Date of Hearing: April 26, 2017

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 746 (Gonzalez Fletcher) – As Amended April 18, 2017

[Note: This bill was doubled 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: Public health: potable water: lead testing: schoolsites and campuses

SUMMARY: Requires a local educational agency (LEA), the Board of Governors (BOG) of the California Community Colleges (CCC), and the Trustees of the California State University (CSU) to test for lead in potable water systems and inform parents, guardians and students on how to obtain physician testing. Specifically, **this bill**:

1) Requires a LEA to do the following:

    a) Test the potable water system for lead at least *once a year* at every schoolsite with a building constructed *before* January 1, 1986, including preschool locations, within the jurisdiction of the LEA.

    b) Test the potable water system for lead at least *once every three years* at every schoolsite with a building constructed *after* January 1, 1986, including preschool locations, within the jurisdiction of the LEA.

2) Requires the BOG and the Trustees of the CSU to do the following:

    a) Test the potable water system for lead at least once a year at every campus with a building constructed before January 1, 1986, within their respective jurisdictions.

    b) Test the potable water system for lead at least once every three years at every campus with a building constructed after January 1, 1986, within their respective jurisdictions.

3) Requires, if a test reveals that the lead level at a schoolsite or campus is greater than the United States Environmental Protection Agency (USEPA) drinking water standards for lead, as those standards existed on January 1, 2017, the LEA, BOG or Trustees of the CSU to notify, within seven days of receiving test results, the parents or guardians of students attending a K-12 school and students who attend the CCC or CSU campus, and provide information on how to obtain physician testing for any student who may be affected by the elevated lead level.

4) Requires a LEA, the BOG and the Trustees of the CSU to make inoperable and shut down from use any part of a schoolsite or campus potable water system that has an elevated lead level.

5) Specifies that if a test reveals that a schoolsite or campus' lead level is greater than 5 parts per billion, every potable water system at the schoolsite or campus shall be tested that year.

6) Encourages the Regents of the University to adopt an appropriate resolution to implement the provisions of this bill for the University of California.

7) Authorizes a LEA, BOG or Trustees of the CSU to do the following:

   a) Contract with a third party to conduct testing required by this bill.

   b) Seek the assistance of a local health agency, a community water system, or the State Water Resources Control Board to ensure compliance with this bill.

8) Requires a LEA, BOG or Trustees of the CSU to use the State Water Resources Control Board's protocol for testing water.

9) Defines "LEA" as a school district, county office of education, or charter school.

10) Defines "potable water system" as water fountains and faucets used for drinking and preparing food.

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 of lack of compliance with drinking water standard from a person operating a public water system 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 testing of lead at water fountains and faucets used for drinking and preparing food every schoolsite at least once a year, including at preschool locations, if the site has a building constructed *before* January 1, 1986. A schoolsite with a building constructed *after* January 1, 1986 is required to conduct testing of lead once every three years. If the test shows lead above the USEPA recommended level for drinking water, LEAs are required to shut down from use any part of a schoolsite potable water system that has an elevated level of lead, notify parents and guardians of pupils of affected schoolsites within seven days of receipt of the test result, and provide information on how to obtain physician testing. The bill applies the same requirements on CCCs and CSUs and requests the UC Board of Regents to do the same.

The author states, “Recent events in cities across the United States have shown that lead in drinking water remains an ongoing public health challenge. Lead in public water systems represents a threat to public health, and any related risks should be assessed and mitigated by the public water systems.”

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.

The most prevalent sources of lead in drinking water are from pipes, fixtures, and associated hardware from which the lead can leach. The amount of lead in tap water can depend on several factors, including the age and material of the pipes, concentration of lead in water delivered by the public utility (or, for private domestic wells, the concentration of lead in raw groundwater), and corrosivity (acidity, temperature, and the concentration of other mineral components) of the water. More corrosive water can cause greater leaching from pipes. As pipes age, mineral deposits will form a coating on the inside of the pipes that protect against further corrosion. However, older homes with lead pipes can still have significant concentrations of lead in their tap water.

Recent incidences. In February, the safety of drinking water was questioned after elevated levels of lead, copper, and bacteria were discovered at three campuses in the San Ysidro School District.

As a result, the City of San Diego will begin testing for lead in water systems at San Diego Unified School District (SDUSD) campuses. Up to five samples will be taken at each schoolsite, from drinking fountains, cafeterias, and food preparation areas. If test results indicate that lead is present above allowable levels, the SDUSD will determine the source of contamination and take appropriate action on a case-by-case basis -- like turning off water, replacing fixtures, or making plumbing repairs.

On February 12, 2017, the Sacramento Bee reported that 85 drinking fountains, bottle-filling stations, and sinks were shut down at Sacramento State University after elevated lead levels were discovered by students and teachers as part of a school project.

The Sacramento Bee also reported that Folsom Cordova Unified School District started testing water last year at schools built before 1960 that have galvanized steel pipes. The testing was prompted by elevated levels of copper, iron, and lead in water coming from a classroom tap in 2015 at Cordova Lane Center, which serves preschoolers and special education students. Additional tests at that school revealed high lead levels from spigots in a storage room, staff room, and a multipurpose room-kitchen. The original parts of the campus were completed in 1959 and had aging water lines that required repair. Follow-up tests showed no signs of lead.

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 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 by Congress.

Volunteer testing of lead. In response to recent events across the United States relating to lead found in drinking water, the State Water Resources Control Board, in collaboration with CDE, launched a testing program in January, 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 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 State Water Resources Control 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 State Water Resources Control Board anticipates adopting guidelines for the program by May 16, 2017 and accepting applications around July 2017.

The Committee may wish to consider whether to give the voluntary testing and water grant programs time to be implemented before imposing additional requirements.

Similar testing bills. There are several bills introduced this legislative session that require testing of lead in schools. This Committee heard AB 885 (Rubio) at its April 5th hearing. One of the major differences between this bill and AB 885 is what constitutes elevated levels of lead. AB 885 uses a more stringent one part per billion in water while this bill uses the USEPA recommended level of 15 parts per billion for drinking water. It is likely that AB 885 will result in nearly all, if not all, schoolsites as being identified with elevated levels of lead. 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.

Prior lead testing bills have allowed testing based on samples at a schoolsite and limited testing to schoolsites located in specified areas of the state that may have higher risk of lead and built before the state banned lead products, including plumbing and solders, in the construction of schools. Recent amendments to AB 746 specify that testing shall be done according to the State Water Resources Control Board's protocol for testing, which utilizes a sampling method at a schoolsite. However, the bill requires testing of all water fountains and faucets used for drinking

and preparing food at a schoolsite if a test reveals that a schoolsite or campus' lead level is greater than 5 parts per billion.

This bill requires LEAs to notify parents and guardians within seven days of receiving results showing elevated levels of lead at a schoolsite and inform parents and guardians of how to obtain physician testing. Opposition of the bill raises concerns regarding the lack of expertise about lead by LEAs and requests an amendment to require LEAs to instead share information developed by organizations with expertise in lead issues, such as the Department of Public Health or the State Water Resources Control Board.

Unlike other bills, this bill is simply a testing and notification bill and does not require LEAs to develop mitigations or a plan to address elevated levels of lead in schools.

Committee amendments: Staff recommends the following amendments:

1) The bill specifies the frequency of testing based on the age of buildings (annually if constructed before 1986 and once every three years if after 1986). The Committee has previously recommended testing based on the year the Education Code banned the use of lead in the construction and modernization of schools, which is 1993. **Staff recommends** amending the date a building was constructed from 1986 to 1993.

2) Instead of requiring information on how to obtain physician testing to be provided to parents, guardians and students, **staff recommends** requiring the provision of information on lead developed by an agency with expertise on lead, such as the United States Center for Disease Control and Prevention, the USEPA, the DPH, the State Water Resources Control Board, or another agency.

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 and requires the CDE to compile these assessments, post the information on its Internet Web site, and transmit the compiled assessments to the State Water Resources Control 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 885 (Rubio), pending in the Assembly Environmental Safety and Toxic Materials Committee, requires local community water systems to test water outlets at all schools within their boundaries for the presence of lead and requires all schools to develop and adopt a plan of action to prevent elevated lead levels.

SB 210 (Leyva), pending in the Senate Appropriations 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 State Water Resources Control 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

A Voice for Choice Advocacy
American Heart Association/American Stroke Association
California State PTA

Opposition

California School Boards Association (unless amended)

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