Date of Hearing: April 3, 2024

ASSEMBLY COMMITTEE ON EDUCATION
Al Muratsuchi, Chair
AB 1851 (Holden) – As Amended March 12, 2024

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

SUBJECT: Drinking water: schoolsites: lead testing pilot program

SUMMARY: Requires the Superintendent of Public Instruction (SPI) to provide grants to participating local educational agencies (LEAs) for testing drinking water lead levels, remediating lead in drinking water at eligible facilities, and contracting with a technical assistance (TA) provider. Specifically, **this bill**:

1) Defines the following terms:

    a) "Eligible facility" to mean a facility that is on a schoolsite and that has plumbing that was installed before January 1, 2010;

    b) "LEA" to mean a school district, county office of education (COE), or charter school;

    c) "Participating LEA" to mean an LEA that has been selected by the SPI to participate in the pilot program and has consented to participation;

    d) "Pilot program" to mean the program established by this bill;

    e) "Potable water system outlet" to mean all cold water outlets, including single-handle faucets that dispense both hot and cold water, which are reasonably expected to be used for drinking and food preparation as depicted in Module 4 of the United States Environmental Protection Agency's (US EPA) "3Ts for Reducing Lead in Drinking Water in Schools and Child Care Facilities" manual;

    f) "TA provider" to mean a public institution of higher education selected by the SPI that provides TA to participating LEAs for purposes of the pilot program.

2) Requires the SPI to establish a pilot program to accomplish both of the following:

    a) Test for and remediate lead contamination in drinking water at eligible facilities of participating LEAs; and

    b) Inform recommendations, for addressing lead contamination in drinking water in LEAs across the state.

3) Requires the SPI to select no fewer than 6 and no more than 10 LEAs of varying enrollment sizes and notify those LEAs of their selection by December 1, 2025. Requires, in selecting LEAs, the SPI to give priority to the following:

a) LEAs with at least one school that serves pupils in transitional kindergarten (TK), kindergarten, and grades 1 to 3, inclusive, where at least 75% of the pupils enrolled in the school are eligible for free and reduced-priced meals (FRPM); and

b) LEAs with schools that are located in a disadvantaged community, as specified.

4) States that an LEA not be required to participate in the pilot program.

5) Requires an LEA choosing to participate in the pilot program to provide written consent, and specified information to the SPI within 90 days of the SPI's selection of proposed participating LEAs.

6) Requires the SPI to provide grants to participating LEAs for testing drinking water lead levels, remediating lead in drinking water at eligible facilities, and contracting with the TA provider.

7) Requires any unspent funds after July 1, 2027, to be returned to the SPI and disbursed by the SPI to other grantees in need of additional funding for testing or remediation.

8) Requires administrative and managerial contracts entered into to be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code (PCC) and authorizes the SPI to award those contracts on a noncompetitive bid basis.

9) Requires the TA provider to advise participating LEAs on the drinking water lead level sampling, remediation, and specified notification requirements.

10) Requires participating LEAs to ensure that drinking water sampling meets specified requirements.

11) Requires, if sampling results show lead levels in excess of 5 parts per billion (ppb) for any potable water system outlet, the participating LEA to do all of the following:

a) Notify the parents and guardians of the pupils who attend the school where the elevated lead levels are found no later than 30 schooldays after receiving the test results during the school year, or otherwise within 60 days after receiving the sampling results, and provide information developed by the California Department of Public Health (CDPH) on the impact of elevated lead levels on children; and authorizes the participating LEA to include a description of a remediation plan as part of the notice;

b) Take immediate steps to make inoperable and shut down from use all potable water system outlets where the excess lead levels may exist;

c) Ensure that a lead-free source of drinking water is provided for pupils at each potable water system outlet that has been shut down due to elevated lead levels. States that providing a lead-free source of drinking water may include, but is not limited to, replacing any fixtures that may be contributing to the elevated lead levels, providing onsite water filtration, or providing bottled water;

d) Retest potable water system outlets where replacement was used to remediate excess levels of lead, to determine if replacement successfully reduced lead levels to below 5 ppb; and

e) Conduct additional sampling of potable water system outlets as recommended by the TA provider to investigate the source of lead contamination, and consult with the TA provider to identify additional remediation options, if results from the required sampling continue to show lead levels in excess of 5 ppb.

12) Requires a potable water system outlet to not be used to provide potable water until test results show lead levels below 5 ppb.

13) Requires the participating LEA to select the remediation method, except that a participating LEA is prohibited from attempting to remediate excess levels of lead by flushing the water in a potable water system outlet.

14) Requires, on or before January 1, 2028, participating LEAs to report to the TA provider, and the TA provider shall report to the SPI, the following information in a standard electronic format:

a) The name of the participating LEA;

b) The name of the school where sampling was conducted;

c) The school address;

d) The identification number for the potable water system outlet;

e) The date sampling was conducted;

f) The amount of lead contained in the sample, in ppb; and

g) A description of any remediation action taken, reported as any of the following categories: faucet replaced, filter installed, faucet decommissioned, replaced faucet failed to reduce lead levels to less than 5 ppb, alternative source of water provided, or other, including alternative remediation actions in which a replaced faucet has failed to reduce lead levels to less than 5 ppb.

15) Requires on or before July 1, 2028, the TA provider to provide the SPI with a report containing a completed analysis of the pilot program's results. Requires the analysis to analyze the pilot program's sampling results, and the sampling, remediation, and notification methods employed during the pilot program. Requires the analysis to also do all of the following:

a) Provide a better understanding of the level and sources of lead contamination in drinking water in California's public schools. Requires a full description of the information provided to the TA provider to be provided, as well as the number and location of schools that found a potable water system outlet with lead levels exceeding 5 ppb.

b) Provide recommendations on all of the following:

i) The most health-protective and cost-effective sampling and remediation strategies for addressing drinking water lead contamination in schools, and reducing lead levels in drinking water in all potable water system outlets in schools to as close to zero lead as possible, but no more than 5 ppb;

ii) Strategies for protecting the health of all pupils, especially pupils attending schools in which at least 75% of the pupils enrolled are eligible for FRPM, and schools located in a disadvantaged community, as specified;

iii) Addressing the needs, implementation, and capacity challenges of LEAs of varying enrollment sizes, and of varying geographic locations; and

iv) Promoting effective communication between LEAs and parents, caregivers, and the public on drinking water lead level concerns, and supporting the ability of LEAs to engage in effective collaboration with partners to accomplish drinking water lead sampling and remediation.

c) Evaluate the cost-effectiveness, feasibility, and potential challenges and health benefits of installing certified, lead-removing filtration devices on school campuses in lieu of other remediation efforts.

16) Requires, on or before July 15, 2028, the SPI to provide the report to the Department of Finance (DOF) and the relevant policy and fiscal committees of the Legislature. Requires the SPI make the report and the information provided to the TA provider publicly available on the CDE's website.

17) States that these requirements are required to be implemented only upon the enactment of an appropriation in the annual Budget Act or another statute for these purposes.

EXISTING LAW:

1) Establishes as a policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Water Code (WC) 106.3)

2) Requires, pursuant to the federal Safe Drinking Water Act (SDWA) and the California SDWA, drinking water to meet specified standards for contamination as set by the US EPA or the State Water Board (SWB). (42 United States Code § 300(f), et seq.; Health and Safety Code (HSC) 116270, et seq.)

3) Requires a licensed child day care center that is located in a building constructed before January 1, 2010, to have its drinking water tested for lead contamination levels on or after January 1, 2020, but no later than January 1, 2023, and every five years after the date of the initial test. (HSC 1597.16(a)(1))

4) Requires a licensed child day care center to collect and submit drinking water samples to an accredited laboratory; requires the laboratory to, in a timely manner, electronically submit its

test results to the SWD; and if the test results show elevated levels, requires the SWD to report, in a timely manner, the test results to the California Department of Social Services (CDSS). (HSC 1597.16(a)(2)(A))

5) Requires the SWB to post all test results received for lead in licensed child day care centers on its internet website in a timely manner and to make test results readily accessible to the public. (HSC 1597.16(a)(2)(B)(ii))

6) Requires, upon notification of elevated lead levels, a licensed child day care center to immediately make inoperable and cease using the fountains and faucets where elevated lead levels may exist, and to obtain a potable source of water for children and staff. (HSC 1597.16(a)(3))

7) Requires a licensed child day care center to notify parents or guardians of children enrolled in the center of the requirement to test a facility's drinking water and of the test results. (HSC 1597.16(a)(4))

8) Establishes the Lead-Safe Schools Protection Act and requires the State Department of Health Services to conduct a sample survey of schools in this state for the purpose of developing risk factors to predict lead contamination in public schools. (Education Code (EC) 32240-32245)

9) Requires, pursuant to the Lead-Safe Schools Protection Act, that the CDPH work with the California Department of Education (CDE) to develop voluntary guidelines for distribution to schools to ensure that lead hazards are minimized in the course of school repair and maintenance programs and abatement procedures. (EC 32242(g))

10) Prohibits, beginning January 1, 1994, 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 32244)

11) 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 38086)

12) Requires a school district to notify parents, pupils, teachers, and other school personnel of drinking water results immediately if the school district is required to provide alternative drinking water sources, and authorizes a school district to comply with that requirement by providing notification of the test results during the next regularly scheduled public school meeting. (HSC 116450)

13) Prohibits the use of any pipe, pipe or plumbing fitting or fixture, solder, or flux that is not "lead-free" in the installation or repair of any public water system or any plumbing in a facility providing water for human consumption. (HSC 116875(a))

14) Defines, for the purposes of the federal Lead and Copper Rule (LCR), a "school" to mean any building associated with public, private, or charter institutes that primarily provide teaching and learning for elementary or secondary students. (40 CFR 141.2)

15) Defines, for the purposes of the federal LCR, "child care facility" to mean a location that houses a licensed provider of child care, day care, or early learning services to children, as determined by the state, local, or tribal licensing agency. (40 CFR 141.2)

16) Requires all community water systems to conduct lead monitoring at the schools and child care facilities they serve if those schools or child care facilities were constructed prior to January 1, 2014, or the date the state adopted standards that meet the definition of "lead-free" under the federal SDWA, whichever is earlier. (40 CFR 141.92)

17) Requires each community water system to compile a list of schools and child care facilities served by the system by October 16, 2024. (40 CFR 141.92(a)(1))

18) Requires community water systems to collect samples from at least 20% of elementary schools and 20% of child care facilities served by the system per year, or according to a schedule approved by the state, until all schools and child care facilities identified on the list, developed pursuant to 40 CFR 141.92(a)(1), have been sampled or declined to participate. (40 CFR 141.92(c)(1))

19) Requires community water systems to sample all elementary schools and child care facilities at least once in the five years following October 16, 2024. (40 CFR 141.92(c)(2))

20) Requires community water systems, after they have completed one cycle of sampling in all elementary schools and child care facilities, to sample at the request of an elementary school or child care facility. (40 CFR 141.92(c)(3))

21) Requires community water systems to sample at the request of a secondary school. (40 CFR 141.92(c)(4))

22) Requires a community water system to collect five samples per school and two samples per child care facility at outlets typically used for consumption; prohibits, except under specified conditions, outlets from having point-of-use devices. (40 CFR 141.92(b)(1))

23) Requires a community water system to collect samples from schools from specified fixture types, as follows: two drinking water fountains, one kitchen faucet used for food or drink preparation, one classroom faucet or other outlet used for drinking, and one nurse's office faucet, as available. (40 CFR 141.92(b)(1)(i))

24) Requires a community water system to sample all outlets used for consumption, if a facility has fewer than the required number of outlets. (40 CFR 141.92(b)(1)(iii))

25) Provides that the state's competitive bidding requirements for contracts for services do not apply to contracts between state agencies, or contracts between a state agency and local agency or federal agency. (PCC 10335(a))

26) 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 52060(d))

27) Requires the California Environmental Protection Agency (CalEPA) to identify disadvantaged communities for investment opportunities. Requires these communities to be identified based on geographic, socioeconomic, public health, and environmental hazard criteria, and may include, but are not limited to, either of the following:

    a) Areas disproportionately affected by environmental pollution and other hazards that can lead to negative public health effects, exposure, or environmental degradation; and

    b) Areas with concentrations of people that are of low income, high unemployment, low levels of homeownership, high rent burden, sensitive populations, or low levels of educational attainment. (HSC 39711)

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill. The author states, "Lead consumption among youth and disenfranchised communities occurs at a higher rate. Assisting schools with the resources and appropriate standards to ensure the water fountains our children drink from are safe will help us protect our schools, students and communities. Children do not become more resistant to lead's toxic effects once they transition from daycare to kindergarten, so California should take the responsible step of aligning childcare and school lead testing standards."

Key provisions of the bill. AB 1851 requires the SPI to establish a pilot program to test for and remediate lead in drinking water at the eligible facilities of LEAs, prioritizing those with at least one school that serves pupils in TK-3 where at least 75% of the pupils are eligible for FRPM and LEAs with schools that are located in a disadvantaged community, as defined by the CalEPA. The SPI is required to select 6-10 eligible LEAs to participate in the grant program, but LEAs may decline their participation in the program; they are not required to participate. The bill requires the SPI to contract with a TA provider, a public institution of higher education, to provide assistance to the participating LEAs in the pilot as they test and remediate for lead in drinking water. If sampling results show lead levels in excess of 5 ppb, participating LEAs are required to notify parents, take immediate steps to make inoperable and shut down the impacted potable water systems, ensure that a lead-free source of drinking water is provided, retest the impacted potable water system, and conduct additional sampling. A participating LEA is also required to select the remediation method, and then carry out and pay for the selected remediation. The bill states that the requirements are to be implemented only upon the enactment of an appropriation in the annual Budget Act or another statute for these purposes. ***The Committee may wish to consider*** that the bill does not specify a total amount for the pilot program, so it is possible that a participating LEA will be required to test and remediate for lead found in drinking water, but the cost of the work may exceed the amount provided for the pilot.

The bill also includes participating LEAs to report to the TA provider, and the TA provider to report to the SPI information regarding the testing and remediation in order for the TA provider

to provide the SPI with a report containing a completed analysis of the pilot program's results, as well as provide recommendations related to future strategies for lead testing and remediation in schools, including an evaluation of cost-effectiveness of specified remediation methods. Finally, the SPI is required to provide the report to the DOF and the relevant policy and fiscal committees of the Legislature by July 15, 2028.

AB 1851 Implementation Activities	**Date**
AB 1851 takes effect	January 1, 2025
SPI identifies potential LEA grantees, conducts outreach	January 1, 2025-November 30, 2025 (not explicitly stated in bill)
SPI notifies LEA grantees	December 1, 2025
LEAs send consent to participate to SPI	March 1, 2026 (bill says 90 days after December 1, 2025)
LEAs begin testing and remediation	March 1, 2026 to June 30, 2027 (not explicitly stated in bill)
LEAs send unused funds back to SPI for redistribution	July 1, 2027
LEAs finish remediation (as needed) with redistributed unspent funds	July 1, 2027-January 1, 2028 (not explicitly stated in bill)
LEAs send collection data to CDE and TA provider sends data to CDE	January 1, 2028
TA provider sends CDE the report (analysis of sampling and remediation results, etc.)	July 1, 2028
CDE sends final report to DOF and Legislature	July 15, 2028

Consequences of childhood lead exposure. According to the Centers for Disease Control and Prevention (CDC), research shows that there is no safe level of lead in drinking water and even very low levels can have negative and irreversible health effects, especially for children and pregnant persons. Because of lead's health impacts, the US EPA maintains a maximum contaminant level goal of zero. The CDC states that childhood lead exposure can seriously harm a child's health and cause well-documented adverse effects, including brain and nervous system damage, slowed growth and development, learning and behavior problems, and hearing and speech problems. These health impacts can in turn lead to decreased attention and underperformance in school among lead-exposed children.

Inequities in childhood lead exposure. Lead exposure is not equally distributed across the United States, and young children at the highest risk for exposure are those living in housing built before 1978, Black or African American children, and children living in areas with higher poverty rates, according to a 2021 article in Environmental Health Perspectives, *Blood Lead*

Levels in U.S. Children Ages 1-11 Years, 1976-2016. According to a 2020 study in Nature Medicine, *Association of Lead-Exposure Risk and Family Income with Childhood Brain Outcomes*, with increasing risk of exposure, children from lower-income families had lower cognitive test scores, and brain changes (including reduced volume of the cortex, a part of the brain that plays a role in higher level processes, including problem solving, planning, critical thinking, and memory). A 2015 study in Environmental Health, *The Impact of Low-Level Lead Toxicity on School Performance Among Children in the Chicago Public Schools,* found that among nearly 58,000 children attending Chicago public schools, blood lead levels were highest in black children (relative to Hispanic and white children) and higher in low-income children. Children from low-income families and communities of color can also be further disadvantaged through the cumulative impacts of lead and other challenges they may face, including higher rates of poverty, malnutrition, exposure to multiple pollutants, and enrollment in under-resourced schools.

Sources of childhood exposure to lead. The US EPA states that children can be exposed to lead in paint, dust, soil, air, and food, as well as drinking water and that drinking water can make up 20% or more of a person's total lead exposure. The most prevalent sources of lead in drinking water are pipes, fixtures, and associated hardware from which lead can leach. According to a 2012 National Center for Environmental Health report, *Lead in Drinking Water and Human Blood Levels in the United States*, nearly all lead in users' tap water originates from the corrosion of lead-containing materials that can occur through contact with water, rather than from the primary water source or treatment plant. Lead can enter a building's drinking water by leaching from lead service lines, lead solder used in copper piping, and from brass fixtures. The amount of lead in tap water can depend on several factors, including the age and material of the pipes and fixtures, the concentration of lead in water delivered by the public utility, and the corrosiveness of the water. Compared to other states, California has a relatively small share of the nation's lead service lines. In 2016, the American Water Works Association released a national survey of lead service line occurrence, finding that California had, at that time, about 1% of the nation's lead service lines.

Student's exposure to lead in the drinking water at school. In the 2021 report, *How States Are Handling Lead in School Drinking Water*, the National Association of State Boards of Education states, "Due in part to their frequent closures and uneven water use patterns during weekends, holidays, summer break, or extenuating circumstances like the pandemic, the topic of lead in drinking water is of special relevance to schools. Water is more likely to stagnate in school pipes and fixtures during closures, potentially making the water more corrosive and increasing the chances that lead leaches into the water." The impacts of lead in drinking water on children's health gained national attention after news broke of the water crisis in Flint, Michigan. In 2014, a switch in Flint's water sources caused lead to leach from service lines into drinking water at dangerously high levels. In the wake of the Flint drinking water crisis, part of the national conversation has focused on strategies for improving the safety of drinking water in schools and child care facilities and the importance of lead testing.

Lead testing in California's K-12 schools. AB 746 (Gonzalez), Chapter 746, Statutes of 2017, required a community water system that serves a schoolsite with a building constructed before January 2010 to test for lead in up to five drinking water sources of the schoolsite by July 1, 2019. According to the SWB, 8,027 schools were tested with approximately 1.1% of schoolsites sampled were found with lead levels that exceed the US EPA recommended level of 15 ppb. LEAs were exempt from testing if they met the following:

- Schoolsites built or modernized on or after January 1, 2010;
- LEAs that completed lead testing after January 1, 2009, and posted information about the lead testing online;
- LEAs that have requested testing from their community water system; or
- LEAs that are permitted as a public water system and are currently testing water for lead.

Additionally, the provisions of AB 746 (2018) require LEAs to take steps to shut down faucets and fountains where lead levels exceed 15 ppb.

In January 2017, the Division of Drinking Water of the SWB and Local Primacy Agencies issued permit amendments to the domestic water supply permits of approximately 1,200 community water systems. This was done to allow schools that are served by a community water system to request assistance from their public water system to conduct water sampling for lead and receive TA if an elevated lead sample is found. School administrators could request that their community water system collect and analyze up to five water samples at each K-12 schoolsite served by the water system. These provisions also allowed, but did not require, private schools to continue to request sampling and assistance after the passage of AB 746. Community water systems were responsible for the costs associated with collecting, analyzing, and reporting. Schools are responsible for any maintenance or corrections needed at their school.

According to 2021 original research in Preventing Chronic Disease, *Water Safety in California Public Schools Following Implementation of School Drinking Water Policies*, 3% (6) of the 174 schools that tested their taps for lead through the state program had at least one drinking water sample that exceeded 15 ppb, the California state action level for lead. 16% (28) of schools that tested through the program had at least one drinking water sample that exceeded 5 ppb, the FDA threshold for bottled water. 16% (28) of schools received water from a water system with a history of noncompliance with water and sanitation regulations (such as elevated levels of contaminants or failure to adhere to disinfectant protocols). Schools served by water systems with a history of noncompliance were more likely to have a smaller enrollment, be located in a city, and serve more than 50% of students who were from racial/ethnic minority backgrounds or eligible for free and reduced-price meals.

Drinking Water for Schools Grant Program. The SWB's Drinking Water For Schools (DWFS) Grant Program has awarded $9.5 million in grant funds to school districts to improve access to, and the quality of, drinking water in public schools (Round 1) under SB 828 (Committee on Budget and Fiscal Review), Chapter 29, Statutes of 2016, consistent with the DWFS Guidelines adopted by the State Water Resources Control Board (SWB) on May 16, 2017.

An additional $6.8 million was authorized for the DWFS Grant Program (Round 2) pursuant to SB 862 (Committee on Budget and Fiscal Review), Chapter 449, Statutes of 2018. Guidelines for this additional funding were approved in June of 2019. Grant funds were awarded to nonprofit organizations Self-Help Enterprises and Rural Community Assistance Corporation, which act as Program Administrators. These Program Administrators are working directly with eligible school districts to develop and fund projects for disadvantaged community schools, prioritizing schools with impaired water quality. Maximum grant amounts are $100,000 for a

single school and $1 million for an LEA. Eligible project types under Round 2 funding include, but are not limited to:

- Installation or replacement of water bottle filling stations or drinking water fountains, with or without treatment devices capable of removing contaminants present in the school's water supply;

- Installation of point-of-entry (POE), or point-of-use (POU) treatment devices for water bottle filling stations, drinking fountains, and other fixtures that provide water for human consumption, including up to three years of replacement filters, continuing operation and maintenance and monitoring of POE or POU devices;

- Installation, replacement, or repairs of drinking water fixtures and associated plumbing appurtenances that are necessary to address lead contamination that requires a corrective action; and

- Provision of interim alternative water supplies for applicants in the process of implementing a permanent solution, including the purchase of temporary transfer water and hauled water.

School Energy Efficiency Stimulus Program. AB 841 (Ting), Chapter 372, Statutes of 2020, established the School Energy Efficiency Stimulus Program which establishes the School Noncompliant Plumbing Fixture and Appliance Program to provide grants to LEAs to replace noncompliant plumbing fixtures and appliances that fail to meet water efficiency standards and waste potable water and the energy used to convey that water, with water-conserving plumbing fixtures and appliances. The California Energy Commission was authorized to design, administer, and implement the California Schools Healthy Air, Plumbing, and Efficiency Program (CalSHAPE). CalSHAPE provides worksheets to help program participants gather the information needed to complete an application for the California Schools Healthy Air, Plumbing, and Efficiency (CalSHAPE) Plumbing Program, which includes documentation of existing noncompliant plumbing fixtures and appliances, proposed replacement water-conserving plumbing fixtures and appliances, and replacement costs. Worksheets are available for automatic ice makers, clothes washers, commercial dishwashers, interior faucets, showerheads, toilets, and urinals. Funding for CalSHAPE Plumbing Program (Round 3) is approximately $65 million and applications are based on a utility service territory location.

California requirements for testing lead in drinking water in child care centers. In 2018, the State Legislature enacted AB 2370 (Holden) Chapter 676, Statutes of 2018, which requires licensed child day care centers operating in buildings constructed before January 1, 2010, to have their drinking water tested for lead by January 1, 2023, and every five years after the initial test. Similar to AB 249, AB 2370 requires the State Water Board to post test results for lead in licensed child day care centers on its website, and similar to AB 1851, requires centers to:

- Cease using fountains and faucets where elevated lead levels may exist;

- Obtain a potable source of water for children and staff; and,

- Notify parents or guardians of the test results.

Subsequent written directives from the CDSS specified an action level of 5 ppb, with a minimum reporting threshold of 1 ppb, for lead in water in child care centers. In SB 862 (Budget Committee) Chapter 449, Statutes of 2018, the Legislature appropriated $5 million, which the SWB is using to assist child care centers with the costs of testing and fixture replacement.

The federal Lead and Copper Rule (LCR) and subsequent revision (LCRR). In 1991, the US EPA promulgated the LCR, a body of regulations established to minimize lead and copper in drinking water. On January 15, 2021, the US EPA issued substantial changes, called the Lead and Copper Rule Revisions (LCRR), to the LCR, to provide greater and more effective protection of public health. The LCRR contains federal regulations that would, for the first time, require community water systems to test for lead in drinking water in schools and child care facilities. If unchanged by the Lead and Copper Rule Improvements (LCRI; described below), rules established under the LCRR will require community water systems, beginning on October 16, 2024, to conduct lead sampling at a certain number of faucets at each elementary school and child care facility they serve within five years; provide testing to secondary schools upon request during the 5 years of mandatory elementary and child care facility testing; and provide testing to elementary schools and child care facilities upon request after the first round of mandatory testing. Notably, the US EPA states that the sampling efforts required under the LCRR should not serve as a replacement for the more comprehensive testing recommended in the agency's "3Ts for Reducing Lead in Drinking Water in Schools and Child Care Facilities" manual, which recommends, for example, that schools sample all fixtures used for consumption. This guidance is consistent with AB 1851's requirement for testing at all potable water system outlets in a school.

The Lead and Copper Rule Improvements. On January 20, 2021, federal Executive Order 13990 directed all federal agencies to undertake review and action to address the promulgation of federal regulations during the prior four years. The LCRR was specifically identified as requiring review. As a result, the US EPA delayed the effective and compliance dates established in the LCRR to December 16, 2021 and October 16, 2024, respectively. The US EPA committed to propose and revise the LCRR by October 2024 with the LCRI.

On November 30, 2023, the US EPA announced the proposed LCRI, which maintain most of the LCRR requirements for community water systems to conduct public education and offer sampling to schools and child care facilities. The LCRI clarify that community water systems do not have to sample in schools and child care facilities that underwent full plumbing replacement after January 1, 2014, or the date that a state adopted standards meeting the federal definition of "lead-free" (January 1, 2010, in California). The LCRI, like the LCRR, does not require sampling at all potable drinking water outlets, or remediation if sampling reveals lead contamination in a school's drinking water. The US EPA states that the LCRI is intended to provide a "baseline level of sampling information," and that "States are likely better positioned than EPA to administer lead testing and remediation programs because States can establish regulations for schools and child care facilities that would provide for greater consistency of education, testing, remediation activities, and public communication across all schools and child care facilities throughout a State."

Recommended Committee Amendments. Staff recommends that the bill be amended as follows:

- Adjust implementation timelines by providing six months for the SPI to identify potential participating LEA, and providing participating LEAs from October 1, 2026 to June 30, 2027 to test and remediate.

- Require the report written by the technical assistance provider to compare the cost effectiveness, feasibility, and the potential challenges and health benefits of implementing the short-term and permanent control measures specified in Module 6 of the United States Environmental Protection Agency's "3Ts for Reducing Lead in Drinking Water in Schools and Child Care Facilities" manual on school campuses.

- Require, on or before September 1, 2027, the technical assistance provider to make testing results received from participating LEA to date available upon request.

Arguments in support. The Environmental Working Group writes, "This bill comes at a crucial time. The [US EPA's] proposed LCRI, which may be finalized this year, offer little clarity or support to schools with lead exceedances. Notably, while the updated LCRI promotes voluntary testing of some school drinking water outlets each year, the LCRI does not require schools to test and remediate outlets, or lower water lead levels. The pending rule doesn't regulate schools, only the water systems that would perform the testing. In the absence of federal action to actually reduce lead in school drinking water, it is critical that California schools understand the scope of their lead-in-water problem, and the most health protective, cost effective, ways to remediate lead exceedances…California continues to chart the path forward for environmental justice, but it lags in lead poisoning prevention. There are 18 states with mandatory lead in water testing requirements for schools and/or childcare centers, and 23 have a statewide voluntary lead testing program. Washington State, for example, passed laws in 2021 that requires lead testing of all drinking water outlets in public schools that were built before 2016."

Related legislation. AB 249 (Holden) of the 2023-24 Session would have required, on or before January 1, 2027, a community water system that serves a schoolsite receiving federal Title I funds to test for lead in each of the schoolsite's potable water system outlets and to report the results to the SWB and applicable schoolsite or LEA; would have required LEAs or schoolsites, if lead levels exceeded five ppb, to perform specified actions. This bill was vetoed by the Governor, with the following message:

> Minimizing childhood exposure to lead in drinking water is a critical issue. While I support the author's commitment to ensure safe drinking water in schools, this bill contains several problematic provisions and cannot be implemented as drafted. The bill constitutes an entirely new enforcement role for the State Water Board, requires the creation of a costly database for tracking compliance and enforcement, and contains an infeasible implementation timeline.
>
> Although some funding was included in the 2023 budget for testing and remediation, the bill lacks key provisions for efficiently administering the funding and is inadequate to cover the full cost of implementation. Additionally, this bill creates a reimbursable state mandate with ongoing Proposition 98 General Fund costs that could range into the hundreds of millions of dollars.
>
> In partnership with the Legislature, we enacted a budget that closed a shortfall of more than $30 billion through balanced solutions that avoided deep program cuts and protected education, health care, climate, public safety, and social service programs that are relied on

> by millions of Californians. This year, however, the Legislature sent me bills outside of this budget process that, if all enacted, would add nearly $19 billion of unaccounted costs in the budget, of which $11 billion would be ongoing.
>
> With our state facing continuing economic risk and revenue uncertainty, it is important to remain disciplined when considering bills with significant fiscal implications, such as this measure.

SB 1144 (Weiner) of the 2021-22 Session would have required state agencies and public schools to complete a water efficiency and quality assessment report on their facilities, as specified. This bill would have required the operating agency, if the report identified noncompliant plumbing fixtures and appliances or contaminants, to remedy the problem at the earliest practical time, subject to dedicated funding. This bill was vetoed by the Governor, with the following message:

> Improving the quality of drinking water in our state's buildings and schools is a priority we share. California's Safe Drinking Water Act tasks the State Water Board with ensuring that public water systems provide uncontaminated, quality, potable water to consumers. The Board regulates water systems; however, oversight of internal plumbing at the individual building level is not a function of the Board. Developing new expertise to adequately implement this bill and develop regulations would require significant new staff and resources.
>
> The scope of this bill is broad, including not just public schools, charter schools, and state buildings, but also buildings leased, maintained, and occupied by a state agency. Implementing this policy would result in substantial, ongoing General Fund and Prop 98 costs in the hundreds of millions of dollars not accounted for in the budget.
>
> With our state facing lower-than-expected revenues over the first few months of this fiscal year, it is important to remain disciplined when it comes to spending, particularly spending that is ongoing. We must prioritize existing obligations and priorities, and this bill could force state agencies and public schools to choose between its implementation and other critical needs.
>
> The Legislature sent measures with potential costs of well over $20 billion in one-time spending commitments and more than $10 billion in ongoing commitments not accounted for in the state budget. Bills with significant fiscal impact, such as this measure, should be considered and accounted for as part of the annual budget process.

AB 75 (O'Donnell) of the 2021-22 Session would have authorized the allocation of state funds for the replacement of school buildings that are at least 75 years old, for specified assistance to school districts with a school facility located on a military installation, as specified, and small school districts, as defined, and for the testing and remediation of lead levels in water fountains and faucets used for drinking or preparing food on schoolsites. Additionally, it would have authorized modernization grants to be used for the control, management, or abatement of lead. This bill was held in the Senate Education Committee.

AB 841 (Ting), Chapter 372, Statutes of 2020, requires the Energy Commission to develop and administer the School Noncompliant Plumbing Fixture and Appliance program to provide grants to state agencies and LEAs to replace noncompliant plumbing fixtures and appliances that fail to

meet water efficiency standards and waste potable water and the energy used to convey that water, with water-conserving plumbing fixtures and appliances.

AB 48 (O'Donnell), Chapter 530, Statutes of 2019, placed the $15 billion Public Preschool, K-12, and College Health and Safety Bond Act of 2020 on the March 2020 statewide ballot and authorized the allocation of funds to test for lead in water outlets used for drinking or preparing food on schoolsites serving kindergarten or any of grades 1 to 12, inclusive, that were constructed before January 1, 2010, and for the remediation of any water outlet used for drinking or preparing food with lead levels in excess of 15 ppb.

AB 2370 (Holden) Chapter 676, Statutes of 2018, requires licensed child day care facilities to, upon enrolling any child, provide parents or guardians with certain written information related to the risks and effects of lead exposure and blood lead testing recommendations and requirements, and subjects certain child day care centers to certain requirements related to testing drinking water for lead contamination levels.

SB 862 (Committee on Budget and Fiscal Review), Chapter 449, Statutes of 2018, appropriates $6.8 million to be used for the State Water Resources Control Board's Safe Drinking Water for Schools grant program, including up to $1 million in TA.

AB 746 (Gonzalez Fletcher), Chapter 746, Statutes of 2017, requires community water systems to test lead levels, by July 1, 2019, in drinking water at all California public, K-12 school sites that were constructed before January 1, 2010.

SB 427 (Leyva), Chapter 238, Statutes of 2017, requires, by July 1, 2020, a community water system, instead of a public water system, to provide a timeline for replacement of known lead user service lines in use in its distribution system to the SWB.

SB 828 (Committee on Budget and Fiscal Review), Chapter 29, Statutes of 2016, requires the SWB to establish a grant program, in consultation with the CDE, to award grants to LEAs for the purposes of improving access to, and the quality of, drinking water in public schools serving kindergarten or any of grades 1 to 12, inclusive, and preschools and child day care facilities located on public school property. This bill appropriated $9.5 million from the General Fund to the SWB.

SB 1398 (Leyva), Chapter 731, Statutes of 2016, requires a public water system to identify and replace known leaded plumbing.

AB 685 (Eng), Chapter 524, Statutes of 2012, establishes in law a state policy that all residents of the state have a right to clean, affordable, and accessible water for human consumption, and directs relevant state agencies to implement the policy.

SB 1413 (Leno), Chapter 558, Statutes of 2010, requires a school district to provide access to free, fresh drinking water during meal times in school food service areas by July 1, 2011, unless the governing board of a school district adopts a resolution stating that it is unable to comply with this requirement and demonstrates the reasons why it is unable to comply due to fiscal constraints or health and safety concerns.

REGISTERED SUPPORT / OPPOSITION:

Support

A Voice for Choice Advocacy
Active San Gabriel Valley
American Academy of Pediatrics, California
American Nurses Association/California
California Dental Association
California Environmental Voters
California Federation of Teachers AFL-CIO
California Nurses for Environmental Health and Justice
California State Pipe Trades Council
Center for Community Action and Environmental Justice
Children Now
Children's Specialty Care Coalition
Clean Earth 4 Kids
Clean Water Action
Cleanearth4kids.org
Climate Health Now
Environmental Health Trust
Environmental Working Group
Facts Families Advocating for Chemical and Toxics Safety
Families Advocating for Chemical and Toxics Safety
Friends Committee on Legislation of California
GenUp (Generation Up)
Jonas Philanthropies
Lilla Arts
Lutheran Office of Public Policy - California
Non Toxic Communities
Nontoxic Schools
Recolte Energy
Resource Renewal Institute
Safe Passages
San Francisco Bay Area Physicians for Social Responsibility
San Francisco Bay Physicians for Social Responsibility
Sierra Club California
Socal 350 Climate Action
Sunflower Alliance
Sustainable St. Helena
Sustainable St. Helena-an Environmental Alliance
Undauntedk12
Union of Concerned Scientists
Western Center on Law and Poverty
Western States Policy Advocate Union of Concerned Scientists
Wholly H2O

Opposition

None on file

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