
Public Hearing

before

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

*“The Committee will take testimony from the public
concerning the administration of the ‘Water Quality Accountability Act’”*

LOCATION: Committee Room 4
State House Annex
Trenton, New Jersey

DATE: October 7, 2019
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Troy Singleton, Chair
Senator Christopher J. Connors



ALSO PRESENT:

Jason S. Postelnik
*Office of Legislative Services
Committee Aide*

Luke E. Wolff
*Senate Majority
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Sarah Fletcher
*Senate Republican
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***Hearing Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey***



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PUBLIC HEARING NOTICE

The Senate Community and Urban Affairs Committee will hold a public hearing on Monday, October 7, 2019 at 10:00 AM in Committee Room 4, 1st Floor, State House Annex, Trenton, New Jersey.

The public may address comments and questions to Jason S. Postelnik, Committee Aide, or make bill status and scheduling inquiries to Jennifer Trott, Secretary, at (609)847-3875, fax (609)633-1228, or e-mail: OLSAideSCU@njleg.org. Written and electronic comments, questions and testimony submitted to the committee by the public, as well as recordings and transcripts, if any, of oral testimony, are government records and will be available to the public upon request.

The committee will take testimony from the public concerning the administration of the "Water Quality Accountability Act."

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Issued 10/1/19

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SENATOR TROY SINGLETON (Chair): Ladies and gentlemen, good morning.

Apologies for our slight delay.

This is our fourth and final hearing on the Water Quality Accountability Act. We've had a pretty robust discussion thus far. This hearing was designed to allow folks from the public, who wanted to offer their opinions and insights on the WQAA, to have an opportunity to do that.

We've heard from a lot of people in the field, but we wanted to also give the public an opportunity to testify.

So we're going to begin our hearing; as we begin all our hearings, we start with the Pledge of Allegiance.

So I ask you to rise for the Pledge. (all recite Pledge of Allegiance)

SENATOR SINGLETON: Jason, start us with a roll call, please.

MR. POSTELNIK (Committee Aide): Senator Connors.

SENATOR CONNORS: Here.

MR. POSTELNIK: Chair Singleton.

SENATOR SINGLETON: Here.

MR. POSTELNIK: Other members are not present.

SENATOR SINGLETON: All right; so we'll get started.

Mr. George Greatrex, Community Associations Institute of New Jersey.

G E O R G E C. G R E A T R E X, Jr., Esq.: Good morning, Mr. Chairman, members of the Committee.

My name is George Greatrex; I'm here representing the Community Associations Institute of New Jersey.

And I have here with me one of the members of our Legislative Action Committee, Mr. Paul Raetsch, who is also a member of the Community Associations Institute. And Mr. Raetsch will be making our presentation today, sir.

Thank you.

PAUL M. RAETSCH: Good morning.

Thank you very much for giving us the opportunity to present before the Committee.

CAI has about 2,000 members in the State of New Jersey, representing 7,000 common-interest communities throughout the state.

We're testifying today about a matter that may not be an urgent part of the Water Quality Accountability Act, but more enforcement of certain portions of it.

I'm the former President of the Horizons at Wood's Landing Homeowners Association; it's an age-restricted community of about 200 single-family homes in Atlantic County. And we have interest in the Water Quality Accountability Act because of the provisions that call for the DEP to inspect, test, and flush fire hydrants annually for all water purveyors with over 500 connections; and also, the same for the water mains and water utilities.

We became aware of two instances where homes were heavily damaged by fire; and part of the heavier damage was due to the fact that the fire hydrants in both communities were defective and had poor pressure and poor quantity. In both instances, neither the homeowners associations

nor the Municipal Utilities Authorities had flushed and maintained the hydrants. The homeowners associations were unaware that the MUAs were not doing that.

So I, then -- since one of the fires was in Atlantic County -- I went to the MUA and asked them if our hydrants in our community had adequate water and adequate pressure and supply. And I was told, "Well, we don't inspect the hydrants in your community. It's considered a private community." This was news to us, because they had actually been flushing them for the four years that I had lived there.

The MUA then said, "Well, we're not only not flushing the hydrants, we have no responsibility for the water utilities in your Association;" the reason being that they say that since our streets are not dedicated to the Township, they consider them private. And this situation exists in other communities around the state, I'm certain.

We, the residents of Wood's Landing, pay the exact same bills as residents of other communities. When the utility has to repair or replace water mains, our share of the water bill goes to pay for that. Yet, they're saying that if our hydrants or water system need repairs, that they would not repair them unless-- They have offered that they would do it; however, we would have to sign agreements holding them not accountable for any damages that might occur.

So it's an issue, we think, of fairness and enforcement that the DEP could not come to a conclusion whether they should be enforcing the standards for inspection, and maintenance, and repair, because they couldn't decide whether we were actually a private utility or not -- even though we don't control it at all; we can't turn the system off, we couldn't

sell it to Aqua or New Jersey Water. We can't maintain it, although we do hire a company to come and flush and inspect our hydrant system.

I think that's basically why we're here -- that, around the state, CAI feels that the DEP should be enforcing MUAs to maintain and inspect the systems of common-interest communities, whether they're private or not, as long as the common-interest communities do not control or maintain the systems.

So we're asking that you would look further into that for us. We very much support CAI; and all of us very much support the Water Quality Accountability Act and the good that it's doing for the state. We just ask for this one consideration of this one enforcement issue.

So I want to thank you, Chairman and Senator, for conducting this hearing, and allowing the opportunity for stakeholders to share their concerns and best practices regarding the Water Quality Accountability Act.

So thank you; and I'm open for questions -- or we are.

SENATOR SINGLETON: First of all, thank you for being here. We appreciate your time, and we appreciate this being an issue of concern for you.

Let me ask a slightly different question, if you don't mind. And I think you -- being a President of a Homeowners Association actually is helpful.

If there was a pothole on one of the private roads in your community, who would have to fix the pothole?

MR. RAETSCH: Right now, the streets are not dedicated; actually, the streets aren't even paved yet. But right now the developer would have to fix them until -- fix the potholes until the streets are

dedicated. Then, presumably, we would turn the streets over to the Township.

SENATOR SINGLETON: So just expounding on that question -- and this may be a question for George, to speak about other associations - - more mature, sort of, developed associations. If there was a pothole in an association where the streets had been transferred to the requisite municipality, it is the responsibility of the municipality to fix that pothole. Is that right or wrong?

MR. GREATREX: If the streets had been dedicated to the Township, it would certainly be the Township's responsibility to fix the pothole. If, however -- and there are a number of such associations across the state where the roads within the community do not get dedicated to the town -- some of those associations have gates -- they're gated communities -- and some do not. But if, in fact, those roads remained as common property owned by the association, then it would be the association's responsibility to fix those potholes, and I would suspect that those associations would budget that type of maintenance money to handle those types of issues.

And it raises an interesting comparison, because in the situation of Mr. Raetsch's Homeowners Association, there had never been any money set aside for that type of maintenance of either the fire hydrant systems or the potable water mains in the street, because it had been their understanding all along that that was going to be the Township's responsibility. So they have no money to fix those systems, even if they needed to.

SENATOR SINGLETON: I guess, then, my confusion is why are the two scenarios not apples-to-apples in this regard? And I'm more

trying to understand why isn't it apples-to-apples -- that if the streets had not been dedicated, then why would the association think that the fire hydrants and such are not the property and responsibility of the association, as opposed to the municipal utility authority? Why is it not analogous in that regard?

MR. GREATREX: Well, because I'm not sure that it is an apples-to-apples type of a situation. If you're talking about roadways and you're comparing it to fire hydrant systems, I'm not sure that it's an even comparison.

SENATOR SINGLETON: I'm more speaking about the responsibility as opposed-- If the responsibility lies with the association, as it would for the roads as you talked about, why wouldn't the responsibility also lie with the association before the roads are dedicated and then turned over to the Township? Why then wouldn't the hydrants that are there fall under the same space?

MR. GREATREX: Okay, I understand the question now.

As we've already talked about, if there was a private road and it needed to be repaired, then the association would have to repair it. However, the association, and each of the members within the association, are paying the same amount of taxes and the same amount in water fees to the local utility, to the township, as someone who may live down the street who doesn't live in an HOA. So they're actually getting double taxed, or it's costing them twice to do the same type of maintenance on those systems as someone who lives down the street who's paying the same amount of taxes.

SENATOR SINGLETON: Right.

MR. GREATREX: So it's an inequity that we wanted to bring to your attention because we believe the enforcement capability lies right within the WQAA.

SENATOR SINGLETON: Right.

And with respect to the ratepayers of any community association, they pay the same exact rate, as it were, as a ratepayer who would, say, be a block outside of the community association that is serviced by the same MUA.

MR. GREATREX: Correct.

MR. RAETSCH: We get the exact same bills; and I actually tested with a friend who lives in a separate HOA, and our water per-gallon costs are exactly the same.

But again, in his community -- if the MUA is maintaining those hydrants, and presumably if there were problems with the water main system, they would also be taken care of by the MUA. Whereas, in our case the MUA has said, "We will not flush and we will not maintain the utility system, both the water and sewer."

SENATOR SINGLETON: So, seemingly, there's an unevenness with respect to how different MUAs are addressing this situation. Because obviously, your friend's Municipal Utility Authority recognizes what the law says and decides that it should follow the law as it's prescribed, regardless of where the hydrants are. But the MUA in your particular community has decided that because the legislation, in and of itself, is not very specific, that regardless of location that they have that obligation. They chose to forfeit their obligation to follow the law -- is essentially what you're telling me.

MR. RAETSCH: It's essentially what I'm saying, except it actually -- the same MUA serves both of us.

SENATOR SINGLETON: So this MUA has made a conscious decision to do -- follow the law for one community, as opposed to not for another.

MR. RAETSCH: It seems that way.

Now, I have not spoken to -- I did not ask my friend, the President of the other HOA, whether they had to sign this indemnification agreement or not. But in all other developments that I'm aware of, the MUA takes care of the utilities completely.

SENATOR SINGLETON: And George, can I ask you -- because I know you do a lot of this statewide -- are you familiar with another community that is serviced by an MUA that has made a conscious decision to, sort of, pick and choose which development they're choosing to follow the law with, as opposed to others?

MR. GREATREX: The answer, Mr. Chairman, is yes -- that we have these discussions, on a monthly basis, with representatives around the state. And there are some associations in which the local MUA takes care of their fire hydrant systems and the potable water systems, even though there are private streets; and then there are others that do not. So it is an uneven application across the state.

SENATOR SINGLETON: And my last question: What town are you in, again, sir?

MR. RAETSCH: I am in Hamilton Township, Atlantic County.

And I just could mention -- the other fire that I'm aware of, that the community found out they had-- They actually had hydrants that they, the community, had paid to replace; and that's Locust Hills in Yardville. And the MUA -- their service -- I'm not quite sure who services them, but the MUA had not performed any maintenance on the utilities there either.

SENATOR SINGLETON: And Hamilton Township -- that's a singular township. The MUA is not a regional MUA; it's the Hamilton Township Municipal Utility?

MR. RAETSCH: Yes, it's just a portion; not the entire Township, because we're a bit rural. But they are the one MUA within the Township of Hamilton; it's a separate MUA.

SENATOR SINGLETON: Got you.

Senator Connors, did you have anything, sir?

SENATOR CONNORS: Thank you for being here today, first of all.

It would seem to me that there's a potential-- Obviously, there's a distinction being made between a municipality and the MUA; the municipality, ultimately, being responsible for roadways, which are accepted by the municipality. I'm not sure the nomenclature here -- I'm hearing *dedicated*, and I'm assuming that might also be interchangeable with the word *accepted* -- that a municipality, when it has a development within its community, might require performance guarantees to be posted. And once that development comes off the performance guarantees, then there would be the issue of actually formally accepting the road network within that community.

MR. GREATREX: That's correct.

SENATOR CONNORS: In which case, then, the responsibility is shifted.

But with regard to the utilities authority -- my question is, with regard to the Hamilton Township issue, was there a developer's agreement between either the utility authority and the developer putting in those lines, or the municipality, as to who would obtain ownership once those lines were put in?

MR. RAETSCH: No, there was no developer's agreement with the MUA. And the development plans all called for public water and sewer in it.

But George has—

SENATOR CONNORS: Yes, I find that somewhat curious; because in many cases a developer's agreement would spell out who takes ownership of those lines once those lines are installed and inspected. And like the municipality with the roadways, they would be accepted by the utility authority, including easements, which would be necessitated by a water system in that regard.

So obviously, Mr. Chairman, there seems to be different manners in which these developments and communities are brought online. And I don't know whether any kind of uniformity might be something that could be looked at.

Also, I believe our statutes provide for reimbursement for some services that are provided within a common-interest community, such as street lighting, snow plowing, and so forth.

MR. GREATREX: Correct.

MR. RAETSCH: Correct.

I think the Municipal Services Act covers streets, and lighting, and garbage disposal, and so forth; but it does not cover--

SENATOR CONNORS: Cover; correct.

MR. RAETSCH: --utilities, which I think would be a good thing to do. We--

MR. GREATREX: That would be another way to address the inequity -- would be to amend the Municipal Services Act to include fire hydrant maintenance and potable water.

As you may know, over the many years since the Municipal Services Act was first passed, back in 1994, there have been a number of attempts to add services to that Act, and they have been unsuccessful. We believe that after having looked at the WQAA, that there is a very ready way in which this issue -- this issue of inequity for associations like Mr. Raetsch's to be addressed.

SENATOR CONNORS: It would obviously not be the Municipal Services Act itself; it might be something similar to that, that would cover--

MR. GREATREX: It's possible.

SENATOR CONNORS: --whether they were private water purveyors or utility authorities. However, it obviously shouldn't be written in a way that would displace previously agreed-upon developer's agreements, or what have you, where there has been a distinction as to who is to be responsible for them.

But again, thank you for your testimony. It is a very interesting conundrum, with regard to the Hamilton Township issue.

Thank you.

MR. GREATREX: Thank you.

MR. RAETSCH: Thank you.

MR. GREATREX: Thank you very much.

SENATOR SINGLETON: Thank you, gentlemen; thank you very much.

Next up, we'll have Mr. Thomas Leach, Alliance to Prevent Legionnaires' Disease.

T H O M A S L E A C H: Mr. Chairman, Senator Connors, thank you for the opportunity to testify here today on behalf of the Alliance to Prevent Legionnaires' Disease.

We commend all of you for undertaking this review and looking for developing proposals for the Water Quality Accountability Act's improvement.

You all should have received our testimony in advance; I will not read that to you here. On behalf of Dr. Cheung -- he had intended to present his own testimony here today; something came up and he was not able to be here this morning -- I'll review some of those points for him.

Just a little bit of brief background. The Alliance to Prevent Legionnaires' Disease is a nonprofit, public health advocacy group, dedicated to reducing the occurrence of Legionnaires' disease by promoting public research, education, best practices for water management, and advocating for comprehensive policies to help eradicate this preventable disease.

We appreciate your review of the WQAA; and thank you for your efforts, along with those from our colleagues in the state's drinking

water suppliers, to remediate public health risks from issues like lead service lines, the replacement of aging infrastructure, and the early detection of water quality issues.

You may not know much about Legionnaires' disease and *Legionella* bacteria. To just review quickly, *Legionella* bacteria, which causes Legionnaires' disease, is a naturally occurring waterborne pathogen. It's found in open lakes, waters, reservoirs, and rivers that supply the public water system. It can establish itself and hide in the biofilm that lines the water distribution systems and pipes to the buildings where we work and live. According to a U.S. EPA study, *Legionella* bacteria were found in approximately 50 percent of the faucets of the households that were sampled in the study.

Service line replacement and related vibrations, hydrant and dead-end flushing, and changes in water pressure may dislodge that biofilm and sediment, which can release *Legionella* into the water supply and, ultimately, into buildings.

In 2018, there were 212 cases of Legionnaires' disease in New Jersey. Over the last year or so, there were notable cases, and some deaths, in Morris Plains, West Orange, Hamilton, Newark, and a shocking 22 cases throughout Union County that resulted in five tragic deaths.

Legionella bacteria is a system-wide issue that impacts urban centers and rural communities alike, and those communities can be served by publicly owned or investor-owned utilities. Disease reduction requires system-wide solutions, and your review of the WQAA provides an opportunity for the State to establish itself as a leader in Legionnaires' disease prevention and decreasing the risks of *Legionella* to the public.

Just a couple things about what is needed to decrease the risk.

More comprehensive reporting about service line interruptions and steps that can be taken to decrease the risks can be important parts of asset management plans and mitigation plans required under the WQAA.

Water purveyors, home and building owners, and public health officials must all take steps to reduce Legionella exposure. Addressing the bacteria throughout the water supply distribution system, from a source-to-tap approach, is a critical best practice.

Some of our recommendations -- which are more thoroughly outlined in the testimony that was provided for you in advance -- can be found in Senate Bill 3965, which requires State agencies, public water systems, and building owners to take steps to minimize and control cases of Legionnaires' disease. We believe strongly that the provisions applicable to the state's water suppliers in this legislation can be included in updates and improvements to the Water Quality Accountability Act.

Some of the first key recommendations the Alliance provides are: To seek the establishment of coordination levels throughout the water supply system that ensures that residual disinfectant levels are at sufficient levels to destroy Legionella and other bacteria, not just when it leaves the water treatment plant. Appropriate residual disinfectant levels are proven to be one of the most impactful and most cost-effective ways to protect the public from Legionella.

Residents located in a system that's undergoing any construction, maintenance, repair, or replacement of any service line or water main should be advised about such work and the potential risk from waterborne pathogens. Notification will help ensure residents take simple

steps to mitigate risks posed from disruptions to the water supply, as that can elevate Legionella and other pathogens.

One thing of concern: We have yet to see any public report about the source of the 22 cases of Legionnaires' disease clustered throughout Union County this past spring. While I think it demonstrates the difficulties in identifying sources of Legionella, it can also point to the difficulties and the failures of the investigatory resources that are available to State and local agencies. We think this is unacceptable; and New Jersey residents and everyone concerned about the public health should take a review of what can be done in this step, in this area.

We urge the Legislature to require comprehensive water management plans to appropriately address the cleaning, sanitizing, and maintenance of equipment that uses potable drinking water, which often contains pathogens, including Legionella bacteria.

So, in summary, New Jersey requires a more coordinated and proactive approach for communications and information sharing among all stakeholders. When water quality concerns arise, the Alliance encourages the Legislature to pursue a source-to-tap approach to address waterborne pathogens.

I'm happy to address any questions you all may have. Anything I cannot answer, I'll be more than happy to work with our Alliance and get, through you, Mr. Chairman, for the Committee.

SENATOR SINGLETON: Thank you, Tom.

Senator -- anything, Senator Connors?

SENATOR CONNORS: No, Mr. Chairman.

SENATOR SINGLETON: Tom, thank you. That was a thorough, obviously, detailed approach to understanding this piece. We appreciate you for passing that along.

The requisite bills that you talk about are separate pieces of legislation, not directly related to the Water Quality Accountability Act. Is what you're telling us is to almost incorporate aspects of those bills into the existing statute? To try and address those -- like the piece about notification about certain types of, as you said, Legionnaires' disease and other, sort of, airborne pathogens into the legislation? Is that the thrust of trying to combine those bills?

MR. LEACH: Sure; I mean, we would be happy to address it in a stand-alone bill. But we think with the review of the WQAA, it creates an opportunity for you all to implement some of those provisions, some of those notification requirements, as you mentioned, and some of the other aspects of our recommended solutions, into maybe the asset management plans, or even some of the mitigation plans, when there are water quality issues that need to be reported.

SENATOR SINGLETON: Got you; thank you.

MR. LEACH: Thank you.

SENATOR SINGLETON: We appreciate it Tom; thank you.

Is there anyone else who is here, who has not had a chance to speak, who is interested in speaking before the Committee? (no response)

Okay; seeing none, we are concluding -- have concluded our final hearing on this topic. It is our goal to have our team here compile some of the recommendations and comments that we've received. Those who have not seen them, the hearings have all been transcribed; they're

online, there are a couple of the books back here as well. But they are all online.

Our goal is to look at some of those recommendations, work them through with our Committee to see things that we can move forward in conjunction with our legislative leadership, and then figure out a path forward.

This has been eye-opening to me; I've learned a lot about water and a lot about lead and water quality. I thank all of those who spent time coming before us to give us their insight, and hopefully we can make a better product and a stronger piece of legislation.

We believe the Water Quality Accountability Act has served its purpose in a unique and special way. Other states are looking to try and emulate that. But, as such, it still can be made stronger and made better, and a more useful tool. So it's our goal to try and make that happen.

So we want to thank everyone for their time and attention over the last few weeks.

This meeting is adjourned.

(HEARING CONCLUDED)