
Wisconsin Legislative Council

AMENDMENT MEMO



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2019 Assembly Bill 797

Assembly Amendments 1 and 2

BACKGROUND

Sealants

Coal tar sealant or sealcoat is a commercial product generally used to maintain and protect driveway and parking lot asphalt pavement. Coal tar sealants contain high concentrations of polycyclic aromatic hydrocarbons (PAHs).

Lead Testing

The federal Safe Drinking Water Act prohibits the use of pipes and materials that contain more than a specified amount of lead, but generally does not require public water systems or property owners to remove previously installed lead-containing plumbing systems. Also under current law, public water systems serving schools are subject to general monitoring requirements under state law and the federal Safe Drinking Water Act. For lead, state law requires public water systems to conduct tap water monitoring, which must include representative samples from throughout the system. In addition, a proposed new federal rule proposes requiring community water systems to conduct lead testing in a certain percentage of schools every year. However, no specific testing requirements apply to schools under current law.

2019 ASSEMBLY BILL 797

Beginning on January 1, 2021, 2019 Assembly Bill 797 prohibits selling, offering for sale, applying, or otherwise using any coal tar-based sealant product or a sealant product that contains more than .1 percent PAH by weight. The bill authorizes the Department of Natural Resources (DNR) to grant an exemption from those prohibitions to either of the following, upon request: (1) a person who is researching the effects of either product on the environment; or (2) a person who is developing an alternative technology if the use of either product is required for research or development.

ASSEMBLY AMENDMENT 1

Assembly Amendment 1 retains the prohibitions regarding selling, offering for sale, and applying coal tar-based sealant products and high-PAH sealant products, but it removes the prohibition on “otherwise using” such sealants.

ASSEMBLY AMENDMENT 2

Assembly Amendment 2 retains all provisions in the bill and adds all provisions in 2019 Assembly Bill 476, relating to lead testing of drinking water in certain schools, as amended by Assembly Substitute Amendment 1.¹

Specifically, the amendment requires public and private schools² to test drinking water sources³ for lead at least once every five years and to take certain actions in response to a test result showing lead contamination in excess of federal drinking water standards. Within 30 days after receiving test results, the amendment requires a school to provide the results to the Department of Public Instruction (DPI) and post the results on the school governing body's website.

If a drinking water standard for lead is exceeded at a drinking water source, the amendment requires a school to do all of the following:

- Disconnect the water sources and, if necessary, provide an alternative drinking water supply.
- Develop and submit a plan to the DPI for remediating lead contamination in the water source within six months.
- Post the remediation plan on the school's website or otherwise make the plan available to the public within 30 days after submitting the plan to DPI.

The amendment allows a school to reconnect the water supply after remediating the contamination according to the plan and re-testing the source with a result showing no lead contamination. In addition, a school is exempt from further testing of a drinking water source if two consecutive tests of that source show lead levels not higher than five parts per billion.

The amendment requires DPI, the Department of Children and Families, and the Department of Agriculture, Trade and Consumer Protection to post guidance for testing, starting with a federal toolkit developed by the U.S. Environmental Protection Agency,⁴ and then replacing the federal toolkit with guidance that the amendment requires the Department of Health Services (DHS) to develop.

In addition, the amendment allows a school board to call one more special referendum than is authorized under current law⁵ during any given calendar year, if the referendum includes only costs associated with lead remediation.

¹ The added provisions are also identical to the provisions in Senate Substitute Amendment 2 to 2019 Senate Bill 423, which was recommended for adoption by the Senate Committee on Natural Resources and Energy on a vote of Ayes, 4; Noes, 1.

² Specifically, the bill applies to public schools, including charter schools, schools participating in parental choice programs, and schools operating certain child care programs.

³ The amendment defines "drinking water source" to mean a water faucet, drinking fountain, ice maker, or other water outlet that dispenses potable water that is used for drinking or food preparation. The amendment also requires schools to identify sources of potable water that are not drinking water sources, and to label such sources as "not for drinking" if they are accessible to pupils. However, drinking water sources in school buildings in which pupils are not regularly present are exempt from the testing requirements if they are not used to prepare food or provide water for pupil consumption.

⁴ Specifically, the amendment requires the agencies to post the *3Ts for Reducing Lead in Drinking Water in Schools*, available here: https://www.epa.gov/sites/production/files/2018-09/documents/final_revised_3ts_manual_508.pdf.

⁵ Under current law, school districts are each subject to a revenue limit, which generally caps the amount of money that a school district can raise in a given year in the form of specific categories of state aid, including equalization aid, and local property tax. In general, if a school board wishes to exceed its school district's revenue limit, including for the purpose of making debt payments on borrowed funds, then it must seek elector approval via referendum. Generally, a school district is limited to no more than two such referenda in any calendar year.

The amendment also specifies that the Board of Commissioners of Public Lands may provide a loan to a municipality, county, technical college, or cooperative educational service agency to remediate lead contamination in a school with which the municipality, county, technical college district, or cooperative educational service agency (CESA) has contracted.

Finally, the amendment requires DPI, in consultation with DHS and the DNR, to seek federal funding to assist schools with the cost of testing and remediation under the amendment.

BILL HISTORY

On January 24, 2020, Representative Kitchens and others introduced 2019 Assembly Bill 797, a bill recommended by the Speaker's Task Force on Water Quality. Representative Kitchens offered Assembly Amendment 1, on January 28, 2020. On February 11, 2020, the Assembly Committee on Transportation voted to recommend adoption of the amendment and passage of the bill, as amended, both on votes of Ayes, 14; Noes, 0.

Representatives Thiesfeldt and Kitchens offered Assembly Amendment 2 on February 17, 2020. On February 18, 2020, the Assembly voted to adopt Assembly Amendments 1 and 2 on voice votes and then passed the bill, as amended, on a vote of Ayes, 98; Noes, 0.

AH:ksm