

Relating to taking action to address lead in school drinking water

Major provisions of underlying bill:

- Requires public and private elementary and secondary schools with buildings built, or with all plumbing replaced, before 2016 (schools) to have drinking water outlets tested for lead contamination; communicate test results and other information to the public; and adopt action plans if test results reveal lead concentrations that exceed 5 parts per billion (ppb).
- Requires the Department of Health (DOH) to conduct lead testing of drinking water in public 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.

The proposed substitute bill makes the following changes to the underlying bill:

- Directs schools that receive an elevated lead test result to shut off the water to the outlet as soon as practicable and until a mitigation measure is implemented.
- Adds that school action plans must include a description of mitigation measures implemented since the lead test result was received and a schedule of remediation activities that may be based on the availability of funding for remediation activities.
- Directs the DOH to develop and publish a two-year plan for sampling and testing of public school buildings built, or with all plumbing replaced, before 2016.
 - Specifies, before adding a school to the plan, the DOH must contact the school to determine whether it has contracted, or is planning to contract, for sampling and testing.
 - Requires, beginning July 1, 2026, in developing the two-year plan, the DOH must group school buildings by governing body and then prioritize the groups based on the combined length of time since each school building built, or with all plumbing replaced, before 2016 was sampled and tested.
- Makes the Board of Health, rather than the DOH, responsible for defining "elevated lead level" at a concentration of five or fewer ppb under specified circumstances.
- Adds that technical guidance best practices for remediating elevated lead levels in drinking water outlets in schools include installing and maintaining filters certified by the American National Standards Institute.
- Revises the timeline for annual communications with students' families and staff about lead contamination in drinking water from "beginning September 1, 2021, preferably at the beginning of the school year" to "beginning with the 2021-22 school year...as early in the school year as possible."
- Delays required adoption of school action plans for lead test results received prior to the effective date of the bill from November 1, 2021, to January 2, 2022.
- Removes language stating that the Legislature intends for the DOH and the State Board of Health consider adopting lead testing and remediation rules for child care facilities that are more protective than the federal rules.

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-0850.1/21

ATTY/TYPIST: CL:jlb

BRIEF DESCRIPTION: Taking action to address lead in drinking water.

1 AN ACT Relating to taking action to address lead in school
2 drinking water; adding a new section to chapter 28A.210 RCW; adding
3 new sections to chapter 43.70 RCW; adding a new section to chapter
4 28A.195 RCW; adding a new section to chapter 43.20 RCW; and creating
5 new sections.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

15 (2) The legislature finds that the department of health sampled
16 and tested drinking water outlets in 551 elementary schools between
17 2017 and 2020. 82 percent of these schools had lead contamination of
18 five or more parts per billion in one or more drinking water outlets
19 and 49 percent of these schools had lead contamination of 15 or more
20 parts per billion in one or more drinking water outlets.

1 (3) The legislature acknowledges that the department of health
2 was appropriated \$1,000,000 in the 2019-2021 fiscal biennium to
3 continue the testing for lead contamination in school drinking water.
4 The legislature also finds that the office of the superintendent of
5 public instruction was appropriated funds in the 2019-2021 fiscal
6 biennium for the healthy kids/healthy schools initiative. Part of
7 these funds are for the purpose of distributing grants to school
8 districts for remediation of elevated lead levels in drinking water.
9 The legislature encourages districts to apply for these grants when
10 lead test results reveal elevated lead levels, which are lead levels
11 above five parts per billion.

12 (4) The legislature acknowledges the historically inequitable
13 distribution of lead exposure for communities of color and of low
14 socioeconomic status and plans to make a priority the protection of
15 children from the dangers of lead exposure through school drinking
16 water. The legislature, therefore, intends to require that drinking
17 water outlets in elementary and secondary school buildings built, or
18 with all plumbing replaced, before 2016 be tested for the presence
19 and level of lead contamination by June 30, 2026, and every five
20 years thereafter. The legislature also intends to require that
21 schools notify the school community of lead test results and develop
22 action plans for remediation if test results exceed the health-based
23 standard of five parts per billion.

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

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

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

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

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

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

4 (b) Contract for sampling and testing that meets the requirements
5 of section 3 of this act and submit the test results to the
6 department according to a procedure and deadlines determined by the
7 department.

8 (3) Beginning January 2, 2022, a school shall make available on a
9 public website the most recent results of testing for lead
10 contamination at drinking water outlets in buildings that meet the
11 requirements of subsection (1) of this section. New test results must
12 be made available on the website within 30 days after receipt.

13 (4) Annually, beginning with the 2021-22 school year, a school
14 shall communicate with students' families and staff about lead
15 contamination in drinking water. The school shall consult with the
16 department or a local health agency on the contents of the
17 communication, which must include: The health effects of lead
18 exposure and that there is no safe level of lead in drinking water;
19 the website address of the lead test results; and information about
20 and a comparison of lead test results with the federal threshold, the
21 state threshold, and the American academy of pediatrics recommended
22 threshold, for remedial action to reduce lead contamination in
23 drinking water. Schools are encouraged to provide the communication
24 as early in the school year as possible.

25 (5) As soon as practicable after receiving a lead test result
26 that reveals an elevated lead level, as defined in subsection (7) of
27 this section, at a drinking water outlet, and until a lead
28 contamination mitigation measure is implemented, the school must shut
29 off the water to the outlet.

30 (6)(a) For a lead test result that reveals an elevated lead
31 level, as defined in subsection (7) of this section, at one or more
32 drinking water outlets, the school's governing body shall develop and
33 adopt a school action plan in compliance with the requirements of
34 this subsection.

35 (b) The school action plan must:

36 (i) Be developed in consultation with the department or a local
37 health agency regarding the technical guidance, and with the office
38 of the superintendent of public instruction regarding funding for
39 remediation activities;

1 (ii) Describe mitigation measures implemented since the lead test
2 result was received;

3 (iii) Include a schedule of remediation activities, including use
4 of filters, that adhere to the technical guidance. The schedule may
5 be based on the availability of funding for remediation activities;
6 and

7 (iv) Include confirmatory retesting.

8 (c) The school's governing body must provide the public with
9 notice and opportunity to comment on the school action plan before it
10 is adopted.

11 (d) The school action plan adoption deadlines are as follows:

12 (i) For lead test results received between July 1, 2014, and the
13 effective date of this section, for which a school did not take
14 remedial action or for which retesting has not confirmed that the
15 elevated lead level has been reduced to five or fewer parts per
16 billion, the school's governing body shall provide notice of elevated
17 lead levels in the communication required under subsection (4) of
18 this section and adopt an action plan by January 2, 2022; and

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

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

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

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

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

30 (d) "Elevated lead level" means a lead concentration in drinking
31 water that exceeds five parts per billion, unless a lower
32 concentration is specified by the state board of health in rule in
33 accordance with section 7 of this act.

34 (e) "School" means a school district and the common schools, as
35 defined in RCW 28A.150.020, within the district; a charter school
36 established under chapter 28A.710 RCW; or the state school for the
37 blind or the state school for the deaf established under RCW
38 72.40.010.

39 (f) "Technical guidance" means the technical guidance for
40 reducing lead in drinking water at schools issued by the United

1 States environmental protection agency until the department complies
2 with section 6 of this act when the term means the technical guidance
3 developed by the department.

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

6 (1) The department shall conduct sampling and testing for lead
7 contamination at drinking water outlets in school buildings built, or
8 with all plumbing replaced, before 2016 as specified in this section.
9 The department meets the requirements of this section when a school
10 contracts for sampling and testing that meets the requirements of
11 this section and submits the test results to the department according
12 to a procedure and deadlines determined by the department.

13 (2) Sampling and testing for the presence and level of lead in
14 drinking water must meet the technical requirements described in the
15 technical guidance.

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

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

20 (4)(a) The department shall develop and publish a two-year plan
21 for sampling and testing. The plan must be updated at least annually.
22 Prior to adding a school to the plan, the department must contact the
23 school to determine whether the school has contracted, or is planning
24 to contract, for sampling and testing.

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

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

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

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

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

6 NEW SECTION. **Sec. 5.** A new section is added to chapter 28A.195
7 RCW to read as follows:

8 (1) A private school shall contract for sampling and testing for
9 lead contamination at drinking water outlets, as defined in section 2
10 of this act, in school buildings built, or with all plumbing
11 replaced, before 2016 as required by this section.

12 (2) Sampling and testing for the presence and level of lead in
13 drinking water must meet the technical requirements described in the
14 technical guidance, as defined in section 2 of this act.

15 (3) Deadlines for initial testing and retesting are as provided
16 in section 3 of this act.

17 (4) A private school shall meet the requirements provided in
18 section 2 of this act related to communicating with students'
19 families and staff about lead contamination in drinking water, making
20 lead test results available on a public website, and developing and
21 adopting a school action plan.

22 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.70
23 RCW to read as follows:

24 The department shall develop and make available technical
25 guidance for reducing lead contamination in drinking water at schools
26 that is at least as protective of student health as any technical
27 guidance on this topic issued by the United States environmental
28 protection agency. The technical guidance must include the technical
29 requirements for sampling, processing, and analysis, including that
30 analysis must be conducted by a laboratory accredited by the
31 department of ecology. The technical guidance must describe best
32 practices for remediating elevated lead levels at drinking water
33 outlets in schools. Best practices must include installing and
34 maintaining filters certified by a body accredited by the American
35 national standards institute. Provisions of the technical guidance
36 related to testing for the presence and level of lead in drinking
37 water, as opposed to testing to identify sources of lead for
38 remediation, must be designed to maximize detection of lead in water,

1 and therefore must prohibit sampling or analytical methods that tend
2 to mask lead contamination, including prestagnation flushing and
3 removal of aerators prior to sampling.

4 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.20
5 RCW to read as follows:

6 After July 1, 2030, the state board may, by rule, define
7 "elevated lead level" at a concentration of five or fewer parts per
8 billion if scientific evidence supports a lower concentration as
9 having the potential for further reducing the health effects of lead
10 contamination in drinking water.

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

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

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

27 NEW SECTION. **Sec. 9.** This act may be known and cited as the
28 Bruce Speight protect children from being exposed to lead in school
29 drinking water act.

--- END ---