Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON HUMAN SERVICES
Alex Lee, Chair
AB 2671 (Weber) – As Introduced February 14, 2024

SUBJECT: Family daycare homes: filtered water

SUMMARY: Requires licensed family daycare homes (FCCHs) to only serve water to children, or use water in food preparation, that has been filtered with a point-of-use water filtration device certified to meet specified standards to remove lead. Permits lead-removing water filters to be provided through the United States Environmental Protection Agency's (U.S. EPA's) Voluntary School and Child Care Lead Testing and Reduction Grant Program up until 2027, and requires prioritizing providers caring for low-income children. Specifically, **this bill**:

1) Requires licensed FCCHs to serve water to children, or use water in food preparation for the FCCH, that has been filtered with a point-of-use water filtration device certified to meet National Sanitation Foundation of the American National Standards Institutes (NSF/ANSI) standards for water safety NSF/ANSI 42 and NSF/ANSI 43. Further requires the filtration device to explicitly claim to remove lead.

2) Requires an FCCH to maintain records and receipts demonstrating that the water filtration device be maintained and its filters replaced, in accordance with the manufacturer's recommendations.

3) Permits funds provided to the state from the U.S. EPA's Voluntary School and Child Care Lead Testing and Reduction Grand Program in 2024-25, 2025-26, and 2026-27 fiscal years be used to provide lead-removing water filters to FCCHs.

4) Requires funding priority for 3) above of water filters to be given to FCCH providers that primarily care for low-income children.

5) Requires provided filters meet the requirements specified in 1) above.

EXISTING LAW:

State law:

1) Establishes as the policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Water Code § 106.3)

2) Finds and declares that every California resident has the right to pure and safe drinking water and that it is the policy of the state to reduce to the lowest level feasible all concentrations of toxic chemicals that, when present in drinking water, may cause cancer, birth defects, and other chronic diseases. (Health & Safety Code [HSC] § 116270)

3) Defines "contaminant" to mean any physical, chemical, biological, or radiological substance or matter in water. (HSC § 116275 (a))

4) Requires the installation of point-of-entry or point-of-use treatment devices for drinking fountains, and up to three years of post-installation replacement filters, and operations, maintenance, and monitoring of the devices, including training on how to operate and maintain the treatment devices in local educational agencies serving kindergarten or any of grades 1-12, inclusive, and preschools and child daycare facilities located on public school property. (HSC § 116276(a)(3))

5) Establishes the "California Child Day Care Facilities Act", creating a separate licensing category for child daycare centers and FCCHs within the California Department of Social Services' (CDSS) existing licensing structure. (HSC § 1596.70 *et seq.*)

6) Defines the following terms:

   a) "Child daycare facility" to mean a facility that provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis, and includes daycare centers, employer-sponsored CCCs, and FCCHs. (HSC § 1596.750)

   b) "Family daycare home" to mean a facility that regularly provides care, protection, and supervision for 14 or fewer children, including children under 10 years of age who reside at the home, in the provider's own home, for periods of less than 24 hours per day, while the parents or guardians are away. (HSC § 1596.78(a))

   c) "Large family daycare home" to mean a facility that provides care, protection, and supervision for seven to 14 children, inclusive, including children under 10 years of age who reside at the home. (HSC § 1596.78(b))

   d) "Small family daycare home" to mean a facility that provides care, protection, and supervision for eight or fewer children, including children under 10 years of age who reside at the home. (HSC § 1596.78(c))

7) Requires licensed child daycare facilities to comply with certain requirements for beverages served by the daycare provider to the children in care, including ensuring the availability and accessibility of readily available clean and safe drinking water throughout the day. (HSC § 1596.808(a)(4))

8) Requires drinking water from a noncontaminating fixture or container in childcare centers (CCCs) be readily available both indoors and in an outdoor activity area, and further requires all drinking water be potable, as specified. (22 California Code of Regulations [CCR] § 101239.2)

9) Requires at least one director or teacher at each daycare center, and each FCCH licensee who provides care to have at least 15 hours of health and safety training, including a preventative health practices course regarding the prevention of lead exposure that is consistent with the most recent Department of Public Health's (CDPH) training curriculum on childcare lead poisoning prevention. (HSC 1596.866)

10) Defines "lead free" as not containing more than 0.2% lead when used with respect to solder and flux and not more than a weighted average of 0.25% lead when used with respect to the wetted surfaces of pipes and pipefittings, plumbing fittings, and fixtures. (HSC § 116875(e))

11) Declares childhood lead exposure as the most significant childhood environmental health problem in the state and establishes the "Childhood Lead Poisoning Prevention Program" to reduce the incidence of childhood lead exposure in California. (HSC 124125 § *et seq.*)

12) Establishes the "Childhood Lead Poisoning Prevention Act of 1991" affirming California's commitment to lead poisoning prevention activities and mandates the CDPH with broad mandates on blood lead screening protocols, laboratory quality assurance, identification and management of lead exposed children, and reducing lead exposures. (HSC § 105275 *et seq.*)

13) Requires the State Water Resources Control Board (State Water Board) to provide grants for testing drinking water lead levels in licensed CCCs, remediating lead in CCC drinking water systems, and providing technical assistance to CCCs requiring help applying for the grants, from any funds appropriated for these purposes in the 2018-19 Budget Act. (HSC § 1596.8661)

14) Requires a licensed child daycare center that is located in a building that was constructed before January 1, 2010, to have its drinking water tested for lead contamination levels on or after January 1, 2020, but no later than January 1, 2023, and every five years after the date of the initial test. (HSC § 1597.16(a)(1))

15) Requires a licensed child daycare center subject to 14) above to collect and submit drinking water samples to an accredited laboratory; requires the laboratory to, in a timely manner, electronically submit its test results to the State Water Board; and, if the test results show elevated levels, requires the State Water Board to report, in a timely manner, the test results to CDSS. (HSC § 1597.16(a)(2)(A))

16) Requires the State Water Board to post all test results received for lead in licensed child daycare centers on its internet website in a timely manner and to make test results readily accessible to the public. (HSC § 1597.16(a)(2)(B)(ii))

17) Requires, upon notification of elevated lead levels, a licensed child daycare center to immediately make inoperable and cease using the fountains and faucets where elevated lead levels may exist, and to obtain a potable source of water for children and staff. (HSC § 1597.16(a)(3))

18) Requires a licensed child daycare center to notify parents or guardians of children enrolled in the center of the requirement to test a facility's drinking water and of the test results. (HSC § 1597.16(a)(4))

19) Establishes the "Lead-Safe Schools Protection Act" implementing a lead poisoning prevention and protection program for California schools for a survey to ascertain risk factors that predicted lead contamination in public schools. (Education Code [EDC] § 32241)

20) Requires, pursuant to the Lead-Safe Schools Protection Act, that the CDPH work with the California Department of Education to develop voluntary guidelines for distribution to

schools to ensure that lead hazards are minimized in the course of school repair and maintenance programs and abatement procedures. (EDC § 32242(g))

Federal law:

21) Requires, pursuant to the federal "Safe Drinking Water Act (SDWA)" and California SDWA, drinking water to meet specified standards for contamination as set by the U.S. EPA or the State Water Board. (42 United States Code § 300(f) *et seq.*; HSC § 116270 *et seq.)*

22) Requires, pursuant to the federal Lead and Copper Rule (LCR), that all public drinking water systems regularly test a sample of high-risk homes for lead at the tap. (40 Code of Federal Regulations § 141)

FISCAL EFFECT: Unknown, this bill has not been analyzed by a fiscal committee.

COMMENTS:

Background: *Licensed Childcare.* The California Child Day Care Facilities Act governs the licensure, maintenance, and operation of CCCs and FCCHs in the state. This law and the associated regulations found in Title 22 of the CCR establish, among other things, general health and safety requirements, staff-to-child ratios, and provider training requirements. CDSS' Community Care Licensing Division has the responsibility of licensing and monitoring the state's childcare facilities, which include CCCs and FCCHs.

In fiscal year 2022-23, most children enrolled in subsidized childcare and development programs received care through licensed FCCHs (158,959), CCCs (124,708), and license-exempt settings (82,704).

Family Childcare Homes. FCCHs are operated in the licensee's own home, which may be rented, leased, or owned, and are permitted to be in a mobile home park or an apartment. FCCHs provide nonmedical care and supervision in a family-like setting, providing a nurturing environment for children while supporting their cognitive, social, and emotional development. FCCHs are further categorized into small (eight or fewer children) and large homes (as many as 14) based on the size of the childcare group and the ages of the children.

Families with lower incomes may have a greater need for home-based childcare, whether licensed or unlicensed, compared to higher-income families. This can be due, in part, to the availability of care options during nontraditional work hours commonly associated with certain lower-paying occupations. For instance, data from a 2022 report by the U.S. Department of Labor, Bureau of Labor Statistics, reveals that in 2020, 2 million individuals were categorized as "working poor" – those who spent at least 27 weeks in the labor force, but still earned incomes below the federal poverty level – were employed in service occupations. Jobs within the service sector often entail nontraditional and unpredictable work schedules. As such, FCCH programs play a critical role in increasing accessibility to early childhood education and care, particularly for families in underserved or rural areas where traditional childcare facilities may be limited.

The January 2024 CDSS Child Care Transition Quarterly Report found that 158,959 Californian children were enrolled in FCCHs in fiscal year 2022-23. Additionally, data from the Children's Equity Project in 2019 indicated that 75% of children enrolled in an FCCH were Latinx. A study published by the University of California, Berkeley's Center for the Study of Child Care

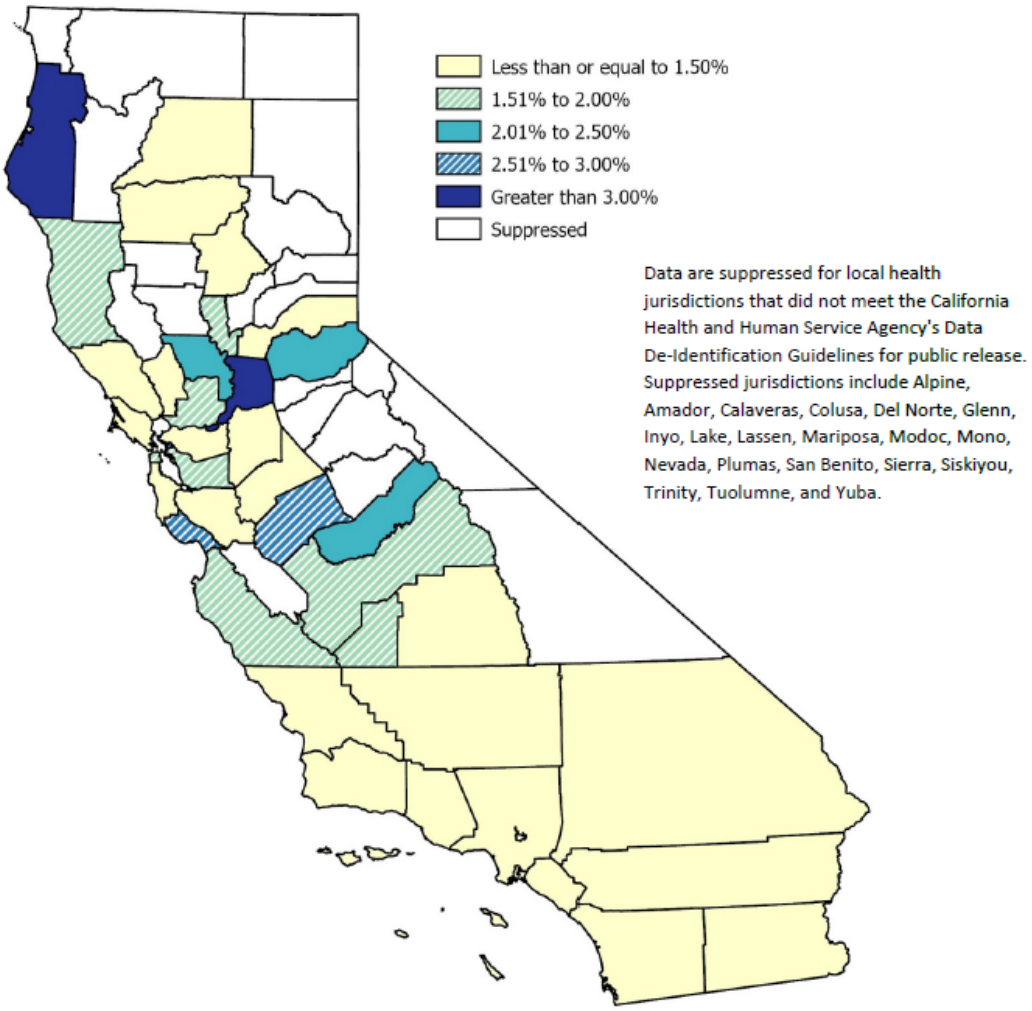
Employment in 2022 surveyed 3,000 FCCH providers and found that 98% were women; 82% were above 40 years of age; and, 37% were Latina followed by 29% who identified as White.

Childhood Lead Exposure. Lead is a naturally occurring heavy metal element that can be found in various environmental settings, including the air, soil, water, regions with historical usage of fossil fuels and industrial operations, as well as areas where leaded gasoline was regularly used. Lead is also commonly found in households such as ceramic ware, water pumped through lead-containing pipes and plumbing fixtures, batteries, ammunition, cosmetics, and residences constructed before 1978 when the application of lead-based paint was predominately used.

Despite its prevalence, according to the Centers for Disease Control and Prevention (CDC), research shows that there is no safe level of lead in drinking water and even very low levels can have negative and irreversible health effects, especially for children and pregnant persons. Because children's bodies are still developing, their bodies absorb more lead than the body of an adult, and their brains and nervous systems are more sensitive to the long-term effects of lead exposure, leading to developmental delays, behavioral issues, and learning disabilities. A study conducted in 2015 and published by Environmental Health analyzed data from nearly 58,000 children enrolled in Chicago public schools. Findings indicated that elevated blood lead levels correlated with higher rates of failure on standardized reading and math assessments. Due to the health risks associated with lead exposure, the U.S. EPA sets a maximum containment level goal of zero. Various organizations, including the American Association of Pediatrics, advocate for statewide and nationwide initiatives to minimize lead levels in drinking water, aiming to approach zero parts per billion (ppb).

Identifying lead poisoning in children is challenging given that most lead-poisoned children do not look or act sick. The only way to know whether a child has been poisoned with lead is through blood testing. In January 2012, a committee of experts recommended the CDC to change its definition of "blood level of concern" from 10 micrograms per deciliter to 5 micrograms per deciliter (mcg/dl) of lead in blood. According to CDPH, among children under the age of six years of age, approximately 1% tested at 4.5mcg/dL or greater in 2020, with the highest percentage in Humboldt County, following Sacramento, and Riverside with the lowest (see map on the next page).

Figure 1. Percent of Children Under 6 Years Old with a Blood Lead Level of 4.5 µg/dL or Greater, by California Local Health Jurisdiction, 2020



Inequities in Childhood Lead Exposure. According to the CDC, individuals from low-income backgrounds and communities of color are disproportionately located in areas with aging infrastructure, potentially leading to heightened exposure to lead-based paint as well as plumbing systems featuring lead pipes, faucets, and fixtures. A 2015 study discovered that among 58,000 students enrolled in Chicago public schools black children exhibited the highest levels of blood lead compared to Hispanic and white counterparts, with elevated levels also prevalent among children from low-income households.

Children from low-income households and marginalized communities may encounter compounded challenges, including heightened exposure to lead alongside other adversities such as increased poverty rates, inadequate nutrition exposure to various pollutants, and attendance at under-resourced schools. A study published by Nature Medicine in 2020 revealed that when combined, lead exposure and belonging to a low-income family can exacerbate adverse outcomes for children compared to those experiencing only one of these risk factors. Specifically, children from low-income backgrounds with elevated risk levels of lead exposure exhibited diminished cognitive abilities and alterations in brain regions responsible for functions such as problem-solving, planning, critical thinking, and memory.

Federal Action on Lead in Drinking Water in Childcare Facilities. Childcare safety regulations are essential for ensuring the well-being of children in childcare facilities. Initially established in 1991 by the U.S. EPA, the LCR was aimed to mitigate the presence of lead and copper in drinking water. Substantial revisions known as the Lead and Copper Rule Revisions (LCRR) were introduced by the U.S. EPA on January 15, 2021, to enhance public health protection effectively. The LCRR introduces federal regulations mandating community water systems to conduct lead testing in schools and childcare facilities for the first time.

The U.S. EPA states that the LCR Improvements are intended to provide a "baseline level of sampling information," and that "States are likely better positioned than EPA to administer lead testing and remediation programs because States can establish regulations for schools and childcare facilities that would provide for greater consistency of education, testing, remediation activities, and public communication across all schools and childcare facilities throughout a State." To facilitate these efforts, the Bipartisan Infrastructure Law, enacted in November 2021, established the “Voluntary School and Child Care Lead Testing and Reduction Grant Program”, which allowed grant funding for lead remediation in addition to testing.

State Action on Lead in Drinking Water in Childcare Facilities. Childcare regulations around safe drinking water vary across facility type. While drinking water from a noncontaminating fixture or container is required to be readily available both indoors and in the outdoor activity area for licensed CCCs, there are no similar regulations for FCCHs. Existing law addresses this gap by requiring all licensed child daycare facilities to comply with certain requirements for beverages served by the daycare provider to the children in care, including ensuring the availability and accessibility of readily available clean and safe drinking water throughout the day. However, the terms “clean and safe” are not further defined and does not explicitly mention water free from contaminants like lead.

In 2018, AB 2370 (Holden), Chapter 676, Statutes of 2018, mandated licensed CCCs situated in a building constructed prior to January 1, 2010, to undergo lead testing in their drinking water by January 1, 2023, and subsequently every five years thereafter. This bill also required collaboration between CDSS and the State Water Board to the enactment of the bill provisions, which includes, but is not limited to:

- Discontinue the use of fountains and faucets in areas where elevated lead levels are detected;
- Secure a safe source of potable water for children and staff; and,
- Inform parents or guardians about the test outcomes.

Subsequent written directives from CDSS specified an action level of 5 ppb, with a minimum reporting threshold of 1 ppb, for lead in water in CCCs. Additionally, through SB 862 (Budget and Fiscal Review Committee), Chapter 449, Statutes of 2018, the California Legislature allocated $5 million to the State Water Board to aid CCCs in covering the expenses associated with testing and replacing fixtures. FCCHs were left out of these investments.

This bill seeks to address gaps in existing law regarding water safety in licensed FCCHs, with a specific focus on mitigating lead exposure risks for children. This bill requires licensed FCCHs to adopt measures to ensure water served to children, and used in food preparation, undergoes filtration with certified lead-removing water filtration devices, specifically the NSF/ANSI 42 and 43 standards for water safety.

This bill also requires FCCHs to maintain records and receipts demonstrating regular maintenance and filter replacements in accordance with the manufacturer's recommendations. This requirement aims to ensure the continued effectiveness of the filtration devices in removing lead and maintaining water safety standards over time.

Lastly, this bill aims to leverage existing resources from the U.S. EPA's Voluntary School and Child Care Lead Testing and Reduction Grant Program to facilitate compliance. These funds would be used to provide lead-removing water filters to licensed FCCHs, particularly prioritizing providers caring for low-income children. By targeting resources to those most in need, this bill aims to address disparities in access to water safety measures and promote equity in childcare settings.

Author's Statement: "We know that no level of lead exposure is safe and that it is linked to slowed growth and development of children, and that it damages the brain and nervous system. Children are some of the most vulnerable residents in our state, and we cannot continue to allow them to be unintentionally poisoned in the same facilities where they are cared for.

"For these reasons, [this bill] requires a licensed family daycare home to only serve water to children, or use water in food preparation for the family daycare home that has been filtered with a point-of-use water filtration device certified to meet National Sanitation Foundation of the American National Standards Institute (NSF/ANSI) standards for water safety, and that explicitly claims to remove lead.

"The bill also requires the family daycare home to maintain records and receipts demonstrating that the water filtration device has been maintained, and its filters replaced."

Equity Implications: Subsidized childcare predominately serves low-income families and children of color. These families predominately place their children in FCCHs for care, which offer more flexible care for families in terms of hours and in some cases, FCCHs may be the only available childcare in the area. By requiring FCCHs to install filtration devices that remove lead, this bill ensures greater protection for the 158,959 children who utilized this care as of 2022-23.

Proposed Amendments*: Due to timing and should this bill pass out of this Committee, agreed-upon amendments shall be taken in the second policy committee, Assembly Committee on Environmental Safety and Toxic Materials.*

Following discussions between the author, Committee, Assembly Committee on Environmental Safety and Toxic Materials and key stakeholders, the author and Committee have agreed to recast the bill to accomplish the following:

- Require, starting from January 1, 2027, licensed FCCHs operating in buildings constructed before January 1, 2010, to exclusively provide children with water, or use water in food preparation, that has been filtered with a point-of-use water filtration device certified to meet NSF/ANSI standards for lead and particulate reduction.

- Require, by January 1, 2026, CDSS in collaboration with the State Water Board, to establish regulations to enforce the requirements outlined in this section. These regulations will ensure:

  - Proper installation, consistent use, and maintenance of point-of-use water filtration devices meeting NSF/ANSI standards for lead and particulate reduction in FCCHs. Guidelines will be provided on verifying that a water filtration device has been tested and certified against these standards;

  - Adequate flushing procedures after installing a new filter, replacing a filter cartridge, and during periods of stagnation to minimize human exposure to bacteria and lead;

  - Transparent recording of maintenance and filter cartridge replacement history for point-of-use filtration devices. This includes using template forms and maintaining receipts or other records;

  - Comprehensive lead testing in drinking water at FCCHs, when required. Testing procedures will ensure proper sample collection by certified external water samplers and analysis by accredited laboratories; and,

  - Point-of-use filtration devices are typically a temporary measure for lead in drinking water and will offer options for long-term or permanent solutions.

- Require, if NSF/ANSI standards for point-of-use filtration devices are updated, CDSS to revise the regulations accordingly to ensure that filters meeting the most current standards are used.

- Require FCCHs to maintain records and receipts, to be provided during inspections, demonstrating that all point-of-use water filtration devices have been used, maintained, and had filter cartridges replaced according to the manufacturer's recommendations and regulations under this section. Maintenance records should include a visible template near the front door annotating filter cartridge replacement dates.

- Require, if during an inspection, CDSS finds that records and receipts do not align with the manufacturer's recommendations, to issue a notice of violation.

- Require the FCCH, upon receipt of a notice of violation for failure to use filters, to provide documentation within five business days showing filter installation. For failure to demonstrate proper maintenance, the FCCH must submit documentation within 185 days proving six months of continuous and appropriate maintenance.

- Require CDSS, if the FCCH fails to comply with the above requirement, to require immediate lead testing of drinking water to ensure levels are below 5ppb.

- Require laboratories to promptly submit drinking water test results to the State Water Board using approved lead data submission methods. The State Water Board will then report the results to CDSS.

- Require FCCHs to inform parents or legal guardians of enrolled children within five business days of being required by CDSS to test drinking water or install filters. Additionally, FCCHs to notify parents of test results within five business days of receiving them from the laboratory.

- Require, if testing reveals lead levels above 5ppb, affected FCCHs to immediately stop using affected fountains and faucets, provide a safe water source to children and staff, and demonstrate filter maintenance until records are provided.

- Failure to comply with these requirements will result in temporary license suspension.

- Exempt FCCHs from these requirements if they provide two rounds of comprehensive test results to CDSS showing lead levels below 1ppb in the previous year.

- Require, by July 1, 2029, CDSS to submit a report to the relevant fiscal and policy committees of the Legislature detailing the following:

    - The annual percentage and total number of licensed FCCHs exempted from the requirements.

    - The percentage and total number of licensed FCCHs issued only a letter of violation.

    - The percentage and total number of licensed FCCHs issued a letter of violation followed by a license suspension under this section, categorized by the reason for the suspension.

    - The percentage and total number of licensed FCCHs with testing results showing lead levels in drinking water above 5ppb.

- Require CDSS to include a public stakeholder process in adopting regulations.

Double referral: Should this bill pass out of this committee, it will be referred to the Assembly Committee on Environmental Safety and Toxic Materials.

RELATED OR PRIOR LEGISLATION:

AB 249 (Holden) of 2023, would have required, on or before January 1, 2027, a community water system that serves a school site receiving federal Title I funds to test for lead in each of the school site's potable water system outlets and to perform specified actions, if lead levels exceeded 5 ppb. *AB 249 was vetoed by Governor Gavin Newsom.*

AB 1931 (Rivas) of 2022, would have required a community water system to create an inventory of lead service lines in its distribution system and a timeline for the replacement or removal of lead service lines. *AB 1931 was held on the Assembly Appropriations Committee suspense file.*

AB 100 (Holden), Chapter 692, Statutes of 2021, required, commencing January 1, 2023, manufacturer compliance with a specified lower lead leaching standard for faucets and other end point devices used for providing drinking water; prohibited sales of products that do not meet the new standard beginning July 1, 2023; and, required labeling of products that comply with the definition of "lead free" to indicate compliance in an easily identifiable manner.

AB 2370 (Holden), Chapter 676, Statutes of 2018, required licensed child daycare facilities to, upon enrolling any child, provide parents or guardians with certain written information related to the risks and effects of lead exposure and blood lead testing recommendations and requirements, and subjects certain CCCs to certain requirements related to testing drinking water for lead contamination levels.

SB 862 (Budget and Fiscal Review Committee), Chapter 449, Statutes of 2018, appropriated $5 million to the State Water Board to provide grants or contracts for drinking water testing for lead at licensed CCCs, remediation of lead in plumbing and drinking water fixtures, and technical assistance for licensed child daycare providers to apply for testing and remediation.

AB 746 (Gonzalez), Chapter 746, Statutes of 2017, required a community water system that serves a school site with a building constructed before January 2010 to test for lead in the potable water system of the school site by July 1, 2019.

AB 2124 (Garcia) of 2016, would have required a public water system to include in its water analysis samples from schools, daycare facilities, and healthcare facilities, to the extent those locations are within the public water system. *AB 2124 was held in the Senate Environmental Quality Committee.*

AB 2084 (Brownley), Chapter 593, Statutes of 2010, created a minimum standard for beverages that are served in licensed child daycare facilities and required facilities to make clean and safe drinking water readily available and accessible for consumption throughout the day.

REGISTERED SUPPORT / OPPOSITION:

Support

CALPERG, California Public Interest Research Group (Co-Sponsor)
Environmental Working Group (Co-Sponsor)
A Voice for Choice Advocacy
Active San Gabriel Valley
Alliance of Nurses for Healthy Environments
As You Sow
Brighter Beginnings
California Environmental Voters (formerly CLCV)
California Nurses for Environmental Health & Justice
Center for Community Action & Environmental Justice
Center for Environmental Health
Clean Water Action
CleanEarth4Kids.org
Development of Court Skills
Facts: Families Advocating for Chemical & Toxics Safety
Friends Committee on Legislation of California
Little Things Matter
Lutheran Office of Public Policy - California
Mamavation - Non-toxic Products for Healthy Families
Moms Advocating Sustainability
mySafetyNEST.org
Non-Toxic Neighborhoods
Non-Toxic Schools
Recolte Energy
Russian Riverkeeper
www.gmoscience.org

Opposition

None on file.

Analysis Prepared by: Bri-Ann Hernández / HUM. S. / (916) 319-2089