



State of Wisconsin
2019 - 2020 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 423**

January 3, 2020 - Offered by Senator COWLES.

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 (4) (om) 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 a revenue limit adjustment for a school
6 district for costs incurred to remediate lead contamination in drinking water
7 sources at schools in the school district.

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 eliminates the referendum restriction exception created in the bill. Instead, the substitute amendment creates a revenue limit adjustment for a school district that incurs costs to remediate lead contamination in water sources at schools in the school district. Under the substitute amendment, if a school board, after holding a public hearing, adopts a resolution to do so, the school district's revenue limit for a school year is increased by the amount spent in that school year on lead remediation in accordance with a remediation plan developed by the school board. Under the substitute amendment, the total amount by which a school district may increase its revenue limit for all school years in which the school district incurs costs for lead remediation may not exceed 3 percent of the total amount of property taxes levied by the school district for the 2019-20 school year.

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:

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

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

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

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

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

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

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

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

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

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

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

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

1 97.67 (8) (a) No later than 7 days after the effective date of this paragraph ...
2 [LRB inserts date], the department shall post on its Internet site a copy of the
3 guidance document and testing protocol published by the federal environmental
4 protection agency under 42 USC 300j-24 (b). This paragraph does not apply after
5 the department posts the information required under par. (b).

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

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

11 115.28 (66) LEAD CONTAMINATION GUIDANCE DOCUMENT AND TESTING PROTOCOL. No
12 later than 7 days after the effective date of this subsection ... [LRB inserts date], post
13 on the department's Internet site a copy of the guidance document and testing
14 protocol published by the federal environmental protection agency under 42 USC
15 300j-24 (b). This subsection does not apply after the state superintendent posts the
16 information required under sub. (67).

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

22 (68) FEDERAL FUNDING FOR LEAD TESTING AND REMEDIATION. In consultation with
23 the department of health services and the department of natural resources, seek
24 federal funding to assist school boards, operators of charter schools under s. 118.40
25 (2r) and (2x), and governing bodies of private schools participating in programs

1 under ss. 115.7915, 118.60, and 119.23 to pay for the costs of complying with the
2 testing and remediation requirements under s. 118.07 (6). The state superintendent
3 shall ensure that any funding obtained for this purpose is distributed equitably
4 among those school boards, operators, and governing bodies that are eligible for that
5 funding.

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

7 118.07 (6) (a) In this subsection:

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

11 2. “Governing body” means any of the following:

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

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

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

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

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

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

1 (b) Except as provided under pars. (g) and (h), the governing body of a school
2 shall, at least once every 5 years, test all drinking water sources at the school for lead
3 contamination. The governing body shall conduct a test under this paragraph in
4 accordance with the guidance posted on the department's Internet site under s.
5 115.28 (66) or (67) at the time the test is conducted. The governing body shall submit
6 the test sample for processing to the laboratory of hygiene or a certified laboratory,
7 as defined in s. 299.11 (1) (b).

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

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

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

21 2. Provide the results to the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

9 121.91 (4) (om) 1. Subject to subds. 2. and 3., beginning in the 2020-21 school
10 year, if the school board of a school district receives results for a test conducted under
11 s. 118.07 (6) (b) that show lead contamination, as defined in s. 118.07 (6) (a) 3., in a
12 drinking water source, as defined in s. 118.07 (6) (a) 1., at a school in the school
13 district, and if the school board adopts a resolution to do so, the limit otherwise
14 applicable to the school district under sub. (2m) in any school year is increased by the
15 amount spent by the school district in that school year on a project, including the
16 payment of debt service on a bond or note issued or a state trust fund loan obtained
17 to finance the project, to remediate the presence of lead in potable sources of water
18 at schools in the school district in accordance with a remediation plan developed by
19 the school board. The term of a bond or note issued or state trust fund loan obtained
20 to finance the project under this subdivision may not exceed 20 years. If a school
21 board issues a bond or note or obtains a state trust fund loan to finance a project
22 described in this subdivision, a resolution adopted by the school board under this
23 subdivision is valid for each school year in which the school board pays debt service
24 on the bond, note, or state trust fund loan.

1 2. At least 30 days before voting on a resolution under subd. 1. to exceed the
2 school district's revenue limit, a school board shall hold a public hearing on the
3 resolution. At least 30 days before the public hearing, the school board shall publish
4 a class 1 notice, under ch. 985, of the public hearing that includes the address for an
5 Internet site at which the public may access a copy of the remediation plan described
6 under subd. 1 that is the subject of the resolution.

7 3. The total amount by which a school district may increase the limit otherwise
8 applicable to the school district under sub. (2m) in all school years for all remediation
9 projects under subd. 1. may not exceed 3 percent of the total amount of property taxes
10 levied by the school district for the 2019-20 school year.

11 4. Any additional revenue received by a school district under this paragraph
12 shall not be included in the base for determining the school district's limit under sub.
13 (2m) for the following school year.

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

15 254.15 (7) (a) After consultation with the department of agriculture, trade and
16 consumer protection, the department of children and families, the department of
17 natural resources, the department of public instruction, and the department of
18 safety and professional services, create a document providing technical guidance on
19 and a model plan for schools, child care providers under ch. 48, child care centers
20 under ch. 48, group homes under ch. 48, and recreational and educational camps
21 under ch. 97 for testing potable sources of water for lead contamination, remediating
22 lead contamination in potable sources of water, and disseminating information on
23 results of tests of potable sources of water.

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

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

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

7 **SECTION 12. Nonstatutory provisions.**

8 (1) (a) In this subsection:

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

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

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

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

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

23 (c) Notwithstanding the requirement under s. 118.07 (6) (b) that the governing
24 body of a school shall conduct a test under s. 118.07 (6) (b) in accordance with the
25 guidance posted on the department of public instruction's Internet site under s.

1 115.28 (66) or (67), the governing body, in conducting the first test as provided under
2 par. (b), is required to obtain and test only one sample for each drinking water source.

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

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

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

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

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

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

21 (1) The treatment of s. 118.07 (6) and SECTION 12 (1) of this act take effect on
22 July 1, 2020.

23 (END)