

# HOUSE BILL REPORT

## E2SHB 1139

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### As Amended by the Senate

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

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

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Pollet, Callan, Berg, Dolan, Ryu, Leavitt, Bronoske, Ramel, Ramos, Lekanoff, Stonier, Ortiz-Self, Frame, Goodman, Rule, Bergquist, Berry, Wylie, Johnson, J., Taylor and Valdez).

### Brief History:

#### Committee Activity:

Education: 1/26/21, 2/11/21 [DPS];

Appropriations: 2/18/21, 2/19/21 [DP2S(w/o sub ED)].

#### Floor Activity:

Passed House: 3/4/21, 94-4.

Senate Amended.

Passed Senate: 4/11/21, 48-0.

### Brief Summary of Engrossed Second Substitute Bill

- Requires state-funded elementary and secondary schools with buildings built, or with all plumbing replaced, before 2016, to: (1) have drinking water outlets tested for lead contamination; (2) communicate test results and other information; and (3) take specified actions if test results reveal lead concentrations that exceed stated thresholds.
- Requires the Department of Health (DOH) to conduct lead testing of drinking water in state-funded elementary and secondary schools by specified deadlines and according to stated technical requirements.
- Designates the DOH, rather than community water systems, as the principal agency in regard to lead testing, remediation, and other actions at elementary and secondary schools.

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

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## HOUSE COMMITTEE ON EDUCATION

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Santos, Chair; Dolan, Vice Chair; Berg, Bergquist, Callan, McCaslin, Ortiz-Self, Rude, Steele and Stonier.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives Ybarra, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; McEntire.

**Staff:** Megan Wargacki (786-7194).

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## 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 29 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Caldier, Chandler, Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Harris, Jacobsen, Johnson, J., Lekanoff, Pollet, Rude, Ryu, Senn, Springer, Steele, Stonier, Sullivan and Tharinger.

**Minority Report:** Without recommendation. Signed by 4 members: Representatives Boehnke, Dye, Hoff and Schmick.

**Staff:** Linda Merelle (786-7092).

### **Background:**

#### Federal Requirements.

The federal Safe Drinking Water Act's Lead and Copper Rule (LCR), finalized in December 2020, requires community water systems to sample and test for lead contamination in drinking water outlets in elementary schools with buildings built, or with all plumbing replaced, before 2014. Beginning January 16, 2024, community water systems must conduct sampling at 20 percent of these elementary schools per year and must conduct sampling at secondary schools on request. After five years, the community water system must conduct sampling by request only. Sample results and other information must be provided to each sampled school and the state Department of Health (DOH).

Schools that operate their own water systems must continue to meet LCR requirements. Currently, approximately 100 schools own and operate their own water system and are required to sample and test for lead contamination at least every three years.

If the level of lead contamination exceeds specified thresholds, community and school

water systems must take steps to reduce the level of lead in the water system.

#### State Requirements and Actions.

The DOH implements the state's drinking water program. The 10-member Board of Health provides a citizen forum for the development of public health policy and regulates a number of health activities, including establishing drinking water quality standards. State-adopted drinking water regulations may not be less stringent than what is required under the federal Safe Drinking Water Act.

The DOH requires public water systems to collect water samples from residential customers, treat the water when more than 10 percent of samples exceed 15 parts per billion (ppb), and provide annual public education to all consumers when the water system exceeds 15 ppb. "Public water systems" are any system, excluding those serving a single residence or farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with the system.

In the 2019-21 fiscal biennium, the DOH was appropriated \$1 million to sample and test for lead contamination in drinking water outlets in public schools. The DOH was required to determine which school districts have the highest priority and test those districts first. The DOH and the districts for which tests were conducted were directed to 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.

In the 2019-21 fiscal biennium, the Office of the Superintendent of Public Instruction (OSPI) set aside \$250,000 of its Healthy Kids-Healthy Schools Capital Budget appropriation to fund drinking water fixture replacements in school districts with drinking water outlets that tested positive for any detectable level of lead contamination. The funding was fully obligated within the first fiscal year.

#### **Summary of Engrossed Second Substitute Bill:**

##### Schools.

The following schools with buildings built, or with all plumbing replaced, before 2016, referred to as "pre-2016 schools," must meet specified requirements related to sampling and testing for lead contamination at drinking water outlets: school districts and the common schools within each district; charter 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 sampling and testing for lead contamination at drinking water outlets, a pre-2016 school must either: (a) cooperate with the DOH so that the DOH can conduct lead sampling and testing; or (b) contract for lead sampling and testing that meets the DOH technical requirements and submit the test results to the DOH.

*Mitigation and Action Plans.* After receiving a lead test result that reveals a lead level that exceeds 5 parts per billion (ppb) (an "elevated lead level") at a drinking water outlet, the governing body of a pre-2016 school must take specified actions. As soon as practicable after receiving a lead test result that reveals a lead concentration that exceeds 15 ppb at a drinking water outlet, the water to the outlet must be shut off until a lead contamination mitigation measure is implemented.

Then the governing body of a pre-2016 school must develop and adopt a school action plan by the following deadlines: (1) for test results received between July 1, 2014, and the effective date of the bill, for which either remedial action was not taken or retesting has not confirmed that the elevated lead level has been reduced to below 5 ppb, the governing body must provide notice of the test results in the annual communication and adopt an action plan by January 2, 2022; and (2) for test results received after the effective date of the bill, the governing body must adopt a school action plan within six months of receipt. The public must be provided with notice and opportunity to comment on the school action plan before it is adopted.

The school action plan must be: (1) developed in consultation with the DOH or a local health agency regarding the DOH technical guidance and with the OSPI regarding funding for remediation activities; (2) describe mitigation measures implemented since the test result was received; (3) include remediation activities that adhere to the DOH technical guidance and that may be based on the availability of state or federal funding; and (4) include postremediation retesting to confirm that remediation activities have reduced lead concentrations to below the elevated lead level.

The school action plan may include sampling and testing of the drinking water entering the school when the results of testing for lead contamination at drinking water outlets within the school indicate that the infrastructure of the public water system is a significant contributor to the elevated lead levels.

If testing reveals that a significant contributor to lead contamination in school drinking water is infrastructure operated by a public water system that is not a school water system, the governing body of a pre-2016 school: (1) is not financially responsible for remediating elevated lead levels in drinking water that passes through that infrastructure; (2) must communicate with the public water system regarding its significant contribution to lead contamination in school drinking water and request from the public water system a plan for reducing the lead contamination; and (3) may defer its remediation activities until after the elevated lead level in the public water system's infrastructure is remediated and

postremediation retesting does not detect an elevated lead level in the drinking water that passes through that infrastructure.

*Communications.* The governing body of a pre-2016 school must post on a public website the most recent lead test results no later than the time the proposed school action plan is made publicly available.

Each pre-2016 school must annually communicate with students' families and staff about lead contamination in drinking water. The schools must consult with the DOH or a local health agency on the contents of the communication, which must include: the health effects of lead ; the website address of the most recent lead test results; and information about school's plan for remedial action to reduce lead contamination in drinking water. However, this annual communication is not required if initial testing, or once postremediation testing, does not detect an elevated lead level at any drinking water outlet.

#### The Department of Health.

*Lead Testing.* The DOH must conduct lead sampling and testing for lead contamination at drinking water outlets in the pre-2016 state-funded schools listed above. The DOH meets this requirement when a pre-2016 school contracts for lead sampling and testing that meets specified requirements and submits the test results to the DOH. Initial testing must be conducted between July 1, 2014, and June 30, 2026, and retesting must be conducted no less than every five years beginning July 1, 2026.

The DOH must develop and publish a two-year plan for sampling and testing. The plan must be updated at least annually. Prior to adding a pre-2016 school to the plan, the DOH must contact the school to determine whether the school has contracted, or is planning to contract, for sampling and testing. Beginning July 1, 2026, in developing the two-year plan, the DOH must group pre-2016 school buildings by governing body and then prioritize the groups based on the combined length of time since each pre-2016 school was sampled and tested.

The DOH must enter a data-sharing agreement with the OSPI for the purpose of compiling a list of pre-2016 schools. The DOH must allow state-tribal compact schools to opt in to lead sampling and testing for lead contamination at drinking water outlets in school buildings built, or with all plumbing 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. These best practices must include installing and maintaining filters certified by a body accredited by the American National Standards Institute. 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.

*Principal Agency.* To the fullest extent permitted by federal law, the DOH, rather than community water systems, is designated as the lead or principal agency in regard to lead in drinking water sampling, testing, notification, remediation, public education, and other actions at public and private elementary and secondary schools as required by the LCR.

The DOH must issue a written waiver that exempts community water systems that serve schools from the sampling and testing requirements of the LCR related to schools if the DOH determines that the mandatory requirements for sampling and testing for, and remediation of, lead contamination in drinking water outlets at elementary and secondary schools under this act are consistent with the LCR requirements.

#### Board of Health.

After July 1, 2030, the Board of Health may, by rule, define "elevated lead level" at a concentration less than 5 ppb if scientific evidence supports a lower concentration as having the potential for further reducing the health effects of lead contamination in drinking water.

#### **EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment makes changes to school implementation provisions as follows:

- requires a school's governing body to adopt, rather than develop and adopt, a school action plan under specified circumstances;
- 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;
- permits a school's governing body to adopt an update to an existing school action plan, rather than adopting a new school action plan, in order to address additional lead test results that reveal elevated lead levels at drinking water outlets, coordinate remediation activities at multiple buildings, or adjust the schedule of remediation activities;
- 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; and
- specifies that significant contribution by a public water system must be documented.

**Appropriation:** None.

**Fiscal Note:** Available.

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

bill is passed. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony (Education):**

(In support) The bill takes necessary and overdue measures to ensure that our students, teachers, and staff are safe from lead contaminated water. Both the federal Environmental Protection Agency and Center for Disease Control have acknowledged that no lead level is safe for children. It is time for the state to recognize this and respond appropriately.

Lead exposure in children is preventable. Lead harms the way children learn, grow, and behave, even at low levels. Parents send their children to school to develop their brains and improve their academics, not to lower their IQs.

The bill has a lower lead action level than the federal law. The American Academy of Pediatrics recommendation is 1 ppb in drinking water and this is the standard that should be followed. The lead level allowed in bottled water by the federal Food and Drug Administration is 5 ppb. The District of Columbia and Montana have already adopted 5 ppb. Testing levels should be specific to children's rapidly developing body using evidence-based data.

Drinking water in schools should be safe and free of toxins. Lead contamination in school water is widespread in Washington. About 30 percent of elementary schools in the state have voluntarily had their drinking water tested for lead. About 82 percent of these schools had at least one drinking water outlet with a lead concentration of over 5 ppb, some exceeded the bottled water standard by 30 times. However, only 17 percent of tested outlets flagged high.

Fixing this problem is very inexpensive. The average cost of remediation in about 99 percent of cases is about \$375 to replace one water faucet and valve. This bill is coupled with a request from the OSPI to provide \$3 million in grants over the biennium to fully cover remediation costs to school districts.

This version of the bill gives school districts more time to adopt an action plan, which allows for action over the summer. The bill should make clear that schools would shut off lead contaminated taps while developing remediation plans. The bill will be revised to explicitly allow certified filters to be used for remediation, which is an even cheaper.

The bill is named after Bruce Speight, who championed this policy. Bruce would probably be frustrated that the bill has not been enacted yet. Lead has been removed from paint in school interiors, schools are earthquake proofing, and now it is time to ensure that children have clean drinking water. This bill will have the biggest impact in communities that already face higher levels of environmental pollution, which tends to be communities of low income and communities of color.

(Opposed) This bill is problematic because there is no grading system established for the data that the public can easily understand, no centralized reporting place for schools to report their results, not enough funding for repairs and updates, and no remedy for schools to recover money spent updating water system only to discover that the tainted water was from a different source. The deadlines in the bill are tight and time and money are limited resources, especially in the time of the pandemic. Hundreds of private schools test their water systems, and none have reported lead contamination. The bill should not apply to private schools.

The action level in the bill is lower than the federal action level of 15 ppb. The reduction is important, but there is a federal regulation, and other states are still using the higher action level.

Some school districts test buildings on a rolling basis to establish baseline for lead and have not found any drinking water outlets above the threshold. The remediation and grant funding can box schools into unfunded mandates. One school district spent \$600,000 on testing and remediation.

The requirements in the bill should apply to water systems that are using a 15 ppb threshold. Schools cannot control the water coming into the school. Changing water fixtures and adding filters is easy, but may not decrease lead levels in the long run.

(Other) Lead is a developmental neurotoxin that accumulates in the body and can permanently affect children's brains. The leading exposure to lead for children is dust from lead based paint, but remediating lead in school drinking water will be especially beneficial to children already living in high risk exposure areas.

While the costs for sampling, analysis, and mitigation will be significant, the bill could result in important reductions in blood lead levels in children.

The bill could be improved by referencing that drinking water filters to remove lead must be certified by a body accredited by the American National Standards Institute.

The state Board of Health has authority to adopt rules regarding school environmental health and safety including lead testing and remediation. These rules were last updated in 2009 and suspended by the Legislature through budget provisos. This budget proviso should be removed because all aspects of the suspended school rule are vital to keep students and teachers safe. Focusing on drinking water and ignoring other factors addresses only one element of school safety.

There are two technical issues with the bill. The Board of Health is encouraged to adopt rules for childcare facilities, but the Board of Health does not have this authority. The state DOH is given authority to adopt action level, but this falls into the Board of Health authority.



One school district tested 862 water fixtures for lead contamination. The cost for this testing in the 2015-16 school year was \$65,000 and \$12,000 was spent on repair and replacement of fixtures that exceeded lead limit. Testing must be completed when buildings are occupied and in use. Not all districts are able to afford the remediation cost. Ongoing state funding will need to be provided.

**Staff Summary of Public Testimony (Appropriations):**

(In support) Parents do not expect their children to be harmed when they send them to school. Schools should be safe and healthy. Low level chronic exposure to lead can cause significant deficits, and this harms a child's ability to learn. Problems in drinking water should be systematically identified and remediated, and this bill would be a big step in the right direction. Children matter and their health matters.

(Opposed) The requirements of this bill should not apply to private schools. Private schools are already testing and reporting the results to parents. Private schools are facing hardship as a result of a decline in enrollment. The federal lead level threshold is sufficient, and the lower level under this bill should not be mandated.

(Other) If the state imposes new criteria, the costs would be significant. Such a dramatic change in standards needs to be fully funded. This is an unfunded mandate.

**Persons Testifying (Education):** (In support) Representative Pollet, prime sponsor; Gwen Loosmore, Washington State PTA; Molly Coddling, Institute for Neurotoxicology and Neurological Disorders, University of Washington; Lorrell Noahr, Washington Education Association; Samantha Fogg, Seattle Public Schools; Tyler Muench, Office of the Superintendent of Public Instruction; Pam Clough, Environment Washington; and Heidi Blankenship-Speight.

(Opposed) Jake Kuper, The Schools Coalition; Mitch Denning and Doug Vanderleest, Washington Association of Maintenance and Operation Administrators; and Suzie Hanson, Washington Federation of Independent Schools.

(Other) Sandy Hayes; Luckisha Phillips, Washington State School Directors' Association; Jed Scheuermann, The International Association of Plumbing and Mechanical Officials Group; Kaitlyn Donahoe, Washington State Board of Health; Neil Hartman, Washington State Association of the United Association of Plumbers and Pipefitters; and Anneke Jansen, Washington State Department of Health.

**Persons Testifying (Appropriations):** (In support) Representative Pollet, prime sponsor; Molly Coddling, University of Washington – Institute for Neurotoxicology and Neurological Disorders; Tyler Muench, Office of Superintendent of Public Instruction; Pamela Clough, Environment Washington; and Susan Baird-Joshi, Washington State Parent Teacher Association.

(Opposed) Suzie Hanson, Washington Federation of Independent Schools; Mitch Denning, Washington Association of Maintenance and Operation Administrators; and Douglas Rich, Diocese of Yakima.

(Other) Brian Buck, School Coalition.

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

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