Date of Hearing: April 5, 2017

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 885 (Rubio) – As Amended March 20, 2017

[Note: This bill is doubled referred to the Assembly Environmental Safety and Toxic Materials Committee and will be heard by that Committee as it relates to issues under its jurisdiction.]

SUBJECT: Pupil health: drinking water: lead

SUMMARY: Requires a school to purchase and install specified water filters, requires each school to develop and adopt a plan of action to prevent elevated lead levels in all water used for drinking or cooking at the school, and requires a community water system to test schools annually for presence of lead. Specifically, **this bill**:

1) Requires, on or before April 1, 2018, a school to purchase and install water filters with NSF International or equivalent certification at all school faucets, fountains, and other outlets designated for drinking or cooking.

2) Specifies that to expedite water filter installation, a school shall give priority to contractors that are local to the school with the expertise to execute the project.

3) Requires a school to be responsible for the ongoing cost of operation and maintenance for all installed water filters at the school.

4) Requires, on or before July 1, 2018, each school to develop and adopt a plan of action to prevent elevated lead levels in all water used for drinking or cooking at the school. Requires the plan of action to include all of the following:

    a) How the school will operate and maintain the water filters installed by the school.

    b) An inventory of lead-bearing parts within the school's water delivery system, including, but not limited to, fixtures and plumbing with lead soldering, and how the school will replace those lead-bearing parts.

    c) Any other measures to reduce lead contamination of water.

5) Specifies that a school may adjust its plan of action regarding an inventory of lead-bearing parts and any other measures to reduce lead contamination in response to public input.

6) Requires a school to submit its plan of action to an independent entity that is experienced in the replacement of lead-bearing parts for review of whether the school's plan of action will successfully result in the replacement of all lead-bearing parts. Requires a school to amend and resubmit its plan of action until the independent entity makes this determination. Specifies that once the independent entity makes this determination, the school shall submit its plan of action to the State Water Resources Control Board (water board) and the California Department of Education (CDE) for recordkeeping.

7) Specifies that a school shall use the inventory created pursuant to this bill to replace all lead-bearing parts within the school's water delivery system, where feasible and cost effective, on or before January 1, 2020. Expresses the intent of the Legislature for a school to use grants and other external sources of funding to the maximum extent possible to fulfil this requirement.

8) Requires a community water system to test, on or before July 1, 2019, and every year thereafter, for the presence of lead at each water outlet used for drinking or cooking at each school within the boundaries of the community water system.

9) Authorizes the water board to alter the annual testing requirement on a case-by-case basis if it determines that a higher or lower frequency of testing is necessary or sufficient to ensure public health at the school, including, but not limited to, requiring the community water system to conduct additional testing after replacement of lead service lines at a school.

10) Specifies that if testing reveals an elevated lead level at a water outlet used for drinking or cooking at a school, the school shall, within 24 hours of receiving notification from the community water system, close off access to the outlet, and report the test results to the water board. Specifies that a school may seek the assistance of a local health agency, a community water system, or the water board to help ensure its compliance with this requirement.

11) Express the intent of the Legislature that costs incurred by a school pursuant to this bill be reimbursed pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code as costs mandated by the state.

12) Specifies that a school is exempt from the requirements of this bill, and a community water system is exempt from the testing requirement, if the school demonstrates to the satisfaction of the water board that its water delivery system is free of lead-bearing parts.

13) For purposes of this section, the following terms have the following meanings:

    a) "Community water system" has the same meaning as defined in Section 116275 of the Health and Safety Code.

    b) "Elevated lead level" means lead in excess of one part per billion in water.

    c) "School" means a public elementary school, a public secondary school, a public preschool located on public school property, and a public day care facility located on public school property.

    d) "Water board" means the State Water Resources Control Board.

EXISTING LAW:

1) Requires a school district to provide access to free, fresh drinking water during meal times in the food service areas of the schools under its jurisdiction, including, but not necessarily limited to, areas where reimbursable meals under the National School Lunch Program or the federal School Breakfast Program are served or consumed. Authorizes a school district to comply with this requirement by, among other means, providing cups and containers of water or soliciting or receiving donated bottled water. (Education Code (EC) Section 38086)

2) Authorizes the governing board of a school district to adopt a resolution stating that it is unable to comply with the requirement to provide access to free, fresh drinking water during meal times and demonstrating the reasons why it is unable to comply due to fiscal constraints or health and safety concerns. Requires the resolution to be publicly noticed on at least two consecutive meeting agendas, first as an information item and second as an action item, and approved by at least a majority of the governing board. (EC Section 38086)

3) Establishes the Lead-Safe Schools Protection Act, enacted in 1992, which required the Department of Health Services (DHS) to conduct a sampling survey of schools to determine the likely extent and distribution of lead exposure to children from paint on the school, soil in play areas, drinking water at the tap, and other potential sources identified by DHS; required DHS to evaluate the most current cost-effective lead abatement technologies; and required DHS to work with CDE to develop voluntary guidelines for distribution to requesting schools to ensure that lead hazards are minimized in the course of school repair and maintenance programs and abatement procedures. (EC Sections 32240-32243)

4) Prohibits the use of lead-based paint, lead plumbing and solders, or other potential sources of lead contamination in the construction of any new school facility or the modernization or renovation of any existing school facility. (EC Section 32244)

5) Requires the governing board of a school district to adopt a local control and accountability plan (LCAP) and specifies state priorities, including the priority for school facilities to be maintained in good repair. (EC Section 52060)

6) Defines "good repair" as a facility that is maintained in a manner that assures that it is clean, safe, and functional as determined by school facility inspection and evaluation instrument approved by the State Allocation Board or a local evaluation instrument. Requires the school facility inspection and evaluation instrument and local evaluation instruments to include criteria as specified, including: 1) interior and exterior drinking fountains that are functional, accessible, and free of leaks; 2) drinking fountain water pressure is adequate; and 3) foundation water is clear and without unusual taste or odor, and moss, mold, or excessive staining is not evident. (EC Section 17002)

7) Specifies that whenever a school or school system, the owner or operator of residential rental property, or the owner or operator of a business property receives a notification from a person operating a public water system, the school or school system shall notify school employees, students and parents if the students are minors, the owner or operator of a residential rental property shall notify tenants, and the owner or operator of business property shall notify employees of businesses located on the property. (Health and Safety Code Section 116450)

8) Prohibits the use of any pipe or plumbing fitting or fixture, solder or flux that is not lead free. Defines “lead free,” consistent with the requirements of federal law, as not more than 0.2 percent lead when used with respect to solder and flux and not more than 8 percent when used with respect to pipes and pipe fittings. (Health and Safety Code Section 116875)

FISCAL EFFECT: The Legislative Counsel has keyed this bill as a state-mandated local program.

COMMENTS: This bill requires local community water systems to test water outlets at all schools within their boundaries for the presence of lead, requires all schools to install water filters at all school faucets, fountains and other outlets designated for drinking and cooking, and requires all schools to develop and adopt a plan of action to prevent elevated lead levels.

The author states, "According to the American Academy of Pediatrics, there is no safe level of lead for children. Lead is a highly toxic metal, and children are particularly vulnerable to the effects of lead exposure. Even small exposures to lead can cause irreversible neurocognitive damage to children.

Unfortunately, a lot of our older water infrastructure contains pipes or plumbing fixtures made with lead that can leach into the water supply. Many schools across the country started testing their water after the Flint, Michigan water crisis. Far too often, they are finding lead levels that put children's health at risk. For example, according to a recent report by CALPIRG Education Fund, nearly half of the 40,000 tests conducted at schools in Massachusetts last year showed some level of lead in water from drinking fountains and faucets. Until we can replace lead pipes and plumbing fixtures, the most effective way to protect children from lead threats in drinking water is to use filters certified to remove lead. Existing California Law does not require schools to take preventative measures to ensure children are fully protected from lead in drinking water. There is also no legal requirement for schools to periodically test their drinking water outlets for lead."

The California Food Policy Advocates, which supports this bill, states that a 2016 study found as many as 1,048,222 students attended schools impacted by water systems that did not meet primary safe drinking water standards, with Central Valley schools having the greatest number and highest percentage of schools impacted by unsafe drinking water.

Dangers of lead. Children are especially susceptible to high levels of exposure to lead and other toxic chemicals because their bodies absorb these metals at higher rates than the average adult. Research shows that long-term exposure to high levels of lead can cause irreversible damage to the brain, red blood cells, and kidneys. Exposure at low levels of lead can cause low IQ, hearing impairment, reduced attention span, and poor classroom performance.

Prior state efforts. The state has initiated several lead identification and prevention efforts in schools. Enacted in 1992, the Lead-Safe Schools Protection Act required the DHS, now called the Department of Public Health (DPH), to conduct a study to determine the prevalence of lead in paint, soil and water in public elementary school and childcare facilities. The study began in 1994 and was completed with a report to the Legislature in April, 1998. The study reported that most elementary schools contain paint with a lead content level above federal recommended level and that six percent of public elementary schools have bare soils with lead levels that exceed the U.S. Environmental Protection Agency (USEPA) recommended level for bare soil areas where children play.

Using weighted sample analysis, the study estimated that 18.1% of schools may have water outlets with lead content that exceeds federal recommended level. While lead content was highest in schools built before 1940, schools in all ages had water samples with lead content above the federal recommended levels. The report recommended evaluating lead content of drinking water in public schools using USEPA guidelines, including collecting water using

standard USEPA sampling technique that should be analyzed only by laboratories certified by DHS.

According to the report, water can be contaminated with lead by the source water system or by corrosion of lead plumbing or fixtures. Plumbing installed prior to 1930 is considered most likely to contain lead. However, lead could also leak from lead plumbing solder.

Funds for lead testing in schools. In 1998, as part of the Budget Act, SB 1564 (Schiff), Chapter 330, Statutes of 1998, the education trailer bill, provided $1.053 million to fund lead testing in drinking water in public elementary and secondary schools. The budget allocated $120 to each elementary schoolsite and $230 to each junior high, middle and high school for this purpose. A water collection guideline developed for the test recommended prioritizing testing of school buildings constructed prior to 1986, when lead plumbing solder was banned for use in drinking water plumbing systems.

Volunteer testing of lead. In response to recent events across the United States relating to lead found in drinking water, the water board, in collaboration with CDE, initiated a testing program, whereby at the request of a school, the municipality, a water district, mutual water company, other public water system serving the school will collect and analyze up to five water samples at each school. Additional testing and assistance will be provided if results show an elevated lead level.

Drinking Water for Schools Grant Program. The 2016-17 budget provided $10 million to provide grants to local educational agencies (LEAs) to improve access to and the quality of drinking water in schools. Enacted through SB 828, Chapter 29, Statutes of 2016, the grant is administered by the water board and may be used by LEAs and preschools and child care facilities located on public school property to install water bottle filling stations, install or replace drinking water fountains with devices that are capable of removing contaminants, install point-of-entry or point-of-use treatment devices for drinking fountains, and costs for up to three years of postinstallation replacement filters. Funds can also be used for training and education. The water board anticipates adopting guidelines for the program by May 2, 2017 and accepting applications around July 2017.

By April 18, 2018	All schools must install NSF certified filters at all water outlets used for drinking and cooking in all schools.
By July 1, 2018	All schools required to develop a plan to prevent elevated levels of lead, including an inventory of lead-bearing parts. The plan must be approved by an independent entity to ensure that the plan will result in the replacement of all lead-bearing parts.
By July 1, 2019, and annually thereafter	A community water system is required to test for the presence of lead at each water outlet used for drinking and cooking at each school within its boundaries. Access to water outlets with an elevated level of lead must be closed off within 24 hours of notification.
By January 1, 2020	All schools must replace all lead-bearing parts within the schools' water delivery systems where feasible and cost effective.

The Committee may wish to consider the following:

- If enacted, this bill takes effect on January 1, 2018. According to the CDE, there were 10,453 schools in California in 2015-16. It seems unrealistic to expect the purchase and installation of filters at all 10,453 schools within three and half months. Are there other methods to address lead (e.g., running water for several minutes every morning)?

- The bill requires all schools to develop a plan by July 1, 2018 that includes an inventory of lead-bearing parts and how the school will replace those parts. This requirement takes places before the deadline of July 1, 2019 for community water systems to test every school in California.

- By January 1, 2020, all schools must replace all lead-bearing parts where feasible and cost effective. This deadline comes six months after the deadline for water to be tested at all schools. It is unclear how schools are to determine feasibility and cost effectiveness, but requiring all parts to be replaced within this timeframe is probably not feasible.

- The USEPA recommends collecting and testing water using a sampling method. This bill requires testing of all outlets used for drinking and cooking in all schools.

- The Drinking Water for Schools Grant program is still in development. It is not yet known whether the authorized uses and standards for funding will be consistent with the requirements of this bill.

- The bill's definition of "elevated presence of lead" as one part per billion in water is more stringent than the USEPA level of 15 parts per billion. It is unclear whether any outlet will meet the threshold established by this bill. Under current law, "lead free," is defined as components that contain no more than 0.2 percent lead when used with respect to solder and flux and no more than 8 percent when used with respect to pipes and pipe fittings.

- The Health and Safety Code, enacted in 1995 and effective on January 1, 2010, prohibits the use of any pipe or plumbing fitting or fixture, solder or flux that is not lead free. The Education Code, enacted in 1993, prohibits the use of lead-based paint, lead plumbing and solders, or other potential sources of lead contamination specifically in the construction and modernization of schools. Should schools built after these laws were enacted be excluded from testing?

- The bill provides an exemption from the requirements of this bill if a school demonstrates to the water board that its water delivery system is free of lead-bearing parts. It is unclear whether any school can demonstrate that there are no lead-bearing parts at any schoolsite.

- The cost of this bill will be high. State building codes require one drinking fountain for every 150 students. With 6.2 million students in public schools, this bill will require testing and installation of filters at a minimum of 41,500 drinking fountains. This does not include water outlets used for cooking. While there are state general obligation bond funds and some districts have passed local bonds, there are limitations in accessing state or local bond funds for this purpose. The requirements of this bill will most likely have to be paid for by a school district's general funds.

- This bill does not apply to charter schools. Shouldn't pupils attending charter schools receive the same protection?

Committee Amendments: **Staff recommends** the following amendments:

1) Reverse the order of requirements:

   a) Require a community water system to conduct testing.
   b) If testing shows elevated level of lead, require shut off of water at those outlets and require development of a plan, which may include the use of filters.

2) Limit testing to schools built before 1994. This is consistent with the Committee's recommendations for similar bills that have come before this Committee.

Arguments in support. California Public Interest Research Group, the sponsor of the bill, states, "The Flint water crisis shocked the country and put a national spotlight on the problem of lead in drinking water. As more schools across the county test their water, they are finding lead levels that jeopardize children's health. Recently, there have been several incidents of lead tainted water in California schools….Earlier this year, reports revealed elevated levels of lead in drinking water at three San Ysidro elementary schools. Following these reports, San Marcos Unified School District found that one of its schools had a drinking fountain with high levels of lead. Sacramento State also recently shut down 85 drinking fountains, bottle-filling stations, and sinks after tests exposed lead contaminated drinking water….By requiring filters and testing, AB 885 will help ensure that every child in California has safe, lead-free water to drink at school. This public health protection is absolutely fundamental for fostering the healthy growth and development of our children."

Arguments in opposition. The opposition agree with the intent of the bill, but are concerned about the ability to meet the specified timelines and costs, and question whether the standard should be more stringent than the USEPA, whether it is possible to meet the bill's standard for lead, whether all schools and outlets need to be tested, and whether the Legislature should give the voluntary testing and water grant programs time to be implemented before imposing additional requirements.

Related legislation. AB 305 (Arambula), pending in this Committee, requires each school district to conduct an assessment of the drinking water access points at each schoolsite and to submit a report to the CDE, who will be required to compile these assessments, post the information on its Internet Web site, and transmit the compiled assessments to the water board for posting on its Internet Web site.

AB 567 (Quirk-Silva), pending in this Committee, requires a school district to ensure that every drinking water fountain at each school under its jurisdiction is equipped with both a water fountain and a spigot, or a combination water fountain and spigot, for filling water bottles.

AB 746 (Gonzalez Fletcher), pending in the Assembly Environmental Safety and Toxic Materials Committee, requires lead testing in all K-12 schools and all higher education institutions, requires those entities to inform parents and students of level of lead that exceeds the USEPA standard, and provide information on how to obtain physician testing.

SB 210 (Leyva), pending in the Senate Environmental Quality Committee, prohibits drinking water that does not meet the USEPA or state regulations for lead and other contaminants from being provided at a school facility, and requires schools that have contaminated water to immediately close access to those drinking water sources. This bill also requires the water board, as part of the Drinking Water for Schools Grant Program, to give priority to projects for schools that have tested their drinking water sources and have contamination issues.

Prior related legislation. SB 828, Chapter 29, Statutes of 2016, established the Drinking Water for Schools Grant Program.

AB 496 (Rendon), Chapter 664, Statutes of 2015, requires the CDE to identify available sources of funding to fund school water quality and infrastructure and post the information on its Internet Web site.

SB 334 (Leyva), vetoed by the Governor in 2015, prohibits drinking water that does not meet the USEPA drinking water standards for lead from being provided at a school facility and deletes the authority of a governing board of a school district to adopt a resolution stating that it is unable to comply with the requirement to provide access to free, fresh drinking water during meal times in the food service areas.

AB 629 (Krekorian), held in the Assembly Appropriations Committee suspense file in 2009, would have required a school district, by January 1, 2012, to conduct a one-time analysis of the level of lead in water in schools that were constructed before January 1, 1993.

AB 2965 (Krekorian), held in the Assembly Appropriations Committee suspense file in 2008, would have required a school district to conduct a one-time assessment of water toxicity levels at point of entry and delivery in schools 40 years of age or older.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Interest Research Group (sponsor)
American Academy of Pediatrics, California
California Food Policy Advocates
California State PTA
California Teachers Association
Center for Food Safety
Children Now
Community Water Center
Environment California
Environmental Justice Coalition for Water
Environmental Working Group
Friends Committee on Legislation of California
Pacific Water Quality Association
Pueblo Unido CDC
Water Quality Association

Opposition

Association of California School Administrators
Association of California Water Agencies (unless amended)
California Association of School Business Officials
Coalition for Adequate School Housing
County School Facilities Consortium
Los Angeles Unified School District

Analysis Prepared by: Sophia Kwong Kim / ED. / (916) 319-2087