ASSEMBLY, No. 4857

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED OCTOBER 22, 2020

Sponsored by:
Assemblyman WILLIAM W. SPEARMAN
District 5 (Camden and Gloucester)

SYNOPSIS

Requires public water systems to inventory lead service lines and replace lead service lines at expense of public water system customers.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning public water systems and the replacement of lead service lines and supplementing Title 58 of the Revised Statutes and Title 18A of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. As used in sections 1 through 8 of P.L. , c. (C.) (pending before the Legislature as this bill):

"Board" means the Board of Public Utilities or any successor agency.

"Department" means the Department of Environmental Protection.

"Director" means the Director of Local Government Services in the Department of Community Affairs.

"Government-owned public water system" means a public water system established, pursuant to law, by a political subdivision of this State or any agency or instrumentality of one or more thereof.

"Investor-owned public water system" means a public water system that is a public utility as defined in R.S.48:2-13 and subject to the jurisdiction of the board pursuant to Title 48 of the Revised Statutes.

"Lead service line" means a service line that is found to contain lead.

"Public water system" shall have the same meaning as defined in section 3 of P.L.1977, c.224 (C.58:12A-3). "Public water system" shall not include a water company not under the jurisdiction of the board as provided in section 1 of P.L.1997, c.203 (C.48:2-13.2).

"Service line" means the pipe, tubing, and fittings connecting a water main to a building that serves a customer of a public water system.

2. a. No later than 18 months after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), each public water system in the State shall compile and submit to the department an inventory of all known lead service lines in use in its distribution system. The department may prescribe data management means and methods to provide for the receipt of uniform submissions by public water systems. In compiling the lead service line inventory pursuant to this section, the public water system shall make a reasonable effort, which may be achieved through statistical analysis, to determine the existence or absence of a lead service line at each service connection in its distribution system. The department may require a public water system to update its lead service line inventory periodically until the department determines that the lead service line inventory is complete.

b. No later than 90 days after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), the department shall develop and publish on its Internet website a guidance document to assist public water systems in compiling the lead service line inventories required pursuant to this section. The guidance document shall reference industry best practices and standards for identifying lead service lines.

c. A public water system shall make its lead service line inventory available upon request and at no cost to appropriate State and local government officials served by the public water system, and shall publish its lead service line inventory on its Internet website.

3. a. No later than 90 days after submission of its lead service line inventory pursuant to section 2 of P.L. , c. (C.) (pending before the Legislature as this bill), and annually thereafter as the department may require, a public water system shall send to each customer and, if a landlord-tenant relationship is known, to both the landlord and each head of household tenant of a property that is served by a lead service line, a notice of the existence of a lead service line serving the customer's property. The notice shall be in a form and manner as determined by the department, and shall include, but not be limited to, information about the sources of lead in drinking water, including lead service lines and household plumbing, the health effects of lead exposure, and steps customers can take to reduce their exposure to lead in drinking water.

b. If a public water system serves a municipality in which the primary language of 10 percent or more of the residents is a language other than English, the public water system shall provide the notice required pursuant to subsection a. of this section in both English and that other language to residents of that municipality.

4. a. Except as provided in subsection b. of this section, if a public water system determines that a customer in its distribution system is served by a lead service line, the public water system shall replace the entire lead service line. A public water system shall not, except upon the department's approval for circumstances in which there are emergent public health risks, conduct a partial lead service line replacement.

b. A public water system that undertakes the replacement of a lead service line pursuant to subsection a. of this section shall first provide notice of the planned replacement to the owner of the property that is served by the lead service line. The owner and any head of household tenant shall provide the public water system with reasonable access to the owner's property to undertake the replacement in accordance with any rules and regulations adopted by the department. If a public water system is not granted access and approval by the property owner to replace the entire lead service line

on the private property or to make improvements as are necessary or as otherwise provided by law, then the public water system shall not replace any portion of the lead service line.

5. a. One hundred percent of the costs of undertaking and funding the replacement of lead service lines pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) shall be borne by all of the customers of an investor-owned public water system and those costs may be included in the investor-owned public water system's rate base or otherwise be recoverable from customers in a manner determined by the board.

b. Before an investor-owned public water system shall recoup the cost of lead service line replacement from its customers pursuant to subsection a. of this section, the board shall, in a manner determined by the board in consultation with the department, first approve the investor-owned public water system's plan for the replacement of the lead service lines connected to the investor-owned public water system's distribution system. The investor-owned public water system's plan shall address the following:

(1) a description of how the replacement of lead service lines will be accomplished in conjunction with other investor-owned public water system distribution system replacement projects;

(2) the estimated savings in costs per lead service line that would be realized by the investor-owned public water system replacing a customer-owned portion of a lead service line versus the anticipated replacement costs if a customer was required to replace the customer-owned portion of a lead service line;

(3) the investor-owned public water system's proposal for addressing the costs of site restoration work necessitated by structures or improvements located within the investor-owned public water system's distribution system used to connect with the customer-owned portion of lead service lines;

(4) the investor-owned public water system's proposal for:

(a) communicating with a customer the investor-owned public water system's plan to replace the lead service line; and

(b) documenting the customer's consent or lack of consent to have the investor-owned public water system replace the lead service line; and

(5) the estimated total cost to replace all customer-owned portions of lead service lines within or connected to the investor-owned public water system's distribution system and an estimated range for the annual cost to be incurred by the investor-owned public water system under the investor-owned public water system's lead service line replacement plan.

6. a. One hundred percent of the costs of undertaking and funding the replacement of lead service lines pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) shall be borne by all of the customers of a government-owned public water system and those costs may be assessed to customers of a government-owned public water system in a manner determined by the director.

b. Before a government-owned public water system shall recoup the cost of lead service line replacement from its customers pursuant to subsection a. of this section, the director shall, in a manner determined by the director in consultation with the department, first approve the government-owned public water system's plan for the replacement of the lead service lines connected to the government-owned public water system's distribution system. The government-owned public water system's plan shall address the following:

(1) a description of how the replacement of lead service lines will be accomplished in conjunction with other government-owned public water system distribution system replacement projects;

(2) the estimated savings in costs per lead service line that would be realized by the government-owned public water system replacing a customer-owned portion of a lead service line versus the anticipated replacement costs if a customer was required to replace the customer-owned portion of a lead service line;

(3) the government-owned public water system's proposal for addressing the costs of site restoration work necessitated by structures or improvements located within the government-owned public water system’s distribution system used to connect with the customer-owned portion of lead service lines;

(4) the government-owned public water system's proposal for:

(a) communicating with a customer the government-owned public water system's plan to replace the lead service line; and

(b) documenting the customer's consent or lack of consent to have the government-owned public water system replace the lead service line; and

(5) the estimated total cost to replace all customer-owned portions of lead service lines within or connected to the government-owned public water system's distribution system and an estimated range for the annual cost to be incurred by the government-owned public water system under the government-owned public water system's lead service line replacement plan.

7. a. No later than one year after submission of the lead service line inventory pursuant to subsection a. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill), each public water system shall submit to the department a schedule for the replacement of known lead service lines in use in its distribution

system. The schedule shall include a range for the number of lead service lines estimated to be replaced annually and a range for the total feet of lead service lines estimated to be replaced annually. The schedule shall provide that at least 10 percent of all known lead service lines as of the date of that submission shall be replaced by the public water system annually and that all known lead service lines shall be replaced by the public water system within 10 years from the date of that submission; provided, however, that a public water system may apply to the department for a reasonable extension of these deadlines if the public water system adequately demonstrates that it is warranted due to the need to prioritize a non-lead public health risk within the system.

b. No later than 30 days after submission of a lead service line replacement schedule pursuant to subsection a. of this section, the department shall approve or deny the schedule, based on requirements or standards it establishes pursuant to subsection a. of this section. If the department fails to act within 30 days after submission of a schedule, the schedule shall be deemed approved. If the department denies a schedule, it shall provide a written explanation for why the schedule was denied and propose a revised schedule to the public water system. If a public water system rejects the department's proposed revised schedule, the public water system and the department shall develop a compromise schedule within 30 days.

c. No later than December 31 of each year, a public water system shall submit to the department and publish on its Internet website a report, in a form and manner as may be determined by the department, detailing the public water system's progress in replacing lead service lines pursuant to P.L. , c. (C.) (pending before the Legislature as this bill). Once the department determines that a public water system has completed the replacement of all lead service lines within the public water system's service area, the public water system shall no longer be required to submit the report.

8. a. The Department of Environmental Protection may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and regulations necessary to implement sections 2, 3, 4, and 7 of P.L. , c. (C.) (pending before the Legislature as this bill).

b. The Board of Public Utilities may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and regulations necessary to implement section 5 of P.L. , c. (C.) (pending before the Legislature as this bill).

c. The Department of Community Affairs may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and regulations necessary to implement section

6 of P.L. , c. (C.) (pending before the Legislature as this bill).

9. a. Notwithstanding the provisions of any law, rule, regulation, or order to the contrary, there is established in the Department of Education a program which shall be known as the "School Lead Water Expedited Remediation Program." Any school district in need of removing and replacing water piping, water fixtures, and other materials responsible for introducing lead into the school district's water supply from school district property, as determined by the school district, shall be eligible to apply to the Department of Education for participation in the program.

b. Within 180 days of the effective date of this section, a school district shall submit a plan for program eligibility to the Department of Education in a form and manner as determined by the department. The Department of Education, in consultation with the Department of Environmental Protection, shall approve or reject a plan submitted by a school district within 90 days of receipt of the plan. The Department of Education shall approve any revised plan submitted by a school district, as determined by the department, prior to the expiration of this section. Any plan submitted by a school district that is not approved by the Department of Education prior to the expiration of this section shall be null, void, and of no effect.

c. If a plan submitted by a school district is approved by the Department of Education, a school district shall be authorized to issue bonds for the express purpose of financing and implementation of the plan. An issuance of bonds shall be deemed approved if the board of education of a school district approves a plan by a vote of at least two-thirds of the full membership of the board of education. An issuance of bonds to finance an approved plan shall not be subject to voter approval. Bonds issued pursuant to this subsection shall be for a term no longer than 15 years. A school district issuing bonds pursuant to this subsection shall be fully eligible for State debt service aid under any existing State funding formula for school district debt.

d. A school district shall submit a report to the Department of Education upon completion of its plan in a form and manner as determined by the department.

e. The State Board of Education may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and regulations necessary to implement section 9 of P.L. , c. (C.) (pending before the Legislature as this bill).

10. This act shall take effect immediately, and section 9 shall expire five years thereafter.

STATEMENT

This bill requires a public water system (PWS) to develop a lead service line inventory and schedule for the replacement of lead service lines in its distribution system. Current law defines a PWS as a system providing the public with potable water if the system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.

Specifically, within 18 months after the effective date of the bill, each PWS in the State is required to compile and submit to the Department of Environmental Protection (DEP) an inventory of known lead service lines in use in its distribution system. In compiling the lead service line inventory, the PWS is required to make a reasonable effort to determine the existence or absence of a lead service line at each service connection in the distribution system. The DEP is to publish guidance on its Internet website to assist a PWS in compiling its lead service line inventory. A PWS is required to make its inventory available upon request and at no cost to State and local government officials served by the PWS, and to publish its inventory on its Internet website.

Within 90 days after submission of its lead service line inventory to the DEP, the bill requires a PWS to send to each customer and, if a landlord-tenant relationship is known, to both the landlord and each head of household tenant of a property that is served by a lead service line, a notice of the existence of the lead service line serving the customer's property. The notice is to include information about the sources of lead in drinking water, including lead service lines and household plumbing, the health effects of lead exposure, and steps customers can take to reduce their exposure to lead in drinking water.

Under the bill, if a PWS determines that a customer in its distribution system is served by a lead service line, the PWS is to be required to replace the entire lead service line. A PWS is prohibited from conducting a partial lead service line replacement, except upon the DEP's approval for a situation in which there are emergent public health risks. A PWS that undertakes the replacement of a lead service line is to first provide notice of the planned replacement to the property owner served by a lead service line. The property owner and any head of household tenant is required to provide the PWS with reasonable access to the property to undertake that replacement.

The bill allows a PWS to assess to all of its customers 100 percent of the costs of replacing lead service lines and establishes a process by which a PWS is to submit a cost reimbursement plan to either the Board of Public Utilities for a private utility, or the Director of Local Government Services in the Department of

Community Affairs for a government utility, prior to plan approval. The PWS's plan is to address:

1) a description of how the replacement of lead service lines will be accomplished in conjunction with other PWS distribution system replacement projects;

2) the estimated savings in costs per lead service line that would be realized by the PWS replacing a customer-owned portion of a lead service line versus the anticipated replacement costs if a customer was required to replace the customer-owned portion of a lead service line;

3) the PWS's proposal for addressing the costs of site restoration work necessitated by structures or improvements located within the PWS's distribution system used to connect with the customer-owned portion of lead service lines;

4) the PWS's proposal for communicating with a customer the PWS's plan to replace the lead service line and documenting the customer's consent or lack of consent to have the PWS replace the customer-owned portion of a lead service line; and

5) the estimated total cost to replace all customer-owned portions of lead service lines within or connected to the PWS's distribution system and an estimated range for the annual cost to be incurred by the PWS under their lead service line replacement plan.

Under the bill, within one year after submission of its lead service line inventory, each PWS is required to submit to the DEP a schedule for the replacement of known lead service lines in use in its distribution system for the DEP's approval, provided that at least 10 percent of all known lead service lines are to be replaced by the PWS annually and that all known lead service lines are to be replaced by the PWS within 10 years from the date of that submission, except that a PWS may apply to the DEP for a reasonable extension of these deadlines if the PWS adequately demonstrates that it is warranted due to the need to prioritize a non-lead public health risk within the system. Further, no later than December 31 of each year, a PWS is required to submit to the DEP and publish on its Internet website a report detailing the PWS's progress in replacing lead service lines as required under the bill. Once the DEP determines that a PWS has completed the replacement of all lead service lines within the PWS's service area, the PWS is no longer required to submit the report.

The bill establishes in the Department of Education (DOE) a program known as the "School Lead Water Expedited Replacement Program" (program). Any school district in need of removing and replacing water piping, water fixtures, and other materials responsible for introducing lead into the school district's water supply from school district property is eligible to apply to the DOE for participation in the program and after submitting a plan for program eligibility (plan) to the DOE for approval. A school

district deemed eligible for the program is authorized to issue bonds for the express purpose of the financing and implementation of its plan. A bond issuance to finance a plan is to be approved if the board of education for the school district approves the bond issuance by a vote of at least two-thirds of the full membership of the board of education. A bond issuance is not to be subject to voter approval. Bonds are to be for a term of no longer than 15 years. A school district participating in the program is to be fully eligible for State debt service aid under any existing State funding formula for school district debt.