

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1139

67th Legislature
2021 Regular Session

Passed by the House April 14, 2021
Yeas 91 Nays 5

**Speaker of the House of
Representatives**

Passed by the Senate April 11, 2021
Yeas 48 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1139** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1139

AS AMENDED BY THE SENATE

Passed Legislature - 2021 Regular Session

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 adopt a
26 school action plan in compliance with the requirements of this
27 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 documented significant contributor to the elevated lead levels.

9 (d) The school must provide the public with notice and
10 opportunity to comment on the school action plan before it is
11 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: (i) Is not financially responsible for remediating elevated
16 lead levels in drinking water that passes through that
17 infrastructure; (ii) must communicate with the public water system
18 regarding its documented 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 shall provide notice of elevated
32 lead levels in the communication required under subsection (3) of
33 this section and the school's governing body shall adopt an action
34 plan by March 31, 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 (g) A school's governing body may adopt an update to an existing
39 school action plan, rather than adopting a new school action plan, in
40 order to address additional lead test results that reveal elevated

1 lead levels at drinking water outlets, coordinate remediation
2 activities at multiple buildings, or adjust the schedule of
3 remediation activities.

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

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

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

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

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

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

20 (e) "Public water system" has the same meaning as in RCW
21 70A.120.020.

22 (f) "School" means a school district and the common schools, as
23 defined in RCW 28A.150.020, within the district; a charter school
24 established under chapter 28A.710 RCW; or the state school for the
25 blind or the state school for the deaf established under RCW
26 72.40.010.

27 (g) "Technical guidance" means the technical guidance for
28 reducing lead in drinking water at schools issued by the United
29 States environmental protection agency until the department complies
30 with section 5 of this act when the term means the technical guidance
31 developed by the department.

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

34 (1) The department shall conduct sampling and testing for lead
35 contamination at drinking water outlets in school buildings built, or
36 with all plumbing replaced, before 2016 as specified in this section.
37 The department meets the requirements of this section when a school
38 contracts for sampling and testing that meets the requirements of

1 this section and submits the test results to the department according
2 to a procedure and deadlines determined by the department.

3 (2) Sampling and testing for the presence and level of lead in
4 drinking water must meet the technical requirements described in the
5 technical guidance.

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

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

10 (4)(a) The department shall develop and publish a two-year plan
11 for sampling and testing. The plan must be updated at least annually.
12 Prior to adding a school to the plan, the department must contact the
13 school to determine whether the school has contracted, or is planning
14 to contract, for sampling and testing.

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

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

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

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

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

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

35 The department shall develop and make available technical
36 guidance for reducing lead contamination in drinking water at schools
37 that is at least as protective of student health as any technical
38 guidance on this topic issued by the United States environmental

1 protection agency. The technical guidance must include the technical
2 requirements for sampling, processing, and analysis, including that
3 analysis must be conducted by a laboratory accredited by the
4 department of ecology. The technical guidance must describe best
5 practices for remediating elevated lead levels at drinking water
6 outlets in schools. Best practices must include installing and
7 maintaining filters certified by a body accredited by the American
8 national standards institute. Provisions of the technical guidance
9 related to testing for the presence and level of lead in drinking
10 water, as opposed to testing to identify sources of lead for
11 remediation, must be designed to maximize detection of lead in water,
12 and therefore must prohibit sampling or analytical methods that tend
13 to mask lead contamination, including prestagnation flushing and
14 removal of aerators prior to sampling.

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

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

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

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

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

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

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

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