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**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) Beginning January 2, 2022, a school shall make available on a  
6 public website the most recent results of testing for lead  
7 contamination at drinking water outlets in buildings that meet the  
8 requirements of subsection (1) of this section. New test results must  
9 be made available on the website within 30 days after receipt.

10 (4) Annually, beginning with the 2021-22 school year, a school  
11 shall communicate with students' families and staff about lead  
12 contamination in drinking water. The school shall consult with the  
13 department or a local health agency on the contents of the  
14 communication, which must include: The health effects of lead  
15 exposure and that even small amounts of lead can be harmful; the  
16 website address of the lead test results; and information about and a  
17 comparison of lead test results with the federal threshold, the state  
18 threshold, and the American academy of pediatrics recommended  
19 threshold, for remedial action to reduce lead contamination in  
20 drinking water. Schools are encouraged to provide the communication  
21 as early in the school year as possible.

22 (5) As soon as practicable after receiving a lead test result  
23 that reveals an elevated lead level, as defined in subsection (7) of  
24 this section, at a drinking water outlet, and until a lead  
25 contamination mitigation measure is implemented, the school must shut  
26 off the water to the outlet.

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

32 (b) The school action plan must:

33 (i) Be developed in consultation with the department or a local  
34 health agency regarding the technical guidance, and with the office  
35 of the superintendent of public instruction regarding funding for  
36 remediation activities;

37 (ii) Describe mitigation measures implemented since the lead test  
38 result was received;

39 (iii) Include a schedule of remediation activities, including use  
40 of filters, that adhere to the technical guidance. The schedule may

1 be based on the availability of funding for remediation activities;  
2 and

3 (iv) Include confirmatory retesting.

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

7 (d) If testing reveals that the primary cause of lead  
8 contamination is the infrastructure operated by a public water system  
9 that is not a school water system, the school's governing body is not  
10 financially responsible for remediating elevated lead levels in  
11 drinking water that passes through that infrastructure. However, the  
12 school's governing body must communicate with the public water system  
13 regarding the primary cause of lead contamination and request from  
14 the public water system a plan for reducing the lead contamination.

15 (e) The school action plan adoption deadlines are as follows:

16 (i) For lead test results received between July 1, 2014, and the  
17 effective date of this section, for which a school did not take  
18 remedial action or for which retesting has not confirmed that the  
19 elevated lead level has been reduced to five or fewer parts per  
20 billion, the school's governing body shall provide notice of elevated  
21 lead levels in the communication required under subsection (4) of  
22 this section and adopt an action plan by January 2, 2022; and

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

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

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

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

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

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

38 (e) "Public water system" has the same meaning as in RCW  
39 70A.120.020.

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

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

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

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

20 (2) Sampling and testing for the presence and level of lead in  
21 drinking water must meet the technical requirements described in the  
22 technical guidance.

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

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

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

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

37 (5) The department shall enter a data-sharing agreement with the  
38 office of the superintendent of public instruction for the purpose of

1 compiling a list of school buildings built, or with all plumbing  
2 replaced, before 2016.

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

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

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

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

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

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

34 After July 1, 2030, the state board may, by rule, define  
35 "elevated lead level" at a concentration of five or fewer parts per  
36 billion if scientific evidence supports a lower concentration as

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

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

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

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

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

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

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