

# SENATE BILL REPORT

## SB 5745

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As of February 22, 2017

**Title:** An act relating to addressing contaminated drinking water stemming from the lead content in drinking water infrastructure, including pipes, connections, and fixtures.

**Brief Description:** Addressing contaminated drinking water stemming from the lead content in drinking water infrastructure, including pipes, connections, and fixtures.

**Sponsors:** Senators Kuderer, Keiser, Hasegawa and Chase.

**Brief History:**

**Committee Activity:** Energy, Environment & Telecommunications: 2/16/17, 2/16/17 [DP-WM, w/oRec].

**Ways & Means:** 2/21/17.

**Brief Summary of Bill**

- Requires public water systems (1) to replace lead-containing service lines to schools and early childhood programs by July 1, 2020, and (2) to replace all other lead-containing service lines by July 1, 2030.
- Requires the State Board of Health to adopt rules requiring state-wide testing for lead in drinking water and drinking water fixtures at public schools.
- Requires the Department of Health to develop a program to coordinate local health jurisdictions and public schools to ensure testing of drinking water.

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**SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS**

**Majority Report:** Do pass and be referred to Committee on Ways & Means.

Signed by Senators Sheldon, Vice Chair; Carlyle, Ranking Minority Member; Hobbs, Ranker and Wellman.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Brown, Honeyford and Short.

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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 a part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Jan Odano (786-7486)

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## SENATE COMMITTEE ON WAYS & MEANS

**Staff:** James Kettel (786-7459)

**Background:** Safe Drinking Water Act (SDWA). The SDWA authorizes the U.S. Environmental Protection Agency (EPA) to set national health-based standards for drinking water. The standards for drinking water include enforceable maximum contaminant levels for particular contaminants in drinking water or required treatment methods to remove the contaminants from the water. The standards also provide testing requirements to ensure the standards are achieved. The SDWA applies to every public water system serving at least 15 connections or 25 individuals (Group A water systems). Public water systems are responsible for ensuring that contaminants in tap water do not exceed the standards.

The EPA relies on states to implement the SDWA, which is the responsibility of the Department of Health (DOH). Any state-adopted drinking water regulation must be at least as stringent as the EPA standards.

Under the SDWA, EPA established a rule for the maximum contaminant level for lead and copper (LCR) in drinking water. The LCR requires water systems to sample for lead and copper. The treatment of lead in drinking water is determined when more than 10 percent of samples taken at residences' taps exceed 15 parts per billion. System-wide treatment may be necessary when there is an exceedance of the standard. In addition, the SDWA established a definition for lead free for wetted surfaces of a pipe, pipe fitting, plumbing fitting, and fixture, and for lead solder and flux. The use of any pipe, pipe or plumbing fitting, or fixture and any solder or flux that is not lead-free is prohibited.

Governor's Directive. In May 2016, the Governor directed the DOH and the State Board of Health (SBOH) to develop policy and budget proposals with the goal of removing lead service lines and other lead components in Group A water systems within 15 years. DOH and SBOH were further directed to prioritize removing lead service lines and other lead components in water distribution systems when considering funding proposals through the Drinking Water State Revolving fund. In addition, DOH and SBOH were directed to review and, if necessary, update the school rules and prepare a decision package to implement the school rules with an emphasis on rules that are related to lead exposure.

In response to the directive, DOH reported that it developed an online survey for Group A water systems to assess lead service lines and lead service components. DOH is in the process of following up with water systems to refine the estimates of the number of lead service lines and components. DOH has submitted a decision package requesting funding for testing drinking water at schools without implementing the suspended school rules.

SBOH School Rules. The SBOH is required to adopt rules controlling public health related to environmental conditions at schools. The SBOH updated the Environmental Health and Safety Standards Primary and Secondary Schools Rules in 2009. However, the rules have not been implemented due to budget constraints and an operating budget proviso suspending the rules until Legislature has formally provided full funding.

Public Works Assistance Account (Account). The Account was established in 1985 to encourage local government self-reliance in meeting public works needs, and assist in financing critical infrastructure projects. Monies in the Account must be used to make loans and give financial guarantees, and may also be appropriated to provide state match for federal dollars under the Drinking Water State Revolving fund. Loan repayments and revenues from three tax sources have historically been deposited into the Account.

The Public Works Board (PWB) may make low-interest or interest-free loans from the Account to finance the acquisition, construction, repair, replacement, or improvement of local: bridges, streets, and roads; water systems; storm and sanitary sewage systems; and solid waste facilities, including recycling. For up to a maximum of 15 percent of the biennial capital budget appropriation, the PWB may make loans for pre-construction, emergency, and capital facilities planning. Local governments and special purpose districts, except port and school districts, are eligible to apply for loans from the Account. The PWB may provide technical assistance. Existing debt or financial obligations may not be refinanced.

The PWB must consider a number of factors in prioritizing projects, including health and safety, relative project costs, and economic criteria.

**Summary of Bill:** By July 1, 2020, public water systems must replace utility-owned distribution system components that are not lead free and which extend from the water main to the service connection of:

- public K-12 schools, including charter schools; or
- early childhood programs, including family day care providers and preschools.

Public water systems must, to the extent possible, coordinate with the property owner to minimize disruption and to ensure drinking water quality.

By July 1, 2030, public water systems must replace all lead service lines within their service areas. Public water systems must notify the DOH within 60 days of completing these lead service line replacement obligations, and must identify the lines and connections that were replaced. Public water systems must bear the cost associated with lead service line replacements.

SBOH must adopt rules for requiring state-wide testing for lead in drinking water and drinking water fixtures used for drinking or cooking at public schools. When developing the rules, SBOH must consider EPA's most current guidance manual, entitled 3Ts for Reducing Lead in Drinking Water in Schools. The rules must require testing over the next six years and prioritize schools in the following order:

1. Public elementary schools where the drinking water has not been tested.
2. Public elementary schools where the drinking water has not been tested in the past three years.
3. Other public schools where the drinking water has not been tested.
4. All other public schools.

In addition, the rules must establish a schedule for on-going testing of drinking water and fixtures at schools to ensure drinking water quality.

DOH must develop a program to coordinate local health jurisdictions (LHJs) and public schools to ensure testing of drinking water. The program must be consistent with SBOH rules. The LHJs are responsible for testing the drinking water at the schools and for providing test results to the schools, DOH, and the community. Where LHJs are unable to complete the testing, DOH may contract with qualified, independent third parties. DOH must consult with the Office of the Superintendent of Public Instruction to determine school testing priority and testing schedules.

Lead line replacement and testing at schools are eligible for funding through the Account.

**Appropriation:** None.

**Fiscal Note:** Available.

**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 (Energy, Environment & Telecommunications):**  
PRO: High levels of lead are detrimental to young children. The bill reinvests in our public water systems. It focuses on public water systems because that's where we get our water. High lead levels can be found in new schools, it's not confined to older schools. It affects schools, early learning child care centers, and homes. The bulk of schools remain untested. This starts with elementary schools as the children there are more affected. The cost to replacing lead pipes is not insignificant. We want to make sure our water remains safe. Flint is a cautionary tale. We need to take lessons and stage in and focus on those parts known to contain lead. Need to make sure our children are safe. The bill aligns with the Governor's lead directive and SBOH's recommendations. It is important to replace those fixtures to reduce lead levels. The bill is also consistent with DOH's work with schools. To facilitate the bill, we recommend fully funding the Governor's budget for these activities. Also consider a grant program for schools.

CON: Thankfully we don't have a lot of lead service lines. The focus of state resources needs to be on the highest concerns. The section regarding service lines is the biggest concern; who owns which part of the system. We're not to say we don't have a role with fixing it. The structure of public water systems is ownership up to the meter and then from the meter to the property belongs to the property owner. The Public Works Trust Fund Account may not actually be a viable source of funding.

**Persons Testifying (Energy, Environment & Telecommunications):** PRO: Senator Patty Kuderer, Prime Sponsor; Lauren Jenks, WA State Dept of Health; Michelle Davis, WA State Board of Health; Casey Moore, Director of School Facilities, OSPI.

CON: Bill Clarke, WA PUD Association, Pierce Water Coop; Scott Hazlegrove, WA Association of Sewer & Water Districts.

**Persons Signed In To Testify But Not Testifying (Energy, Environment & Telecommunications):** No one.

**Staff Summary of Public Testimony (Ways & Means):** PRO: We support this bill. The costs are identified in the Governor's budget with the exception of some small rulemaking costs. Water systems are required to test their systems for lead. But, unless the school itself is a water system, there is currently no requirements for the school to test its water. The Governor asked DOH to make recommendations to prevent kids from being exposed to lead. At that time, DOH began working with schools that chose to voluntarily test drinking water for the presence of lead. Some schools in the Tacoma area chose to voluntarily test their water. Other schools throughout the state also chose to voluntarily test their water, but did not necessarily report the results to the department. Those tests did indicate that some fixtures had too much lead. DOH has therefore recommended to the Governor and others that all schools be tested for lead. Fixtures should be replaced if tests come back positive. The Governor's budget includes \$1 million in the OSPI capital budget for the replacement of fixtures that are not safe. About ten kids every week are reported with elevated levels of lead in their blood. Most of those kids were not poisoned by lead in drinking water, but the department does think that it is important for schools to have safe drinking water. Section two of the bill requires the SBOH to adopt rules for the testing of lead in water used for fixtures used for drinking and cooking. In 2009, the board updated some longstanding rules about public health in schools, including provisions about testing water. Those rules have been suspended by a proviso in the appropriations bill. The board would like to see the bill also apply to private schools. Overall, the testing requirements outlined in the bill align closely with recommendations from the SBOH and outlined in the Governor's budget. Although, the bill does impose some additional cost for the SBOH that were not included in the Governor's budget. The SBOH does have established rules that require schools to operate in a clean and safe manner, but these established rules do not specifically address drinking water testing requirements.

OTHER: The Department of Health and Board of Health during the interim convened a work study group to review this issue. The Association of School Administrators appreciated the opportunity to participate in this workgroup. This bill is very consistent with the recommendations coming out of the workgroup. Having the Local Health Jurisdictions oversee the sampling and testing of drinking water makes much more sense than asking the 296 school districts. The concern is over the cost of sampling and testing. Additional funding is needed in the budget. Otherwise, the school districts could be on the hook to pay for sampling and testing of drinking water. The replacement of fixtures is a huge capital cost that is not addressed in this bill whatsoever. The intent of this bill should be expanded to the watersheds in our state. The herbicides and pesticides that are being sprayed on our forests and wetlands are a contributing factor to the lead in our drinking water. These herbicides and pesticides are impacting our schools, and also our fish and wildlife. The chemicals being used are causing cancer, Parkinson's disease, and other things.

**Persons Testifying (Ways & Means):** PRO: Lauren Jenks, WA State Department of Health.

OTHER: Dan Steele, WA Association of School Administrators, WA Association of School Business Officials; Bruce Barnes, citizen.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** PRO: Michelle Davis, WA State Board of Health.