
Education Committee

HB 1860

Brief Description: Addressing lead in drinking water in schools.

Sponsors: Representatives Pollet, Stanford, Riccelli, Robinson, Wylie, Gregerson, Lovick, Peterson, Ryu, Shewmake, Valdez, Jinkins, Goodman, Tarleton, Fitzgibbon, Leavitt, Doglio and Macri.

Brief Summary of Bill

- Requires schools with facilities built before 2000 to test for, remediate, and provide notifications related to, lead in drinking and cooking water as specified in the act.
- Directs the Superintendent of Public Instruction to develop technical guidance on reducing lead in drinking water at schools, and to adopt emergency rules to implement the provisions to the act.

Hearing Date: 1/21/20

Staff: Megan Wargacki (786-7194).

Background:

Federal Lead and Copper Rule Generally. The federal Lead and Copper Rule and related state standards do not include the establishment of a maximum contaminant level for lead in drinking water sources. Instead, public water systems regulated under federal law are required to take certain corrosion-reduction actions to minimize the disturbance of lead during the delivery of water to customers' water outlets. If water quality monitoring results indicate that 10 percent of customer outlets exceed 15 parts per billion (ppb) of lead, the public water system must take corrective action to reduce lead levels in the water delivered to the outlets.

The Department of Health (DOH) implements the state's drinking water program mandated by the federal Safe Drinking Water Act. State-adopted drinking water regulations may not be less stringent than what is required under federal law.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Drinking Water Testing and Remediation at Schools. The federal Lead and Copper Rule requires schools to test for lead only if the school operates its own public water system. However, schools that are customers of public water systems operated by other entities are not required to do their own lead testing of drinking water.

In 2009, the DOH adopted a rule requiring schools to establish drinking water testing programs that included testing for and remediation of lead in drinking water. Via a series of provisos in each successive operating budget enacted since 2009, the Legislature has precluded the DOH from implementing this rule.

In October 2016, in response to an executive directive to review the issue, the DOH recommend that local health jurisdictions perform inspections of schools every three years, and that drinking water in all schools be tested over a six-year period, with highest priority given to elementary schools without recent tests.

The 2019-21 Omnibus Operating Budget includes \$1 million for the DOH lead testing in public school drinking water. The DOH must determine which school districts have the highest priority and must test those districts first. The DOH and the districts for which tests are conducted must communicate to parents, educators, school staff and the public regarding the test results, comparison to specified recommended action levels, the potential consequences of lead exposure, and examples of actions that can be taken to remediate lead in drinking water. Between July and December 2019, the DOH tested drinking water from 3,300 fixtures in 92 schools costing \$256,000.

Summary of Bill:

Testing and Remediation Requirements. No less frequently than once every three years, starting with the 2019-20 school year, each public and private school with students in any of grades kindergarten through twelfth grade must test each outlet used for drinking water or cooking in each school facility built before 2000 for the presence of lead. School districts may test one-third of the buildings required to be tested pursuant to this section in 2019, one-third in 2020, and one-third in 2021.

Each test for lead must be conducted by a laboratory certified for this purpose by the Secretary of the DOH, in accordance with the sampling and testing methods specified in the Office of the Superintendent of Public Instruction (OSPI) technical guidance. Concluding with the fiscal year ending June 30, 2025, each school conducting this required testing may be reimbursed for its testing costs by the Superintendent of Public Instruction (Superintendent) from funds appropriated for this purpose. A school may conduct more frequent testing than required.

If testing reveals a lead level of 5 ppb or higher at a water outlet used for drinking or cooking, within 24 hours the school must close off access to the outlet and report the test results to the DOH and to the Superintendent. Additionally, within 30 days of receiving a test result showing an outlet with lead levels of 5 ppb or higher, the school shall either: permanently shut or close off access to the water outlet and provide an alternative source of safe water without elevated lead levels; or install and maintain a certified filter at the outlet. Schools must take additional measures if necessary to eliminate elevated lead levels, consistent with the OSPI technical guidance.

Plans of Action. By January 1, 2020, each school must develop and adopt a plan of action to prevent elevated lead levels in all water used for drinking or cooking. An "elevated lead level" is defined as a lead concentration in drinking water that exceeds 5 ppb. The plan of action must include:

- installing and maintaining filters certified to remove lead from drinking water at all faucets, fountains, or other outlets designated for drinking or cooking, at which elevated levels of lead have been identified, within 18 months of the effective date of this act. A school may, consistent with other obligations in law, remove some outlets from operation instead of installing filters on those outlets, as long as every child has reasonable access to free, safe drinking water;
- the creation of an inventory of lead-bearing parts within the school's water delivery system, including but not limited to fixtures and plumbing with lead soldering. By July 1, 2021, a school must replace all lead-bearing parts identified in the inventory, to the extent feasible and cost-effective, except that a school is not required to undertake structural modifications to a building; and
- any other measures to reduce lead contamination of water, consistent with the technical guidance issued by the OSPI.

A school may seek the assistance of a local health jurisdiction, the DOH, or the Superintendent to help ensure its compliance with these action plan requirements. A school may adjust its plan of action in response to public input or to be consistent with the OSPI's technical guidance. However, the required components of the plan may not be amended in response to the DOH technical guidance or public input.

Notification and other Requirements. Each school must:

- submit to the DOH and the OSPI, as soon as practicable: its plan of action for preventing lead contamination of water; and information on testing activities conducted as required, including the date the testing was completed, the location and type of each drinking water outlet tested, the complete results of each test, and any measures being taken to remediate a drinking water outlet found to have a lead level greater than 5 ppb;
- maintain copies of the information submitted to the DOH and the OSPI in a suitable location for inspection by the public, and on the internet website of the school;
- notify parent, teacher, and employee organizations of the availability of the information submitted; and
- designate a person to serve as the contact person for communications with the DOH and the public regarding lead testing and remediation activities.

If testing reveals a lead level of 1 ppb or higher at a drinking water outlet used for drinking or cooking, within 10 business days, a school must directly notify teachers, other school personnel, and parents. Notification may be accomplished through written notice, email, or other means approved by the DOH. The notification must include a summary of the results of the testing conducted and information on the availability of the complete test results for public inspection at a suitable location and on the internet website of the school; a description of any remedial measures being taken; general information on the public health effects and risks posed by lead in drinking water and information on the availability of additional resources concerning lead in drinking water, as outlined in the OSPI technical guidance; and the name and contact information of the person designated to communicate with the public.

At each outlet used for drinking or cooking, the school must post an electronic code that, when electronically scanned, provides a person with access to information on testing and remediation for that outlet. The information available via the electronic code must include the maintenance schedule and log for installed NSF certified filters, unless the outlet is equipped with a clearly visible indicator for filter replacement.

Technical Guidance. The Superintendent, in consultation with the DOH, must issue technical guidance that is at least as protective of the public health as the technical guidance for reducing lead in drinking water at schools issued by the United States Environmental Protection Agency. Provisions of the technical guidance related to testing to determine the presence and levels of lead in water, as opposed to testing to identify sources of lead for remediation, must be designed to maximize detection of lead in water, and therefore must prohibit sampling or testing methods that tend to mask lead contamination, including prestagnation flushing and removal of aerators prior to sampling. By September 1, 2019, the Superintendent must provide the technical guidance, a list of laboratories certified to conduct lead testing, and any other information the Superintendent deems appropriate to each school, and post the technical guidance on the OSPI's web site.

Emergency Rules. The OSPI, in consultation with the DOH and the Department of Ecology, must adopt emergency rules to implement the provisions of this act. Emergency rules may remain in effect for up to 18 months from the date of adoption.

Appropriation: None.

Fiscal Note: Requested on January 15, 2020.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.