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## SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

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**Bill No:** AB 746 **Hearing Date:** June 28, 2017  
**Author:** Gonzalez Fletcher  
**Version:** May 26, 2017  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Lynn Lorber

**Subject:** Public health: potable water systems: lead testing: schoolsites

**NOTE:** This bill has been referred to the Committees on Education and Environmental Quality. A "do pass" motion should include referral to the Committee on Environmental Quality.

### SUMMARY

This bill requires a local educational agency to annually test for lead in the potable water system at every schoolsite with a building constructed before 1993, and every three years at every schoolsite with a building constructed in or after 1993.

### BACKGROUND

The Childhood Lead Poisoning Prevention Act provides services for the purpose of increasing awareness regarding the hazards of lead exposure, reducing lead exposure and increasing the number of children assessed and appropriated blood tested for lead poisoning. The Childhood Lead Poisoning Prevention Program offers home visitation, environmental home inspections and nutritional assessments to families of children found to be severely lead-poisoned. (Health and Safety Code § 105275 et. seq.)

#### *Drinking water quality*

- 1) The federal Safe Drinking Water Act (SDWA) authorizes the United States Environmental Protection Agency to set standards for drinking water quality and to oversee the states, localities and water suppliers who implement those standards. The California SDWA requires the State Water Resources Control Board (SWRCB) to regulate drinking water and to enforce the federal SDWA and other related regulations. The duties and responsibilities related to the regulation and oversight of drinking water were transferred from the California Department of Public Health to the State Water Resources Control Board in 2014. (HSC § 116270 et. seq.)
- 2) The SWRCB's Division of Drinking water regulates over 8,000 public water systems by inspecting the systems, issuing permits, taking enforcement actions and implementing new requirements due to changes in federal or state law or regulations.
- 3) Existing law requires schools that receive notification from a public water system regarding non-compliance with any primary drinking water standard or a violation

of monitoring requirements, to notify school employees, students and parents.  
(HSC § 116450)

*Lead-Safe Schools Protection Act*

Existing law:

- 1) 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. (Education Code § 32244)
- 2) Requires the State Department of Health Services (now called the Department of Public Health) to:
  - a) Conduct a sample survey of schools to determine the likely extent and distribution of lead exposure to children from paint on the school, the soil in play areas at the school, drinking water at the tap, and other potential sources. Risk factors include the location in relation to high-risk areas, the age of the facility, likely use of lead paint in or around the facility, numbers of children enrolled under the age of six, and results of lead screening programs.
  - b) Notify the principal of the school of the survey results within 60 days of the completion of testing. School principals are required to notify the teachers and other school personnel and parents of survey results within 45 days of receiving the survey results.
  - c) Advise any school that has been determined to have significant risk factors for lead, and the school is required to notify teachers, other personnel and parents within 45 days.
  - d) Make recommendations to the legislature and California Department of Education (CDE) on the feasibility and necessity of conducting statewide lead testing and any additional action needed relating to lead contamination in schools.
  - e) Develop environmental lead testing methods and standards.
  - f) Work with the CDE to develop voluntary guidelines to ensure that lead hazards are minimized in the course of school repair and maintenance and abatement procedures. (EC § 32241, § 32242, and § 32243)

*Drinking water at schools*

Existing law requires:

- 1) Interior and exterior drinking fountains to be functional, accessible, and free of leaks, and with adequate water pressure. Drinking fountain water must be clear and without unusual taste or odor and have no evidence of moss, mold, or

excessive staining. Drinking fountains must appear to have been cleaned each day that the school is in session. (EC § 17002)

- 2) School districts to provide access to free, fresh drinking water during meal times in the food service areas. School districts may adopt a resolution stating that it is unable to comply with this requirement and demonstrate the reasons why it is unable to comply due to fiscal constraints or health and safety concerns. (EC § 38086)
- 3) Requires the State Water Resources Control Board (SWRCB) to establish a program, in consultation with the California Department of Education, to award grants to local educational agencies (LEAs) for the purposes of improving access to, and the quality of, drinking water in public schools consistent with the Legislature's intent that school facilities be maintained in "good repair." Existing law provides that eligible entities are limited to LEAs serving K-12, and preschools and child day care facilities located on a LEA's property. Existing law requires the program to include but not be limited to funding for at least one of the following:
  - a) Installation of water bottle filling stations.
  - b) Installation or replacement of drinking water fountains with devices that are capable of removing contaminants that are present in the facility's water supply.
  - c) Installation of point-of-entry or point-of-use treatment devices for drinking fountains, and up to three years of post-installation replacement filters, and operation, maintenance, and monitoring of the devices, including training on how to operate and maintain the treatment devices and community outreach and education about their use. (Health & Safety Code § 116276)
- 4) 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)

## ANALYSIS

This bill requires a LEA to annually test for lead in the potable water system at every schoolsite with a building constructed before 1993, and every three years at every schoolsite with a building constructed in or after 1993. Specifically, this bill:

- 1) Requires a LEA, at least once a year, to test for lead in the potable water system at every schoolsite with a building constructed before January 1, 1993, including preschool locations, within the jurisdiction of the LEA.
- 2) Requires a LEA, at least once every three years, to test for lead in the potable water system at every schoolsite with a building constructed after January 1, 1993, including preschool locations, within the jurisdiction of the LEA.

- 3) Requires the local educational agency (LEA), if a test reveals that a schoolsite's lead level is greater than the United States Environmental Protection Agency's drinking water standards for lead (15 part per billion), to notify the parents and guardians within seven days of receiving test results of the elevated level and provide information on lead developed by an agency with expertise on lead, such as the United States Environmental Protection Agency, the State Department of Public Health, the State Water Resources Control Board (SWRCB), or another agency.
- 4) Require a LEA to make inoperable and shut down from use any part of a schoolsite's potable water system that has an elevated lead level (exceeds 15 parts per billion).
- 5) Requires every potable water system at the schoolsite to be tested, that year, if a test reveals that a schoolsite's lead level is greater than 5 parts per billion.
- 6) Requires a LEA to use the SWRCB's protocol for testing water.
- 7) Authorizes a LEA to do the following:
  - a) Contract with a third party to conduct testing.
  - b) Seek the assistance of a local health agency, a community water system, or the SWRCB to ensure compliance.
- 8) Defines:
  - a) "Local educational agency" as a school district, county office of education, or charter school.
  - b) "Potable water system" as the water fountains and faucets used for drinking and preparing food.

## STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, "In February 2017, the safety of drinking water was questioned after heavy metals and bacteria were found in water fountains and faucets in San Ysidro public schools. AB 746 will require all schools to test the water source for lead contaminants and to give assurance to parents and the school community that the water is lead free or lead is revealed. School administrators are responsible for limiting lead exposure in their school facilities. But existing law does not require California schools to test their water for lead. Currently, the testing is only initiated once a school superintendent or administrator requests it."
- 2) ***New program for free lead testing.*** The State Water Resources Control Board (SWRCB) announced a new initiative on January 17, 2017, for K-12 schools to receive free testing for lead. Specifically, the SWRCB is requiring all community water systems to test school drinking water upon request by school officials. Testing is voluntary for schools; if a school makes a written request, the

community water system is required to collect samples within three months and report the results back to the school within 10 business days after receiving the results from the laboratory, or two business days if a result exceeds 15 parts per billion. The State Water Resources Control Board (SWRCB) requires community water systems to collect up to five samples at each school requesting assistance. Sampling locations may include drinking fountains, cafeteria and food preparation areas, and reusable water bottle filling stations.

Community water systems are responsible for the costs associated with:

- a) Collecting, analyzing, and reporting drinking water samples for lead testing at up to five locations at each school.
- b) Conducting repeat sampling at the school to confirm elevated lead levels and the effectiveness of any corrective action taken by the school.

Community water systems are not responsible for the costs associated with:

- c) Conducting sampling at any locations other than the five locations chosen for initial sampling, even if elevated lead levels (over 15 parts per billion (ppb)) are found during initial sampling.
- d) Any maintenance or corrections needed at the school if elevated lead levels are found in the drinking water.
- e) Repeat sampling at a sample site if the school chooses to remove the tap from service.

This initiative will end on November 1, 2019. *Any school that does not make a written request for free lead testing through this SWRCB initiative by the November 2019 deadline will not receive free lead testing.*

- 3) **Lead levels.** The United States Environmental Protection Agency (EPA) has established 15 ppb as the “action level” for lead sampling in schools. The EPA’s 3Ts (Training, Testing and Telling) Program for Schools currently uses 20 ppb in a 250-milliliter sample as the trigger level for follow-up testing.

This bill requires every potable water system at the schoolsite to be tested, that year, if a test reveals that a schoolsite’s lead level is greater than 5 ppb.

*Is this threshold too low?*

*Should every potable water system at the schoolsite to be tested only if 10 percent of the initial test samples exceed 5 ppb (10 percent is consistent with the EPA’s Lead and Copper Rule trigger for action including service line replacement)?*

- 4) **Frequency of testing.** This bill requires a local educational agency, at least once a year, to test for lead in the potable water system at every schoolsite with a building constructed before January 1, 1993, and at least once every three

years if constructed after January 1, 1993, including preschool locations, within the jurisdiction of the local educational agency (LEA).

*Is required retesting too frequent?*

*Should testing be required only in areas of the state known to have corrosive water, or testing be prioritized for such areas (the free testing program ends in 2019)?*

*Should new schools be exempt, or required to test only if located in an area of the state known to have corrosive water?*

- 5) **Budget funding.** The 2016-17 Budget Act provided \$9.5 million to provide grants to LEAs to improve access to and the quality of drinking water in schools. 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 post-installation replacement filters. Funds can also be used for training and education.
- 6) **Technical amendment suggested.** The provisions of this bill are placed in the Pure and Safe Drinking Water section of the California Safe Drinking Water Act. Staff recommends an amendment, *to be adopted in the Senate Environmental Quality Committee*, to relocate the provisions of this bill to an area in the Education Code near the Lead-Safe Schools Protections Act (sections 32240-32245).
- 7) **Fiscal impact.** According to the Assembly Appropriations Committee, this bill would impose “unknown potential Proposition 98/General Fund reimbursable mandated costs to schools for lead testing. Much of the cost will be offset through free testing by community water systems, as required by the State Water Board.”
- 8) **Related legislation.** AB 305 (Arambula) requires each school district to conduct an assessment of the drinking water access points at each schoolsite and to submit a report to the California Department of Education (CDE) and requires the CDE to compile these assessments, post the information on its website, and transmit the compiled assessments to the State Water Resources Control Board for posting on its website. AB 305 was never heard.

AB 567 (Quirk-Silva) 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 567 was never heard.

AB 885 (Rubio) requires each school to develop and adopt a plan of action to prevent elevated lead levels in all water used for drinking or cooking at the school and requires a community water system to test schools annually for the presence

of lead. AB 885 was held in the Assembly Appropriations Committee.

SB 210 (Leyva) requires the State Water Resources Control Board, as part of its Safe Drinking Water in School Program to establish additional priority criteria in awarding the grants to give priority to projects for schools that have tested their drinking water sources and have contamination issues. SB 210 is pending in the Assembly Environmental Safety and Toxic Materials Committee.

- 9) **Prior legislation.** SB 334 (Leyva, 2015) prohibited drinking water that does not meet the United States Environmental Protection Agency drinking water standards for lead from being provided at a school facility, requires schools that have lead-containing plumbing components to flush all drinking water sources at the beginning of each schoolday, and deletes the authority for school district governing boards 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. SB 334 was vetoed; the Governor's veto message read:

***I agree that all California students should have access to safe drinking water but this bill creates a state mandate of uncertain but possibly very large magnitude.***

***As our first order of business, local schools should understand the nature of their water quality problem, if there is one. Accordingly, I am directing the State Water Resources Control Board to work with school districts and local public water systems to incorporate water quality testing in schools as part of their lead and copper rule. School districts should utilize this information to ensure all students are provided safe water.***

## **SUPPORT**

American Heart Association/American Stroke Association  
California Teachers Association

## **OPPOSITION**

None received

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