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**SUBSTITUTE HOUSE BILL 1139**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** House Education (originally sponsored by Representatives Pollet, Callan, Berg, Dolan, Ryu, Leavitt, Bronoske, Ramel, Ramos, Lekanoff, Stonier, Ortiz-Self, Frame, Goodman, Rule, Bergquist, Berry, Wylie, J. Johnson, Taylor, and Valdez)

1 AN ACT Relating to taking action to address lead in school  
2 drinking water; adding a new section to chapter 28A.210 RCW; adding  
3 new sections to chapter 43.70 RCW; adding a new section to chapter  
4 28A.195 RCW; adding a new section to chapter 43.20 RCW; and creating  
5 new sections.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** (1) The legislature recognizes that the  
8 United States environmental protection agency and centers for disease  
9 control and prevention acknowledge that there is no known safe level  
10 of lead in a child's blood. Even low levels of lead exposure can  
11 cause permanent cognitive, academic, and behavioral difficulties in  
12 children. The American academy of pediatrics recommends government  
13 action to ensure that the lead concentration in drinking water at  
14 schools does not exceed one part per billion.

15 (2) The legislature finds that the department of health sampled  
16 and tested drinking water outlets in 551 elementary schools between  
17 2017 and 2020. 82 percent of these schools had lead contamination of  
18 five or more parts per billion in one or more drinking water outlets  
19 and 49 percent of these schools had lead contamination of 15 or more  
20 parts per billion in one or more drinking water outlets.

1 (3) The legislature acknowledges that the department of health  
2 was appropriated \$1,000,000 in the 2019-2021 fiscal biennium to  
3 continue the testing for lead contamination in school drinking water.  
4 The legislature also finds that the office of the superintendent of  
5 public instruction was appropriated funds in the 2019-2021 fiscal  
6 biennium for the healthy kids/healthy schools initiative. Part of  
7 these funds are for the purpose of distributing grants to school  
8 districts for remediation of elevated lead levels in drinking water.  
9 The legislature encourages districts to apply for these grants when  
10 lead test results reveal elevated lead levels, which are lead levels  
11 above five parts per billion.

12 (4) The legislature acknowledges the historically inequitable  
13 distribution of lead exposure for communities of color and of low  
14 socioeconomic status and plans to make a priority the protection of  
15 children from the dangers of lead exposure through school drinking  
16 water. The legislature, therefore, intends to require that drinking  
17 water outlets in elementary and secondary school buildings built, or  
18 with all plumbing replaced, before 2016 be tested for the presence  
19 and level of lead contamination by June 30, 2026, and every five  
20 years thereafter. The legislature also intends to require that  
21 schools notify the school community of lead test results and develop  
22 action plans for remediation if test results exceed the health-based  
23 standard of five parts per billion.

24 (5) The legislature recognizes that the youngest children are the  
25 most vulnerable to lead exposure and that many of these children  
26 spend significant amounts of time at child care facilities.

27 (6) This act is named for the director of the Washington public  
28 interest research group who developed and advocated for this  
29 legislation before dying of cancer in 2019 and may be known as the  
30 Bruce Speight protect children from being exposed to lead in school  
31 drinking water act.

32 NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.210  
33 RCW to read as follows:

34 (1) This section applies to schools with buildings built, or with  
35 all plumbing replaced, before 2016.

36 (2) With respect to sampling and testing for lead contamination  
37 at drinking water outlets, a school shall either:

1 (a) Cooperate with the department so that the department can  
2 conduct sampling and testing as required under section 3 of this act;  
3 or

4 (b) Contract for sampling and testing that meets the requirements  
5 of section 3 of this act and submit the test results to the  
6 department according to a procedure and deadlines determined by the  
7 department.

8 (3) Beginning January 2, 2022, a school shall make available on a  
9 public website the most recent results of testing for lead  
10 contamination at drinking water outlets in buildings that meet the  
11 requirements of subsection (1) of this section. New test results must  
12 be made available on the website within 30 days after receipt.

13 (4) Annually, beginning with the 2021-22 school year, a school  
14 shall communicate with students' families and staff about lead  
15 contamination in drinking water. The school shall consult with the  
16 department or a local health agency on the contents of the  
17 communication, which must include: The health effects of lead  
18 exposure and that even small amounts of lead can be harmful; the  
19 website address of the lead test results; and information about and a  
20 comparison of lead test results with the federal threshold, the state  
21 threshold, and the American academy of pediatrics recommended  
22 threshold, for remedial action to reduce lead contamination in  
23 drinking water. Schools are encouraged to provide the communication  
24 as early in the school year as possible.

25 (5) As soon as practicable after receiving a lead test result  
26 that reveals an elevated lead level, as defined in subsection (7) of  
27 this section, at a drinking water outlet, and until a lead  
28 contamination mitigation measure is implemented, the school must shut  
29 off the water to the outlet.

30 (6)(a) For a lead test result that reveals an elevated lead  
31 level, as defined in subsection (7) of this section, at one or more  
32 drinking water outlets, the school's governing body shall develop and  
33 adopt a school action plan in compliance with the requirements of  
34 this subsection.

35 (b) The school action plan must:

36 (i) Be developed in consultation with the department or a local  
37 health agency regarding the technical guidance, and with the office  
38 of the superintendent of public instruction regarding funding for  
39 remediation activities;

1 (ii) Describe mitigation measures implemented since the lead test  
2 result was received;

3 (iii) Include a schedule of remediation activities, including use  
4 of filters, that adhere to the technical guidance. The schedule may  
5 be based on the availability of funding for remediation activities;  
6 and

7 (iv) Include confirmatory retesting.

8 (c) The school's governing body must provide the public with  
9 notice and opportunity to comment on the school action plan before it  
10 is adopted.

11 (d) The school action plan adoption deadlines are as follows:

12 (i) For lead test results received between July 1, 2014, and the  
13 effective date of this section, for which a school did not take  
14 remedial action or for which retesting has not confirmed that the  
15 elevated lead level has been reduced to five or fewer parts per  
16 billion, the school's governing body shall provide notice of elevated  
17 lead levels in the communication required under subsection (4) of  
18 this section and adopt an action plan by January 2, 2022; and

19 (ii) For lead test results received after the effective date of  
20 this section, the school's governing body shall adopt an action plan  
21 within six months of receipt.

22 (7) The definitions in this subsection apply throughout this  
23 section unless the context clearly requires otherwise.

24 (a) "Department" means the department of health.

25 (b) "Drinking water" means any water that students have access to  
26 where it is reasonably foreseeable that the water may be used for  
27 drinking, cooking, or food preparation.

28 (c) "Drinking water outlet" or "outlet" means any end point for  
29 delivery of drinking water, for example a tap, faucet, or fountain.

30 (d) "Elevated lead level" means a lead concentration in drinking  
31 water that exceeds five parts per billion, unless a lower  
32 concentration is specified by the state board of health in rule in  
33 accordance with section 7 of this act.

34 (e) "School" means a school district and the common schools, as  
35 defined in RCW 28A.150.020, within the district; a charter school  
36 established under chapter 28A.710 RCW; or the state school for the  
37 blind or the state school for the deaf established under RCW  
38 72.40.010.

39 (f) "Technical guidance" means the technical guidance for  
40 reducing lead in drinking water at schools issued by the United

1 States environmental protection agency until the department complies  
2 with section 6 of this act when the term means the technical guidance  
3 developed by the department.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.70  
5 RCW to read as follows:

6 (1) The department shall conduct sampling and testing for lead  
7 contamination at drinking water outlets in school buildings built, or  
8 with all plumbing replaced, before 2016 as specified in this section.  
9 The department meets the requirements of this section when a school  
10 contracts for sampling and testing that meets the requirements of  
11 this section and submits the test results to the department according  
12 to a procedure and deadlines determined by the department.

13 (2) Sampling and testing for the presence and level of lead in  
14 drinking water must meet the technical requirements described in the  
15 technical guidance.

16 (3)(a) Initial testing for lead contamination in drinking water  
17 must be conducted between July 1, 2014, and June 30, 2026.

18 (b) Retesting for lead contamination in drinking water must be  
19 conducted no less than every five years beginning July 1, 2026.

20 (4)(a) The department shall develop and publish a two-year plan  
21 for sampling and testing. The plan must be updated at least annually.  
22 Prior to adding a school to the plan, the department must contact the  
23 school to determine whether the school has contracted, or is planning  
24 to contract, for sampling and testing.

25 (b) Beginning July 1, 2026, in developing the two-year plan for  
26 sampling and testing, the department must group school buildings by  
27 governing body and then prioritize the groups based on the combined  
28 length of time since each school building built, or with all plumbing  
29 replaced, before 2016 was sampled and tested.

30 (5) The department shall enter a data-sharing agreement with the  
31 office of the superintendent of public instruction for the purpose of  
32 compiling a list of school buildings built, or with all plumbing  
33 replaced, before 2016.

34 (6) The definitions in section 2 of this act apply throughout  
35 this section unless the context clearly requires otherwise.

36 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.70  
37 RCW to read as follows:

1 The department shall allow state-tribal compact schools  
2 established under chapter 28A.715 RCW to opt into sampling and  
3 testing for lead contamination at drinking water outlets in school  
4 buildings built, or with all plumbing replaced, before 2016 pursuant  
5 to section 3 of this act.

6 NEW SECTION. **Sec. 5.** A new section is added to chapter 28A.195  
7 RCW to read as follows:

8 (1) This section applies to private schools with buildings built,  
9 or with all plumbing replaced, before 2016.

10 (2) With respect to sampling and testing for lead contamination  
11 at drinking water outlets, private schools must:

12 (a) Contract for sampling and testing that meets the technical  
13 requirements described in the technical guidance;

14 (b) Meet the deadlines for initial testing and retesting provided  
15 in section 3(3) of this act; and

16 (c) Submit the test results to the department according to a  
17 procedure and deadlines determined by the department.

18 (3) Beginning January 2, 2022, private schools shall make  
19 available to students' families and staff the most recent results of  
20 testing for lead contamination at drinking water outlets in buildings  
21 that meet the requirements of subsection (1) of this section. New  
22 test results must be made available within 30 days after receipt.

23 (4) Annually, beginning with the 2021-22 school year, private  
24 schools shall communicate with students' families and staff about  
25 lead contamination in drinking water. Each school shall consult with  
26 the department or a local health agency on the contents of the  
27 communication, which must include: The health effects of lead  
28 exposure and that even small amounts of lead can be harmful; the  
29 department website address of the lead test results; and information  
30 about and a comparison of lead test results with the federal  
31 threshold, the state threshold, and the American academy of  
32 pediatrics recommended threshold, for remedial action to reduce lead  
33 contamination in drinking water. Private schools are encouraged to  
34 provide the communication as early in the school year as possible.

35 (5) As soon as practicable after receiving a lead test result  
36 that reveals an elevated lead level at a drinking water outlet, and  
37 until a lead contamination mitigation measure is implemented, private  
38 schools must shut off the water to the outlet.

1 (6) (a) For a lead test result that reveals an elevated lead level  
2 at one or more drinking water outlets, the governing body of the  
3 private school shall develop and adopt a school action plan in  
4 compliance with the requirements of this subsection.

5 (b) The school action plan must:

6 (i) Be developed in consultation with the department or a local  
7 health agency regarding the technical guidance;

8 (ii) Describe mitigation measures implemented since the lead test  
9 result was received;

10 (iii) Include a schedule of remediation activities, including use  
11 of filters, that adhere to the technical guidance. The schedule may  
12 be based on the availability of funding for remediation activities;  
13 and

14 (iv) Include confirmatory retesting.

15 (c) The governing body of the private school must provide staff  
16 and students' families with notice and opportunity to comment on the  
17 school action plan before it is adopted.

18 (d) The school action plan adoption deadlines are as follows:

19 (i) For lead test results received between July 1, 2014, and the  
20 effective date of this section, for which a school did not take  
21 remedial action or for which retesting has not confirmed that the  
22 elevated lead level has been reduced to five or fewer parts per  
23 billion, the governing body of the private school shall provide  
24 notice of elevated lead levels in the communication required under  
25 subsection (4) of this section and adopt an action plan by January 2,  
26 2022; and

27 (ii) For lead test results received after the effective date of  
28 this section, the governing body of the private school shall adopt an  
29 action plan within six months of receipt.

30 (7) The definitions in section 2 of this act apply throughout  
31 this section unless the context clearly requires otherwise.

32 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.70  
33 RCW to read as follows:

34 The department shall develop and make available technical  
35 guidance for reducing lead contamination in drinking water at schools  
36 that is at least as protective of student health as any technical  
37 guidance on this topic issued by the United States environmental  
38 protection agency. The technical guidance must include the technical  
39 requirements for sampling, processing, and analysis, including that

1 analysis must be conducted by a laboratory accredited by the  
2 department of ecology. The technical guidance must describe best  
3 practices for remediating elevated lead levels at drinking water  
4 outlets in schools. Best practices must include installing and  
5 maintaining filters certified by a body accredited by the American  
6 national standards institute. Provisions of the technical guidance  
7 related to testing for the presence and level of lead in drinking  
8 water, as opposed to testing to identify sources of lead for  
9 remediation, must be designed to maximize detection of lead in water,  
10 and therefore must prohibit sampling or analytical methods that tend  
11 to mask lead contamination, including prestagnation flushing and  
12 removal of aerators prior to sampling.

13 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.20  
14 RCW to read as follows:

15 After July 1, 2030, the state board may, by rule, define  
16 "elevated lead level" at a concentration of five or fewer parts per  
17 billion if scientific evidence supports a lower concentration as  
18 having the potential for further reducing the health effects of lead  
19 contamination in drinking water.

20 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.70  
21 RCW to read as follows:

22 (1) To the fullest extent permitted by federal law, the  
23 department, rather than community water systems, is designated as the  
24 lead or principal agency in regard to lead in drinking water  
25 sampling, testing, notification, remediation, public education, and  
26 other actions at public and private elementary and secondary schools  
27 as required by the federal lead and copper rule, 40 C.F.R. Part 141.

28 (2) The department must issue a written waiver that exempts  
29 community water systems that serve schools from the sampling and  
30 testing requirements of 40 C.F.R. Part 141.92 related to schools if  
31 the department determines that the mandatory requirements for  
32 sampling and testing for, and remediation of, lead contamination in  
33 drinking water outlets at elementary and secondary schools under this  
34 act are consistent with the requirements in 40 C.F.R. Part 141.92 of  
35 the federal lead and copper rule.



1        NEW SECTION.    **Sec. 9.**    This act may be known and cited as the  
2 Bruce Speight protect children from being exposed to lead in school  
3 drinking water act.

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