



State of Wisconsin
2019 - 2020 LEGISLATURE

LRBs0201/2
KRP/MCP/KP:amn&wlj

**SENATE SUBSTITUTE AMENDMENT 2,
TO SENATE BILL 423**

January 17, 2020 - Offered by Senators COWLES and MARKLEIN.

1 **AN ACT** *to renumber* 48.737; *to amend* 24.61 (3) (a) 2. and 24.61 (3) (a) 3.; and
2 *to create* 24.61 (3) (a) 1. dm., 24.61 (3) (a) 3m., 48.737 (2), 97.67 (8), 115.28 (66)
3 to (68), 118.07 (6), 121.91 (3) (a) 3. and 254.15 (7) of the statutes; **relating to:**
4 lead testing of drinking water sources in certain schools; providing loans for
5 lead remediation in certain schools; and providing an exception to referendum
6 restrictions for lead remediation.

Analysis by the Legislative Reference Bureau

This substitute amendment differs from 2019 Senate Bill 423 in the following respects:

1. Under the bill, a school board, operator of an independent charter school, or governing body of a private school participating in a parental choice program or in the Special Needs Scholarship Program (governing body) must conduct certain tests of water sources in schools. The substitute amendment adds child care programs established by school boards to the list of “schools” in which testing must occur.

2. Under the bill, the governing body of a school must test all potable water sources at the school. The substitute amendment requires the governing body to test all “drinking water sources” at the school. Under the substitute amendment,

“drinking water source” means a water faucet, drinking fountain, ice maker, or other water outlet that dispenses potable water that is used for drinking or food preparation.

3. The substitute amendment requires the governing body of a school to identify all water sources at the school, determine whether the water source must be tested under the bill, and label all potable water sources that are not tested and that are accessible to pupils as “not for drinking.”

4. Under the bill, the governing body of a school must test drinking water sources for lead concentration, and, if test results show a concentration of lead “greater than the concentration considered safe for drinking under the federal Safe Drinking Water Act,” the governing body must take certain actions, including disconnecting the affected water source. Under the substitute amendment, the concentration of lead that triggers the required actions is a concentration of lead “greater than the federal action level for lead established pursuant to the federal Safe Drinking Water Act” (lead contamination), which is currently set at 15 parts per billion (ppb).

5. Under the bill, the required actions described under item 4 include, among other things, disconnecting the affected water source until a subsequent test shows a lead concentration below the trigger level. Under the substitute amendment, all access to water from the affected water source must be either disconnected, shut off, or otherwise eliminated.

6. The substitute amendment requires the Department of Public Instruction, the Department of Children and Families, and the Department of Agriculture, Trade and Consumer Protection to post on each of their Internet sites a copy of the guidance document and testing protocol published by the federal Environmental Protection Agency under the federal Safe Drinking Water Act, commonly called the “3Ts,” an abbreviation for “Training, Testing, and Taking Action.” Under the substitute amendment, when the Department of Health Services creates the technical guidance document described below, DPI, DCF, and DATCP must post DHS’s guidance document on each of their Internet sites instead of the 3Ts.

7. The substitute amendment requires DHS to create a document by July 1, 2023, providing technical guidance on and a model plan for schools, child care providers, child care centers, group homes, and recreational and educational camps for testing potable sources of water for lead contamination, remediating lead contamination in potable water sources, and disseminating information on results of tests of potable water sources. Under the substitute amendment, in creating the guidance document, DHS must consult with stakeholders and interested parties, conduct a public hearing, and accept written comments.

8. Under the bill, a governing body must conduct required tests in accordance with the 3Ts. The substitute amendment requires a governing body to conduct required tests in accordance with the guidance posted on DPI’s Internet site at the time a test is conducted. In other words, after DHS completes its guidance document and DPI posts that guidance on DPI’s Internet site, testing must be conducted in compliance with DHS’s guidance, rather than the 3Ts.

9. The substitute amendment requires DPI, in consultation with DHS and the Department of Natural Resources, to seek federal funding to assist governing bodies to pay for the costs of complying with the testing and remediation requirements created in the bill.

10. The substitute amendment changes the frequency of required testing from three years to five years.

11. Under the bill, if the governing body of a school conducts two consecutive tests in a school at least three years apart that show lead levels not higher than one ppb in water sources in the school, the governing body is not required to conduct any additional tests at the school. Under the substitute amendment, if the governing body of a school conducts two consecutive tests of a particular water source at a school that show lead levels not higher than five ppb, the governing body is not required to conduct any additional tests of that water source. The substitute amendment also specifies that the consecutive tests must be conducted at the regular testing interval required under the substitute amendment.

12. The substitute amendment provides that the testing requirements do not apply to a school building in which pupils are not regularly present and that is not used to prepare food or provide water for pupil consumption.

13. The substitute amendment modifies the referendum restriction exception created in the bill. Under the substitute amendment, if a school board conducts a required test that shows the presence of lead in drinking water at a school in the school district, the school board may call a special referendum, and the limit on the number of referendums that may be called in any calendar year is increased by one. The substitute amendment provides that the special referendum must include only costs associated with lead remediation conducted to reduce or eliminate the presence of lead in drinking water at schools in the school district. The substitute amendment does not create an exception for the restriction regarding at what time during a calendar year the special referendum may be scheduled.

14. The bill allows the Board of Commissioners of Public Lands to use school trust funds to issue loans to school districts, municipalities, technical college districts, and cooperative educational service agencies for the purpose of remediating lead contamination in schools. The bill also allows funds from the Safe Drinking Water Loan Program to be used to reduce the principal and interest rates on BCPL loans made for this purpose. The substitute amendment eliminates the provision in the bill that allows SDWLP funds to be used to reduce the principal and interest rates on these BCPL loans.

For further information, see the analysis for the bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 24.61 (3) (a) 1. dm. of the statutes is created to read:

2 24.61 (3) (a) 1. dm. Remediating lead contamination in a school building.

1 **SECTION 2.** 24.61 (3) (a) 2. of the statutes is amended to read:

2 24.61 **(3)** (a) 2. A town, village, city, or county as provided under s. 67.04 or
3 otherwise authorized by law, or to remediate lead contamination in a school with
4 which the town, village, city, or county has contracted.

5 **SECTION 3.** 24.61 (3) (a) 3. of the statutes is amended to read:

6 24.61 **(3)** (a) 3. A technical college district as provided under s. 67.04 or
7 otherwise authorized by law, or to remediate lead contamination in a school with
8 which the district has contracted.

9 **SECTION 4.** 24.61 (3) (a) 3m. of the statutes is created to read:

10 24.61 **(3)** (a) 3m. A cooperative educational service agency for the purpose of
11 remediating lead contamination in a school with which the agency has contracted.

12 **SECTION 5.** 48.737 of the statutes is renumbered 48.737 (1).

13 **SECTION 6.** 48.737 (2) of the statutes is created to read:

14 48.737 **(2)** (a) No later than 7 days after the effective date of this paragraph
15 [LRB inserts date], the department shall post on its Internet site a copy of the
16 guidance document and testing protocol published by the federal environmental
17 protection agency under 42 USC 300j-24 (b). This paragraph does not apply after
18 the department posts the information required under par. (b).

19 (b) No later than 7 days after the department receives the notice under 2019
20 Wisconsin Act (this act), section 12 (2), the department shall post on its Internet
21 site a copy of the document created under s. 254.15 (7) providing technical guidance
22 and a model plan for testing potable sources of water for lead contamination.

23 **SECTION 7.** 97.67 (8) of the statutes is created to read:

24 97.67 **(8)** (a) No later than 7 days after the effective date of this paragraph
25 [LRB inserts date], the department shall post on its Internet site a copy of the

1 guidance document and testing protocol published by the federal environmental
2 protection agency under 42 USC 300j-24 (b). This paragraph does not apply after
3 the department posts the information required under par. (b).

4 (b) No later than 7 days after the department receives the notice under 2019
5 Wisconsin Act (this act), section 12 (2), the department shall post on its Internet
6 site a copy of the document created under s. 254.15 (7) providing technical guidance
7 and a model plan for testing potable sources of water for lead contamination.

8 **SECTION 8.** 115.28 (66) to (68) of the statutes are created to read:

9 115.28 **(66)** LEAD CONTAMINATION GUIDANCE DOCUMENT AND TESTING PROTOCOL. No
10 later than 7 days after the effective date of this subsection [LRB inserts date], post
11 on the department's Internet site a copy of the guidance document and testing
12 protocol published by the federal environmental protection agency under 42 USC
13 300j-24 (b). This subsection does not apply after the state superintendent posts the
14 information required under sub. (67).

15 **(67)** TECHNICAL GUIDANCE AND MODEL PLAN FOR TESTING POTABLE WATER. No later
16 than 7 days after the department receives the notice under 2019 Wisconsin Act
17 (this act), section 12 (2), post on the department's Internet site a copy of the document
18 created under s. 254.15 (7) providing technical guidance and a model plan for testing
19 potable sources of water for lead contamination.

20 **(68)** FEDERAL FUNDING FOR LEAD TESTING AND REMEDIATION. In consultation with
21 the department of health services and the department of natural resources, seek
22 federal funding to assist school boards, operators of charter schools under s. 118.40
23 (2r) and (2x), and governing bodies of private schools participating in programs
24 under ss. 115.7915, 118.60, and 119.23 to pay for the costs of complying with the
25 testing and remediation requirements under s. 118.07 (6). The state superintendent

1 shall ensure that any funding obtained for this purpose is distributed equitably
2 among those school boards, operators, and governing bodies that are eligible for that
3 funding.

4 **SECTION 9.** 118.07 (6) of the statutes is created to read:

5 118.07 (6) (a) In this subsection:

6 1. "Drinking water source" means a water faucet, drinking fountain, ice maker,
7 or other water outlet that dispenses potable water that is used for drinking or food
8 preparation.

9 2. "Governing body" means any of the following:

10 a. For a public school other than a charter school under s. 118.40 (2r) or (2x),
11 the school board of the school district in which the school is located.

12 b. For a child care program established under s. 120.13 (14), the school board
13 that established the child care program.

14 c. For a charter school under s. 118.40 (2r) or (2x), the operator of the charter
15 school.

16 d. For a private school participating in a program under s. 115.7915, 118.60,
17 or 119.23, the governing body of the private school.

18 3. "Lead contamination" means a concentration of lead that is greater than the
19 federal action level for lead established pursuant to the Safe Drinking Water Act, 42
20 USC 300f et seq.

21 4. "School" means a public school, including a charter school; a child care
22 program established under s. 120.13 (14); or a private school participating in a
23 program under s. 115.7915, 118.60, or 119.23.

24 (b) Except as provided under pars. (g) and (h), the governing body of a school
25 shall, at least once every 5 years, test all drinking water sources at the school for lead

1 contamination. The governing body shall conduct a test under this paragraph in
2 accordance with the guidance posted on the department's Internet site under s.
3 115.28 (66) or (67) at the time the test is conducted. The governing body shall submit
4 the test sample for processing to the laboratory of hygiene or a certified laboratory,
5 as defined in s. 299.11 (1) (b).

6 (c) The governing body of a school shall identify all water sources at the school
7 and, for each water source, determine whether it dispenses potable or nonpotable
8 water. For each water source that dispenses potable water, the governing body shall
9 determine whether the water source is a drinking water source under this
10 subsection. For a potable water source the governing body determines is not a
11 drinking water source under this subsection, the governing body shall, if the water
12 source is accessible to pupils, clearly identify the water source with an appropriate
13 sign identifying the water as not for drinking.

14 (d) The governing body of a school shall, no later than 30 days after receiving
15 the results of a test conducted under par. (b), do all of the following:

16 1. Post the results on the governing body's Internet site or, if the governing body
17 does not have an Internet site, make the results available to the public for
18 examination on request.

19 2. Provide the results to the department.

20 (e) If the results of a test of a drinking water source at a school conducted under
21 par. (b) show lead contamination, the governing body of the school shall do all of the
22 following:

23 1. Immediately disconnect, shut off, or otherwise eliminate all access to water
24 from the drinking water source and, if necessary, provide an alternative drinking
25 water supply.

1 2. No later than 6 months after receiving the results that show lead
2 contamination, develop and submit a plan to the department for remediating the
3 lead contamination.

4 3. No later than 30 days after submitting a remediation plan under subd. 2.,
5 post the plan on the governing body's Internet site or, if the governing body does not
6 have an Internet site, make the plan available to the public for examination on
7 request.

8 (f) The governing body of a school may reconnect, turn on, and otherwise restore
9 access to water from a drinking water source described under par. (e) 1. if the
10 governing body does all of the following:

11 1. Remediates the lead contamination in the drinking water source in
12 accordance with the remediation plan developed under par. (e) 2.

13 2. Conducts a test of the drinking water source in accordance with the
14 requirements under par. (b).

15 3. Submits the test sample from the test described under subd. 2. for processing
16 in accordance with the requirements under par. (b).

17 4. Receives test results for the test sample described under subd. 3. that show
18 no lead contamination.

19 5. No later than 30 days after receiving the test results described under subd.
20 4., posts the results as provided under par. (d) 1. and provides the results to the
21 department.

22 (g) If the governing body of a school conducts 2 consecutive tests under par. (b)
23 or (f) of a drinking water source at the school and the test results show lead levels
24 not higher than 5 parts per billion, the governing body is not required to conduct any
25 additional tests under par. (b) of that drinking water source.

1 (h) The requirements under this subsection do not apply to a school building
2 in which pupils are not regularly present and that is not used to prepare food or
3 provide water for pupil consumption.

4 **SECTION 10.** 121.91 (3) (a) 3. of the statutes is created to read:

5 121.91 (3) (a) 3. If the school board of a school district receives results for a test
6 conducted under s. 118.07 (6) (b) that show the presence of lead in drinking water at
7 a school in the school district, all of the following apply:

8 a. The school board may call a special referendum under subd. 1. only to submit
9 to the electors of the school district for approval or rejection a resolution supporting
10 inclusion in the final school district budget of an amount equal to the proposed excess
11 revenue attributable to costs of lead remediation conducted to reduce or eliminate
12 the presence of lead in drinking water at schools in the school district.

13 b. Notwithstanding subd. 1. and s. 67.05 (6a) (a) 2. a., a school board may
14 proceed under this subdivision, under subd. 1., and under s. 67.05 (6a) (a) 2. a. no
15 more than 3 times in any calendar year.

16 **SECTION 11.** 254.15 (7) of the statutes is created to read:

17 254.15 (7) (a) After consultation with the department of agriculture, trade and
18 consumer protection, the department of children and families, the department of
19 natural resources, the department of public instruction, and the department of
20 safety and professional services, create a document providing technical guidance on
21 and a model plan for schools, child care providers under ch. 48, child care centers
22 under ch. 48, group homes under ch. 48, and recreational and educational camps
23 under ch. 97 for testing potable sources of water for lead contamination, remediating
24 lead contamination in potable sources of water, and disseminating information on
25 results of tests of potable sources of water.

1 (b) In developing the technical guidance and model plan under this subsection,
2 do all of the following:

- 3 1. Consult with stakeholders and interested parties.
- 4 2. Conduct a public hearing relating to the technical guidance and model plan.
- 5 3. Accept from any person written comments relating to the technical guidance
6 and model plan.

7 (c) Create the document providing technical guidance and a model plan under
8 this subsection by July 1, 2023.

9 **SECTION 12. Nonstatutory provisions.**

10 (1) (a) In this subsection:

- 11 1. "Drinking water source" has the meaning given in s. 118.07 (6) (a) 1.
- 12 2. "Governing body" has the meaning given in s. 118.07 (6) (a) 2.
- 13 3. "Lead contamination" has the meaning given in s. 118.07 (6) (a) 3.
- 14 4. "School" has the meaning given in s. 118.07 (6) (a) 4.

15 (b) The governing body of a school shall conduct the first test required under
16 s. 118.07 (6) (b) as follows:

17 1. For a school building or an addition to a school building constructed before
18 January 1, 1974, no later than one year after the effective date of this subdivision.

19 2. For a school building or an addition to a school building constructed on or
20 after January 1, 1974, and before January 1, 1985, no later than 2 years after the
21 effective date of this subdivision.

22 3. For a school building or an addition to a school building constructed on or
23 after January 1, 1985, no later than 3 years after the effective date of this
24 subdivision.

1 (c) Notwithstanding the requirement under s. 118.07 (6) (b) that the governing
2 body of a school shall conduct a test under s. 118.07 (6) (b) in accordance with the
3 guidance posted on the department of public instruction's Internet site under s.
4 115.28 (66) or (67), the governing body, in conducting the first test as provided under
5 par. (b), is required to obtain and test only one sample for each drinking water source.

6 (d) If the governing body of a school tested all drinking water sources at the
7 school in accordance with the requirements under s. 118.07 (6) (b) no more than 5
8 years before the effective date of this paragraph, the governing body shall do all of
9 the following:

10 1. Notwithstanding par. (b), conduct the first test required under s. 118.07 (6)
11 (b) no later than 6 years after the effective date of this subdivision.

12 2. No later than 3 months after the effective date of this subdivision, provide
13 the test results to the department of public instruction.

14 3. If the test results for a drinking water source show lead contamination, no
15 later than 6 months after providing the test results to the department of public
16 instruction under subd. 2., develop and submit a remediation plan to the department
17 of public instruction regarding the drinking water source.

18 (2) When the department of health services creates the document required
19 under s. 254.15 (7), the department shall notify the department of agriculture, trade
20 and consumer protection, the department of children and families, and the
21 department of public instruction of the date on which the document is created.

22 **SECTION 13. Effective dates.** This act takes effect on the day after publication,
23 except as follows:

