

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

1 by Section 88.001.

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

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

7 SECTION 2. Subchapter C, Chapter 341, Health and Safety
8 Code, is amended by adding Sections 341.051, 341.052, 341.053,
9 341.054, and 341.055 to read as follows:

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

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

27 (c) The commission shall ensure that lead service lines are

1 disposed of in accordance with hazardous waste laws and not
2 disposed of in a landfill or incinerated.

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

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

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

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

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

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

27 (e) A public school, private school, or child care facility

1 may revise the school's or facility's plan of action, especially in
2 response to public input, if the plan of action complies with the
3 commission's technical guidance under Section 341.055.

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

8 (g) Nothing in this section prevents a public school,
9 private school, or child care facility from conducting more
10 immediate lead remediation when a test indicates that a drinking
11 water outlet has an elevated lead level, as provided by Section
12 341.053(c).

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

26 (b) Nothing in this section prevents a public school,
27 private school, or child care facility from conducting more

1 frequent testing than required under this section.

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

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

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

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

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

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

24 (A) the plan of action adopted under Section
25 341.052 and any modifications to the plan; and

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

1 (i) the date the testing was completed;
2 (ii) the location and type of each drinking
3 water outlet tested;

4 (iii) the complete results of each test;
5 and

6 (iv) any measures being taken under Section
7 341.053(c) to remediate a drinking water outlet found to have an
8 elevated lead level;

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

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

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

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

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

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

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

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

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

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

27 (b) The commission shall provide the technical guidance

1 described by Subsection (a), a list of laboratories certified to
2 conduct lead testing, and any other information the commission
3 considers appropriate to each school district, open-enrollment
4 charter school, private school, and child care facility.

5 SECTION 3. (a) Not later than December 1, 2021, the Texas
6 Commission on Environmental Quality shall order each public water
7 system to replace all lead service lines at each public school,
8 private school, and child care facility as required by Section
9 341.051(a), Health and Safety Code, as added by this Act.

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

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

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

26 (e) Not later than March 1, 2022, each public school,
27 private school, and child care facility shall adopt a plan of action

1 to prevent elevated lead levels in all water used for drinking or
2 cooking as required by Section 341.052(a), Health and Safety Code,
3 as added by this Act.

4 (f) Not later than March 1, 2023, each public school,
5 private school, and child care facility shall install and maintain
6 filters certified by NSF International, as required by Section
7 341.052(a), Health and Safety Code, as added by this Act.

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

12 (h) Not later than December 1, 2021, each public school,
13 private school, and child care facility shall perform an initial
14 test of each drinking water outlet, as required by Section
15 341.053(a), Health and Safety Code, as added by this Act.

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

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