

HOUSE BILL REPORT

2SSB 6342

As Reported by House Committee On:
Environment & Energy

Title: An act relating to chemical contaminants in drinking water.

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 History:

Committee Activity:

Environment & Energy: 2/24/20, 2/27/20 [DPA].

**Brief Summary of Second Substitute Bill
(As Amended by Committee)**

- Requires certain public drinking water systems to test for perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals.
- Requires the Department of Health (DOH) to establish statewide maximum contaminant levels or state action levels 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.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: Do pass as amended. Signed by 10 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; DeBolt, Ranking Minority Member; Dye, Assistant Ranking Minority Member; Doglio, Fey, Goehner, Mead, Robinson and Shewmake.

Minority Report: Do not pass. Signed by 1 member: Representative Boehnke.

Staff: Jacob Lipson (786-7196).

Background:

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.

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.

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 DOH'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. Maximum contaminant levels 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. 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 a 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 Amended Bill:

Public Water System Testing for PFAS.

Public water systems must test drinking water for PFAS chemicals using a method approved by the DOH or the EPA if the water system is at risk of PFAS contamination. The DOH may work with local health jurisdictions to determine public water systems at risk for contamination.

By July 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 report must also assess impacts from PFAS contamination on vulnerable populations and include recommendations for how to address PFAS chemical drinking water standards through MCLs, state action levels (SALs), or reliance on federal standards. The DOH must consult with Group A water system owners when developing the report.

Regulatory Standards for PFAS in Drinking Water.

The DOH must establish MCLs or SALs for Group A water systems for PFAS chemicals. A SAL may be established for PFAS chemicals if there is not sufficient economic data available or economic data does not support the establishment of a MCL. If a SAL is established, the DOH may require some or all public water systems to monitor for the contaminant. If a SAL is exceeded, the DOH may require public water systems to undertake certain follow-up actions in the event that a SAL is exceeded, including notification to customers and continued monitoring for the contaminant.

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.

Amended Bill Compared to Second Substitute Bill:

The striking amendment:

- narrows the requirements for public water systems to test for PFAS chemicals to only those systems at risk for PFAS contamination, but authorizes the Board of Health to require other public water systems to test for PFAS chemicals;
- eliminates the specified January 1, 2021, start date for PFAS testing requirements;
- requires the 2022 report to the Legislature to assess impacts from PFAS contamination on vulnerable populations and recommendations for how to address PFAS chemical drinking water standards through specified regulatory tools;
- directs the Board of Health to adopt either a MCL or a SAL, and specifies the circumstances in which a SAL would be the appropriate regulatory tool;
- eliminates the requirement that the DOH recommend a PFAS MCL to the Board of Health by 2025 and that the board adopt rules by 2026 specifying how public water systems must respond if drinking water exceeds a SAL or MCL; and
- specifies that the DOH may require that public water systems undertake certain follow-up actions in the event that a SAL is exceeded, including notification to customers and continued monitoring for the contaminant.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Many states have begun to establish drinking water standards for PFAS chemicals. This bill has been watered down from its original version by limiting the testing requirements that apply to drinking water systems.

(Opposed) Testing for PFAS in water systems is very expensive, and treating contaminated water systems is even more expensive. A maximum contaminant level for PFAS chemicals should be established, so that drinking water systems can seek financial reimbursement from parties responsible for the pollution. The Board of Health is already planning to adopt rules on PFAS chemicals in drinking water, and this bill would interrupt and complicate that process. It is not possible to test for all 3,000 types of PFAS chemicals. The violation of a SAL should not require a drinking water system to notify customers that they should use alternate sources of water.

(Other) The EPA and the Board of Health are already addressing PFAS in drinking water. The draft rule that the Board of Health has proposed would already require drinking water standards to be developed for PFAS chemicals and would require drinking water sampling, though not in the specific manner prescribed by this bill. The bill would require the Board of Health to take a different approach in their PFAS rule than is currently contemplated. The bill confuses the role of the DOH and the Board of Health. The DOH report to the Legislature in 2022 is the only component of the bill that drinking water systems are comfortable with.

Persons Testifying: (In support) Senator Dhingra, prime sponsor.

(Opposed) Jeff Johnson, Regional Water Cooperative of Pierce County; John Weidenfeller, Thurston Public Utility District 1; and Randy Black, Lakewood Water District.

(Other) Bill Clarke, Washington Public Utility District Association and Regional Water Cooperative of Pierce County; Shelly Helder, City of Issaquah; Marian Dacca, Tacoma Public Utilities and Tacoma Water; and Mike Means, Washington Department of Health.

Persons Signed In To Testify But Not Testifying: None.