HOUSE BILL REPORT
E2SHB 1860

As Passed House:
February 19, 2020

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

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

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Pollet, Stanford, Riccelli, Robinson, Wylie, Gregerson, Lovick, Peterson, Ryu, Shewmake, Valdez, Jinkins, Goodman, Tarleton, Fitzgibbon, Leavitt, Doglio and Macri).

Brief History:
Committee Activity:
Education: 1/21/20, 2/6/20 [DPS];
Appropriations: 2/10/20, 2/11/20 [DP2S(w/o sub ED)].
Floor Activity:
Passed House: 2/19/20, 98-0.

Brief Summary of Engrossed Second Substitute Bill

- Requires public elementary and secondary schools with buildings built or renovated, with drinking water lines and outlets replaced before 2016, to allow the Department of Health (DOH) to: conduct, or contract for the conduction of, lead testing of drinking water; communicate test results and other information to the public; and adopt action plans if test results reveal lead concentrations that exceed 9 parts per billion (ppb).
- Requires private schools with buildings built or renovated, with drinking water lines and outlets replaced before 2016, to: contract for lead testing of drinking water, communicate test results and other information to the public; and adopt action plans if test results reveal lead concentrations that exceed 9 ppb.
- Requires public elementary and secondary schools with a school action plan and incomplete remediation activities to apply for grant funding to complete the remediation activities when grants are available through the DOH or the Office of the Superintendent of Public Instruction.

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

- Requires the DOH to conduct lead testing of drinking water in certain public elementary and secondary schools by specified deadlines and according to stated technical requirements.

HOUSE COMMITTEE ON EDUCATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Santos, Chair; Dolan, Vice Chair; Paul, Vice Chair; Steele, Ranking Minority Member; McCaslin, Assistant Ranking Minority Member; Volz, Assistant Ranking Minority Member; Bergquist, Caldier, Callan, Corry, Harris, Ortiz-Self, Rude, Stonier, Thai, Valdez and Ybarra.

Staff: Megan Wargacki (786-7194).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Education. Signed by 32 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Stokesbary, Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Chopp, Cody, Corry, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Kilduff, Kraft, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Schmick, Senn, Springer, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

Staff: Linda Merelle (786-7092).

Background:

Federal Lead and Copper Rule Generally.
The federal Lead and Copper Rule and related state standards do not include the establishment of a maximum contaminant level for lead in drinking water sources. Instead, public water systems regulated under federal law are required to take certain corrosion-reduction actions to minimize the disturbance of lead during the delivery of water to customers' water outlets. If water quality monitoring results indicate that 10 percent of customer outlets exceed 15 parts per billion (ppb) of lead, the public water system must take corrective action to reduce lead levels in the water delivered to the outlets.

The Department of Health (DOH) implements the state's drinking water program mandated by the federal Safe Drinking Water Act. State-adopted drinking water regulations may not be less stringent than what is required under federal law.

Drinking Water Testing and Remediation at Schools.
The federal Lead and Copper Rule requires schools to test for lead only if the school operates its own public water system. However, schools that are customers of public water systems operated by other entities are not required to do their own lead testing of drinking water.

In 2009 the DOH adopted a rule requiring schools to establish drinking water testing programs that included testing for and remediation of lead in drinking water. Via a series of provisos in each successive operating budget enacted since 2009, the Legislature has precluded the DOH from implementing this rule.

In October 2016, in response to an executive directive to review the issue, the DOH recommend that local health jurisdictions perform inspections of schools every three years, and that drinking water in all schools be tested over a six-year period, with highest priority given to elementary schools without recent tests.

The 2019-21 State Omnibus Operating Appropriation Act (Operating Budget) includes $1 million for the DOH lead testing in public school drinking water. The DOH must determine which school districts have the highest priority and must test those districts first. The DOH and the districts for which tests are conducted must 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. Between July and December 2019, the DOH tested drinking water from 3,300 fixtures in 92 schools costing $256,000.

Summary of Engrossed Second Substitute Bill:

State-Funded Schools.
The following schools with buildings built, or renovated with drinking water lines and outlets replaced, before 2016, referred to as "pre-2016 state-funded schools," must meet specified requirements related to lead in drinking water: school districts and the common schools within each district, charter public schools, the state School for the Blind, and the state School for the Deaf.

Drinking water is any water that students have access to where it is reasonably foreseeable that the water may be used for drinking, cooking, or food preparation.

A drinking water outlet is any end point for delivery of drinking water, for example a tap, faucet, or fountain.

Lead Testing.
With respect to lead testing at drinking water outlets, a pre-2016 state-funded school must either: (a) cooperate with the DOH so that the DOH can conduct lead testing; or (b) contract for lead testing that meets the DOH technical requirements, which may include school staff collecting water sample, and submit the test results to the DOH.

Communications.
Beginning September 1, 2020, a pre-2016 state-funded school must make available on a public webpage the most recent lead test results. New test results must be posted within 30 days after receipt.

Annually, beginning September 1, 2020, preferably at the beginning of the school year, a pre-2016 state-funded school must communicate with students' families and staff about lead contamination in drinking water. The school must consult with the DOH or a local health

agency on the contents of the communication, which must include: the health effects of lead and that there is no "safe" level of lead in drinking water; the address of the lead test results webpage; information about, and a comparison of test results with, federal and state thresholds; and the American Academy of Pediatrics recommended threshold, for remedial action to reduce lead contamination in drinking water.

School Action Plans.
For a lead test result that reveals a lead level that exceeds 9 ppb (an "elevated lead level") at a drinking water outlet, a pre-2016 state-funded school's governing body must develop and adopt a school action plan. The school action plan must be developed in consultation with the DOH or a local health agency; include remediation activities that adhere to the DOH technical guidance; and include confirmatory retesting. The public must be provided with notice and opportunity to comment on the school action plan before it is adopted.

The school action plan adoption deadlines are as follows:

- for test results received between July 1, 2014, and the effective date of the act, for which a pre-2016 state-funded school did not take remedial action or for which retesting has not confirmed that the elevated lead level has been reduced to below 9 ppb, the school's governing body must provide notice of the test results and adopt an action plan by November 1, 2020; and
- for test results received after the effective date of the act, a pre-2016 state-funded school's governing body must adopt a school action plan within three months of receipt.

Unless and until a pre-2016 state-funded school receives a state or federal grant, it may not to conduct remediation activities that exceed $2,000 per school building. However, a pre-2016 state-funded school with a school action plan and incomplete remediation activities must apply for grant funding to complete the remediation activities when it is available through the DOH or the Office of the Superintendent of Public Instruction (OSPI).

Private Schools.
A private elementary or secondary school must contract for lead testing in drinking water outlets in school buildings built, or renovated with drinking water lines and outlets replaced, before 2016 as required by this section.

Collection and handling of drinking water samples, and testing for the presence and level of lead in drinking water, must meet the DOH technical requirements.

These private schools must meet the same deadlines for initial testing and retesting as required for state-funded schools. In addition, these private schools must communicate with students' families and staff about lead contamination in drinking water, make lead test results available on a public website, and develop and adopt school action plans, to the same extent as required for state-funded schools, except for provisions related to expenditure limits on, and application for grant funding for, remediation activities.

Department of Health.
Lead Testing.

The DOH must conduct lead testing at drinking water outlets in state-funded school buildings built, or renovated with drinking water lines and outlets replaced, before 2016. The DOH meets this requirement when a pre-2016 state-funded school contracts for lead testing that meets specified requirements and submits the results of the testing to the DOH.

Initial lead testing must be conducted between July 1, 2014, and June 30, 2025, and retesting must be conducted no less than every five years beginning July 1, 2025.

During fiscal year 2020 and fiscal year 2021, the DOH must conduct lead testing using funds provided solely for this purpose in the Operating Budget.

The DOH must allow state-tribal education compact schools to opt in to lead testing of drinking water outlets in school buildings built, or renovated with drinking water lines and outlets replaced, before 2016.

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.

Elevated Lead Level Rule.
After July 1, 2030, the DOH may, by rule, define "elevated lead level" at a concentration less than 9 ppb if scientific evidence supports a lower concentration as having the potential for further reducing the health effects of lead contamination in drinking water.

Principal Agency.
The DOH is designated as the lead or principal agency in regard to lead tests and actions at public and private elementary and secondary schools if and when necessary to meet the requirements of a federal Environmental Protection Agency (EPA) lead rule adopted after the effective date of this act.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 14, 2020.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Education):

(In support) The Centers for Disease Control and Prevention (CDC) and the EPA agree that there is no safe level of lead exposure and that children are at greatest risk for lead exposure. A national pediatrician organization recommends a threshold of 1 ppb. Washington uses a

threshold of 20 ppb. Since 2009, an operating budget proviso has prevented implementation of a health-based standard for lead in drinking water in Washington.

The CDC guidelines state even blood lead levels lower than 5 micrograms per deciliter cause intelligence-quotient (IQ) reduction, increased incidence of attention and behavior problems, decreased academic performance, as well as cardiovascular problems and other issues. To keep 97.5 percent of children ages 0 to 7 from having a blood lead level of or above 5 micrograms per deciliter, drinking water lead levels need to be at or below 5 ppb.

Lead exposure from drinking water is just one of many potential exposure sources. The most problematic is dust from lead-based paint. It is important to reduce lead exposure from all sources. The World Health Organization considers drinking water the largest, controllable source of lead exposure, since legislation successfully restricted lead use in fuel. Children are at schools or childcare centers for most of their lives and will use any accessible source of water for drinking, so the drinking water in these facilities must be safe.

Lead substitutes for calcium and accumulates in bones. Because children are still growing, their bones accumulate more lead. Children absorb 50 percent of the lead they ingest, compared to adults who absorb only 10 percent of ingested lead. In addition, children are more susceptible than adults to brain damage from lead exposure and there are no medical interventions to reverse the effects of exposure. Lead exposure is cumulative and can stay in the body for decades.

The federal lead testing and remediation standard is not a health based standard. The federal government requires that a water system that has 10 percent of its delivery outlets exceeding a threshold level take specific actions to remediate the lead in the system. However, there are no federal or state thresholds that triggers remedial action at a school. The informal thresholds of 20 ppb or 15 ppb used in different parts of Washington are not based on preventing elevated blood lead levels, which are high enough to result in loss of IQ and produce neurological development challenges in children.

Parents think their children's schools are safe. The DOH recently tested 28,000 fixtures in 600 Washington schools and found 6,000 fixtures that tested above 5 ppb. Of the 392 elementary schools in the DOH voluntary lead testing and the Seattle Public Schools required testing, 38 percent had a maximum water fixture lead level of over 20 ppb. Only 4 percent of schools had a maximum water fixture lead level that did not exceed 1 ppb. By passing this bill to reduce lead in school drinking water to 5 ppb, the state will ensure that Washington school children do not suffer the health effects of lead exposure.

It is incredibly inexpensive to use certified water filters, replace valves, or flush the water system to reduces lead levels to below 5 ppb in 99 percent or more of cases. The OSPI has grant money to remediate drinking water in schools.

Some counties provide lead testing and screening for free at community events. The lead levels being detected in some communities are off the charts. There is a general lack of awareness about the need for lead testing. Many people, including physicians, think that lead poisoning is no longer an issue. This bill will decrease exposure to lead in schools and increase awareness of the risks of lead exposure in children's homes.

It is unacceptable that only the highest levels of lead contamination must be mitigated under current state law. This bill is a step in the right direction, by requiring testing in every drinking water outlet at every school and requiring mitigation at every outlet that reveals lead levels of 5 ppb or above. Although reducing the mitigation threshold to 1 ppb is better, the bill does at least require notification to parents at this threshold. The expanded testing and lower thresholds will lead to tens of thousands of fixtures being treated or replaced. The cost for sampling and mitigation may be significant. Despite the amount of money it might take to reduce lead in school drinking water, no parents will be opposed to spending the money.

(Opposed) None.

(Other) Lead exposure from drinking water is only one source of lead; there is also lead exposure from paint dust. It is important to reduce lead exposure from all sources. Expanded testing and lower thresholds will result in identification of many fixtures that require remediation. The cost for sampling, analysis, and mitigation will be high. Adequate funding will be needed.

Staff Summary of Public Testimony (Appropriations):

(In support) When children go to school, they should not be exposed to lead in their drinking water. Exposure to lead is a significant health concern, especially for children. There is no acceptable level of lead exposure. This bill establishes a health-based standard for taking action to address lead in school drinking water and to protect students and school staff. The DOH should develop technical guidance for lead testing and test all schools. Many schools have already been tested and have lead contamination in drinking water that is much higher than the 5 ppb threshold in the bill. The OSPI has funding available through a grant program to help schools pay the cost of remediation. The costs of remediation are not high, but they are worth it to protect children.

(Opposed) Private schools are independently liable for the health risks in their buildings. The provisions related to communication with families and the public do not work for private schools, which often do not have public websites. Work should be done on making the provisions of the bill apply to for private schools.

Some schools already test their drinking water for lead and take action if test results reveal a lead contamination level above 15 ppb, the federal threshold. School districts should not be responsible for communicating that there is no safe lead level to the public, this should be the responsibility of the DOH. The DOH should be responsible for testing water before it ever enters a school. There is a question about whether 5 ppb is the right threshold considering that the federal threshold is 15 ppb.

School districts should only be required to implement the provisions of the bill in years when state funding is specifically provided for the activities. School districts are required to fund many state-required activities through local levies.

Persons Testifying (Education): (In support) Representative Pollet, prime sponsor; Claire Woosley, and Steven Gilbert, the Institute of Neurotoxicology and Neurological Disorders; Nancy Belcher, King County Medical Society; Tyler Muench, Office of the Superintendent of Public Instruction; Pamela Clough, Environment Washington; Nicole Walter, Washington Public Interest Research Group; and Heidi Blankenship-Speight.

(Other) Rad Cunningham, Department of Health.

Persons Testifying (Appropriations): (In support) Representative Pollet, prime sponsor; Melissa Johnson, Washington State Nurses Association and School Nurse Organization of Washington; Tyler Muench, Office of the Superintendent of Public Instruction; and Pam Clough, Environment Washington.

(Opposed) Suzie Hanson, Washington Federation of Independent Schools; Lance Goodpaster, Franklin Pierce School District; and Charlie Brown, The Schools Coalition.

Persons Signed In To Testify But Not Testifying (Education): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.