

To: Senate Health, Human Services, and Senior Citizens Committee
From: Community Associations Institute – New Jersey Chapter
International Council of Shopping Centers
NAIOP New Jersey
New Jersey Apartment Association
New Jersey Hotel and Lodging Association
Date: May 18, 2018
Re: **Opposition to S-1108 – Requires Registration/Inspection of Cooling Towers**

On behalf of the above organizations, we respectfully oppose **S-1108**, which would adopt New York City’s law concerning the registration and testing of cooling towers for the bacteria that could lead to Legionnaire’s Disease (legionellosis). Commercial, industrial, and multifamily building owners and managers take the responsibility of ensuring the safety and well-being of building occupants and the public seriously. To that end, owners of buildings with cooling towers maintain contracts with companies that specialize in maintaining these systems in accordance with industry standards. Additionally, we maintain insurance policies that require cooling towers to be properly maintained. Accordingly, we oppose S-1108, and ask that you hold the bill to provide us an opportunity to meet with the sponsor and discuss these issues.

We would like to offer the following specific concerns:

Frequency of Inspections. Currently, ASHRAE 188-2015 is the current standard aimed at the prevention of legionellosis. It was created as a voluntary consensus standard by a committee comprised of academic, industry, and government subject matter experts. While the standard establishes certain risk management requirements for building water systems, it does not establish a frequency for testing or cleaning cooling towers. Additionally, the Centers for Disease Control notes that “[T]here is no evidence-based consensus recommendation regarding routine testing for *Legionella* for the prevention of legionellosis, as many research gaps exist.”

Definition of Cooling Tower. S-1108 defines a cooling tower to not only include the cooling tower itself, but individual elements of the air conditioner or refrigeration system connected to that tower. These elements, however, do not present the same type of exposure concerns, and accordingly, have a very different maintenance cycle. As such, this expansive definition of a cooling tower would impose significant testing obligations on building owners, with little potential safety benefits.

Qualified Operators. The bill allows an owner to designate a qualified operator to ensure that the requirements of this act are met. Nevertheless, S-1108 makes the owner, and not the operator, responsible for any sanctions for noncompliance. Ordinarily the professional is held responsible for the quality of their work, and not the client. This would put building owners at risk of sanctions for matters beyond their control.

Penalties. We are concerned with the penalties established in this bill. First, we believe that an owner should be given an opportunity to cure a violation before any sanctions are imposed. The bill as introduced would create civil penalties for noncompliance that range from \$2,000 to as high as \$10,000, without any opportunity to cure. Second, failing to comply with an order in the specified time period would give rise to criminal sanctions, including imprisonment for up to eighteen (18) months, regardless of whether the failure was on the part of the owner or the designated operator. Finally, while this bill

would authorize the Commissioner of Health to enforce these regulations, this bill would put initial jurisdiction for violations with the municipal courts rather than with the Office of Administrative Law.

Once again, we oppose S-1108, and ask that you hold the bill to provide us an opportunity to meet with the sponsor and discuss these issues. Should you have any questions regarding our concerns, please do not hesitate to contact us.