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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1139

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State of Washington

67th Legislature

2021 Regular Session

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

READ FIRST TIME 02/22/21.

1 AN ACT Relating to taking action to address lead in school  
2 drinking water; adding a new section to chapter 28A.210 RCW; adding  
3 new sections to chapter 43.70 RCW; adding a new section to chapter  
4 43.20 RCW; and creating new sections.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

20 (3) The legislature acknowledges that the department of health  
21 was appropriated \$1,000,000 in the 2019-2021 fiscal biennium to

1 continue the testing for lead contamination in school drinking water.  
2 The legislature also finds that the office of the superintendent of  
3 public instruction was appropriated funds in the 2019-2021 fiscal  
4 biennium for the healthy kids/healthy schools initiative. Part of  
5 these funds are for the purpose of distributing grants to school  
6 districts for remediation of elevated lead levels in drinking water.  
7 The legislature encourages districts to apply for these grants when  
8 lead test results reveal elevated lead levels, which are lead levels  
9 above five parts per billion.

10 (4) The legislature acknowledges the historically inequitable  
11 distribution of lead exposure for communities of color and of low  
12 socioeconomic status and plans to make a priority the protection of  
13 children from the dangers of lead exposure through school drinking  
14 water. The legislature, therefore, intends to require that drinking  
15 water outlets in elementary and secondary school buildings built, or  
16 with all plumbing replaced, before 2016 be tested for the presence  
17 and level of lead contamination by June 30, 2026, and every five  
18 years thereafter. The legislature also intends to require that  
19 schools notify the school community of lead test results and develop  
20 action plans for remediation if test results exceed the health-based  
21 standard of five parts per billion.

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

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

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

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

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

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

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

5 (3) (a) Except as provided in (b) of this subsection, a school  
6 shall communicate annually with students' families and staff about  
7 lead contamination in drinking water. The school shall consult with  
8 the department or a local health agency on the contents of the  
9 communication, which must include: The health effects of lead  
10 exposure; the website address of the most recent lead test results;  
11 and information about the school's plan for remedial action to reduce  
12 lead contamination in drinking water. Schools are encouraged to  
13 provide the communication as early in the school year as possible.

14 (b) The annual communication described under (a) of this  
15 subsection is not required if initial testing, or once  
16 postremediation testing, does not detect an elevated lead level at  
17 any drinking water outlet.

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

23 (5) (a) For a lead test result that reveals an elevated lead  
24 level, as defined in subsection (7) of this section, at one or more  
25 drinking water outlets, the school's governing body shall develop and  
26 adopt a school action plan in compliance with the requirements of  
27 this subsection.

28 (b) The school action plan must:

29 (i) Be developed in consultation with the department or a local  
30 health agency regarding the technical guidance, and with the office  
31 of the superintendent of public instruction regarding funding for  
32 remediation activities;

33 (ii) Describe mitigation measures implemented since the lead test  
34 result was received;

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

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

4 (c) The school action plan may include sampling and testing of  
5 the drinking water entering the school when the results of testing  
6 for lead contamination at drinking water outlets within the school  
7 indicate that the infrastructure of the public water system is a  
8 significant contributor to the elevated lead levels.

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

12 (e) If testing reveals that a significant contributor to lead  
13 contamination in school drinking water is the infrastructure operated  
14 by a public water system that is not a school water system, the  
15 school's governing body: (i) Is not financially responsible for  
16 remediating elevated lead levels in drinking water that passes  
17 through that infrastructure; (ii) must communicate with the public  
18 water system regarding its significant contribution to lead  
19 contamination in school drinking water and request from the public  
20 water system a plan for reducing the lead contamination; and (iii)  
21 may defer its remediation activities under (b) of this subsection  
22 until after the elevated lead level in the public water system's  
23 infrastructure is remediated and postremediation retesting does not  
24 detect an elevated lead level in the drinking water that passes  
25 through that infrastructure.

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

27 (i) For lead test results received between July 1, 2014, and the  
28 effective date of this section, for which a school did not take  
29 remedial action or for which postremediation retesting has not  
30 confirmed that the elevated lead level has been reduced to five or  
31 fewer parts per billion, the school's governing body shall provide  
32 notice of elevated lead levels in the communication required under  
33 subsection (3) of this section and adopt an action plan by January 2,  
34 2022; and

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

38 (6) A school's governing body must post on a public website the  
39 most recent results of testing for lead contamination at drinking

1 water outlets, no later than the time that the proposed school action  
2 plan is made publicly available, under (c) of this subsection.

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

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

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

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

11 (d) "Elevated lead level" means a lead concentration in drinking  
12 water that exceeds five parts per billion, unless a lower  
13 concentration is specified by the state board of health in rule in  
14 accordance with section 6 of this act.

15 (e) "Public water system" has the same meaning as in RCW  
16 70A.120.020.

17 (f) "School" means a school district and the common schools, as  
18 defined in RCW 28A.150.020, within the district; a charter school  
19 established under chapter 28A.710 RCW; or the state school for the  
20 blind or the state school for the deaf established under RCW  
21 72.40.010.

22 (g) "Technical guidance" means the technical guidance for  
23 reducing lead in drinking water at schools issued by the United  
24 States environmental protection agency until the department complies  
25 with section 5 of this act when the term means the technical guidance  
26 developed by the department.

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

29 (1) The department shall conduct sampling and testing for lead  
30 contamination at drinking water outlets in school buildings built, or  
31 with all plumbing replaced, before 2016 as specified in this section.  
32 The department meets the requirements of this section when a school  
33 contracts for sampling and testing that meets the requirements of  
34 this section and submits the test results to the department according  
35 to a procedure and deadlines determined by the department.

36 (2) Sampling and testing for the presence and level of lead in  
37 drinking water must meet the technical requirements described in the  
38 technical guidance.

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

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

5 (4) (a) The department shall develop and publish a two-year plan  
6 for sampling and testing. The plan must be updated at least annually.  
7 Prior to adding a school to the plan, the department must contact the  
8 school to determine whether the school has contracted, or is planning  
9 to contract, for sampling and testing.

10 (b) Beginning July 1, 2026, in developing the two-year plan for  
11 sampling and testing, the department must group school buildings by  
12 governing body and then prioritize the groups based on the combined  
13 length of time since each school building built, or with all plumbing  
14 replaced, before 2016 was sampled and tested.

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

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

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

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

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

30 The department shall develop and make available technical  
31 guidance for reducing lead contamination in drinking water at schools  
32 that is at least as protective of student health as any technical  
33 guidance on this topic issued by the United States environmental  
34 protection agency. The technical guidance must include the technical  
35 requirements for sampling, processing, and analysis, including that  
36 analysis must be conducted by a laboratory accredited by the  
37 department of ecology. The technical guidance must describe best  
38 practices for remediating elevated lead levels at drinking water

1 outlets in schools. Best practices must include installing and  
2 maintaining filters certified by a body accredited by the American  
3 national standards institute. Provisions of the technical guidance  
4 related to testing for the presence and level of lead in drinking  
5 water, as opposed to testing to identify sources of lead for  
6 remediation, must be designed to maximize detection of lead in water,  
7 and therefore must prohibit sampling or analytical methods that tend  
8 to mask lead contamination, including prestagnation flushing and  
9 removal of aerators prior to sampling.

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

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

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

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

25 (2) The department must issue a written waiver that exempts  
26 community water systems that serve schools from the sampling and  
27 testing requirements of 40 C.F.R. Part 141.92 related to schools if  
28 the department determines that the mandatory requirements for  
29 sampling and testing for, and remediation of, lead contamination in  
30 drinking water outlets at elementary and secondary schools under this  
31 act are consistent with the requirements in 40 C.F.R. Part 141.92 of  
32 the federal lead and copper rule.

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

1        NEW SECTION.    **Sec. 9.**    If specific funding for the purposes of  
2 this act, referencing this act by bill or chapter number, is not  
3 provided by June 30, 2021, in the omnibus appropriations act, this  
4 act is null and void.

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