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TESTIMONY

**Testimony on  
S3990, S4110, and S4177  
Senate Community and Urban Affairs Committee**

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**Contact:**

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Dear Chairman Singleton and members of the committee,

Everyone in New Jersey should have safe water free from the risks of lead. In order to achieve this goal, a comprehensive solution is necessary. New Jersey Future is pleased to see the Senate tackle this critical issue holistically.

New Jersey Future supports the three lead bills being considered today--S3990, S4110, and S4177--but suggests the following amendments, based on the recommendations of the 30-member Jersey Water Works Lead in Drinking Water Task Force.

**S3990** - Requires property condition disclosure statement to indicate presence of lead plumbing in residential property.

The bill currently refers to "lead plumbing," which may or may not include a lead service line. New Jersey Future recommends defining "lead plumbing" as including a lead service line or including a question on the property condition disclosure statement asking whether the property owner is aware of the presence of a lead service line.

Currently, the bill specifies that its contents would affect the obligations of a real estate broker. The real estate broker, broker-salesperson, or salesperson should be required to consult with the seller to determine if lead-free certificates have been issued for the building. There are presently three such certificates--lead-free, lead-free interior, and lead hazard free--each of which is limited to lead paint. These certificates should be expanded to include water and soil. In the absence of such certificates, the property should be inspected to determine if lead plumbing and/or a lead service line are present. The results should be shared with the prospective buyer prior to finalizing the real estate transaction to ensure that the buyer makes an informed decision.

Three other points relating to lead disclosure should be taken into consideration:

1. Properties constructed after 1986, when Congress outlawed lead pipe and solder, should be exempted from disclosure requirements.
2. To help enforce disclosure provisions, municipalities should consider linking them to the issuance of a certificate of occupancy (property sales) and the certificate of habitability (rentals).
3. Property owners with an LSL should receive an annual, written notice from their water system until that service line is removed. Doing so mitigates against the property owner claiming ignorance of the matter and thus helps to establish liability.

**S4110** - Allows municipalities to adopt ordinance to enter properties to perform lead service line replacements

Lead service lines can exist in residences as well as businesses and child care facilities. The current legislation refers to “residential properties,” which is limiting. New Jersey Future recommends removing “residential” and referring simply to “properties.”

This bill focuses primarily on the process of communicating a request for access to property owners, it could be strengthened by detailing the following points as options that may be included in the ordinances:

- Exempt property owners who submit written proof from a licensed certified plumber that no lead service lines exist on the property.
- A standard “right of entry” form should be presented to the property owner by contractors hired by the municipality to gain access to the property.
- Municipalities have the option to pursue court action to gain access in situations where access is denied.
- A set period of time following the effective date of the municipal ordinance should be determined for property owners who wish to replace the lead service line on their own.
- Proof of lead service line replacement should be required for a certificate of occupancy or certificate of habitability.
- Municipalities can issue fines for noncompliance with the ordinance.

The bill should also specify that the authorization applies to lead service line replacement performed by government-owned and investor-owned utilities.

**S4177** - Requires public water systems to develop lead service line inventories and replace lead service lines.

New Jersey Future provides high-level comments on S4177 below. We can provide more detailed comments in the coming days.

A comprehensive inventory is necessary to best protect public health. The bill currently directs water systems to compile and submit to DEP an inventory of all known lead service lines.

However, a more detailed listing of service lines would help accelerate replacement by separately tracking the utility-owned portion and the portion located under private property. In addition, separate categories should be reported on for pipes of unknown and known material broken down by type of material, and for service lines connected to a lead gooseneck. These categories could include “known-lead,” “known-(material other than lead),” and “unknown-not lead” to help focus replacement efforts. Additionally, the existence of lead pigtail and gooseneck connections and fittings to a service line should also be investigated as part of the inventory. Inventories are unlikely to ever truly be completed, so DEP should issue regulations defining what constitutes a sufficient inventory. Public water systems and their host municipalities must be indemnified from liability in a civil action for any damages resulting from an unintentional discrepancy in the published inventory.

DEP should issue regulations requiring utilities to periodically file a progress report with the Governor’s office and Legislature on the status of its inventory effort summarizing what is known about lead service lines in each service area. The report should include a section identifying potential legislative or regulatory actions that, if enacted, could help improve the program.

Water systems are directed to “make a reasonable effort to determine the existence or absence of a lead service line.” The term “reasonable” should be defined to ensure consistency in the approach taken by water utilities. This definition could include reviewing distribution maps, permit files, inspection and maintenance records, lead testing data, customer surveys, and predictive models based on the age of the lead service line or the housing stock.

While New Jersey Future supports a ban on partial lead service line replacements, exceptions to the ban should be established for water main emergencies and homes that are either unsafe or abandoned.

On the topic of paying for LSL replacement, New Jersey Future agrees with the two-part solution recommended by the Jersey Water Works Lead in Drinking Water Task Force:

- Authorizing rate recovery across service areas. In many drinking water utility service areas, a modest rate increase can fund LSL replacement over ten years.
- Creating a \$500 million state subsidy program to assist water utilities with the greatest need.

New Jersey Future recommends using this approach, rather than that found in sections 5.a. and 6.a. We recommend removing section 5. a. and 6.a. referring to costs shared by the utility and the customer base. Recognizing the unique public health issues involved, water utilities should simply charge for the applicable cost of the lead service line replacement work—as an operation and maintenance cost, not a capital cost. It is also unclear what would occur if the utility does not have sufficient funds within its budget to support the 75% portion that is to be derived from “existing resources.”

New Jersey Future recommends that the replacement schedule referred to in section 7. b. be amended to specify that the plan is to include a schedule for the complete replacement of lead service lines, goodnecks, and lead fittings within a ten year planning period, including annual benchmarks for monitoring purposes. The plan should identify how the water system will approach service lines of unknown composition. The plan should also acknowledge the degree to which the water utility controls the lead service lines in its service area and how lead service lines beneath private property will be handled, as well as how sensitive populations, such as child care facilities and high lead areas, would be prioritized.

New Jersey Future recommends that reporting to the DEP and the BPU be folded into the reporting requirements for the Water Quality Accountability Act and its electronic data portal to ensure coordination and efficiency. Further, the relevant state agencies should be authorized to enforce the provisions of this bill.

Thank you for the opportunity to share our recommendations to create a New Jersey free from the risks of lead in drinking water.