87R3887 SLB-D

By:  Talarico H.B. No. 2038

A BILL TO BE ENTITLED

AN ACT

relating to lead in drinking water at schools and child care facilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 341.040, Health and Safety Code, is amended to read as follows:

Sec. 341.040.  DEFINITIONS [~~DEFINITION~~]. In this subchapter:

(1)  "Child care facility" has the meaning assigned by Section 88.001.

(2)  "Commission" [~~, "commission"~~] means the Texas Commission on Environmental Quality.

(3)  "Drinking water outlet" means any water fountain, faucet, or tap regularly used for drinking or food preparation, including ice-making and hot drink machines.

(4)  "Elevated lead level" means a lead concentration in drinking water that exceeds one part per billion.

(5)  "Executive director" means the executive director of the commission.

(6)  "Lead service line" means a pipe and its fittings, which are not lead free as defined by the federal Safe Drinking Water Act (42 U.S.C. Section 300g-6), that connect a drinking water main to a drinking water outlet.

(7)  "Local health department" has the meaning assigned by Section 88.001.

(8)  "Open-enrollment charter school" and "private school" have the meanings assigned by Section 5.001, Education Code.

(9)  "Public water system" has the meaning assigned by Section 15.602, Water Code.

SECTION 2.  Subchapter C, Chapter 341, Health and Safety Code, is amended by adding Sections 341.051, 341.052, 341.053, 341.054, and 341.055 to read as follows:

Sec. 341.051.  LEAD SERVICE LINE REPLACEMENT. (a) Each public water system shall fully replace lead service lines in each public school, private school, and child care facility that is served by the public water system. The replacement shall be paid for by the public water system, regardless of ownership of any portion of the service line, and shall be performed in coordination with the relevant municipality, school, or child care facility. The replacement must conform to the commission's technical guidance under Section 341.055.

(b)  A public water system shall provide each school district, open-enrollment charter school, private school, and child care facility that the public water system serves any information in its possession relating to the location of lead service lines. Each school district, open-enrollment charter school, private school, and child care facility shall determine which of its buildings receive drinking water through lead service lines and report the information to the commission.

(c)  The commission shall ensure that lead service lines are disposed of in accordance with hazardous waste laws and not disposed of in a landfill or incinerated.

Sec. 341.052.  PREVENTING LEAD CONTAMINATION. (a) Each public school, private school, and child care facility shall develop and adopt a plan of action to prevent elevated lead levels in all water used for drinking or cooking. The plan of action must include:

(1)  installing and maintaining filters certified by NSF International at all drinking water outlets in each school or facility building; and

(2)  an inventory of lead-bearing parts within the school's or facility's water delivery system, including fixtures and plumbing with lead soldering.

(b)  A public school, private school, or child care facility may, if consistent with other obligations in law, remove some drinking water outlets from operation, instead of installing filters on those outlets, if every child has reasonable access to free, safe drinking water.

(c)  To the extent that replacement is both feasible and cost-effective, each public school, private school, and child care facility shall replace the items identified in the lead-bearing parts inventory under Subsection (a)(2).

(d)  The plan of action adopted under Subsection (a) may include any other measures to reduce lead contamination of drinking water outlets, consistent with the commission's technical guidance under Section 341.055.

(e)  A public school, private school, or child care facility may revise the school's or facility's plan of action, especially in response to public input, if the plan of action complies with the commission's technical guidance under Section 341.055.

(f)  A public school, private school, or child care facility may seek the assistance of a local health department, a public water system, or the commission to comply with the provisions of this section.

(g)  Nothing in this section prevents a public school, private school, or child care facility from conducting more immediate lead remediation when a test indicates that a drinking water outlet has an elevated lead level, as provided by Section 341.053(c).

Sec. 341.053.  TESTING AND REMEDIATION. (a) Each public school, private school, and child care facility shall undertake periodic testing of the drinking water outlets in each school or child care facility for the presence of lead. Each test for lead shall be conducted by a laboratory certified for this purpose by the executive director in accordance with the sampling and testing methods specified in the technical guidance under Section 341.055. Each school or child care facility shall perform the testing required by this section at least once per year, unless the executive director determines, on a case-by-case basis, that a greater or lesser frequency of testing is necessary or sufficient to ensure the public health, including timely testing after replacement of lead service lines.

(b)  Nothing in this section prevents a public school, private school, or child care facility from conducting more frequent testing than required under this section.

(c)  If testing reveals an elevated lead level at a drinking water outlet, the public school, private school, or child care facility shall, not later than 24 hours after receiving the test results, close off access to the drinking water outlet and report the test results to the commission. Not later than the 30th day after receiving test results showing one or more drinking water outlets have elevated levels of lead, the public school, private school, or child care facility must either:

(1)  permanently shut or close off access to the affected drinking water outlets and provide an alternative source of safe water without elevated lead levels; or

(2)  install and maintain filters certified by NSF International at the drinking water outlets that have elevated lead levels.

(d)  A public school, private school, or child care facility shall take additional measures if necessary to eliminate elevated lead levels at the drinking water outlets, consistent with the technical guidance under Section 341.055.

Sec. 341.054.  TRANSPARENCY AND PUBLIC RIGHT TO KNOW. (a) Each public school, private school, and child care facility shall:

(1)  submit to the commission, the Texas Education Agency, and the department:

(A)  the plan of action adopted under Section 341.052 and any modifications to the plan; and

(B)  information on testing activities conducted under Section 341.053, including:

(i)  the date the testing was completed;

(ii)  the location and type of each drinking water outlet tested;

(iii)  the complete results of each test; and

(iv)  any measures being taken under Section 341.053(c) to remediate a drinking water outlet found to have an elevated lead level;

(2)  maintain copies of information submitted under Subdivision (1) in a suitable location for inspection by the public and on the Internet website of the school or facility;

(3)  notify parent, teacher, and employee organizations of the availability of the submitted information; and

(4)  designate a person to serve as the contact person for communications with the commission and the public regarding the lead testing and remediation activities.

(b)  If testing conducted under Section 341.053 reveals an elevated lead level at a drinking water outlet, the public school, private school, or child care facility shall, within one business day, directly notify teachers, school personnel, and the parent of or person standing in parental relation to each student through written notice, electronic mail, or other means approved by the commission. The notification must include:

(1)  a summary of the results of the testing and information on the availability of the complete test results for public inspection at a suitable location and on the Internet website of the school or facility;

(2)  a description of any remedial measures being taken under Section 341.053;

(3)  general information on the public health effects and risks posed by lead in drinking water and information on the availability of additional resources concerning lead in drinking water, as outlined in the technical guidance under Section 341.055; and

(4)  the name and contact information of the person designated under Subsection (a)(4) to communicate with the public.

(c)  At each drinking water outlet, the public school, private school, or child care facility shall post an electronically accessible code with information on testing and remediation for that outlet. The information must include the maintenance schedule and log for installed filters certified by NSF International, unless the drinking water outlet is equipped with a clearly visible indicator for filter replacement.

Sec. 341.055.  TECHNICAL GUIDANCE. (a) The commission shall issue technical guidance that is at least as protective of the public health as the technical guidance for reducing lead in drinking water at schools issued by the United States Environmental Protection Agency. Provisions of the technical guidance related to testing to determine the presence and level of lead in water must be designed to maximize detection of lead in water and must prohibit sampling or testing methods that tend to mask lead contamination, including pre-stagnation flushing and removal of aerators before sampling.

(b)  The commission shall provide the technical guidance described by Subsection (a), a list of laboratories certified to conduct lead testing, and any other information the commission considers appropriate to each school district, open-enrollment charter school, private school, and child care facility.

SECTION 3.  (a) Not later than December 1, 2021, the Texas Commission on Environmental Quality shall order each public water system to replace all lead service lines at each public school, private school, and child care facility as required by Section 341.051(a), Health and Safety Code, as added by this Act.

(b)  Not later than September 1, 2024, each public water system shall fully replace lead service lines at all public schools, private schools, and child care facilities that it serves, as required by Section 341.051(a), Health and Safety Code, as added by this Act.

(c)  Not later than October 1, 2021, each public water system shall provide school districts, open-enrollment charter schools, private schools, and child care facilities that it serves with information relating to the location of lead service lines, as required by Section 341.051(b), Health and Safety Code, as added by this Act.

(d)  Not later than November 1, 2021, each school district, open-enrollment charter school, private school, and child care facility shall inform the Texas Commission on Environmental Quality which buildings are served by lead service lines as required by Section 341.051(b), Health and Safety Code, as added by this Act.

(e)  Not later than March 1, 2022, each public school, private school, and child care facility shall adopt a plan of action to prevent elevated lead levels in all water used for drinking or cooking as required by Section 341.052(a), Health and Safety Code, as added by this Act.

(f)  Not later than March 1, 2023, each public school, private school, and child care facility shall install and maintain filters certified by NSF International, as required by Section 341.052(a), Health and Safety Code, as added by this Act.

(g)  Not later than September 1, 2023, each public school, private school, and child care facility shall replace the items identified in the lead-bearing parts inventory, as required by Section 341.052(c), Health and Safety Code, as added by this Act.

(h)  Not later than December 1, 2021, each public school, private school, and child care facility shall perform an initial test of each drinking water outlet, as required by Section 341.053(a), Health and Safety Code, as added by this Act.

(i)  Not later than October 15, 2021, the Texas Commission on Environmental Quality shall post the technical guidance required by Section 341.055, Health and Safety Code, as added by this Act, on the commission's Internet website.

SECTION 4.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.