



TESTIMONY BEFORE THE ASSEMBLY COMMITTEE ON ENERGY AND UTILITIES IN OPPOSITION TO ASSEMBLY BILL 78

Chairman Kuglitsch and Committee Members:

Good afternoon and thank you for the opportunity to testify today. My name is Lucas Vebber and I am the General Counsel and Director of Environmental and Energy Policy at Wisconsin Manufacturers and Commerce (WMC). WMC is the state's chamber of commerce and manufacturers' association. With approximately 3,800 members, we are the largest business trade association in Wisconsin. WMC represents members from all over Wisconsin of all sizes and in every sector of the state's economy. I am here today to testify in opposition to Assembly Bill 78. This legislation, while certainly a well-intentioned effort to help solve a serious problem in our state, is both unfair and unnecessary.

This legislation fundamentally alters private property rights in our state, and overturns longstanding precedent by forcing water utility rate payers to subsidize a new social welfare program to fund private property improvements. Further, under current law, municipalities are already able to establish the type of financial assistance programs envisioned by this bill without any additional burdens on rate payers, and the state already has a grant program at the Department of Natural Resources (DNR) in place to provide more funding to municipalities to help with lead pipe replacement. For these reasons, WMC does not currently support this proposal neither as introduced nor as proposed to be amended by Assembly Substitute Amendment 1.

I. Lead service lines are a serious problem in Wisconsin and it will take significant resources to address this issue.

It is undisputed that lead is a dangerous substance to human health and that there is a need to remove lead service lines throughout Wisconsin. It is equally undisputed that the cost of such replacements is considerable. Media reports indicate there are more than 200,000 lead service lines throughout the state that need to be replaced, with about 70,000 of those in the City of Milwaukee alone.¹

The average cost of a lead service line replacement is around \$3,000.² Using this estimate, to replace all the lead service lines in the state would cost approximately \$600 million, and this does not include the cost of replacing the water mains and the utility-side of the service lines, which the legislation requires must either be already replaced or replaced simultaneously with the lead service line replacements funded under the bill. That is a substantial number, and since we really have incomplete information on the lead service line inventory in our state, it is likely a significant under estimate of the real cost to solve this problem.

¹ "Bill to give Milwaukee and other cities options for replacing lead pipes," Milwaukee Journal Sentinel, available at: <http://www.jsonline.com/story/news/politics/2017/02/02/bill-give-milwaukee-and-other-cities-options-replacing-lead-pipes/97393942/>

² "Innovative DNR program to aid lead service line replacement," Wisconsin DNR, available at: <http://dnr.wi.gov/news/releases/article/?id=3940>

This legislation makes replacing the lead service line the only solution to this problem that financial assistance is provided for. There are many other solutions in the market that would do more to protect the public than simply replacing a lead service line, and can often do so at far less cost. While replacing a lead service line will help, there may very well still be lead pipes or lead fixtures throughout the building that continue to pose a risk.

II. This legislation fundamentally alters private property rights in our state.

Property owners in Wisconsin own all the pipes inside their home as well as the service line that runs from the home to the curb stop. The utility owns all of the pipe on the other side of the curb stop, including the water mains. It is a long standing tenet of private property rights and common knowledge that homeowners are responsible for the maintenance, repair and ultimate replacement of their own home's plumbing, including water service lines. Many responsible property owners around Wisconsin have already, at their own expense, taken on the significant cost of replacing their service lines to improve their own private property.

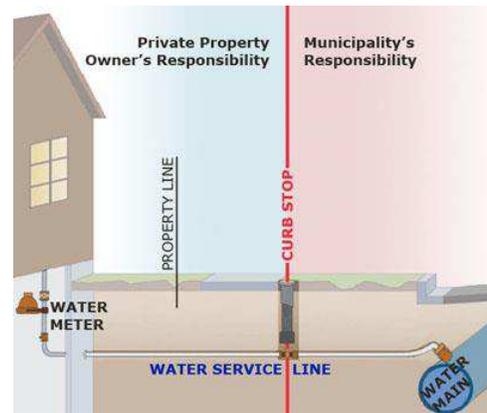


Image from Wisconsin Department of Natural Resources: <http://dnr.wi.gov/Aid/documents/EIF/LeadServiceLineFunding.html>

This legislation seeks to change that. Assembly Bill 78 would allow water utilities to use revenue generated from retail customers to pay for some or all of the cost of replacing lead service lines owned by other private property owners. In so doing, the state would force property owners, including those who already replaced their lead service line, at their own expense, or built their home without a lead service line, to also pay for the cost to replace someone else's service line on that person's private property.

III. This legislation overturns long-standing, court-affirmed precedent and forces water utility rate payers to subsidize the cost of the private property improvements of their neighbors.

More than fifteen years ago, the City of Madison attempted to use water rate revenue to pay for the cost of lead service line replacements for private property owners. Their request was denied by the PSC, and that denial was upheld in the courts. As the Court of Appeals noted back then, "the PSC concluded that it would be unreasonable and unjustly discriminatory if public dollars generated through utility rates were used to subsidize a direct benefit to an exclusive group of private property owners."³

Importantly, despite not being able to use rate payer revenue, the City of Madison was still able to implement a financial assistance program to assist private property owners with lead service line replacements. Nothing in state law prohibits municipalities from providing financial assistance to homeowners to replace their lead service lines or any other private property improvements, they just cannot use dollars generated from water utility rate payers to fund it.

³ City of Madison v. Public Service Commission of Wisconsin, 253 Wis. 2d 846 (WI Ct. App., 2001)

Madison's program has been a success. In fact, it is touted by the City as being a "model nationwide to other cities."⁴ The City of Madison's program is proof positive that municipalities in Wisconsin are already able to successfully implement a type of financial assistance program contemplated by this legislation – they just need to manage their finances properly.

IV. Not only can municipalities in Wisconsin already create the types of financial assistance programs envisioned by this legislation, but they already have a funding mechanism in place.

Customers of municipally-owned water utilities in Wisconsin are already sending a significant portion of their water rates to their local municipality. A recent report of the Public Service Commission (PSC) found that, on average, municipally-owned water utilities are forced to send 15% of their total revenues to the municipality as what is called a "Payment in Lieu of Taxes" or "PILOT."⁵

As a brief history of this tax, the PSC notes: "This tax was introduced as a part of the revenue requirement back in 1956 to ensure that the revenue requirements for municipally-owned utilities were established on a parallel basis to their investor-owned counterparts. The tax equivalent concept was developed to prevent municipal utility ownership from gaining an unfair advantage over the investor-owned model."⁶ Unfortunately, these payments are no longer about ensuring fairness in the marketplace and have simply become a boon for municipalities who use them to pad their bottom lines at the expense of water utility rate payers.

These PILOT payments are a sweet deal for municipalities, but a terrible bargain for rate payers. PILOT payments are calculated using a formula. This formula takes into account the value of the water utility infrastructure. As water utilities replace lead mains with new ones, the value of that infrastructure goes up, and so does the PILOT payment they are required to make to the municipality. Since utilities need more and more revenue under this system as they replace more and more mains, they need to be continuously seeking rate increases while pumping more and more money into the bottom line of municipalities. For example, the City of Milwaukee generated \$12.1 million from their water utility in 2013, the same year the utility sought a 3% water rate increase.⁷ From 2007-2014, the Madison water utility's PILOT payment they were required to make to the City of Madison doubled.⁸ From 2006 to 2013 Milwaukee's PILOT payment went up by \$4.64 million.⁷

It is fitting that we are here today discussing this legislation on tax day. The total PILOT payments that municipalities take from rate payers amounts to around \$100 million statewide. The average rate of 15% is one of the highest, if not the highest, tax rates we have here in the state. Municipalities are free to use

⁴ "Madison Water Utility Completes Successful Lead Pipe Replacement Project," City of Madison Website, available at: <https://www.cityofmadison.com/news/madison-water-utility-completes-successful-lead-pipe-replacement-project>

⁵ See "INVESTIGATION INTO MUNICIPAL UTILITY PAYMENT IN LIEU OF TAXES (PILOT)", PSC Staff Report, Docket 5-GF-215, dated January 30, 2013, available at: <http://apps.psc.wi.gov/pages/viewdoc.htm?docid=180955>

⁶ See "What are the Components of a Reasonable Revenue Requirement of a Municipally-Owned Water Utility" available at: <http://psc.wi.gov/utilityInfo/water/utilityTraining/rateMaking/rrComponents.html>

⁷ "Milwaukee siphons water revenue to general fund," Milwaukee Journal Sentinel, available at: <http://archive.jsonline.com/news/milwaukee/milwaukee-siphons-water-works-revenue-to-citys-general-fund-s791nrh-196380041.html>

⁸ "Paying for Progress," City of Madison Website, available at: <https://www.cityofmadison.com/water/insidemwu/paying-for-progress>

this PILOT money for whatever purpose they want, and could easily use this revenue to help fund the cost of lead service line replacements. Municipalities already have the funding to implement the types of financial assistance programs envisioned by this legislation. Kudos to the City of Madison for implementing a financial assistance program without tapping into additional rate payer dollars. Shame on every other municipality in the state that has been taking money from rate payers for decades while knowing of the lead problem and doing very little about it. It is a fair question to ask what exactly is being done with the \$100 million that's being sent to municipalities every year by water utility rate payers.

In addition to the PILOT money, municipalities have other options available to them under current law to fund service line replacements. In Madison, for example, they were able to raise revenue to help fund their program by renting space on water towers to cell phone companies for antennas.⁹

V. This legislation will increase expenses for water utilities and will increase rates throughout Wisconsin.

Under this proposed legislation, water utilities are required to replace the main lines at the same time that the private laterals are replaced. This means ratepayer revenue will be required to pay for replacing the main lines and the financial assistance to cover some or all of the cost of the private service line replacement, and once they have completed that work, they will be forced to pay an increased PILOT payment to the municipality.

PILOT payments do little more than raise the cost of water utility bills to increase the municipality's bottom line. As the aforementioned PSC report notes: "The cost of PILOT payments is passed on to ratepayers in the form of higher rates. PILOT payments can be a significant component of a municipal water utility's revenue requirement, meaning a large portion of a customer's water bill is actually being paid to support local government operations rather than water production and distribution."⁵

This legislation will drive up water rates as utilities will be required to take on added expenses to fund the financial assistance and pay the ever-growing PILOT payments. Given the potential significant size of these programs statewide, those rate increases could be substantial.

Water rates, like electric rates, are a cost of doing business. As those costs go up, businesses become less competitive. As Wisconsin's economy continues to grow and improve month-by-month, now is not the time to burden rate payers with the cost of paying for a new government program. Especially given that there are ways to accomplish the goals of this legislation without tapping into water rate payers.

VI. The State of Wisconsin has a program in place to provide even more financial assistance to municipalities to replace lead service lines.

The State of Wisconsin already has a funding program in place at the DNR to provide municipalities with funding to help alleviate the cost of private lateral replacement. Funding under this program is available

⁹ "Information for utilities on lead service replacements," City of Madison Website, available at: <https://www.cityofmadison.com/water/water-quality/information-for-utilities-on-lead-service-replacement>

in fiscal years 2017 and 2018 to provide municipalities with an additional revenue stream to help fund lead service line replacements.¹⁰

If the legislature wishes to allocate more state resources to this program, they are free to do so. This funding, along with the \$100 million that municipalities already take from rate payers through PILOT payments, and creative approaches to generate new revenue like the City of Madison implemented are all options available to municipalities that do not require increased burdens on water utility rate payers.

VII. Conclusion

The goal of this legislation – increased lead service line replacement throughout Wisconsin – is something we all share. The approach taken in this legislation, however, is flawed. This legislation would socialize the costs of lead service line replacements over all of the utility’s rate payers, driving up costs even on those who already paid, out of their own pocket, to replace their own lead service lines. That is unfair, and is why the PSC has denied such an approach in the past.

For the reasons I explained, under current law, municipalities have the authority to implement financial assistance programs and ample existing funding and opportunities for additional funding to pay for them. Rate payers should not be punished for the past fiscal mismanagement of municipalities in our state.

If the legislature does seek to move forward with this proposal to overturn past precedent and allow rate payer revenue to fund private lead service line replacements, it should, at the very least: (1) make sure that financial assistance programs are paid for by those who benefit from them and not unfairly punish those who have already replaced their lead service line; (2) cap future PILOT payment increases so that municipalities do not continue to receive windfall increases as water main pipes and utility infrastructure is upgraded; (3) require municipalities to exhaust the revenue they are already receiving from rate payers under PILOT payments before taking any additional revenue from rate payers to fund these programs; and (4) recognize that there are other ways to protect individuals in Wisconsin than a costly lead service line replacement, and make financial assistance available for those as well.

Thank you for the time, I would be happy to take any questions that committee members may have.

¹⁰ “Private Lead Service Line (LSL) Replacement Funding Program,” Wisconsin DNR, available at: <http://dnr.wi.gov/Aid/documents/EIF/leadServiceLineFunding.html>