

E2SHB 1139 - S AMD 745

By Senator Wellman

ADOPTED 04/11/2021

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature recognizes that the
4 United States environmental protection agency and centers for disease
5 control and prevention acknowledge that there is no known safe level
6 of lead in a child's blood. Even low levels of lead exposure can
7 cause permanent cognitive, academic, and behavioral difficulties in
8 children. The American academy of pediatrics recommends government
9 action to ensure that the lead concentration in drinking water at
10 schools does not exceed one part per billion.

11 (2) The legislature finds that the department of health sampled
12 and tested drinking water outlets in 551 elementary schools between
13 2017 and 2020. 82 percent of these schools had lead contamination of
14 five or more parts per billion in one or more drinking water outlets
15 and 49 percent of these schools had lead contamination of 15 or more
16 parts per billion in one or more drinking water outlets.

17 (3) The legislature acknowledges that the department of health
18 was appropriated \$1,000,000 in the 2019-2021 fiscal biennium to
19 continue the testing for lead contamination in school drinking water.
20 The legislature also finds that the office of the superintendent of
21 public instruction was appropriated funds in the 2019-2021 fiscal
22 biennium for the healthy kids/healthy schools initiative. Part of
23 these funds are for the purpose of distributing grants to school
24 districts for remediation of elevated lead levels in drinking water.
25 The legislature encourages districts to apply for these grants when
26 lead test results reveal elevated lead levels, which are lead levels
27 above five parts per billion.

28 (4) The legislature acknowledges the historically inequitable
29 distribution of lead exposure for communities of color and of low
30 socioeconomic status and plans to make a priority the protection of
31 children from the dangers of lead exposure through school drinking
32 water. The legislature, therefore, intends to require that drinking

1 water outlets in elementary and secondary school buildings built, or
2 with all plumbing replaced, before 2016 be tested for the presence
3 and level of lead contamination by June 30, 2026, and every five
4 years thereafter. The legislature also intends to require that
5 schools notify the school community of lead test results and develop
6 action plans for remediation if test results exceed the health-based
7 standard of five parts per billion.

8 (5) The legislature recognizes that the youngest children are the
9 most vulnerable to lead exposure and that many of these children
10 spend significant amounts of time at child care facilities.

11 (6) This act is named for the director of the Washington public
12 interest research group who developed and advocated for this
13 legislation before dying of cancer in 2019 and may be known as the
14 Bruce Speight protect children from being exposed to lead in school
15 drinking water act.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.210
17 RCW to read as follows:

18 (1) This section applies to schools with buildings built, or with
19 all plumbing replaced, before 2016.

20 (2) With respect to sampling and testing for lead contamination
21 at drinking water outlets, a school shall either:

22 (a) Cooperate with the department so that the department can
23 conduct sampling and testing as required under section 3 of this act;
24 or

25 (b) Contract for sampling and testing that meets the requirements
26 of section 3 of this act and submit the test results to the
27 department according to a procedure and deadlines determined by the
28 department.

29 (3) (a) Except as provided in (b) of this subsection, a school
30 shall communicate annually with students' families and staff about
31 lead contamination in drinking water. The school shall consult with
32 the department or a local health agency on the contents of the
33 communication, which must include: The health effects of lead
34 exposure; the website address of the most recent lead test results;
35 and information about the school's plan for remedial action to reduce
36 lead contamination in drinking water. Schools are encouraged to
37 provide the communication as early in the school year as possible.

38 (b) The annual communication described under (a) of this
39 subsection is not required if initial testing, or once

1 postremediation testing, does not detect an elevated lead level at
2 any drinking water outlet.

3 (4) As soon as practicable after receiving a lead test result
4 that reveals a lead concentration that exceeds 15 parts per billion
5 at a drinking water outlet, and until a lead contamination mitigation
6 measure, such as use of a filter, is implemented, the school must
7 shut off the water to the outlet.

8 (5)(a) For a lead test result that reveals an elevated lead
9 level, as defined in subsection (7) of this section, at one or more
10 drinking water outlets, the school's governing body shall adopt a
11 school action plan in compliance with the requirements of this
12 subsection.

13 (b) The school action plan must:

14 (i) Be developed in consultation with the department or a local
15 health agency regarding the technical guidance, and with the office
16 of the superintendent of public instruction regarding funding for
17 remediation activities;

18 (ii) Describe mitigation measures implemented since the lead test
19 result was received;

20 (iii) Include a schedule of remediation activities, including use
21 of filters, that adhere to the technical guidance. The schedule may
22 be based on the availability of state or federal funding for
23 remediation activities; and

24 (iv) Include postremediation retesting to confirm that
25 remediation activities have reduced lead concentrations at drinking
26 water outlets to below the elevated lead level.

27 (c) The school action plan may include sampling and testing of
28 the drinking water entering the school when the results of testing
29 for lead contamination at drinking water outlets within the school
30 indicate that the infrastructure of the public water system is a
31 documented significant contributor to the elevated lead levels.

32 (d) The school must provide the public with notice and
33 opportunity to comment on the school action plan before it is
34 adopted.

35 (e) If testing reveals that a significant contributor to lead
36 contamination in school drinking water is the infrastructure operated
37 by a public water system that is not a school water system, the
38 school: (i) Is not financially responsible for remediating elevated
39 lead levels in drinking water that passes through that
40 infrastructure; (ii) must communicate with the public water system

1 regarding its documented significant contribution to lead
2 contamination in school drinking water and request from the public
3 water system a plan for reducing the lead contamination; and (iii)
4 may defer its remediation activities under (b) of this subsection
5 until after the elevated lead level in the public water system's
6 infrastructure is remediated and postremediation retesting does not
7 detect an elevated lead level in the drinking water that passes
8 through that infrastructure.

9 (f) The school action plan adoption deadlines are as follows:

10 (i) For lead test results received between July 1, 2014, and the
11 effective date of this section, for which a school did not take
12 remedial action or for which postremediation retesting has not
13 confirmed that the elevated lead level has been reduced to five or
14 fewer parts per billion, the school shall provide notice of elevated
15 lead levels in the communication required under subsection (3) of
16 this section and the school's governing body shall adopt an action
17 plan by March 31, 2022; and

18 (ii) For lead test results received after the effective date of
19 this section, the school's governing body shall adopt an action plan
20 within six months of receipt.

21 (g) A school's governing body may adopt an update to an existing
22 school action plan, rather than adopting a new school action plan, in
23 order to address additional lead test results that reveal elevated
24 lead levels at drinking water outlets, coordinate remediation
25 activities at multiple buildings, or adjust the schedule of
26 remediation activities.

27 (6) A school must post on a public website the most recent
28 results of testing for lead contamination at drinking water outlets,
29 no later than the time that the proposed school action plan is made
30 publicly available, under subsection (5)(d) of this section.

31 (7) The definitions in this subsection apply throughout this
32 section unless the context clearly requires otherwise.

33 (a) "Department" means the department of health.

34 (b) "Drinking water" means any water that students have access to
35 where it is reasonably foreseeable that the water may be used for
36 drinking, cooking, or food preparation.

37 (c) "Drinking water outlet" or "outlet" means any end point for
38 delivery of drinking water, for example a tap, faucet, or fountain.

39 (d) "Elevated lead level" means a lead concentration in drinking
40 water that exceeds five parts per billion, unless a lower

1 concentration is specified by the state board of health in rule in
2 accordance with section 6 of this act.

3 (e) "Public water system" has the same meaning as in RCW
4 70A.120.020.

5 (f) "School" means a school district and the common schools, as
6 defined in RCW 28A.150.020, within the district; a charter school
7 established under chapter 28A.710 RCW; or the state school for the
8 blind or the state school for the deaf established under RCW
9 72.40.010.

10 (g) "Technical guidance" means the technical guidance for
11 reducing lead in drinking water at schools issued by the United
12 States environmental protection agency until the department complies
13 with section 5 of this act when the term means the technical guidance
14 developed by the department.

15 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.70
16 RCW to read as follows:

17 (1) The department shall conduct sampling and testing for lead
18 contamination at drinking water outlets in school buildings built, or
19 with all plumbing replaced, before 2016 as specified in this section.
20 The department meets the requirements of this section when a school
21 contracts for sampling and testing that meets the requirements of
22 this section and submits the test results to the department according
23 to a procedure and deadlines determined by the department.

24 (2) Sampling and testing for the presence and level of lead in
25 drinking water must meet the technical requirements described in the
26 technical guidance.

27 (3)(a) Initial testing for lead contamination in drinking water
28 must be conducted between July 1, 2014, and June 30, 2026.

29 (b) Retesting for lead contamination in drinking water must be
30 conducted no less than every five years beginning July 1, 2026.

31 (4)(a) The department shall develop and publish a two-year plan
32 for sampling and testing. The plan must be updated at least annually.
33 Prior to adding a school to the plan, the department must contact the
34 school to determine whether the school has contracted, or is planning
35 to contract, for sampling and testing.

36 (b) Beginning July 1, 2026, in developing the two-year plan for
37 sampling and testing, the department must group school buildings by
38 governing body and then prioritize the groups based on the combined

1 length of time since each school building built, or with all plumbing
2 replaced, before 2016 was sampled and tested.

3 (5) The department shall enter a data-sharing agreement with the
4 office of the superintendent of public instruction for the purpose of
5 compiling a list of school buildings built, or with all plumbing
6 replaced, before 2016.

7 (6) The definitions in section 2 of this act apply throughout
8 this section unless the context clearly requires otherwise.

9 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.70
10 RCW to read as follows:

11 The department shall allow state-tribal compact schools
12 established under chapter 28A.715 RCW to opt into sampling and
13 testing for lead contamination at drinking water outlets in school
14 buildings built, or with all plumbing replaced, before 2016 pursuant
15 to section 3 of this act.

16 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.70
17 RCW to read as follows:

18 The department shall develop and make available technical
19 guidance for reducing lead contamination in drinking water at schools
20 that is at least as protective of student health as any technical
21 guidance on this topic issued by the United States environmental
22 protection agency. The technical guidance must include the technical
23 requirements for sampling, processing, and analysis, including that
24 analysis must be conducted by a laboratory accredited by the
25 department of ecology. The technical guidance must describe best
26 practices for remediating elevated lead levels at drinking water
27 outlets in schools. Best practices must include installing and
28 maintaining filters certified by a body accredited by the American
29 national standards institute. Provisions of the technical guidance
30 related to testing for the presence and level of lead in drinking
31 water, as opposed to testing to identify sources of lead for
32 remediation, must be designed to maximize detection of lead in water,
33 and therefore must prohibit sampling or analytical methods that tend
34 to mask lead contamination, including prestagnation flushing and
35 removal of aerators prior to sampling.

36 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.20
37 RCW to read as follows:

1 After July 1, 2030, the state board may, by rule, define
2 "elevated lead level" at a concentration of five or fewer parts per
3 billion if scientific evidence supports a lower concentration as
4 having the potential for further reducing the health effects of lead
5 contamination in drinking water.

6 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.70
7 RCW to read as follows:

8 (1) To the fullest extent permitted by federal law, the
9 department, rather than community water systems, is designated as the
10 lead or principal agency in regard to lead in drinking water
11 sampling, testing, notification, remediation, public education, and
12 other actions at public and private elementary and secondary schools
13 as required by the federal lead and copper rule, 40 C.F.R. Part 141.

14 (2) The department must issue a written waiver that exempts
15 community water systems that serve schools from the sampling and
16 testing requirements of 40 C.F.R. Part 141.92 related to schools if
17 the department determines that the mandatory requirements for
18 sampling and testing for, and remediation of, lead contamination in
19 drinking water outlets at elementary and secondary schools under this
20 act are consistent with the requirements in 40 C.F.R. Part 141.92 of
21 the federal lead and copper rule.

22 NEW SECTION. **Sec. 8.** This act may be known and cited as the
23 Bruce Speight protect children from being exposed to lead in school
24 drinking water act.

25 NEW SECTION. **Sec. 9.** If specific funding for the purposes of
26 this act, referencing this act by bill or chapter number, is not
27 provided by June 30, 2021, in the omnibus appropriations act, this
28 act is null and void."

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29 On page 1, line 2 of the title, after "water;" strike the
30 remainder of the title and insert "adding a new section to chapter

1 28A.210 RCW; adding new sections to chapter 43.70 RCW; adding a new
2 section to chapter 43.20 RCW; and creating new sections."

EFFECT: (1) Requires a school's governing body to adopt, rather than develop and adopt, a school action plan under specified circumstances.

(2) Delays the deadline for school action plan adoption from January 2, 2022, to March 31, 2022, with respect to unremediated lead test results received between July 1, 2014, and the effective date of the bill.

(3) Permits a school's governing body to adopt an update to an existing school action plan, rather than adopting a new school action plan, in order to address additional lead test results that reveal elevated lead levels at drinking water outlets, coordinate remediation activities at multiple buildings, or adjust the schedule of remediation activities.

(4) Makes the school rather than the school's governing body responsible for specified requirements including providing public notice and opportunity to comment on the school action plan; posting on a public website the most recent lead test results; and, under certain circumstances, communicating with the public water system.

(5) Specifies that significant contribution by a public water system must be documented.

(6) Corrects an internal reference.

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