audit*, September 29, 2022, p. 42.
- 79 BGR analysis. The 22 cities do not include regional public water utilities that have a mix of local elected officials from the jurisdictions they serve.
- 80 See BGR, [BGR Backs Mayor’s S&WB Reform Proposals, Suggests Improvements](#), December 10, 2012.
- 81 Ibid.
- 82 See *By-Laws of the Sewerage and Water Board of New Orleans*, Article II, Section 1 and Article IV Section 2.
- 83 This is based on a recommended practice for corporate governing boards. See Gregory and Grapsas, p. 39.
- 84 See BGR, [On the Ballot: New Orleans Charter Amendment: November 8, 2022](#).
- 85 BGR’s survey of 75 large cities found that only three out of 15 city-created, board-governed water utilities include a seat for the mayor on the board.
- 86 BGR, *Making the Waterworks Work*, pp. 15-16. .
- 87 La. Acts 2013, Reg. Sess., No. 345.
- 88 BGR, [On the Ballot: Sewerage and Water Board Governance Change: December 8, 2018](#).
- 89 La. R.S. 33:4071(A) and City of New Orleans Home Rule Charter, Sec. 5-301.
- 90 BGR’s survey work of the 75 largest U.S. cities revealed that 15 cities have a city-created water utility governed by an appointed board. Of those, only two cities include members of the city council on the utility’s board.
- 91 The State constitution grants the City of New Orleans, through the City Council, the power to enact local legislation, as well as the power of immunity from control by the State Legislature. See La. Const. Art. 6, Sec. 4. Further, as a home rule government that adopted its charter prior to the ratification of the 1974 Louisiana constitution, the City can exercise any legislative powers within its boundaries as long as the exercise of that power does not conflict with the constitution. See La. Const. Art. 6, Sec. 5(E). In reviewing the City’s charter provisions, the Louisiana Supreme Court has found that the charter “stakes a continuing claim, without self-imposed limits, to the utmost powers of initiation available to the city under the constitution.” See *City of New Orleans Home Rule Charter*, Sec. 2-101. See also *City of New Orleans v. Board of Comm’rs*, 640 So.2d, at 242 (La. 7/5/1994).
- 92 Sewerage and Water Board, *2023 Operating and Capital Budgets*, p. 9.
- 93 Because State law authorizes the S&WB’s user fees and property taxes, policymakers considering a municipal utility would need to further analyze whether current statutes should be kept in place or replaced with similar authority in municipal law. This legal analysis was beyond the scope of this report.
- 94 Sewerage and Water Board, *2023 Operating and Capital Budgets*, p. 9. See also City of New Orleans, *2023 Operating Budget*, pp. 17-18.
- 95 State law allows the S&WB to raise rates unilaterally only when necessary to meet its existing debt service obligations (but not to support new debt). If the S&WB does not exercise that authority, the Board of Liquidation can compel it to do so. See La. R.S. 33:4096 and 33:4121. Policymakers should further study whether to retain these safeguards in State law or replace them in municipal law. This legal analysis was beyond the scope of this report.
- 96 Sewerage and Water Board, *Capital Improvement Program Budget, 2022-2031*. See also, City of New Orleans, *2023 Capital Budget*.
- 97 A municipal utility would likely receive support services from other departments and agencies within City government, such as human resources, technology and procurement. Determining the extent of these support services and how a municipal utility can fairly compensate other City departments for providing such services will be yet another factor for policymakers to consider.
- 98 Information for this appendix was obtained from the City of New Orleans, Louisiana Taxable Water Revenue Refunding Bonds, Series 2021.
- 99 More information on tax-exempt bonds can be found here on the Internal Revenue Service website: <https://www.irs.gov/tax-exempt-bonds/private-business-use-management-contracts>.

100 Stein, Michael Isaac, "[City Council passes 2022 budget, debates Gordon Plaza relocation](#)," *The Lens*, December 1, 2021.

101 In 2016, the Civil Service Commission initiated a "delegated authority" program for certain S&WB positions. The program transferred some hiring tasks for select positions from civil service staff to the S&WB's human resources department. The intent of the program was to improve the S&WB's speed and efficiency in filling vacant positions. As a result of the program, the S&WB currently enjoys more authority over certain hiring processes than other City departments.



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