

FINAL BILL REPORT

E2SHB 1139

C 154 L 21
Synopsis as Enacted

Brief Description: Taking action to address lead in drinking water.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Pollet, Callan, Berg, Dolan, Ryu, Leavitt, Bronoske, Ramel, Ramos, Lekanoff, Stonier, Ortiz-Self, Frame, Goodman, Rule, Bergquist, Berry, Wylie, Johnson, J., Taylor and Valdez).

House Committee on Education

House Committee on Appropriations

Senate Committee on Early Learning & K-12 Education

Senate Committee on Ways & Means

Background:

Federal Requirements.

The federal Safe Drinking Water Act's Lead and Copper Rule (LCR), finalized in December 2020, requires community water systems to sample and test for lead contamination in drinking water outlets in elementary schools with buildings built, or with all plumbing replaced, before 2014. Beginning January 16, 2024, community water systems must conduct sampling at 20 percent of these elementary schools per year and must conduct sampling at secondary schools by request. After five years, the community water system must conduct sampling by request only. Sample results and other information must be provided to each sampled school and the state Department of Health (DOH).

Schools that operate their own water systems must continue to meet LCR requirements. Currently, approximately 100 schools in Washington own and operate their own water system and are required to sample and test for lead contamination at least every three years.

If sampling reveals that the level of lead contamination exceeds specified thresholds, community and school water systems must take steps to reduce the level of lead in the water system.

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

State Requirements and Actions.

The DOH implements the state's drinking water program. The 10-member Board of Health provides a citizen forum for the development of public health policy and regulates a number of health activities, including establishing drinking water quality standards. State-adopted drinking water regulations may not be less stringent than what is required under the federal Safe Drinking Water Act.

The DOH requires public water systems to collect water samples from residential customers, treat the water when more than 10 percent of samples have lead contamination that exceeds 15 parts per billion (ppb), and provide annual public education to all consumers when the lead contamination in the water system exceeds 15 ppb. "Public water systems" are any system, excluding those serving a single residence or farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with the system.

In the 2019-21 fiscal biennium, the DOH was appropriated \$1 million to sample and test for lead contamination in drinking water outlets in public schools. The DOH was required to determine which school districts have the highest priority and test those districts first. The DOH and the districts for which tests were conducted were directed to 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.

In the 2019-21 fiscal biennium, the Office of the Superintendent of Public Instruction (OSPI) set aside \$250,000 of its Healthy Kids-Healthy Schools Capital Budget appropriation to fund drinking water fixture replacements in school districts with drinking water outlets that tested positive for any detectable level of lead contamination. The funding was fully obligated within the first fiscal year.

Summary:

Schools.

The following requirements apply to schools with buildings built, or with all plumbing replaced, before 2016, where "schools" means school districts and the common schools within each district; charter schools; the state School for the Blind; and the state School for the Deaf.

Lead Sampling and Testing. For all drinking water outlets, schools must either: (1) cooperate with the DOH so that the DOH can conduct lead sampling and testing; or (2) contract for lead sampling and testing that meets the DOH technical requirements and submit the test results to the DOH.

Mitigation and Action Plans. After receiving a test result that reveals lead contamination that exceeds 5 parts per billion (ppb) (an "elevated lead level"), a school must take specified actions. As soon as practicable after receiving a test result that reveals lead contamination that exceeds 15 ppb at a drinking water outlet, the school must shut off the water to the outlet until a lead contamination mitigation measure is implemented.

The school's governing body, such as the school district board of directors, must adopt a school action plan by March 31, 2022, if the school received lead test results between July 1, 2014, and the effective date of the act for which either remedial action was not taken or retesting has not confirmed that the elevated lead level has been reduced to below 5 ppb. Otherwise, the school's governing body must adopt a school action plan within six months of receipt of lead test results. The public must be provided with notice and opportunity to comment on the school action plan before it is adopted.

The school action plan must be: (1) developed in consultation with the DOH or a local health agency regarding the technical guidance and with the OSPI regarding funding for remediation activities; (2) describe mitigation measures implemented since the test result was received; (3) include a schedule of remediation activities that adhere to the technical guidance and that may be based on the availability of state or federal funding for remediation activities; and (4) include postremediation retesting.

The school action plan may include sampling and testing of the drinking water entering the school when test results indicate that the infrastructure of the public water system is a documented significant contributor to the elevated lead levels in the school drinking water. If testing reveals that the infrastructure of a public water system that is not a school water system is a documented significant contributor to lead contamination in school drinking water, the school: (1) is not financially responsible for infrastructure remediation; (2) must request from the public water system a plan for reducing the lead contamination; and (3) may defer its remediation activities until after the public water system's infrastructure is remediated.

A school's governing body may adopt an update to an existing school action plan, rather than adopting a new action plan, in order to address additional lead test results, coordinate remediation activities at multiple buildings, or adjust the schedule of remediation activities.

Communications. A school must post on a public website the most recent lead test results no later than the time the proposed school action plan is made publicly available.

A school must annually communicate with students' families and staff about lead contamination in drinking water. The schools must consult with the DOH or a local health agency on the contents of the communication, which must include: the health effects of lead; the website address of the most recent lead test results; and information about the school's plan for remedial action to reduce lead contamination in drinking water. However, this communication is not required if initial testing, or once postremediation testing, does

not detect an elevated lead level at any drinking water outlet.

The Department of Health.

Principal Agency. To the fullest extent permitted by federal law, the DOH, rather than community water systems, is designated as the lead or principal agency with regard to lead in drinking water sampling, testing, notification, remediation, public education, and other actions at public and private elementary and secondary schools as required by the federal LCR.

Lead Sampling and Testing. The DOH must conduct sampling and testing for lead contamination at drinking water outlets in the schools as defined above that have buildings built, or with all plumbing replaced, before 2016. The DOH must enter a data-sharing agreement with the OSPI for the purpose of compiling a list of these schools. The DOH meets this requirement when a school contracts for lead sampling and testing that meets specified requirements and submits the test results to the DOH. Initial testing must be conducted between July 1, 2014, and June 30, 2026, and retesting must be conducted no less than every five years beginning July 1, 2026.

The DOH must contact schools before developing a two-year plan for sampling and testing. Beginning July 1, 2026, in developing the plan, the DOH must group and prioritize school buildings as specified.

Technical Guidance. The DOH must develop and make available technical guidance for reducing lead contamination in drinking water at schools that is at least as protective of student health as federal guidance on this topic. The technical guidance must include the technical requirements for sampling, processing, and analysis, including that analysis must be conducted by a laboratory accredited by the Department of Ecology. The technical guidance must describe best practices for remediating elevated lead levels at drinking water outlets in schools. Provisions of the technical guidance related to testing for the presence and level of lead in drinking water must be designed to maximize detection of lead in water.

Community Water Systems. The DOH must issue a written waiver that exempts community water systems that serve schools from the sampling and testing requirements of the LCR related to schools if the DOH determines that the mandatory requirements for sampling and testing for, and remediation of, lead contamination in drinking water outlets at elementary and secondary schools under this act are consistent with the LCR requirements.

State-Tribal Compact Schools. The DOH must allow state-tribal compact schools to opt into sampling and testing for lead contamination at drinking water outlets in school buildings built, or with all plumbing replaced, before 2016.

Board of Health.

After July 1, 2030, the Board of Health may, by rule, define "elevated lead level" at a concentration of 5 or fewer ppb if scientific evidence supports a lower concentration as

having the potential for further reducing the health effects of lead contamination in drinking water.

Votes on Final Passage:

House	94	4	
Senate	48	0	(Senate amended)
House	91	5	(House concurred)

Effective: July 25, 2021