



TESTIMONY

**Testimony on S253, S647, and S922
Senate Community & Urban Affairs Committee
January 27, 2020**

16 W. Lafayette St.
Trenton, NJ 08608
p: (609) 393-0008
f: (609) 360-8478
w: njfuture.org

Contact: [Chris Sturm](#), Managing Director, Policy & Water
csturm@njfuture.org
609.393.0008 x114

Dear Chairman Singleton and members of the committee,

New Jersey Future is a nonprofit organization that believes New Jersey can be a great place to live with a prosperous economy, thriving communities, and a healthy environment if smart decisions are made about what to build and where to build. That's why we promote policies for sustainable, equitable growth in New Jersey. Everyone in New Jersey should have access to safe, clean drinking water, and we support these bills to further that goal.

The following is an overview of New Jersey Future's comments on S253, S647, and S922. We will provide more detailed comments in the coming days.

S253 - Requires public water systems to develop lead service line inventories and replace lead service lines.

Lead service line (LSLs) inventories and the replacement of full lead service lines are critical to protecting New Jerseyans from lead-contaminated drinking water. New Jersey Future appreciates the sponsor's willingness to consider amendments on the bill. In particular, we support the new requirement that investor-owned utilities prioritize lead service line replacement affecting vulnerable populations, such as child care facilities, schools, and hospitals. We also support the requirement that landlords be included among those who are formally notified about known LSLs, which helps to establish their liability if they choose not to fix the problem. The provision preventing investor-owned utilities from recovering costs until the service line is "used and useful" is also important.

New Jersey Future has some concerns about the bill that must be addressed in order to meet the goal of replacing all LSLs in a ten-year timeframe. :

- Funding split - While 100% of the cost of replacing utility-owned LSLs would be supported by rates, the cost for replacing customer-owned LSLs would be split

between ratepayers (40%) and water utility fund balances (60%). This seems unworkable.

- Many government-owned water utilities are unlikely to have sufficient fund balances to support 60% of the work on LSLs beneath private property.
- Strong resistance is likely from investor-owned utilities.
- States that currently authorize rate recovery for replacement of the customer-owned portion of LSL replacement costs include:
 - Indiana
 - Pennsylvania
 - Wisconsin
 - Michigan
 - Missouri
- Customer cost share - There is no mention of prohibiting a cost share from water customers for LSL replacement. Experience in Trenton and Newark has shown that this is a major impediment to program efficiency and wide scale replacement of LSLs. When Newark began offering LSL replacement without a required cost-share, they were able to achieve an accelerated replacement rate of 80 LSLs per day.
 - Future requirements for property owners to pay a cost share also presents an environmental justice issue in poor communities.
 - In addition, requiring a cost share actually *raises* the cost of LSL replacement, since costs drop by 25% by employing a methodical, neighborhood-by-neighborhood approach that does not rely on decisions by individual property owners.
- Investor-owned asset base - The bill does not prohibit investor-owned utilities from adding work performed on LSLs beneath private property to their asset bases, which would enable them to earn a large profit on the work. Fairness dictates that they should be able to recover their costs, but not make a profit..
 - The Division of Rate Counsel has strong reservations about this, as it sets a worrisome precedent for all utilities (electric, gas, etc.) reaching far beyond the LSL issue.
- Transparency on LSL location - The bill requires a centralized database of LSL inventory, as prepared by DEP, and a central portal for submitting the inventory information, but rejects the suggestion that water utility websites include specific addresses with known LSLs, a key provision for disclosure purposes. Cities like Newark already do this.
- Indemnification and warranties - No provision to indemnify water utilities or require them to provide warranties on the LSL replacement work.
 - Since it will take some years before water utilities' service line inventories are fully updated, there are serious liability concerns about the accuracy of the current information on where LSLs exist. Water utilities should be indemnified from liability lawsuits for any inadvertent errors (i.e. inaccurate/missing data) but not for deliberate errors. (The need for indemnification may vary by type of

- utility (e.g., investor-owned, municipal utility authority) which may require further refinement of this section.
- Other states have required warranties on LSL replacements to mollify property owners concerned about potential issues with the quality of the work provided.
- "Public water systems" instead of "public community water systems" - The scope of the term "public water systems" is broad, including systems with at least 15 service connections and serving an average of at least 25 people daily at least 60 days per year (i.e. it will include golf courses, community clubs, etc.). The term "public community water system" focuses more on the state's water utilities which serve at least 15 connections used by year-round residents or regularly serve at least 25 year-round residents, which would seem to be the primary audience for this bill (See NJSA 58:12A-3).

S647 - Revises asset management and related reporting requirements in "Water Quality Accountability Act."

New Jersey Future supports this bill as it will improve the condition of drinking water systems through proactive investment, reporting on key metrics and transparency for consumers. Specifically, we support the detailed requirements for asset management, strengthened requirements for reporting on capital budgets and expenditures, and required reporting for emergency repairs, routine maintenance, and 10-year capital needs. We appreciate that this bill requires a DEP rule-making process for reporting and that it makes requirements enforceable.

New Jersey Future recommends the following to strengthen the bill:

- Require DEP to provide technical assistance to low-resource communities.
- Require utilities to post programs, plans, and provisions detailed in the asset management plans to the website so that the public knows what projects are intended.
- Clarify the amendment to Section 6 of the WQAA to specify a course of action for water purveyors that do not have a website.
- Provide DEP with funding to manage the rule-making process, portal creation, reporting and enforcement.

S922 - Requires Local Finance Board to make certain findings prior to dissolution of municipal water authority.

New Jersey Future supports S922 because it helps to ensure that the payments made by drinking water customers are used for their intended purpose, rather than being diverted for other local government needs. We recommend that these provisions be extended to wastewater systems as well. In addition, we appreciate the larger role that DCA can play in ensuring responsible budgeting for water and sewer authorities.