
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
2015 - 2016 Regular

Bill No: SB 334
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Consultant: Lynn Lorber
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Fiscal: Yes

Subject: Pupil nutrition: drinking water

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 school districts to provide access to free, fresh, clean and cold drinking water throughout the schoolday, and test or provide for the testing of drinking water at the beginning of each school year.

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

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 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.)

The State Water Resources Control Board'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.

Current 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

Current law 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)

Current law requires the State Department of Health Services (now called the Department of Public Health) to:

1. Conduct a sample survey of schools to determine the likely extent and distribution of lead exposure to children from paint on the school, soil in play areas at the school, drinking water at the tap, and other potential sources. Risk factors include location in relation to high-risk areas, 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.
2. 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.
3. 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.
4. 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.
5. Develop environmental lead testing methods and standards.
6. 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

Current law requires 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)

Current law requires 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)

ANALYSIS

This bill requires school districts to provide access to free, fresh, clean and cold drinking water throughout the schoolday, and test or provide for the testing of drinking water at the beginning of each school year. Specifically, this bill:

Providing fresh drinking water

1. Expands the existing requirement for school districts to provide access to free, fresh drinking water during meal times to require the provision of free, fresh, clean and cold drinking water throughout the schoolday, including:
 - A. Meal times.
 - B. Recreation times in the recreation areas of the schools, including while students are engaged in physical activity. These areas include playgrounds, gymnasiums, cafeterias, and recreation centers.
2. Requires school districts to provide at least one drinking water access point for every 100 students enrolled in the school. This bill defines “drinking water access point” as a station, plumbed or unplumbed, where students can access free, fresh, clean and cold drinking water. This bill authorizes an unplumbed access point to include water bottles and portable water dispensers.
3. Deletes the existing ability for school districts to adopt a resolution stating it is unable to provide access to free, fresh drinking water during meal times.

Testing drinking water

4. Requires school districts, before the beginning of each school year, to test or provide for the testing of drinking water for contaminants, including lead and perchlorates. This bill requires school districts to:
 - A. Test the drinking water it receives from municipal water systems or other water systems that the district provides in school facilities.
 - B. Test the drinking water at the schoolsite at which the drinking water is provided.
 - C. Ensure the drinking water meets drinking water quality standards prescribed by the California Safe Drinking Water Act.
5. Requires school districts to provide alternative sources of free, fresh, clean and cold drinking water to students if the drinking water received from a municipal

water system or other water system does not meet the standards of the California Safe Drinking Water Act.

6. Requires school districts to provide a public notice of the drinking water quality test results to students, parents and teachers. The notice must clearly specify whether the drinking water provided at the school is potable water.

STAFF COMMENTS

1. ***Need for the bill.*** According to the author, “To date, there are few guidelines or requirements for the monitoring of water quality and access in schools that receive water from public water systems. There is a lack of attention in the statute for monitoring water on school sites after it has been delivered to them from a water system, regardless of its categorization. Standards for water quality monitoring and compliance in schools are not found in statute. State plumbing codes pertaining to school drinking fountains are outdated as most other states have more stringent fountain-to-student ratios and provide more flexibility for compliance. Currently, 38 states require at least one water fountain per 100 students, while California requires one per the first 150 students and one per each 300 thereafter.”
2. ***Author’s amendments.*** The author wishes to amend this bill as follows:
 - A. Delete the requirement that school districts test or provide for the testing of drinking water sources, and instead expand the Childhood Lead Poisoning Prevention Act to include water. Explicitly require the Department of Public Health (DPH) to test drinking water sources at all schoolsites for lead.
 - B. Require school districts that have drinking water sources that do not meet the standards for lead and any other contaminant established by the United States Environmental Protection Agency to close access to those sources of drinking water immediately upon receipt of test results or notification from the public water system. Require school districts to provide alternative sources of drinking water if closing access to drinking fountains on a schoolsite violates the existing drinking fountain-to-student ratio requirement.
 - i) Authorize school districts to provide drinking water from plumbed or unplumbed sources while the source of contamination is being mitigated.
 - ii) Authorize an unplumbed source to include portable water dispensers and bottled water.
 - C. Require school districts that have drinking water sources that do not meet the standards established by the United States Environmental Protection Agency to work with the DPH and the local department of public health to

identify the most urgent mitigation needs and develop a protocol or plan for mitigation.

- i) Require the protocol or plan to identify timelines and funding sources for mitigation.
 - ii) Require the protocol or plan to be presented and adopted by the school district governing board at a regularly scheduled public meeting within six months of the receipt of the test results by the school districts.
- D. Require lead testing information, including but not limited to the dates tested, number and type of drinking water sources tested, test results, and adopted protocols or plans for mitigation to be reported by school districts to the DPH and the California Department of Education (CDE).
- i) Require the Department of Public Health (DPH) and CDE to establish a process for receiving, recording, and making public the data received from school districts.
 - ii) Require the DPH and CDE to post the data received from school districts on the websites of both departments.
- E. Require school districts to notify parents, students, teachers and other school personnel of test results, immediately upon receipt of those test results, if the school district is required to provide alternative sources of drinking water.
- F. Require schools that have lead pipes to flush all sources of drinking water for a minimum of 30 seconds at the beginning of each schoolday, consistent with protocols recommended by the United States Environmental Protection Agency.
- G. Require the CDE to work with the DPH to develop guidelines and best practices to ensure that lead hazards are minimized in the course of school repair and maintenance and abatement procedures. Require the data sent by school districts to the CDE to be considered in the development of the guidelines and best practices.
- H. Delete the requirement that drinking water be cold.
- I. Delete the requirement for drinking water access points for every 100 students.
3. **Remaining issues.** The author would like the following issues included in this bill. Those issues may be best addressed by the Senate Environmental Quality Committee.

- A. Require the testing of drinking water sources on schoolsites to include tests for copper, as well as for lead.
 - B. The frequency and recurrence of testing.
 - C. Certification of compliance with standards established by the United States Environmental Protection Agency.
4. **No existing requirement to test at schoolsites.** Current law requires drinking fountain water to be clear and without unusual taste or odor, and have no evidence of moss, mold, or excessive staining. There is no requirement in current law regarding the testing of drinking water, for lead or any other contaminants, at schoolsites.
5. **Survey of schools.** Current law requires the State Department of Health Services (now called the Department of Public Health) to conduct a sample survey of schools to determine the likely extent and distribution of lead exposure to children from paint on the school, soil in play areas at the school, drinking water at the tap, and other potential sources. The Department of Health Services conducted a study, beginning in 1994, of the extent of lead contamination in paint, soil and water in California schools. Data was collected from 200 randomly selected schools between 1995 and 1997; the report was submitted to the Legislature in 1998. The report states:

The United States Environmental Protection Agency (USEPA) has set the action level for lead in drinking water at 15 parts lead per billion (ppb) parts water. The action recommended by USEPA is to remove the drinking water outlet from service immediately until the lead content falls below the action level. Study data indicate that an estimated 18.1 percent of California schools are likely to have lead in drinking water at or above the federal action level. Lead exceeding this level was found at 10.5 percent of schools where the sampled outlet had been used within 24 hours of testing. These findings indicate that in some situations drinking water from school water outlets could contribute to children's lead exposure, and demonstrate a need for monitoring lead from drinking water outlets in schools. Water from outlets that have been left standing for 24 hours are generally more likely to contain higher lead levels than water from outlets that have recently been flushed. However, within the study, this flushing procedure did not always reduce lead content to below the action level. The age of the school was not a significant factor in the amount of lead in drinking water.

<http://files.eric.ed.gov/fulltext/ED462820.pdf>

Current law required the Department of Health Services to work with the California Department of Education to develop guidelines to ensure that lead hazards are minimized in the course of school repair and maintenance and abatement procedures. These guidelines were never developed.

6. **Los Angeles Unified.** The Los Angeles Unified School District (LAUSD) requires all drinking water fountains, faucets and food service faucets to be flushed for a minimum of 30 seconds prior to the first use each day. Reference Guide REF-3930.3 states:

Water that remains stationary within standard piping for extended periods of time can leach lead out of pipes joined with lead-containing solder as well as brass fixtures or galvanized pipes. Flushing fixtures has been found to be an effective means of reducing lead levels below the Action Level set by the Environmental Protection Agency. Based on past studies and current data, all drinking water fountains, faucets and food service faucets must be flushed for a minimum of 30 seconds prior to the first use each day. Faucets not used for human consumption which are labeled "Hand Wash Only" or "Laboratory Use Only" are not required to be flushed daily.

<http://www.lausd-oehs.org/docs/ReferenceGuides/REF-3930.pdf>

According to the Los Angeles Unified School District (LAUSD), the district tested drinking fountains for lead annually between 1988 and 2009, but halted testing due to budget reductions. In 2013, the LAUSD Board of Education requested an audit titled "Maintaining School Cleanliness and Safety" after the board expressed concerns about the effectiveness of the district's cleanliness, safety and custodial programs due to the declining budget for maintenance and operations.

One of the audit's objectives was to assess the daily flushing of drinking fountains. The audit found, of the 35 schoolsites visited, 23 had drinking fountains inside the classroom; six of the 23 schoolsites did not flush the drinking faucets for a minimum of 30 seconds prior to the first use each day. The audit also found that, although the classroom drinking faucets had not been flushed, the administrators at the six schoolsites had certified that all applicable fixtures had been flushed.

http://notebook.lausd.net/pls/ptl/docs/PAGE/CA_LAUSD/FLDR_ORGANIZATIONS/FLDR_OIG_PUBLICATIONS_AUDIT_REPORTS/13512MAINTI NSCHOOLCLEANLINESS.PDF

The LAUSD reports it has replaced drinking fountains at 200 schoolsites at a cost of \$15,000 - \$20,000 per drinking fountain.

7. **Existing requirement to provide drinking water.** Current law requires school districts to provide access to free, fresh drinking water during meal times in the food service areas. School districts currently have the authority to 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. This bill eliminates the ability for school districts to adopt a resolution exempting themselves from providing fresh drinking water

during meals. It is unclear how many districts adopted such a resolution, or the reasons for not being able to meet the requirement to provide free, fresh drinking water during meal times.

8. ***Related and prior legislation.***

RELATED LEGISLATION

AB 496 (Rendon) authorizes the California Department of Education (CDE) to receive funds from any available state and federal source, to be allocated to school districts to comply with the existing requirement to provide fresh drinking water during meals. AB 496 requires the CDE to identify available sources of funding, including funds for safe drinking water programs administered by the CDE, the State Department of Public Health, the Department of Water Resources, and the State Water Resources Control Board. AB 496 is pending in the Assembly Education Committee.

PRIOR LEGISLATION

SB 1413 (Leno, Ch. 558, 2010) requires 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.

SUPPORT

American Civil Liberties Union
California Black Health Network
California Food Policy Advocates
Children Now
Clean Water Action
Community Water Center
Environmental Justice Coalition for Water
Leadership Counsel for Justice and Accountability
Mission: Readiness
WeTap

OPPOSITION

California Association of School Business Officials
Los Angeles Unified School District

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