



Washington State Board of Health

Rulemaking Petition, School Environmental Health and Safety, Chapter 246-366A WAC

January 9, 2023

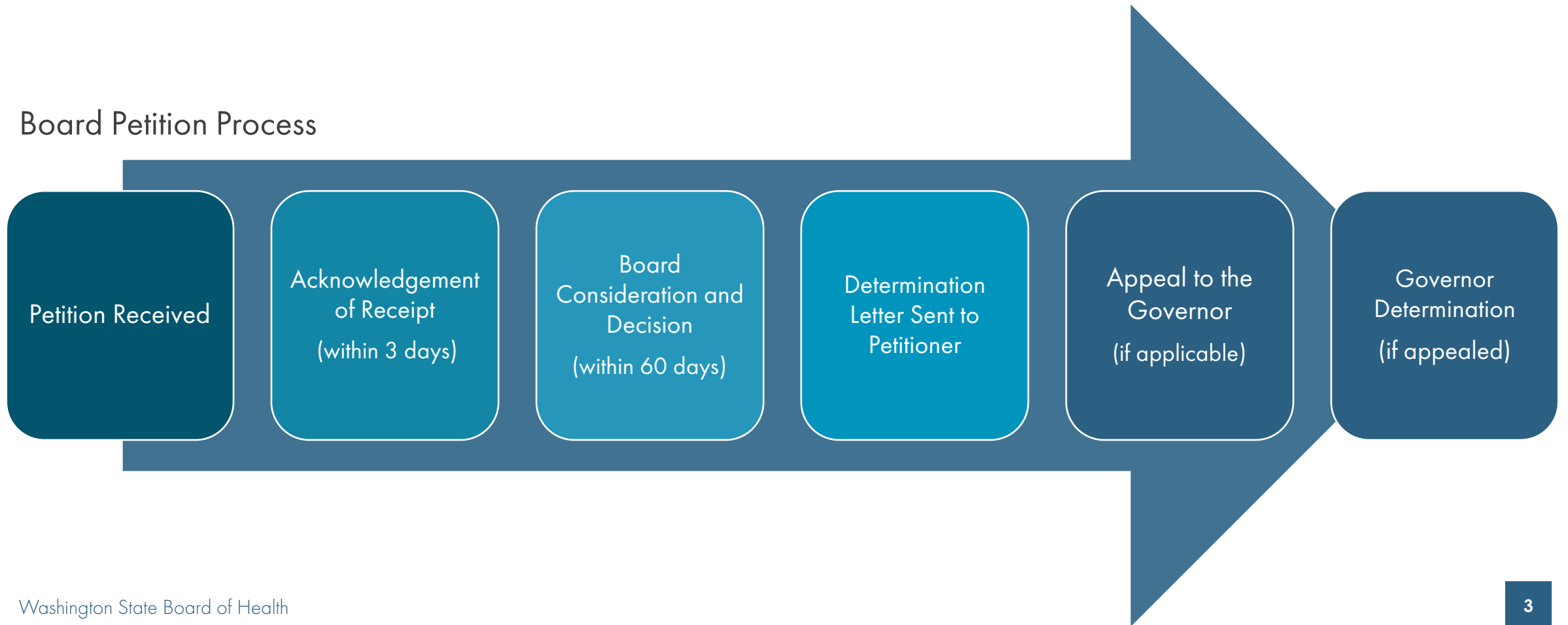
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Background

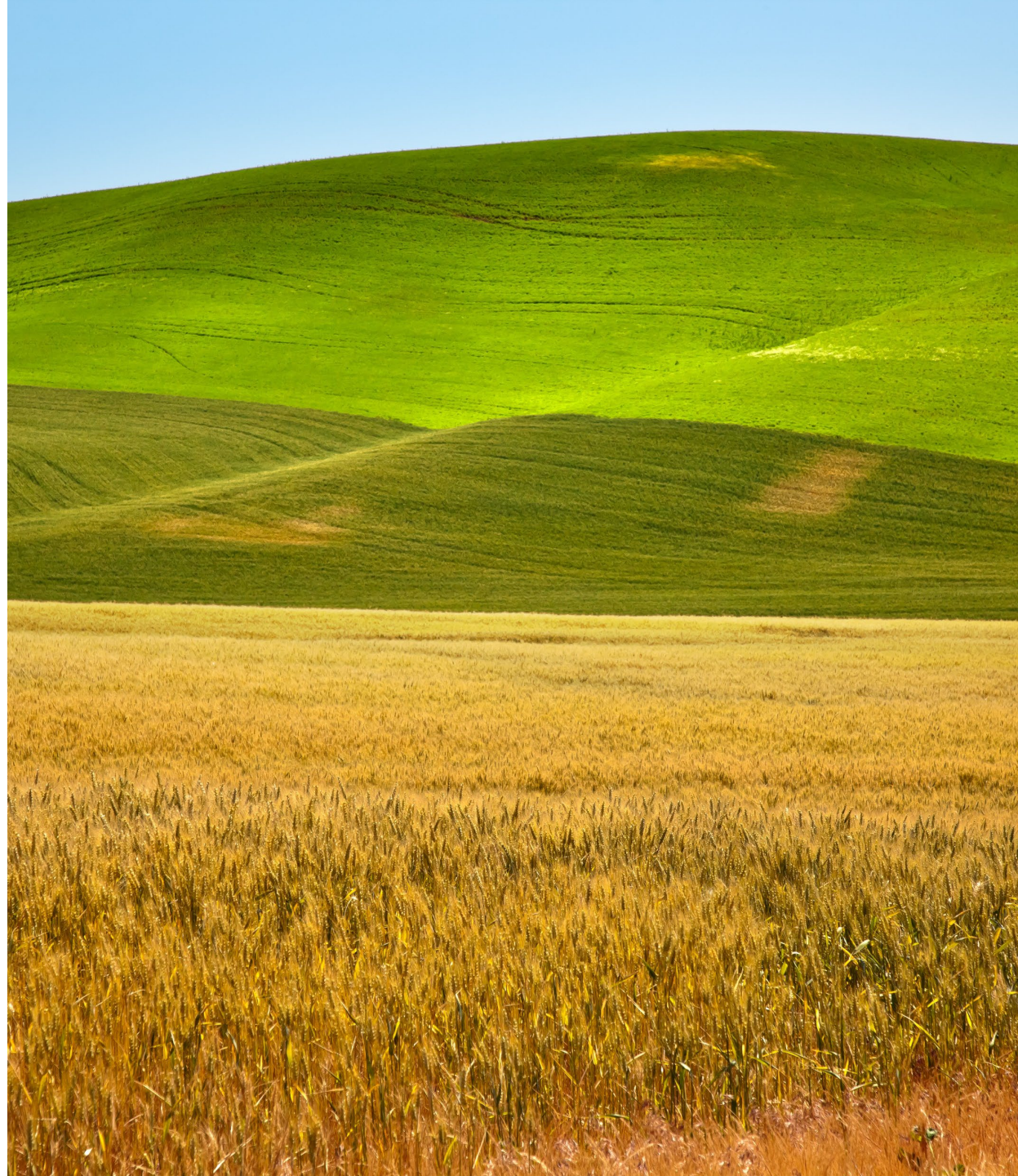
Under the Administrative Procedures Act, any person may petition a state agency to adopt, repeal, or amend any rule within its authority.

Board Petition Process



Petition Request

- On December 19, 2022, the Board received a petition for rulemaking requesting the Board revise [chapter 246-366A WAC, Environmental Health and Safety Standards for Primary and Secondary Schools](#), to reflect more stringent standards for testing and remediation of lead in school drinking water in law.
- The petition asserts that the legislature has fully funded implementation of the new standards for lead testing, remediation, and notification; therefore, the Board is no longer restricted from implementing this section of the suspended school rules.



School Environmental Health & Safety Rules

- Chapter 246-366A WAC establishes a set of minimum environmental health and safety standards for school facilities to promote healthy and safe school environments
- These rules provide minimum environmental health and safety standards for all schools in Washington
- Originally adopted in 2009, the rules have not been implemented due to restrictions enacted by the Legislature related to concerns with the financial impact of the rules



Budget Proviso



The department of health and the state board of health shall not implement any new or amended rules pertaining to primary and secondary school facilities until the rules and a final cost estimate have been presented to the legislature, and the legislature has formally funded implementation of the rules through the omnibus appropriations act or by statute.

Engrossed Second Substitute House Bill 1139 (2021)

- Requires primary and secondary schools to regularly sample, test, and remediate lead in drinking water in buildings that have been built (or plumbing was replaced) prior to 2016.
- Schools must notify students, families, and staff of lead testing results, as well as adopt a school action plan if results exceed lead levels of 5 parts per billion (ppb).
- DOH must develop and publish a two-year sampling and testing plan for schools, issue waivers to community water systems from requirements in the federal lead and copper rule (40 C.F.R Part 141.92), and develop and make available technical guidance for schools.
- The Board may define "elevated lead level" at a concentration of less than 5 ppb in rule if supported by scientific evidence after July 1, 2030.

Lead Testing & Remediation Standards

WAC 246-366A-130

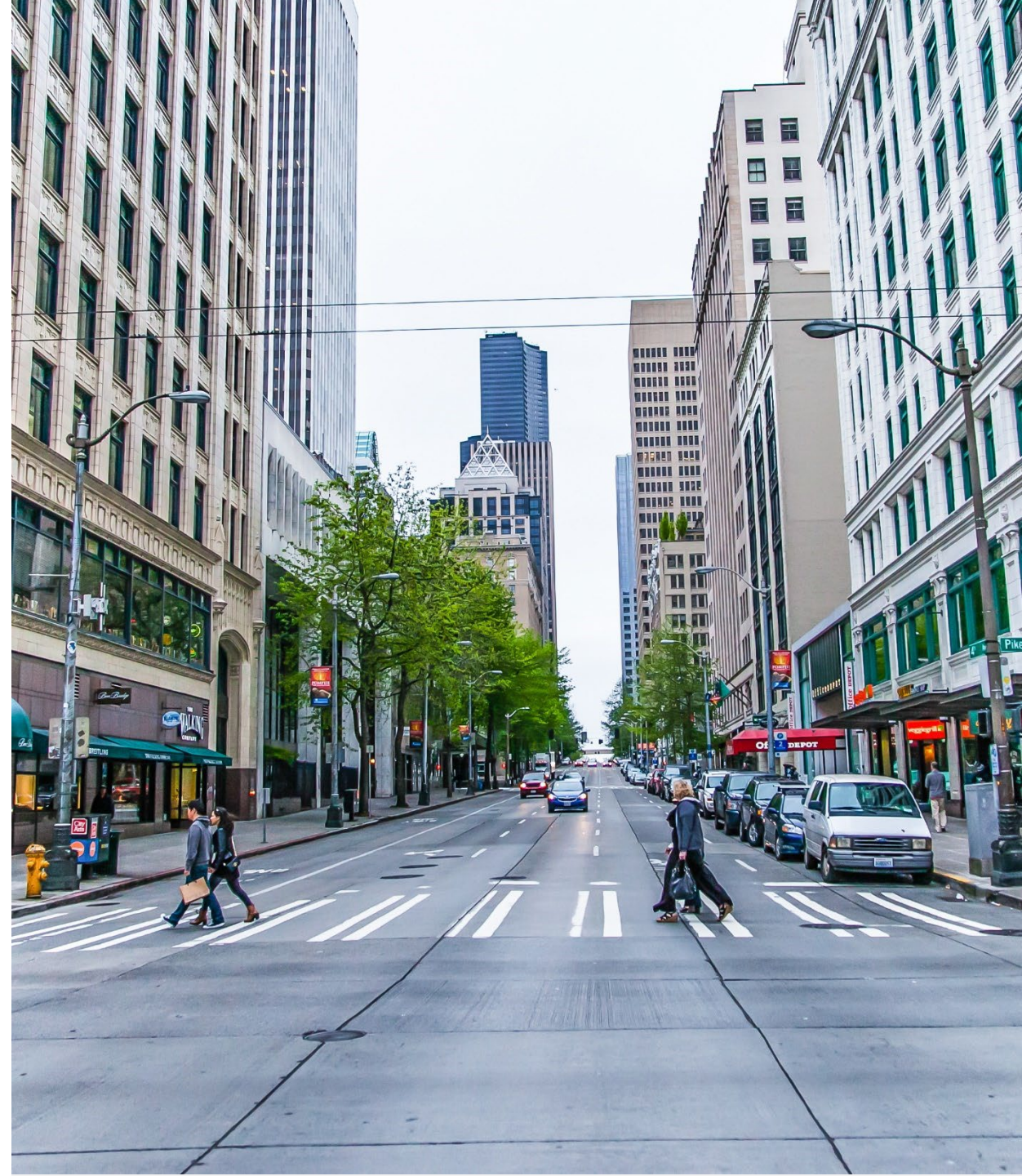
- Must sample plumbing fixtures regularly used for drinking or cooking
- Initial monitoring must be conducted 1-4 years after the effective date of the rules, depending on sampling method and school facility type
- Ongoing monitoring must be conducted every 5-9 years, depending on the school facility type
- Fixtures with lead levels exceeding 20.0 ppb must be immediately shut off or made inoperable; must remediate by providing bottled water, manual or automatic flushing, fixture replacement, or treatment
- School officials must notify school facility staff, students, parents, and the local health officer within 5 business days of receiving sampling results over 20.0 ppb
- Results must also be made available upon request

RCW 28A.210.410

- Schools must coordinate with DOH or contract for sampling and testing for lead contamination in drinking water outlets
- Outlets exceeding 15 ppb must be shut off until mitigated
- Schools must develop an action plan for results exceeding 5 ppb. Action plans must:
 - Be developed in consultation with the DOH or LHJ and OSPI
 - Describe mitigation measures implemented since the test result was received
 - Include a schedule of remediation activities and post-remediation retesting to confirm lead concentrations have been reduced
- Schools must provide the public with notice and opportunity to comment on action plans, and post action plans on their websites.
- Retesting must occur no less than every five years

Considerations

- The petition asserts that the legislature has fully funded implementation of the new standards for lead testing, remediation, and notification; therefore, the Board is no longer restricted from adopting and implementing rules that reflect these more protective standards



E2SHB 1139 Fiscal Note Estimates & Funding

Fiscal Note Estimates

	Biennium		
	2021-2023	2023-2025	2025-2027
Total Estimated Operating Expenditures	\$2,826,714	\$2,810,000	\$3,688,000
Total Estimated Capital Budget Expenditures	\$2,776,017	\$2,760,642	\$2,760,642

Appropriated Funding

	Biennium		
	2021-2023	2023-2025	2025-2027
Operating Budget	\$2,809,000 + \$500,000 (FY 21)	TBD	TBD
Capital Budget	\$3,598,000 + \$128,000	TBD	TBD

Additional Considerations

- It is unclear at this time whether funding provided in the 2021-23 biennium to implement E2SHB 1139 was sufficient to fulfill statutory requirements
- It does not appear that the legislature has formally funded implementation of relevant sections the rules through the omnibus appropriations act or by statute, in accordance with the budget proviso
- There is no conflict between chapter 246-366A and RCW 28A.210.410 because the rules are not currently in effect



Board Discussion

**Would the Board consider accepting or denying this petition?
Why or why not?**

Discussion and justification for the Board's decision will be included in the Board's determination letter to the petitioner.

| THANK YOU