

# SENATE BILL REPORT

## E2SHB 1860

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As of February 27, 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:** Passed House: 2/19/20, 98-0.

**Committee Activity:** Early Learning & K-12 Education: 2/26/20.

### Brief Summary of Bill

- Requires public and private schools to test for lead in drinking water outlets in school buildings built or renovated with drinking water lines and outlets replaced before 2016.
- Allows state-tribal education compact schools to opt into this lead testing.
- Requires a school action plan when a lead test result reveals an elevated lead level, which means it exceeds nine part parts per billion unless a lower concentration is specified in rule.
- Directs the Department of Health to conduct lead testing and develop technical guidance.

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### SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

**Staff:** Ailey Kato (786-7434)

**Background:** Federal Guidance. In 2018, the U.S. Environmental Protection Agency (EPA) revised its manual for reducing lead in drinking water in schools. There is no federal law requiring testing of drinking water in schools except for schools that own, operate, or both, their public water supply.

The EPA's lead and copper rule regulates lead in public drinking water systems. It establishes a lead action level of 15 parts per billion for water systems and facilities that have

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or operate their water source. If the 90th percentile lead level concentration of tap samples exceeds this amount, water systems must take additional actions such as optimizing corrosion control, public education, and lead service line replacement.

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. The first set of rules were adopted in 1971 and amended in the 1990s.

In 2009, the Board adopted a new set of more modern 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. Since then, the directive to delay implementation has been in each operating and supplemental budget, and as a result, the new rules have not been implemented.

In 2016, in response to a Governor's directive, DOH recommended that local health jurisdictions conduct school inspections at least every three years and drinking water is tested over six years giving highest priority to elementary schools without recent tests.

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 the test results;
- the consequence of low levels of exposure or ingestion, such as cognitive deficits, reduction in IQ, and neurological development;
- 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
- actions to prevent exposure.

The American Academy of Pediatrics recommends water lead concentrations do not exceed 1 part per billion. The National Institute of Environmental Health Sciences states that no blood lead level is safe.

**Summary of Bill:** Lead Testing at Drinking Water Outlets. School districts, charter schools, the State School for the Blind, and the State School for the Deaf must conduct lead testing at drinking water outlets in buildings built or renovated with drinking water lines and outlets replaced before 2016. These schools must either:

- cooperate with DOH so it can conduct lead testing; or
- contract for lead testing and submit the results to DOH according to its procedure and deadlines.

"Drinking water" means any water that students have access to where it is reasonably foreseeable that the water may be used for drinking, cooking, or food preparation. "Drinking water outlet" means any end point for delivery of drinking such as a tap, faucet, or fountain.

*Communication.* Beginning September 1, 2020, a school must make the most recent results of lead testing available on a public webpage. New test results must be available within 30 days after receipt.

Beginning September 1, 2020, a school must annually communicate with families and staff about lead contamination in drinking water. The school must consult with DOH or a local health agency on the contents of the communication, which must include:

- the health effects of lead exposure and that there is no safe level of lead in drinking water;
- the address of the lead test results webpage;
- information about, and comparison of test results with, federal and state thresholds; and
- the American Academy of Pediatrics recommended threshold for remedial action.

*School Action Plan.* For a lead test result that reveals an elevated lead level at a drinking water outlet, the school's governing body must develop and adopt a school action plan. "Elevated lead level" means a lead concentration in drinking water that exceeds 9 parts per billion, unless a lower concentration is specified by DOH in rule.

The school action plan must:

- be developed in consultation with DOH or a local health agency;
- include remediation activities that adhere to technical guidance; and
- include confirmatory retesting.

"Technical guidance" means the federal EPA's guidance until the state's DOH develops technical guidance.

The school's governing body must provide the public 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 this section, for which a school did not take remedial action or for which retesting has not confirmed that the elevated lead level has been reduced to below 9 parts per billion, the school's governing body must provide notice and adopt an action plan by November 1, 2020; and
- for test results received after the effective date of this section, the school's governing body must adopt an action plan within three months of receipt.

*Remediation Activities and Grant Funding.* Unless and until a school receives a state or federal grant to conduct remediation activities, the school may not conduct remediation activities that exceed \$2,000 per school building.

A school with an action plan and incomplete remediation activities must apply for grant funding to complete them when grants are available for this purpose through DOH or OSPI.

*State-Tribal Education Compact Schools.* These schools may opt into lead testing of drinking water outlets in school buildings built or renovated before 2016.

*Private Schools.* Private schools must contract for lead testing in drinking water outlets in school buildings built or renovated before 2016. Collection and handling of drinking water samples and testing must meet the requirements described in the technical guidance.

Private schools must meet the same deadlines for initial testing and retesting as public schools. Private schools must also meet the requirements related to communicating with families and staff, making lead test results available on a public webpage, and developing and adopting a school action plan.

Department of Health Duties. DOH must conduct lead testing at drinking water outlets in school buildings built or renovated before 2016. Testing for the presence and level of lead in drinking water must meet the requirements described in the technical guidance.

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

During fiscal years 2020 and 2021, DOH must conduct lead testing using funds provided in the 2019-21 operating budget.

*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 as the federal EPA's guidance. The technical guidance must:

- include technical requirements for sampling, processing, and analysis, including that analysis be conducted by a laboratory accredited by the state Department of Ecology;
- describe best practices for remediating elevated lead levels; and
- prohibit sampling or analytical methods that tend to mask lead contamination, including pre-stagnation flushing and removal of aerators prior to sampling.

*Elevated Lead Level Rule.* After July 1, 2030, DOH may, by rule, define "elevated lead level" at a concentration less than 9 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.

*Lead Agency.* DOH is designated as the lead or principal agency for lead tests and actions at public and private elementary and secondary schools if and when necessary to meet the requirements of a federal EPA lead rule adopted after the effective date of this section.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 25, 2020.

**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:** PRO: Children should be able to drink water in school. If children drink water contaminated with lead, their health could be impacted

including a lower IQ, decreased attention span, learning disabilities, and behavioral problems. Lead exposure is preventable. More testing is needed, and a health-based standard needs to be established.

CON: Some school districts are already testing under federal standards and ensuring that water quality is acceptable. Some of the requirements in this bill are not necessary.

OTHER: Schools are actively concerned about student health and well-being. However, there is concern about devoting too many resources and attention to things that may not produce a benefit. For example, retesting fixtures every five years even if the fixture previously tested negative for any lead. Lead testing should continue, and actions should be prioritized.

**Persons Testifying:** PRO: Representative Gerry Pollet, Prime Sponsor; Lorrell Noahr, Washington Education Association.

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

OTHER: Brian Sims, Washington State School Directors Association.

**Persons Signed In To Testify But Not Testifying:** CON: Suzie Hanson, Washington Federation of Independent Schools.

OTHER: Dave Mastin, Office of Superintendent of Public Instruction.