

[Second Reprint]
SENATE, No. 695

STATE OF NEW JERSEY
219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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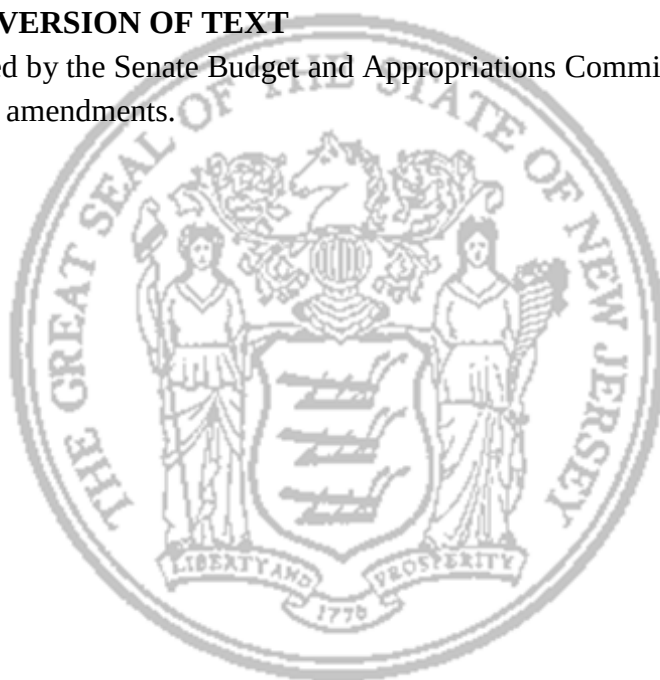
Senators T.Kean, Madden and Diegnan

SYNOPSIS

Requires DEP, DOH, DCA, owners or operators of public water systems, and owners or operators of certain buildings to take certain actions to prevent and control cases of Legionnaires' disease.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on January 6, 2022, with amendments.



(Sponsorship Updated As Of: 6/10/2021)

1 AN ACT concerning Legionnaires' disease and supplementing
 2 P.L.1977, c.224 (C.58:12A-1 et seq.) and Title 52 of the Revised
 3 Statutes.

4
 5 **BE IT ENACTED** by the Senate and General Assembly of the State
 6 of New Jersey:

7
 8 1. a. Notwithstanding any other provision of law, or rule or
 9 regulation adopted pursuant thereto, to the contrary, the owner or
 10 operator of a public water system shall:

11 (1) maintain a ²minimum² detectable disinfectant residual of
 12 free chlorine ²**【**, combined chlorine, or chlorine dioxide**】**² of at least
 13 ²**【0.5】** 0.3² milligrams per liter in all active parts of the public
 14 water system at all times; and

15 (2) conduct disinfectant residual testing at frequent and regular
 16 intervals to determine the amount and type of detectable
 17 disinfectant residual existing at different points in the public water
 18 system.

19 b. ²(1) If the owner or operator of a public water system
 20 repeatedly fails to meet the minimum detectable disinfectant
 21 residual of chlorine targets established pursuant to paragraph (1) of
 22 subsection a. of this section and the violations are reported to the
 23 Department of Environmental Protection, the public water system
 24 shall conduct an internal investigation of the violations. If, after the
 25 public water system conducts an investigation, subsequent failures
 26 to meet the targets are reported, the Department of Environmental
 27 Protection shall conduct an investigation of the subsequent
 28 violations or, at its discretion, authorize a third-party entity to
 29 conduct the investigation.

30 (2) The Department of Environmental Protection shall develop
 31 procedures and guidelines regarding the investigation of an owner
 32 or operator of a public water system conducted pursuant to
 33 paragraph (1) of this subsection, including but not limited, to:

34 (a) the definition of what constitutes a repeated failure to meet
 35 the minimum detectable disinfectant residual of chlorine targets;

36 (b) the requirements for reporting violations of the chlorine
 37 targets;

38 (c) when to initiate an initial internal investigation of violations
 39 of chlorine targets and subsequent investigations;

40 (d) the establishment of penalties for a violation of chlorine
 41 targets, if the department determines that a violation has occurred;

42 (e) the development of a notice to inform consumers if a public
 43 water system fails to maintain the minimum detectable disinfectant
 44 residual of chlorine targets established pursuant to paragraph (1) of
 45 subsection a. of this section; and

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SHH committee amendments adopted January 27, 2020.

²Senate SBA committee amendments adopted January 6, 2022.

1 (f) the criteria used by the department to select appropriate third
2 party entities to conduct investigations of additional violations of
3 chlorine targets.

4 c.² The Department of Environmental Protection, in
5 consultation with the Department of Health, may adopt rules and
6 regulations pursuant to the “Administrative Procedure Act,”
7 P.L.1968, c.410 (C.52:14B-1 et seq.), if determined to be
8 appropriate, to require additional disinfectant requirements or
9 testing requirements of public water systems ², or to increase the
10 minimum detectable disinfectant residual,² in order to minimize the
11 growth and transmission of *Legionella* bacteria, and requirements
12 for the monitoring of public water systems during construction
13 activities that may impact the public water system. ²The
14 Department of Environmental Protection shall not reduce the
15 minimum detectable disinfectant residual of chlorine targets
16 established pursuant to paragraph (1) of subsection a. of this
17 section.

18 d. The Department of Environmental Protection shall submit an
19 annual report to the Governor and to the Legislature, pursuant to
20 section 2 of P.L.1991, c.164 (C.52:14-19.1), containing its
21 recommendations as to whether the minimum detectable
22 disinfectant residual of chlorine targets established pursuant to
23 paragraph (1) of subsection a. of this section should be increased in
24 order to minimize the growth and transmission of *Legionella*
25 bacteria.²

26
27 2. a. The owner or operator of a public water system shall
28 provide a timely written notice, in a form and manner as determined
29 by the Department of Environmental Protection pursuant to
30 subsection b. of this section, to all residential, commercial, and
31 institutional customers and residents served by the public water
32 system and located in an affected area of disruptions in the water
33 distribution system that could result in increased levels of
34 *Legionella* bacteria being present in the public water system.

35 The notice shall include, but need not be limited to:

36 (1) notification that planned construction, maintenance, repair,
37 or replacement of a part of the system may affect *Legionella*
38 bacteria in the water distribution system and temporarily increase
39 the level of *Legionella* bacteria in the public water system;

40 (2) the estimated length of time that the level of *Legionella*
41 bacteria may remain elevated, as determined by the department;

42 (3) general information on the possible sources of *Legionella*
43 bacteria in the public water system, and the health effects of
44 Legionnaires’ disease and related illnesses to at-risk populations;
45 and

46 (4) measures consumers can take to reduce or eliminate
47 exposure to *Legionella* bacteria, including, but not limited to,
48 ²ensuring hot water heaters are working properly and maintaining a

1 temperature of at least 130 degrees Fahrenheit at the water heater
2 outlet,² flushing water lines ², including the hot water heater drain
3 and external hose connections,² during and after completion of
4 construction work, removing and cleaning faucet aerator screens
5 and showerheads, and installing a water filter or water treatment
6 device certified to remove *Legionella* bacteria.

7 b. No later than 120 days after the effective date of
8 P.L. , c. (C.) (pending before the Legislature as this bill),
9 the Department of Environmental Protection, in consultation with
10 the Department of Health and the Department of Community
11 Affairs, shall publish a public notice in the New Jersey Register and
12 on its Internet website specifying the form and manner of the notice
13 required pursuant to subsection a. of this section ², the
14 circumstances under which the owner or operator of a public water
15 system is required to provide the notice pursuant to subsection a. of
16 this section, including when a notice is to be provided if the
17 disruption in a water distribution system is related to *Legionella*
18 bacteria in ground water and when the disruption is related to
19 *Legionella* bacteria in surface water,² and the specific information
20 to be included in the notice.

21 c. If a public water system serves a municipality in which the
22 primary language of 10 percent or more of the residents is a
23 language other than English, the water purveyor shall provide the
24 notice required pursuant to subsection a. of this section in both
25 English and the other language to the residents.

26 d. The owner or operator of a public water system shall not be
27 required to provide the notice required pursuant to subsection a. of
28 this section until the department has published the public notice
29 required pursuant to subsection b. of this section.

30
31 3. a. For every reported diagnosis of Legionnaires' disease, the
32 Department of Health shall immediately provide notification to the
33 Department of Environmental Protection of the diagnosis. This
34 notification shall include addresses where the individual diagnosed
35 with Legionnaires' disease resided, frequently visited, or was
36 employed in the month immediately prior to the individual's
37 diagnosis.

38 b. Upon receipt of notification from the Department of Health
39 pursuant to subsection a. of this section, the Department of
40 Environmental Protection shall sample and test the public water
41 system for the presence of *Legionella* bacteria¹**[,]**¹ at all locations
42 identified by the Department of Health. Each test shall be conducted
43 by a laboratory certified for this purpose by the Department of
44 Environmental Protection, and in accordance with the sampling and
45 testing methods established and provided by the department. ²At
46 the request of an individual diagnosed with Legionnaires' disease,
47 the Department of Environmental Protection shall sample and test

1 the fixtures and water-using equipment in the individual's residence
 2 in a manner consistent with the consent provided.²

3 ¹c.¹ The Department of Environmental Protection shall conduct,
 4 or require the owner or operator of the applicable public water
 5 system to conduct, further testing to confirm the presence of
 6 *Legionella* bacteria in any source in which the bacteria is detected
 7 through initial testing pursuant to this subsection, as ¹**[it]** the
 8 department¹ determines to be necessary.

9 ²**[**¹d. When testing for the *Legionella* bacteria is required
 10 pursuant to this section, the Department of Environmental
 11 Protection shall ensure that the testing shall be conducted by
 12 qualified testing professionals certified in accordance with ASSE
 13 Series 12000–2018, Professional Qualifications Standard for
 14 Infection Control Risk Assessment for All Building Systems or any
 15 subsequent standards established by ASSE International.¹²**]**
 16

17 4. a. No later than one year after the effective date of
 18 P.L. , c. (C.) (pending before the Legislature as this bill),
 19 the owner or operator of a building that meets any of the criteria set
 20 forth in paragraphs (1) through (5) of this subsection shall
 21 implement a water management program to minimize the growth
 22 and transmission of *Legionella* bacteria in the building's water
 23 system, consistent with the American Society of Heating,
 24 Refrigeration, and Air Conditioning Engineers (ASHRAE) Standard
 25 188-2018 or comparable standards adopted by a nationally-
 26 recognized, accepted, and appropriate organization:

27 (1) a health care facility licensed pursuant to P.L.1971, c.136
 28 (C.26:2H-1 et seq.) where patient stays exceed 24 hours;

29 (2) a building containing one or more areas for the purpose of
 30 housing or treating occupants receiving treatment for burns,
 31 chemotherapy, solid organ transplantation, or bone marrow
 32 transplantation;

33 (3) a building containing one or more areas for the purpose of
 34 housing or treating occupants that are immunocompromised, at-risk,
 35 on medications that weaken the immune system, or have renal
 36 disease, diabetes, or chronic lung disease;

37 (4) a building containing a whirlpool; spa; pool; open- or
 38 closed-circuit cooling tower or evaporative ²**[cleanser]** condenser²
 39 that provides cooling or refrigeration for a heating, ²**[venting]**
 40 ventilation², air conditioning, or refrigeration system; ornamental
 41 fountain; mister; atomizer; air wash; humidifier; or other non-
 42 potable water system or device that releases water aerosols in the
 43 building or on the property upon which the building is located; and

44 (5) a building that is more than 10 stories high, including any
 45 level that is below grade, with a centralized potable water-heater
 46 system.

47 b. The owner or operator of a facility or building required to
 48 implement a water management program pursuant to this section

1 shall make the water management program available upon request
2 to an employee of the Department of Community Affairs, the
3 Department of Environmental Protection, the Department of Health,
4 or any other department or agency with license or inspection
5 authority for the facility or building.

6 c. ²When testing for *Legionella* bacteria consistent with a
7 building's water management program pursuant to subsection a. of
8 this section, the testing shall be conducted:

9 (1) in a manner consistent with the American Society of
10 Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE)
11 Standard 188-2018 or comparable standards adopted by a nationally
12 recognized, accepted, and appropriate organization; and

13 (2) by individuals whose qualifications to conduct the testing is
14 determined by the Department of Environmental Protection and
15 may include testing professionals certified in accordance with
16 ASSE Series 12000-2018, Professional Qualifications Standards for
17 Infection Control Risk Assessment for all Building Systems, or any
18 subsequent standards established by ASSE International.

19 d.² (1) An owner or operator of a facility or building who fails
20 to implement a water management program or fails to demonstrate
21 compliance with a water management program required pursuant to
22 this section shall be subject to a penalty of not more than \$2,000 for
23 a first violation, and not more than \$5,000 for a second or
24 subsequent violation, except that the owner or operator shall be
25 subject to a penalty of not more than \$10,000 for any violation
26 which causes serious injury or death to any person, to be collected
27 by the State in a civil action by a summary proceeding under the
28 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
29 et seq.). The Superior Court and the municipal court shall have
30 jurisdiction over proceedings for the enforcement of the penalty
31 provided by this section.

32 (2) The Department of Community Affairs, the Department of
33 Environmental Protection, or the Department of Health may
34 institute a civil action for injunctive relief in the Superior Court to
35 enforce the provisions of this section and to prohibit and prevent a
36 violation of this section, and the court may proceed in the action in
37 a summary manner.

38 ²e. The provisions of this section shall not apply to a residential
39 property with four or less dwelling units.²

40
41 5. No later than 180 days after the effective date of P.L. ,
42 c. (C.) (pending before the Legislature as this bill), the
43 Department of Community Affairs, in consultation with the
44 Department of Health, Department of Environmental Protection,
45 and a public stakeholder group that shall be comprised of no more
46 than five public members, including one representative of a public
47 health organization dedicated to eradicating Legionnaires' disease
48 and one representative of an organization representing water

purveyors, shall adopt rules and regulations pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), as necessary to implement the provisions of P.L. , c. (C.) (pending before the Legislature as this bill).

The rules and regulations adopted pursuant to this section ²**[shall]** :

(1) shall be consistent with the American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) Standard 188-2018 or comparable standards adopted by a nationally recognized, accepted, and appropriate organization;

(2) shall² include requirements for the monitoring and testing for *Legionella* bacteria ², the specific strains of which shall be determined by the Department of Environmental Protection and shall include but may not be limited to *Legionella Pneumophila*,² in the water system of facilities and buildings identified in subsection a. of section 4 of P.L. , c. (C.) (pending before the Legislature as this bill ²**[.]**;² and

²(3)² may ¹**[require]** include requirements for¹ increased monitoring and testing of the water system in those facilities and buildings during construction activities or other events that may impact the water supply distribution system and could result in the loss of water pressure or foster the release of *Legionella* bacteria into the water system of the facility or building.

6. No later than one year after the effective date of P.L. c. (C.) (pending before the Legislature as this bill), and annually thereafter, the ¹**[Commissioner]** Department¹ of Community Affairs, in conjunction with the Department of Environmental Protection and the Department of Health, shall submit a report to the Governor, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, which shall include:

a. the number of cases of ¹**[Legionnaire’s]** Legionnaires¹ disease in the State reported in each of the previous 10 years;

b. the number of reported test results received by the Department of Community Affairs, the Department of Environmental Protection, or the Department of Health which indicate the presence of *Legionella* bacteria ²**[at levels that present a serious health threat]**² ;

c. the number and type of violations of P.L. , c. (C.) (pending before the Legislature as this bill) for which penalties were assessed; and

d. recommendations for legislative action as may be necessary to further control *Legionella* bacteria in the public water supply and affected buildings.

1 ²7. The Department of Health shall develop a public awareness
2 campaign and targeted consumer education program to educate
3 consumers, especially vulnerable populations, on the environmental
4 sources of *Legionella* bacteria, the movement of *Legionella* bacteria
5 through water distribution systems, the notification requirements of
6 P.L. _____, c. _____ (C. _____) (pending before the Legislature as this bill)
7 and how the requirements impact consumers, and on methods to
8 control *Legionella* bacteria in a person's home. The public
9 awareness campaign and education program shall include, but not
10 be limited to, information on the relationship between the risks of
11 the proliferation of *Legionella* bacteria and hot water and the
12 temperature requirements for medical devices, expansion tanks, hot
13 tubs, whirlpools, spas, pools, air conditioning, ornamental
14 fountains, or other equipment or device that releases water aerosols
15 in a person's home or on the person's property and the related risks
16 associated with the inhalation by vulnerable populations of water
17 droplets containing *Legionella* bacteria.²

18

19 ²[7.] 8.² This act shall take effect immediately.