

Date of Hearing: July 1, 2015

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

SB 334 (Leyva) – As Amended June 3, 2015

**[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.]**

**SENATE VOTE:** 40-0

**SUBJECT:** Pupil health: drinking water.

**SUMMARY:** Requires the State Department of Public Health (DPH) to test drinking water sources at a sample of schoolsites for lead in the drinking water, prohibits drinking water that does not meet the United States Environmental Protection Agency (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. Specifically, **this bill:**

- 1) Requires the California Department of Education (CDE) to work with the DPH to develop guidelines and best practices to ensure that lead hazards are minimized in the course of school repair and maintenance and abatement procedures. Requires the data gathered pursuant to the testing of water sources required by this bill to be considered in the development of the guidelines and best practices.
- 2) Prohibits drinking water that does not meet the USEPA drinking water standards for lead from being provided at a school facility.
- 3) Requires the DPH to test drinking water sources at a sample of schoolsites for lead in the drinking water. Requires the sample to include schools that are representative of the state by geographical region, size of enrollment, and areas identified as disadvantaged communities by the California Environmental Protection Agency.
- 4) Requires the data collected by the DPH to include drinking water lead testing information, including, but not limited to, dates of testing, number and type of drinking water sources tested and test results.
- 5) Requires the DPH and the CDE to do both of the following:
  - a) Establish a process for receiving, recording, and making public the data received from testing water at schoolsites; and,
  - b) Post the data collected during drinking water lead testing on the departments' respective Internet Web sites.
- 6) Specifies that the DPH shall not test drinking water sources that are located at schoolsites constructed after January 1, 2010, or have been tested by DPH or a certified professional

employed or hired by a school district and meets the USEPA and state drinking water standards for lead.

- 7) Requires a school district that has drinking water sources with drinking water that does not meet the USEPA drinking water standards for lead work with the DPH and the local department of public health to identify the most urgent mitigation needs and develop a protocol or plan for mitigation.
- 8) Requires the protocol or plan for mitigation to identify timelines and funding sources for mitigation, and be presented to and adopted by the governing board of the school district at a regularly scheduled public meeting within six months of the school district's receipt of the drinking water test results.
- 9) Requires a school that has lead-containing plumbing components to flush all drinking water sources for a minimum of 30 seconds at the beginning of each schoolday, consistent with protocols recommended by the USEPA. Specifies that a school is not required to flush drinking water sources that have been shut off or have been certified as free of lead.
- 10) Strikes 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 due to fiscal constraints or health and safety concerns, and instead requires a school district to comply with the requirement through the use of drinking water access points.
- 11) Defines "drinking water access point" as a station, plumbed or unplumbed, where pupils can access free, fresh, and clean drinking water. Specifies that an unplumbed access point may include water bottles and portable water dispensers.
- 12) Requires a school district that has drinking water sources with drinking water that does not meet the USEPA drinking water standards for lead or any other contaminant to close access to those drinking water sources immediately upon receipt of test results or notification from the public water system.
- 13) Specifies that if, as a result of closing access to a drinking water source, a schoolsite within a school district no longer has the minimum number of drinking fountains required pursuant to Chapter 4 (commencing with Section 401.0) of the California Plumbing Code (Part 5 of Title 24 of the California Code of Regulations), the school district shall provide alternative drinking water sources at that schoolsite.
- 14) Specifies that an alternative drinking water source provided while the source of contamination is being mitigated may be from plumbed or unplumbed sources. Unplumbed sources may include, but are not limited to, portable water sources and bottled water.
- 15) Requires a school district to notify parents, pupils, teachers, and other school personnel of drinking water test results, immediately upon receipt of those test results, if the school district is required to provide alternative drinking water sources.

**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. (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, as follows:
  - a) Requires the Department of Health Services (DHS) to conduct a sampling survey of schools throughout the state for the purpose of developing risk factors to predict lead contamination in public schools;
  - b) Requires the survey 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;
  - c) Requires DHS to notify principals of schools or director of schoolsites of the survey results. Upon receipt of the results, requires principals or directors to notify teachers and other school personnel and parents of the survey results;
  - d) Requires DHS to make recommendations to the Legislature and the CDE on the feasibility and necessity of conducting statewide lead testing and any additional action needed relating to lead contamination in the schools;
  - e) As deemed necessary and appropriate in view of the survey results, requires DHS to develop environmental lead testing methods and standards to ensure the scientific integrity of results, for use by schools and contractors designated by schools for that purpose;
  - f) Requires DHS to evaluate the most current cost-effective lead abatement technologies; and,
  - g) Requires 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. (Education Code (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 under any provision of this section, 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)

**FISCAL EFFECT:** According to the Senate Appropriations Committee, unknown, but likely significant costs to the DPH to test drinking water at a sample of schools; CDE reports one-time workload costs of \$20,000 and ongoing workload of \$5,000 related to data requirements, and \$15,000 to \$25,000 related to the bill's requirements to develop guidelines and best practices; and unknown but major costs for the remaining provisions of the bill.

**COMMENTS:** *What does this bill do?* This bill requires the DPH to test a sample of schools for lead in the drinking water. The bill requires the schools tested to represent geographic diversity, various enrollment sizes, and disadvantaged communities. Schools that were constructed after January 1, 2010, or were determined to meet drinking water standards by the DPH or a certified professional employee are excluded. If the level of lead in the drinking water at a school does not meet the federal USEPA standards, school districts must do the following:

- 1) Work with the DPH and local public health department to develop a protocol and plan for mitigation. The protocol and plan must be adopted at a regularly scheduled public meeting within six months from the district's receipt of the drinking water test results.
- 2) Close access to drinking water sources immediately upon receipt of test results and provide alternative drinking water sources if closing access to drinking water sources violates the minimum number of drinking fountains required under the California Plumbing Code.
- 3) Notify parents, pupils, teachers, and other school personnel of drinking water test results.

The bill requires the DPH and the CDE to establish a process for receiving, recording and making public the data received from the testing of water at schoolsites and post the data collected on each department's Internet Web site.

The bill requires the CDE to work with the DPH to develop guidelines and best practices to ensure that lead hazards are minimized in the course of school repair and maintenance and abatement procedures. Current law already contains this requirement, but the guidelines and best practices were not developed.

Current law requires school districts to provide free, fresh drinking water during meal times in the food service areas. A school district may provide cups and containers of water or bottled water to comply with this requirement. Current law allows a governing board to adopt a resolution stating that it is unable to comply with the requirement due to fiscal constraints or health and safety concerns. This bill strikes this authorization and instead requires a school district to offer drinking water through drinking water access points, defined as a station that is plumbed or unplumbed. An unplumbed access point may include water bottles and portable water dispensers.

The bill prohibits a school from providing water that does not meet the USEPA drinking water standards, and requires a school that has lead-containing plumbing components to flush all drinking water sources for a minimum of 30 seconds at the beginning of each schoolday. This latter requirement applies to all schools, not just those that are tested. It is unclear how school districts will know whether there are lead-containing plumbing components at a schoolsite. Flushing for 30 seconds is already a standard practice at the Los Angeles Unified School District (LAUSD).

***Maintenance requirements.*** School districts are required to maintain school facilities specified in various parts of the Education Code. School districts that receive state bond funds are required to set aside three percent of their general funds in a routine restricted account to be used for the maintenance of schools. During the state's budget fiscal crisis, school districts were allowed to lower the required percentage to one percent or none if their schools are kept in "good repair". The three percent requirement was set to be reinstated beginning July 1, 2015; however, this year's budget trailer bill language contains a mechanism to delay restoration of the three percent until 2021.

School districts are required to adopt a LCAP to determine the use of local control funding formula dollars. Under the LCAP, school districts are required to meet eight state priorities, including the priority for school facilities to be maintained in "good repair". The standard for "good repair" was developed as a result of the *Williams v. State of California* settlement in 2004, in which the state agreed to allocate funds to provide students in low performing schools equal access to instructional materials, safe and decent school facilities, and qualified teachers. As part of the \$800 million allocation for school facilities, county offices of education were required to inspect deciles 1-3 schools using a "good repair" standard. The standard developed includes a lengthy list of components at a school to be evaluated, including whether drinking fountain water is clear and without unusual taste or odor. Good repair does not include whether drinking fountain water is free of lead or other contaminants.

***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 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 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, which was commonly used until banned in 1984. This bill tests fixtures at schools, but does not address lead as a result of source water systems.

***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.

***Funds for mitigation.*** Notwithstanding the benefits of testing and eliminating lead in drinking water, school districts have expressed concerns about the ability to fund mitigation. Replacing drinking water fountains and/or pipes can result in exorbitant costs. The LAUSD reports it has replaced drinking fountains at 200 schoolsites at a cost of \$15,000 - \$20,000 per drinking fountain. Under regulations adopted pursuant to the California Plumbing Code, schools are required to have one drinking fountain for every 150 people on a school campus. Districts can use available local bond funds if the projects were identified in the bond initiative, but state bond funds for modernization projects have been exhausted since 2012. Absent state or local bond funds, school districts would be required to use general funds for mitigation purposes. In addition, as a result of the bill's requirement for school districts to close access to drinking water sources identified by testing or from notification by public water systems as exceeding federal drinking water standards for lead or any other contaminant, school districts that no longer meet the state's minimum number of available drinking water fountains will be required to provide alternative sources of water, such as bottled water, on a daily basis. These costs will be also borne by general funds.

***Testing only applies to an unspecified number of schools.*** Earlier versions of this bill required testing at all schools. Amendments adopted in the Senate Appropriations Committee limited the

bill to testing a sample of schoolsites. The sample, an unspecified number, is required to represent geographical regions, size of enrollment, and disadvantaged communities identified by the California Environmental Protection Agency. If only a limited number of schoolsites are to be tested and required to conduct mitigation, should testing prioritize schools where lead may be at higher levels? **Staff recommends** an amendment to express the Legislature's intent to prioritize testing.

***Other Committee amendments:***

- 1) Exclude testing of schools constructed after 1993, rather than January 1, 2010. The Lead-Safe Schools Protection Act enacted in 1992 prohibits 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 beginning in 1993.
- 2) Define drinking water source as drinking water fountains and other fixtures that are intended to convey water for human consumption (such as kitchens).
- 3) Require DPH to notify school districts of the test results.
- 4) Strike EC Section 32242(g) to eliminate duplication of Section 1 of this bill.

***Arguments in support.*** The author states, "Current law does not require testing of water at schools in order to ensure that the water is lead free. Furthermore, no department or agency has adopted guidelines or regulations to ensure that schools test the water provided to students or that schools provide clean drinking water to students throughout the day. Current law only goes as far as to require schools provide clean and free drinking water to students during lunch time. However, there is no testing to ensure that the water sources are actually safe for consumption."

***Arguments in opposition.*** The California School Boards Association (CSBA) has an "oppose unless amended" position and states, "CSBA is an advocate for safe and healthy schools, including safe drinking water for our students. SB 334 may lead to the identification of water quality problems at our aging school sites, but it would not do anything to actually resolve them. Plumbing is usually buried underground or inside walls, as such, the costs of replacing plumbing in our aging school sites would be very high. Our opposition to this bill stems solely from our desire for a *solution* to this problem, one that would provide LEAs (local educational agencies) with resources to perform the work that will be generated by the bill." CSBA requests an amendments to make this bill contingent upon funds available for this purpose in a future statewide school facilities bond.

***Related legislation.*** AB 496 (Rendon), pending in the Senate Education Committee, requires the CDE to identify available sources of funding to fund school water quality and infrastructure.

***Prior related legislation.*** 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 Association of Joint Powers Authority  
California Black Health Network  
California School Employees Association  
California State PTA  
Children Now

**Opposition**

California Association of School Business Officials  
California School Boards Association (unless amended)

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