

SENATE BILL REPORT

E2SHB 1139

As Reported by Senate Committee On:
Early Learning & K-12 Education, March 19, 2021
Ways & Means, April 2, 2021

Title: An act relating to taking action to address lead in school drinking water.

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).

Brief History: Passed House: 3/4/21, 94-4.

Committee Activity: Early Learning & K-12 Education: 3/15/21, 3/19/21 [DP-WM].
Ways & Means: 4/01/21, 4/02/21 [DP, w/oRec].

Brief Summary of Bill

- Identifies the Department of Health (DOH) to be the lead or principal agency regarding lead in school drinking water sampling, testing, notification, remediation, public education, and other actions.
- Requires school districts, charter schools, the State School for the Blind, and the State School for the Deaf to cooperate with DOH to conduct or contract for sampling and testing for lead contamination at drinking water outlets in schools with buildings built, or with all plumbing replaced, before 2016.
- Directs these schools to communicate certain information, take certain mitigation actions, and adopt an action plan when a test result reveals an elevated lead level.
- Defines elevated lead level as lead concentration that exceeds five parts per billion, unless a lower concentration is specified in rule.

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.

SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Wellman, Chair; Nobles, Vice Chair, K-12; Wilson, C., Vice Chair, Early Learning; Hawkins, Ranking Member; Dozier, Hunt, McCune, Mullet and Pedersen.

Staff: Ailey Kato (786-7434)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Braun, Carlyle, Conway, Darneille, Dhingra, Gildon, Hasegawa, Hunt, Keiser, Lias, Mullet, Muzzall, Pedersen, Rivers, Van De Wege, Wagoner, Warnick and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senators Honeyford, Assistant Ranking Member, Capital; Schoesler, Assistant Ranking Member, Capital.

Staff: Corban Nemeth (786-7736)

Background: Federal Guidance and Requirements. In 2018, the U.S. Environmental Protection Agency (EPA) revised its manual for reducing lead in drinking water in schools.

EPA recently adopted a revised lead and copper rule that requires community water systems test for lead in drinking water in schools. Beginning January 16, 2024, community water systems must conduct drinking water sampling at each elementary school they serve over no more than five years, testing 20 percent of the facilities they serve each year. The rule applies to schools with buildings built, or with all plumbing replaced, before 2014. Community water systems must also conduct testing to secondary schools on request.

EPA rule establishes a lead action level of 15 parts per billion for water systems and facilities that have or operate their water source. The action level triggers actions water systems must take if the concentration of lead in more than 10 percent of tap water samples is greater than 15 parts per billion. Some of the actions include installing corrosion control treatment, public education, lead service line replacement and source water monitoring.

The American Academy of Pediatrics recommends water lead concentrations not to exceed one part per billion.

State Rules, Recommendations, and Funding. The State Board of Health (Board) and the Department of Health (DOH) are required to adopt environmental health and safety rules

for schools. In 2009, the Board adopted a set of rules including monitoring for lead in drinking water. The Board delayed implementation of these new rules in accordance with a directive in the 2009-11 operating budget and subsequent budgets.

The 2019-21 operating budget appropriated \$1 million to DOH for lead testing in public schools. DOH must determine the school districts with the highest priority. DOH and school districts must:

- provide clear communications regarding test results;
- identify the consequence of low levels of exposure or ingestion, such as cognitive deficits, reduction in IQ, and neurological development;
- share the information that no level of lead in drinking water is safe;
- compare the results to the recommendation of the American Academy of Pediatrics and the National Toxicology program of the National Institutes of Health and the Centers for Disease Control, regardless of whether the level exceeds the federal lead and copper rule; and
- take actions to prevent exposure.

DOH recommends schools take different actions for each fixture with lead results over 20 parts per billion, between 10 to 19 parts per billion, and between 2 to 9 parts per billion.

The Office of the Superintendent of Public Instruction (OSPI) provided grants with some of the Healthy Kids-Healthy Schools capital budget appropriation to fund replacing drinking water fixtures contributing to high levels of lead in school drinking water.

Summary of Bill: Department of Health. To the fullest extent permitted by federal law, DOH, rather than community water systems, is designated as the lead or principal agency regarding lead in drinking water sampling, testing, notification, remediation, public education, and other actions at public and private schools as required by the federal lead and copper rule.

DOH must issue a written waiver that exempts community water systems that serve schools from the sampling and testing requirements of the federal rule if allowed under the federal requirements.

Technical Guidance. 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 any federal technical guidance. The technical guidance must:

- include the requirements for sampling, processing, and analysis, including that the analysis be conducted by a laboratory accredited by the Department of Ecology;
- describe best practices for remediating elevated lead levels at drinking water outlets, including installing and maintaining filters certified by a body accredited by the American National Standards Institute; and
- prohibit sampling or analytical methods that tend to mask lead contamination, including prestagnation flushing and removal of aerators prior to sampling.

Sampling and Testing. DOH must conduct sampling and testing for lead contamination at drinking water outlets in school buildings built, or with all plumbing replaced, before 2016 (pre-2016 schools). DOH meets these requirements when a school contracts for sampling and testing and submits the test results to DOH according to its procedure and deadlines. Sampling and testing must meet the requirements in the technical guidance.

Initial testing must be conducted between July 1, 2014 and June 30, 2026. Beginning July 1, 2026, retesting must be conducted no less than every five years.

DOH must develop, publish, and update a two-year plan for sampling and testing. When developing the plan, DOH must group school buildings by governing body and then prioritize the groups. DOH must enter a data-sharing agreement with OSPI for compiling a list of pre-2016 buildings.

School Requirements. The following requirements apply to pre-2016 schools. "School" means school districts, charter schools, the State School for the Blind, and the State School for the Deaf.

Sampling and Testing. Schools must either:

- cooperate with DOH, so it can conduct sampling and testing, or
- contract for sampling and testing that meets certain requirements and submit the test results to DOH.

A school's governing body must post on a website the most recent testing results.

Communication. Schools must consult with DOH or a local health agency and communicate annually with families and staff about:

- the health effects of lead exposure;
- the website address of the most recent lead test results; and
- information about the school's plan for remedial action to reduce lead contamination.

Annual communication is not required if initial testing, or once post-remediation testing does not detect an elevated lead level at any drinking water outlet.

Elevated lead level means a lead concentration in drinking water that exceeds five parts per billion, unless a lower concentration is specified by the Board in rule.

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

If a lead test result reveals an elevated lead level, at one or more drinking water outlets, the

school's governing body must develop and adopt a school action plan. The action plan must:

- be developed in consultation with DOH or a local health agency regarding the technical guidance, and with OSPI regarding funding for remediation activities;
- describe mitigation measures implemented since the result was received;
- include a schedule of remediation activities, including use of filters, that adhere to the technical guidance and may be based on the availability of state or federal funding for remediation activities; and
- include post-remediation retesting to confirm it is below the elevated lead level.

The school's governing body must provide the public with notice and opportunity to comment on the action plan before it is adopted.

The school's governing body must adopt an action plan and provide communication by January 2, 2022, if schools received lead test results between July 1, 2014, and the effective date of this act, and the school did not take remedial action or post-remediation retesting does not confirm elevated lead levels have been reduced to five or fewer parts per billion. Otherwise, the school's governing body must adopt an action plan within six months of receipt of test results.

State-Tribal Compact Schools. DOH must allow state-tribal compact schools to opt into sampling and testing for lead contamination.

Public Water System. The action plan may include sampling and testing of the drinking water entering the school when the results indicate the infrastructure of the public water system is a significant contributor to the elevated lead levels. If testing reveals it is a significant contributor, the school's governing body:

- is not financially responsible for remediating elevated lead levels that pass through that infrastructure,
- must communicate with the public water system and request a plan for reducing the lead contamination; and
- may defer its remediation activities until after the public water system's infrastructure is remediated.

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

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony (Early Learning & K-12 Education): PRO: When families send their children to school, they do not expect the water their children drink is going to lower their IQ or cause permanent and irreversible health effects. The levels of lead in school water are causing these effects and is widespread throughout the state. Lead exposure impacts the littlest learners the most. There is no safe level of lead in drinking water. Children may be exposed to lead elsewhere in their life. Decreasing lead in school water is an equity issue. Setting lead levels at 5 parts per billion will dramatically reduce the risks and make schools safer for students and staff. The need for action is clear. Federal rules allow naming DOH as the lead agency, and DOH can coordinate the testing. The issue is not replacing pipes but fixtures, which is significantly less expensive. The bill allows schools to wait to replace fixtures until they get funding. If the issue is the water coming into school, the bill allow schools to wait until the source is fixed. The bill should also require fixtures that test below 15 parts per billion and above 5 parts per billion be shut off. DOH should also be allowed to define elevated lead level to be fewer than 5 parts per billion if scientific evidence supports that before 2030.

CON: The state should use the federal standard of 15 parts per billion. The fiscal note does not capture the actual cost of this bill, and this bill could be an unfunded mandate. This bill could put pressure on schools to replace entire plumbing systems.

OTHER: Newer school buildings have had to remediate fixtures, which means the cost of remediating fixtures in older buildings throughout the state may be significantly higher than current estimates. Schools are concerned that fixtures will have to be replaced right away but funding will not be available. Funding issues significantly impact small and mid-size districts. The federal standard is 15 parts per billion, which is also the standard in Oregon and California. The 5 parts per billion is difficult to achieve. There are concerns this bill will force school districts to solve city water problems because city water will be held to the federal standard while school districts would have a lower standard. The requirements and costs should be placed on the water source not schools.

Persons Testifying (Early Learning & K-12 Education): PRO: Representative Gerry Pollet, Prime Sponsor; Gwen Loosmore, Washington State PTA; Tyler Muench, Office of Superintendent of Public Instruction; Pamela Clough, Environment Washington; Molly Coddling, Institute of Neurotoxicology and Neurological Disorders, UW; Stacy Tarango; Samantha Fogg, Seattle Public Schools Parent; Lorrell Noahr, Washington Education Association.

CON: Mitch Denning, Washington Association of Maintenance and Operation Administrators; Doug Vanderleest, Washington Association of Maintenance and Operation Administrators.

OTHER: Jake Kuper, Puget Sound School Coalition; Grace Yuan, Puget Sound School Coalition; Marissa Rathbone, Washington State School Directors' Association; Anneke Jansen, Washington Department of Health; Charlie Brown, Tacoma School District.

Persons Signed In To Testify But Not Testifying (Early Learning & K-12 Education):
No one.

Staff Summary of Public Testimony (Ways & Means): PRO: This bill follows scientific analysis and the leads of other states. This is an issue primarily with lead valves and lead solder, which should reduce the fiscal impact. Environmental hazards at schools should be minimized. Chronic lead exposure can reduce IQ, and children are at the greatest risk of harm. Please include \$3 million in funding in the operating and capital budgets for this. The costs to parents and families of lead contamination are large, and the costs of special education are large. In comparison, the cost to replace fixtures is small. It is rare that pipes need to be replaced. We would request an amendment that would require taps to be shut off if they are above 5 parts per billion.

OTHER: School directors are committed to providing healthy and safe water. We are concerned with the actual costs of the bill. For many districts, costs will exceed what is documented in the fiscal note. This work is important, but we do not want an unfunded mandate. \$350,000 per fixture is not enough. We estimate it is about \$1,500 dollars including all costs. Many districts have costs that will be significant. We ask for a proviso to analyze the full costs of this bill.

Persons Testifying (Ways & Means): PRO: Molly Coddling, Institute of Neurotoxicology and Neurological Disorders, UW; Gwen Loosmore, Washington State PTA; Pamela Clough, Environment Washington; Tyler Muench, Office of the Superintendent of Public Instruction; Samantha Fogg; Susan Vossler.

OTHER: Brian Buck, Puget Sound School Coalition; Grace Yuan, Puget Sound School Coalition; Marissa Rathbone, Washington State School Directors' Association; Charlie Brown, Tacoma School District; Mitch Denning, Washington Association of Maintenance and Operation Administrators; Doug Vanderleest, Washington Association of Maintenance and Operation Administrators.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.