

**E2SHB 1139 - S AMD 788**

By Senator Wellman

**PULLED 04/10/2021**

1 Strike everything after the enacting clause and insert the  
2 following:

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

11 (2) The legislature finds that the department of health sampled  
12 and tested drinking water outlets in 551 elementary schools between  
13 2017 and 2020. 82 percent of these schools had lead contamination of  
14 five or more parts per billion in one or more drinking water outlets  
15 and 49 percent of these schools had lead contamination of 15 or more  
16 parts per billion in one or more drinking water outlets.

17 (3) The legislature acknowledges that the department of health  
18 was appropriated \$1,000,000 in the 2019-2021 fiscal biennium to  
19 continue the testing for lead contamination in school drinking water.  
20 The legislature also finds that the office of the superintendent of  
21 public instruction was appropriated funds in the 2019-2021 fiscal  
22 biennium for the healthy kids/healthy schools initiative. Part of  
23 these funds are for the purpose of distributing grants to school  
24 districts for remediation of elevated lead levels in drinking water.  
25 The legislature encourages districts to apply for these grants when  
26 lead test results reveal elevated lead levels, which are lead levels  
27 above five parts per billion.

28 (4) The legislature acknowledges the historically inequitable  
29 distribution of lead exposure for communities of color and of low  
30 socioeconomic status and plans to make a priority the protection of  
31 children from the dangers of lead exposure through school drinking  
32 water. The legislature, therefore, intends to require that drinking

1 water outlets in elementary and secondary school buildings built, or  
2 with all plumbing replaced, before 2016 be tested for the presence  
3 and level of lead contamination by June 30, 2026, and every five  
4 years thereafter. The legislature also intends to require that  
5 schools notify the school community of lead test results and develop  
6 action plans for remediation if test results exceed the health-based  
7 standard of five parts per billion.

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

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

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

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

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

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

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

29 (3) (a) Except as provided in (b) of this subsection, a school  
30 shall communicate annually with students' families and staff about  
31 lead contamination in drinking water. The school shall consult with  
32 the department or a local health agency on the contents of the  
33 communication, which must include: The health effects of lead  
34 exposure; the website address of the most recent lead test results;  
35 and information about the school's plan for remedial action to reduce  
36 lead contamination in drinking water. Schools are encouraged to  
37 provide the communication as early in the school year as possible.

38 (b) The annual communication described under (a) of this  
39 subsection is not required if initial testing, or once

1 postremediation testing, does not detect an elevated lead level at  
2 any drinking water outlet.

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

8 (5)(a) For a lead test result that reveals an elevated lead  
9 level, as defined in subsection (7) of this section, at one or more  
10 drinking water outlets, the school's governing body shall adopt a  
11 school action plan in compliance with the requirements of this  
12 subsection.

13 (b) The school action plan must:

14 (i) Be developed in consultation with the department or a local  
15 health agency regarding the technical guidance, and with the office  
16 of the superintendent of public instruction regarding funding for  
17 remediation activities;

18 (ii) Describe mitigation measures implemented since the lead test  
19 result was received;

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

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

27 (c) The school action plan may include sampling and testing of  
28 the drinking water entering the school when the results of testing  
29 for lead contamination at drinking water outlets within the school  
30 indicate that the infrastructure of the public water system is a  
31 documented significant contributor to the elevated lead levels.

32 (d) The school must provide the public with notice and  
33 opportunity to comment on the school action plan before it is  
34 adopted.

35 (e) If testing reveals that a significant contributor to lead  
36 contamination in school drinking water is the infrastructure operated  
37 by a public water system that is not a school water system, the  
38 school: (i) Is not financially responsible for remediating elevated  
39 lead levels in drinking water that passes through that  
40 infrastructure; (ii) must communicate with the public water system

1 regarding its documented significant contribution to lead  
2 contamination in school drinking water and request from the public  
3 water system a plan for reducing the lead contamination; and (iii)  
4 may defer its remediation activities under (b) of this subsection  
5 until after the elevated lead level in the public water system's  
6 infrastructure is remediated and postremediation retesting does not  
7 detect an elevated lead level in the drinking water that passes  
8 through that infrastructure.

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

10 (i) For lead test results received between July 1, 2014, and the  
11 effective date of this section, for which a school did not take  
12 remedial action or for which postremediation retesting has not  
13 confirmed that the elevated lead level has been reduced to five or  
14 fewer parts per billion, the school shall provide notice of elevated  
15 lead levels in the communication required under subsection (3) of  
16 this section and the school's governing body shall adopt an action  
17 plan by March 31, 2022; and

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

21 (g) The school's governing body may update the school action plan  
22 as necessary to address any additional lead test results that reveal  
23 elevated lead levels at drinking water outlets.

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

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

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

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

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

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

1 (e) "Public water system" has the same meaning as in RCW  
2 70A.120.020.

3 (f) "School" means a school district and the common schools, as  
4 defined in RCW 28A.150.020, within the district; a charter school  
5 established under chapter 28A.710 RCW; or the state school for the  
6 blind or the state school for the deaf established under RCW  
7 72.40.010.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 After July 1, 2030, the state board may, by rule, define  
37 "elevated lead level" at a concentration of five or fewer parts per

1 billion if scientific evidence supports a lower concentration as  
2 having the potential for further reducing the health effects of lead  
3 contamination in drinking water.

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

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

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

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

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

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27 On page 1, line 2 of the title, after "water;" strike the  
28 remainder of the title and insert "adding a new section to chapter  
29 28A.210 RCW; adding new sections to chapter 43.70 RCW; adding a new  
30 section to chapter 43.20 RCW; and creating new sections."

EFFECT: (1) Requires a school's governing body to adopt, rather than develop and adopt, a school action plan under specified circumstances.

(2) Delays the deadline for school action plan adoption from January 2, 2022, to March 31, 2022, with respect to unremediated lead test results received between July 1, 2014, and the effective date of the bill.

(3) Permits the school action plan to be updated as necessary to address any additional elevated lead test results.

(4) Makes the school rather than the school's governing body responsible for specified requirements including providing public notice and opportunity to comment on the school action plan; posting on a public website the most recent lead test results; and, under certain circumstances, communicating with the public water system.

(5) Specifies that significant contribution by a public water system must be documented.

(6) Corrects an internal reference.

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