SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 695

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 6, 2022

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 695 (1R).

This bill, as amended by the committee, requires the Department of Environmental Protection (DEP), the Department of Health (DOH), the Department of Community Affairs (DCA), owners or operators of public water systems, and the owners or operators of certain types of buildings to take specified actions to help inform citizens of the State about, and prevent and control cases of, Legionnaires' disease.

The bill requires the owner or operator of a public water system to maintain a minimum detectable disinfectant residual of free chlorine of at least 0.3 milligrams per liter in all active parts of the public water system at all times and to conduct disinfectant residual testing at frequent and regular intervals to determine the amount and type of detectable disinfectant residual existing at different points in the public water system. The DEP would be authorized to adopt rules and regulations to require additional disinfectant requirements or testing requirements of public water systems, or to increase the minimum detectable disinfectant residual, in order to minimize the growth and transmission of *Legionella* bacteria.

The bill requires the owner or operator of a public water system to provide written notice to its residential, commercial, and institutional customers and to residents located in an affected area of disruptions in the water distribution system that could result in increased levels of *Legionella* bacteria being present in the public water system. The bill would require the DEP to publish a public notice in the New Jersey Register and on its Internet website specifying the form and manner of this notice, the circumstances under which the notice is to be provided, and the specific information to be included in the notice.

The bill requires the DOH to immediately notify the DEP of reported diagnoses of Legionnaires' disease, including addresses where the individual diagnosed with Legionnaires' disease resided, frequently visited, or was employed in the month immediately prior to the individual's diagnosis. Upon receiving this notification from the DOH, the bill would require the DEP to sample the water for the

presence of *Legionella* bacteria, at all locations identified by the DOH. At the request of an individual diagnosed with Legionnaires' disease, the DEP would be required to sample and test the fixtures and water-using equipment in the individual's residence in a manner consistent with the consent provided. The DEP would conduct, or require the owner or operator of the applicable public water system to conduct, further testing to confirm the presence of *Legionella* bacteria in any source in which the bacteria is detected, as the DEP determines to be necessary.

The bill also requires the owner or operator of certain types of buildings to implement a water management program to minimize the growth and transmission of *Legionella* bacteria in the building water system. This requirement would apply to:

(1) certain health care facilities where patient stays exceed 24 hours;

(2) buildings containing one or more areas for the purpose of housing or treating occupants receiving treatment for burns, chemotherapy, solid organ transplantation, or bone marrow transplantation;

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

(4) buildings containing a whirlpool, spa, pool, open- or closed-circuit cooling tower or evaporative condenser that provides cooling or refrigeration for a heating, ventilation, air conditioning, or refrigeration system, ornamental fountain, mister, atomizer, air wash, humidifier, or other non-potable water system or device that releases water aerosols in the building or on the property upon which the building is located; and

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

Testing conducted as part of a building's water management program is to be conducted: (1) in a manner 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; and (2) by individuals whose qualifications to conduct the testing is determined by the DEP and may include testing professionals certified in accordance with ASSE Series 12000-2018, Professional Qualifications Standards for Infection Control Risk Assessment for all Building Systems, or any subsequent standards established by ASSE International.

The bill provides for penalties for the owner or operator of a facility or building who fails to implement a water management program or fails to demonstrate compliance with a water management

program. A violator would be subject to a penalty of not more than $2,000 for a first violation, and not more than $5,000 for a second or subsequent violation, except that an owner or operator would be subject to a penalty of not more than $10,000 for any violation which causes serious injury or death to any person.

The bill requires the DCA, in consultation with the DEP and the DOH, and a public stakeholder group, to adopt rules and regulations as necessary to implement the provisions of the bill. The rules and regulations are to 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 and include requirements for the monitoring and testing for *Legionella* bacteria, the specific strains of which shall be determined by the DEP and shall include but may not be limited to Legionella Pneumophila. In addition, the rules and regulations may include requirements for 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.

The bill requires the DCA, in conjunction with the DEP and the DOH, to prepare an annual report including information on reported cases of Legionnaires' disease reported in each of the previous 10 years, test results indicating the presence of Legionella bacteria, and recommendations for such legislative action as may be necessary to further control *Legionella* bacteria in the public water supply and affected buildings.

Lastly, the bill requires the DOH to develop a public awareness campaign and targeted consumer education program to educate consumers, especially vulnerable populations, on the environmental sources of *Legionella* bacteria, the movement of *Legionella* bacteria through water distribution systems, the notification requirements required by the bill and how the requirements impact consumers, and on methods to control *Legionella* bacteria in a person's home.

COMMITTEE AMENDMENTS:

The committee amendments:

(1) require the owner or operator of a public water system to maintain a minimum detectable disinfectant residual of free chlorine of at least 0.3 milligrams per liter (rather than a detectable disinfectant residual of free chlorine, combined chlorine, or chlorine dioxide of at least 0.5 milligrams per liter) in all active parts of the public water system at all times;

(2) add a requirement for a public water system to conduct an internal investigation if the public water system repeatedly fails to meet the minimum detectable disinfectant residual of chlorine targets

established by the bill; provide that if subsequent failures to meet the targets are reported after the public water system conducts an investigation, the DEP would be required to conduct an investigation of the subsequent violations or, at its discretion, authorize a third-party entity to conduct the investigation; and require the DEP to develop procedures and guidelines regarding these investigations;

(3) authorize the DEP to adopt rules or regulations to increase the minimum detectable disinfectant residual in order to minimize the growth and transmission of *Legionella* bacteria and clarify that the DEP is to not reduce the minimum detectable disinfectant residual of chlorine targets;

(4) require the DEP to submit an annual report to the Governor and to the Legislature containing its recommendations as to whether the minimum detectable disinfectant residual of chlorine targets established by the bill should be increased in order to minimize the growth and transmission of *Legionella* bacteria;

(5) clarify the information to be included in the notice to customers to be provided by a public water system;

(6) require the DEP, at the request of an individual diagnosed with Legionnaires' disease, to sample and test the fixtures and water-using equipment in the individual's residence in a manner consistent with the consent provided;

(7) removes language requiring the DEP to ensure testing is conducted by qualified testing professional certified in accordance with ASSE Series 12000-2018, Professional Qualifications Standard for Infection Control Risk Assessment for All Building Systems or any subsequent standards established by ASSE International;

(8) require the testing conducted as part of a building's water management program to be conducted: (a) in a manner consistent with 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; and (b) by individuals whose qualifications to conduct the testing is determined by the DEP and may include testing professionals certified in accordance with ASSE Series 12000-2018, Professional Qualifications Standards for Infection Control Risk Assessment for all Building Systems, or any subsequent standards established by ASSE International;

(9) specify that the provisions of section 4 of the bill concerning water management programs do not apply to residential property with four or less dwelling units;

(10) specify that the rules and regulations to be adopted by the DCA are to 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 and include requirements for the monitoring and testing for *Legionella* bacteria, the specific strains

of which shall be determined by the DEP and shall include but may not be limited to Legionella Pneumophila;

(11) direct the DOH to develop a public awareness campaign and targeted consumer education program and specify the requirements of the public awareness campaign and education program; and

(12) make various technical changes concerning grammar and usage.

FISCAL IMPACT:

The Office of Legislative Services (OLS) determines that this bill would result in an indeterminate annual expenditure increase by the State and by local government units that operate public water systems in order to satisfy the bill's requirement that public water systems maintain a certain level of free chlorine in their water supply and institute a testing regimen to verify this level. It is not known how many public water systems in the State currently meet the standard detailed in the bill or which systems have a testing regimen that would satisfy the bill's provisions.

The bill would also result in an indeterminate annual expenditure increase by the Department of Environmental Protection (DEP) because the department is required to perform water tests and other tasks when it becomes aware of a diagnosis of Legionnaires' disease. Assuming that the cost of these tasks does not exceed $1,000 for each case and that New Jersey continues to experience around 350 cases of Legionnaires' disease each year, on the high end of the range, this expenditure increase should not exceed $350,000 annually.

The bill would also result in an indeterminate annual expenditure increase by the State, local government units, and school districts that own or operate certain buildings, since the bill requires the implementation of a water management program for those buildings. The OLS cannot quantify this expenditure increase because it is unclear how many buildings covered by the bill are owned or operated by the State, a local government unit, or a school district, and how many of those have already implemented water management programs that would satisfy the bill's requirements. However, large office buildings and schools are likely to have cooling towers and would thus be covered by the bill.