

---

## Environment & Energy Committee

---

### 2SSB 6342

**Brief Description:** Concerning chemical contaminants in drinking water.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Dhingra, Das, Lovelett, Mullet, Stanford and Wilson, C.).

#### Brief Summary of Second Substitute Bill

- Requires certain public drinking water systems to test for perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals beginning in 2021.
- Requires the Department of Health (DOH) to establish statewide maximum contaminant levels (MCLs) for PFAS chemicals applicable to group A water systems.
- Requires the DOH to submit a report to the Legislature by 2022 regarding PFAS contamination in public water systems.

**Hearing Date:** 2/24/20

**Staff:** Jacob Lipson (786-7196).

#### Background:

##### Drinking Water System Regulation.

Established in 1974, the Safe Drinking Water Act (SDWA) is the federal law that ensures the quality of drinking water supplied by public water systems serving at least 15 connections or 25 individuals. Under the SDWA, the Environmental Protection Agency (EPA) identifies the universe of drinking water contaminants to be regulated, sets standards for drinking water quality, and oversees the states, localities, and water suppliers who implement those standards. The SDWA requires water systems to take actions to protect drinking water sources, deliver water that meets maximum contaminant levels established by EPA regulation, and undertake other measures as needed to ensure that water delivered to customer taps does not contain high levels of certain contaminants.

---

*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.*

Under the SDWA, state regulatory agencies, rather than the EPA, are the regulators generally responsible for implementing drinking water standards and for direct oversight of the operation of public water systems. Any state-adopted drinking water regulations must be no less stringent than the federal drinking water regulations adopted by the EPA. The Department of Health (DOH) implements the state's drinking water program mandated by the federal SDWA and parallel state laws. The Washington Board of Health (Board of Health) may establish standards for allowable concentrations of chemical contaminants which constitute a threat to public health.

Under state law, public water systems are divided into two categories: Group A and Group B systems. Group A systems are public water systems that meet one of three criteria:

- feature 15 or more service connections;
- serve an average of 25 or more people per day for at least 60 days a year, regardless of the number of service connections; or
- serve 1,000 or more people for two consecutive days.

Group B systems encompass all other public water systems. The DOH began implementing a new rule covering Group B systems that took effect in January 2014 and was adopted by the Board of Health. Under this rule, local health jurisdictions may adopt and implement their own Group B system regulations, so long as they are no less stringent than the Department's rules.

Under drinking water regulations, two types of standards for allowable concentrations of chemical contaminants are established:

- Maximum contaminant levels (MCLs) are the maximum permissible level of a contaminant in water that the public water system delivers to a user. MCLs are established where adequate data, considering short-term and chronic toxicity and best available scientific information, supports setting a standard. If a Group A system exceeds a MCL, it must treat the water delivered to users to levels below the MCL.
- State Advisory Levels (SALs) are levels of contaminants that, when exceeded, indicate the need for further assessment to determine if a chemical is an actual or potential threat to human health, but for which MCLs have not been established. The establishment of a SAL for a drinking water contaminant may require a water system to monitor for a contaminant or notify their customers if contaminant levels exceed the SAL but, unlike a MCL, does not require treatment of the contaminant to levels below the SAL.

When a public water system is determined by the Board of Health or local health department to be out of compliance with water quality standards, the water system owner must take action to bring the water into full compliance with standards within one year or more promptly if necessary to abate an immediate public health threat.

#### PFAS Chemicals.

According to the Department of Ecology (Ecology), perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals are characterized by their resistance to oil, stains, grease, and water, as well as their durability, heat resistance, and anticorrosive properties. Ecology has also identified PFAS chemicals as persistent bioaccumulative toxins (PBTs). The Legislature has enacted requirements addressing PFAS chemicals in a number of consumer products, including firefighting foam (2018), fire-protective gear (2018), and food packaging (2018), and has included PFAS chemicals in among the first five chemicals to be reviewed and subjected to

discretionary regulatory action by Ecology with regard to significant sources or uses under a law enacted in 2019.

The EPA has not established an MCL for PFAS chemicals. However, for perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), which are two individual types of PFAS chemicals, the EPA has established a health advisory level, which is an informal technical guidance level that describes a nonregulatory concentration of a drinking water contaminant at which or below which adverse health impacts are not anticipated to occur under specified scenarios. The health advisory levels that the EPA has established for PFOA and PFOS are 70 parts per trillion.

At the state level, in 2017 the Board of Health initiated rulemaking to establish drinking water standards for PFAS chemicals in Group A public water systems. Draft rules establishing a SAL for five PFAS chemicals (PFOA, PFOS, PFHxS, PFNA, and PFBS) were released by the Board of Health in November 2019 for informal comment, but a formal proposed rule consistent with the requirements of the Washington Administrative Procedure Act has not yet been published.

### **Summary of Bill:**

#### Public Water System Testing for PFAS.

Beginning January 1, 2021, certain public water systems must test drinking water for perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals using a method approved by the Department of Health (DOH) or the United States Environmental Protection Agency (EPA). Public water systems are subject to this requirement if the DOH makes a determination through sampling results or identifies potential sources of PFAS contaminants with proximity to Group A water systems. The DOH may work with local health jurisdictions to determine public water systems at risk for contamination.

By June 1, 2022, the DOH must submit a report to the Legislature that reviews public and group A water system needs and PFAS contamination in water systems, as discovered in test results. The DOH must consult with group A water system owners when developing the report.

#### Maximum Contaminant Levels for PFAS.

The DOH must establish statewide maximum contaminant levels (MCLs) for Group A water systems for PFAS chemicals. The DOH must provide the Washington Board of Health (Board of Health) recommendations for the PFAS MCLs by January 1, 2025; however, if there is insufficient information to develop a MCL for a specific PFAS chemical, the DOH must establish a state action level and provide recommendations for the best available treatment technology. The DOH may develop a single or several MCLs or state action levels for PFAS chemicals that can serve as proxies for other PFAS chemicals found in drinking water.

By July 1, 2026, the Board of Health must adopt rules to specify actions taken by Group A water systems when PFAS chemicals are detected at or above the MCL or state action level. The Board of Health must also require that when a group A water system exceeds a state action level, the water system must recommend that consumers use an alternate source of drinking water.

When establishing MCLs, the DOH must review MCLs adopted by other states, including the studies and scientific evidence that other states relied upon and other specified sources of

scientific information. The MCL must be at least as restrictive as the MCL or health advisories promulgated by the EPA. The Department must adopt MCLs more stringent than federal MCLs or health advisories if the Department determines federal standards to not adequately protect human health.

Water systems that do not comply with water quality standards must take action to bring water into full compliance with standards within one year or another timeline determined by the DOH.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 18, 2020.

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