

ASSEMBLY SPECIAL COMMITTEE ON INFRASTRUCTURE AND NATURAL RESOURCES COMMITTEE

STATEMENT TO **ASSEMBLY, No. 5343**

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 15, 2021

The Assembly Special Committee on Infrastructure and Natural Resources reports favorably and with committee amendments Assembly Bill No. 5343.

As amended by the committee, this bill would require each public community water system (PCWS) in the State to develop a service line inventory of lead service lines and suspected lead service lines and adopt a plan that provides for the replacement of all lead service lines in the system's service area within 10 years after the bill's effective date. The amended bill also authorizes an investor-owned PCWS to recoup the costs of lead service line replacements by increasing the rates it charges to its customers.

The bill would require each PCWS to submit to the Department of Environmental Protection (DEP), no later than 60 days after the bill's effective date, an initial count of its lead service lines and service lines of unknown composition, as well as the number that are to be replaced annually. The bill would then require each PCWS to submit an initial service line inventory to the DEP no later than six months after the bill's effective date, and a more detailed and updated service line inventory within one year after the bill's effective date. Commencing two years after the bill's enactment, and until such time as all lead service lines have been replaced, the bill would require PCWSs to annually submit to the DEP an updated service line inventory, as well as a statement certifying that the PCWS is in compliance with the bill's provisions. The bill would further require each PCWS to make its most recent service line inventory available on its Internet website or, if there is no available Internet website, in another publicly accessible location. The bill would authorize the DEP to direct PCWSs to excavate service lines, when necessary, to determine whether or not they contain lead.

The amended bill would provide for a PCWS, no later than 30 days after submitting its initial service line inventory to the DEP, and periodically thereafter, to send written notice, by certified mail, to each residential, commercial, or institutional address affected by a known lead service line, which notice is to be addressed to the primary resident or commercial or institutional occupant thereof, as

appropriate. Notice is to be sent to all affected addresses, regardless of whether the resident or occupant is a system customer (i.e., is the property owner or lessee who receives and pays a water utility bill) or is a non-paying customer (i.e., is a lessee or primary occupant of residential or commercial space in the service area, who does not receive or pay the water bill for the property). If the recipient of the notice is the owner or operator of an apartment building, group home, or other multi-family or multi-unit dwelling, the owner or operator will be required to provide a hard copy of the notice to each existing resident of the multi-family or multi-unit dwelling and additionally post a copy of the notice in a conspicuous location in a common area of the dwelling. The owner or operator will also be required to inform new residents of the existence of a lead service line, prior to their residence at the multi-family or multi-unit dwelling, and provide a hard copy of the notice thereto, upon the commencement of their residence. The bill further requires the written notice to be sent, by certified mail, to each off-site owner of property affected by the known lead service line, which notice is to be addressed to the property owner's last known address, as determined through the review of local property tax or other available records.

No later than 12 months after the bill's enactment, the amended bill would require each PCWS to submit to the DEP an initial plan for replacing all lead service lines within its service area. The plan is to provide for: 1) the annual replacement of at least 10 percent of all lead service lines that are known to the PCWS on the date it submits its initial plan to the DEP; and 2) the replacement of all lead service lines within the PWS's service area no later than 10 years after the bill's effective date, whether or not such lines were known or unknown at the time the PCWS submits its initial plan. Each replacement plan is to be annually updated to be consistent with the PCWS's updated service line inventory, and is to remain in effect until all lead service lines in the service area have been identified and replaced. Under the amended bill, each lead service line replacement plan is to provide for the replacement of all lead service lines within 10 years after the bill's effective date. Notwithstanding that requirement, and despite the fact that a PCWS will be encouraged to complete its service line replacement goals within 10 years, the bill provides that a PCWS will be authorized to continue lead service line replacement activities for a maximum period of 15 years if necessary to enable the PCWS to fully comply with the bill's provisions. A PCWS will be prohibited from permanently suspending the water service of any customer who denies access to the property owner-side of a lead service line during an attempt to replace a lead service line in accordance with the PCWS's lead service line replacement plan.

The bill would require an investor-owned PCWS to recoup the costs of lead service line replacements from its customers, using board-approved recoupment methodologies. Any investor-owned PCWS seeking to recoup these costs will be required to submit a

petition to the BPU, for approval at its next general rate case proceeding, which petition is to include a cost recoupment proposal providing certain specific information about the PWS's proposed recoupment methodologies and anticipated replacement costs.

Similarly, the bill would provide that, notwithstanding the provisions of R.S.40:56-1 to the contrary, any expenditures that are incurred by a government-owned public water system to replace lead service lines, pursuant to the bill's provisions, may be borne by all the customers of the system, or all or a portion of the costs may be assessed to a property of a property owner in the same manner provided for the assessment of local improvements pursuant to R.S.40:56-1 et seq., upon notice to the Director of the Division of Local Government Services (DLGS) in the Department of Community Affairs.

Finally, the bill would require each PCWS to submit an annual report to the DEP, by December 31 of each year, detailing the PCWS's progress in replacing lead service lines in accordance with the bill's provisions. A PCWS would be required to make its report available on its Internet website or, if there is no available website, in another publicly accessible location. If the DEP determines that the PCWS has completed the replacement of all service lines within the service area, the PCWS will no longer be required to submit an annual report showing its progress under the bill. Both the DEP and the BPU will be authorized, in consultation with DLGS, to adopt rules and regulations to implement the bill's provisions.

COMMITTEE AMENDMENTS:

The committee amended the bill to make various substantive changes to the bill. In particular, the amendments would:

- 1) remove references to "public water systems" and replace them with references to "public community water systems" (PCWS), and clarify that the new definition includes investor-owned systems;
- 2) add a new definition of the term, "government-owned public community water system";
- 3) add new definitions for the terms "customer," "property owner," "off-site owner," and "non-paying consumer" to clearly distinguish between property owners and other customers who pay water bills, and off-site property owners and water system consumers who do not pay water bills;
- 4) add a new definition of the term "Distributed System Improvement Charge";
- 5) replace the defined term, "public water system side" with the shorter term, "system side," and modify some other existing definitions to ensure that they comport with modern standards of legislative drafting;
- 6) require a PCWS to submit an initial count of the number of lead service lines and service lines of unknown composition, as well as

the number of lines to be annually replaced, within 60 days (not 30 days) after the bill's effective date;

7) clarify that a PCWS will only be required to annually submit an updated service line inventory to the DEP, until such time as all lead service lines in the service area have been replaced;

8) provide for the most recent PCWS inventory to be posted online or in another publicly accessible location;

9) require a PCWS lead service line replacement plan to provide for the average annual replacement of at least 10 percent (not seven percent) of all lead service lines that were known to the PCWS and identified in the initial replacement plan submitted to the DEP;

10) provide for a lead service line replacement plan to remain in effect until all lead service lines have been identified and replaced;

11) prohibit a PCWS from permanently suspending the water service of a customer who denies access to the property owner-side of a lead service line;

12) delete the provision of the bill that would have required a PCWS's proposal for cost recoupment to include a quantification of the shareholder contribution to be made;

13) require a PCWS to complete the replacement of all lead service lines in the service area, whether such lines were known or unknown at the time the PCWS submitted its initial replacement plan, within 10 years (not 20 years) after the bill's effective date, and specify that, notwithstanding this 10-year requirement, a PCWS make take up to 15 years to complete its lead line replacement activities, if necessary;

14) require a PCWS to notify consumers in the service area of the existence of known lead service lines by sending a notice, by certified mail, to each residential, commercial, or institutional address affected by the known lead service line, which notice is to be addressed to the primary resident or commercial or institutional occupant, as appropriate, regardless of whether the resident or occupant is a system customer or is a non-paying consumer;

15) require a PCWS to additionally notify any off-site property owner of the existence of lead services lines affecting the property owned in the service area, by sending a notice, by certified mail, to the off-site owner's last-known address;

16) require the notice mailed by a PCWS to water consumers to: be separate and distinct from the water utility bill that is issued for the property; to contain large, easily readable text; and to be presented on distinctly colored paper or other paper that is easily distinguishable from the water billing statement;

17) clarify that the notice is to include a list of the lead service lines that are being used to serve the customer or non-paying consumer;

18) remove the references to "landlords" and "tenants" that previously appeared the bill's notice provisions, and replace these references with new references to the "owners or operators," and the

“residents,” of multi-family or multi-unit dwellings. This change is necessary because not all multi-family or multi-unit dwellings are operated under traditional landlord/tenant arrangements. Under the amended bill, a resident of a multi-family or multi-unit dwelling may receive a lead service line notice both from the PCWS, through a direct mailing, and from the owner or operator of the multi-family or multi-unit dwelling, through the owner or operator’s provision of hard copies of the notice thereto and the public posting of the notice in a common area of the dwelling. The amendments also provide that a notice posted in the common area of a multi-family or multi-unit dwelling may be removed only after all of the lead service lines identified in the notice have been replaced and determined to be non-lead service lines.

The amendments further clarify that an investor-owned PCWS will be required to recover, from customers, 100 percent of the costs associated with the replacement of lead service lines under the bill, excluding any portion funded by grants or other subsidies, in a manner determined by the board. The amendments prohibit a PCWS from profiting from lead service line replacement activities. Specifically, the amendments require the BPU, when determining an appropriate recoupment methodology, to stipulate that: 1) the proportionate share of project costs for the replacement of the system side of a lead service line may be incorporated into the PCWS’s rate base as capital assets, or may be recovered through the use of a Distributed System Improvement Charge (DSIC) or alternate recoupment methodology approved by the BPU; and 2) the proportionate share of costs for the replacement of the property-owner side of a lead service line is to be treated as an operation and maintenance cost, with no profit additive, because the property-owner side is, by definition, not a capital asset of the investor-owned PCWS. The amendments specify that nothing in the bill’s provisions may be construed to allow an investor-owned PCWS to earn a return, in rates, on any costs associated with property that is not used and useful investor-owned PCWS property. The amendments further provide that the total replacement costs included in a PCWS’s cost recoupment proposal are to include the estimated total cost to evaluate service lines of unknown composition and to replace any such lines that are determined to be lead.

The amendments similarly provide that any costs incurred by a government-owned PCWS to replace lead service lines under the bill may be borne by all of the system’s customers, or may be assessed to a property in the same manner provided for local improvements.

Finally, the amendments include various technical changes to: 1) correct subdivision lettering and numbering; 2) clarify and improve the directness of the bill’s language; 3) ensure that terminology is used consistency throughout the bill; and 4) ensure the correct use of punctuation.