

Legal Factors

This section is intended to give communities an overview of the legal questions that need to be considered when embarking on a lead service line (LSL) replacement initiative in the community. Prior to reading this section, you should determine whether your community's water utility is privately or municipally owned. All community water systems must comply with the Safe Drinking Water Act (SDWA) as implemented by the state agency with primacy for SDWA. However, privately owned systems also are regulated by a state public utility commission. Also, local governments, entities formed by local government, like water authorities, and privately held water utilities are subject to restrictions imposed by state law and local ordinances.

The legal context is needed to understand:

- Who owns all or part of the LSL?
- Who has access to the portion of the service line on private property?
- Who can pay for what?

Ownership of the property on which the LSL is located influences, but does not necessarily determine, the answers to the other two questions. However, state and local laws and regulations can affect whether a local government or water utility is allowed to pay for or even to work on private property. The latter may include distinctions between funds from local taxes, bonds and water rates. After understanding the legal context, the community can assess multiple potential funding approaches. Communities also may want to seek changes to current laws and regulations that will support the most effective LSL replacement initiative.

The following is an overview of legal questions communities should seek to understand in establishing a full LSL replacement initiative. Check with legal experts both to verify specific legal considerations and to learn whether they have additional questions to suggest.

Legal factors to consider:

- [State Laws](#)
- [Local Laws and Ordinances](#)
- [Other Legal, Contractual, or Policy Obligations](#)
- [Lead Service Lines on Private Property](#)

State Laws

Both community leaders and the water utility need to understand how state laws and regulations affect responsibility for LSL replacement. Decision makers may find it helpful to consult an attorney about legal constraints and legal options for local governments to implement a LSL replacement initiative.

State laws affecting roles and responsibilities for LSL replacement may not be specific to LSLs. While local governments in “Dillon Rule” states have limited authority only to do what the state has specifically permitted, local governments in “home rule “ states have the latitude to determine their own local laws and ordinances as long as they are consistent with the state and federal constitution. Read more about [Dillon Rule and Home Rule states](#).

Additionally, some states have laws that preclude spending public funds on private property. Such laws will affect who can take what actions to implement a LSL replacement initiative.

It may be helpful to ask questions early in the process before initiating any LSL initiative:

1. What options are available to replace LSLs on private property?
 - Does the water system have the authority to require replacement of the lead service line on private property? If so, under what circumstances?
 - If not, are there other entities (e.g., local government’s elected boards) with such authority if needed?
2. What sources of funding can a community use to support LSL replacement (e.g., water service rates, special fees, taxes, non-rate revenue streams, etc.)?
3. Does the community have authority to pay for or to require that private property owners replace LSLs found on private property? Does this authority exist for local government, the water system, other entities?
4. Is specific approval for an LSL replacement initiative required prior to the expending funds?
5. Do existing requirements draw distinctions in which customers may be eligible to have costs of LSL replacement covered based on financial need?

The regulations of the state PUC also will apply if the local water system is privately owned or operated, and in some states, if the system is operated by local government. If the water system is regulated by a state PUC, it will be important to understand any PUC policies that impact LSL replacement, PUCs typically have policies or specific regulations that bear directly on the costs a water system can incur with the expectation of reimbursement through rates.

Local Laws and Ordinances

If not prohibited by state law, some municipalities may have (or wish to) establish ordinances that define access to private property and funding responsibilities for LSL replacement. For example, the water utility in Lansing, Michigan owns the service line from the curb to the meter, which has facilitated their [lead service line replacement initiative](#).

Other Legal, Contractual, or Policy Obligations

A water utility may have legal, contractual or policy obligations that influence how to structure and accelerate an LSL replacement initiative. Water utilities often have articles of incorporation, bylaws or other governing documents that lay out certain responsibilities for maintenance of infrastructure, including service lines. In some cases, this may extend to responsibility for maintaining a service line on private property. The policies and operating procedures for day-to-day operation of the utility may also provide insight on obligations related to normal operations and emergency repairs. Examining the full range utility-specific legal and operational documents could uncover underutilized processes that the utility and community may want to explore in an effort to accelerate their LSL replacement initiative.

It is important to understand who has what legal authority and/or responsibility to replace LSLs, given that these lines connect publicly owned water mains to privately owned structures (internal plumbing is the responsibility of the owner of the building, regardless what the responsibility is for the lead service line on private property). Though there is often some form of shared responsibility between the local public water system and the private property owner, the specific relationships between responsibilities and location of LSLs on private property are complicated and vary across the United States.

Lead Service Lines on Private Property

The goal is replacing LSLs in their entirety, from the main to the building.

LSL replacement can be complicated by the ownership of the property above the service line. So, it is important that a community with an active LSL replacement initiative be clear, consistent, and accurate when describing its plans for replacement of service lines.

Ownership of property could have implications that will need to be addressed in terms of paying for replacement and right-of-entry to make replacements. Specific ownership scenarios

vary from community to community; but, in many cases, a portion of the service line is situated on private property. Communities have replaced service lines located on private property, with or without a direct additional charge to the property owner. Because it is important to align the LSL replacement effort so that it adapts to local circumstances, understanding current roles and responsibilities with respect to LSLs located on private property will be important aspects of developing a community's LSL effort. Further, when a community planning an LSL replacement initiative is made up of what have historically been multiple communities (e.g. a regional water system or a city that serves outlying areas), there may be portions of the community operating under different frameworks.

Information to Provide:

Descriptions of service line replacement plans should include the following four elements:

1. Description of community plans to replace service lines under public and private property in community;
2. History of local use of LSLs;
3. Roles and responsibilities; and
4. Where to find out more information.