



STATE OF WASHINGTON  
**WASHINGTON STATE BOARD OF HEALTH**

*PO Box 47990 • Olympia, Washington 98504-7990*

March 12, 2008

**TO:** Washington State Board of Health Members

**FROM:** Environmental Health Committee, State Board of Health—  
Keith Higman and Karen VanDusen

**SUBJECT: UPDATE ON REVISION OF SCHOOL ENVIRONMENTAL  
HEALTH AND SAFETY RULE: CHAPTER 246-366 WAC**

**Background and Summary**

The State Board of Health has been working with the Department of Health (DOH) and stakeholders since 2004 on updating chapter 246-366 WAC, the school environmental health and safety rule. Several Board members have expressed concern about how long rule making has taken. The existing schedule has called for a Board briefing on updates in April and a public hearing in June or July to consider adoption.

There has been considerable legislative interest in the school rule, including a House Capital Budget Committee work session and hearing at which Executive Director Craig McLaughlin presented. During the hearing, organizations representing schools unveiled a study suggesting the rule would add millions of dollars to the cost of new schools and school retrofits. These estimates were based largely on interpretations of the second discussion draft that differ from the intent of DOH and this committee, and in some cases contradict written guidance provided by DOH. The hearing pointed out the lack of agreement about rule intent and the lack of specificity in some of the draft language.

Board and DOH staff participated in meetings with several legislators, legislative staff, and stakeholders that resulted in agreements about how to proceed. The main proposal was to convene a work group to refine the rule language. The goal would be to eliminate confusion and disagreement that stems from unclear language and to identify and clearly articulate remaining areas of substantive disagreement. Legislators requested a revised timeline and a communication plan—something Board members had requested in January. These rule revision workshops will push back a rule hearing until August.

The committee has asked Craig McLaughlin to explain these developments to the Board. A letter from him to legislators summarizing the agreements is included in your packets behind Tab 10. Also included for review and comment are the proposed timeline and draft communication plan submitted to legislative staff, as well as a list of participants in

the rule revision group. The school groups' costing estimates will be available at the hearing.

### **Recommended Board Action**

This is an opportunity to discuss future directions and timing and to provide guidance and suggestions to the Environmental Health Committee and DOH and Board staff.

Depending on the nature of the discussion, this could take the form of a motion or just a sense of the Board on general direction. No specific motion is recommended.

### **Discussion**

RCW 43.20.050(2)(c) grants the Board authority to “*adopt rules controlling public health related to environmental conditions including but not limited to heating, lighting, ventilation, sanitary facilities, cleanliness and space in all types of public facilities including...schools.*”

Between 1998 and 2003, the Board received considerable testimony about environmental health problems, particularly related to poor indoor air quality, in schools. Board staff conducted a review of chapter 246-366 WAC, Primary and Secondary Schools, and reported that a stakeholder workgroup recommended updating the rules. At its July 2003 meeting, the Board asked its executive director to initiate the rule making by July 2004. The DOH convened a more extensive workgroup of stakeholders between November 2004 and July 2005, called the School Rule Development Committee (SRDC), to develop recommendations for a rule revision.

In March 2006, DOH released a discussion draft of possible revisions to chapter 246-366 WAC. DOH received many comments on that draft, both positive and negative. During 2006, the Board heard more testimony about environmental health and safety issues in schools during public comment periods and during planned work sessions. In December 2006, it adopted this committee's recommendations regarding next steps and asked DOH to develop another discussion draft, building on the good work already done by DOH and the SRDC. DOH released a second discussion draft and briefed the Board in August 2007. DOH asked that the public submit comments by October 12 so that a summary could be reported to the Board at its November 2007 meeting. In November 2007, the Board reviewed a rule development timeline that anticipated a June 2008 public hearing.

DOH held workshops in late November 2007 to gather cost estimates for implementing new provisions in the draft. DOH received input at these meetings that reflect a great deal of concern from many stakeholders about the potential cost of the rule. Besides concern about costs for new provisions, there is concern that a revised rule will focus attention on existing requirements that have not been fully implemented for many years. Much of the concern appears to be related to worst-case interpretations language in the second draft. Many of the interpretations differed from the intent of the rule drafters. DOH staff spent

much of December and January developing clarifying explanations of the language and alternative wording.

On January 31, Board staff was asked to participate in a hearing of the House Capital Budget Committee about proposed provisions in the draft rule revision and potential costs to schools. School representatives gave cost estimates to the legislative committee members based on the high-cost potential interpretations expressed in November. In follow-up meetings, participants agreed that the Board and DOH would organize a stakeholder review team to revise and refine the language in the rule draft to clarify the requirements. The Office of Superintendent of Public Instruction agreed to hire a facilitator for the process, as well as a consulting architect. Craig McLaughlin agreed to develop a new timeline and a communications plan for assuring stakeholders were kept informed.

DOH and Board staff have been working on revised draft language intended to resolve many of the concerns heard from stakeholders about costs. They anticipate completing this in late March and distributing it to the review team before its first meeting. The review team is scheduled to have three or four meetings on consecutive weeks to get through the draft. DOH and Board staff will use this input to finalize a draft proposal. The proposal and the significant analysis describing costs and benefits associated with the proposal, will be reviewed by the revision team in late May. The Board will be briefed at its June meeting.

This Committee has met with DOH staff many times in the past year to review progress and provide advice on the school rule proposal. This committee recommends revising the timeline again to schedule a briefing in June and tentatively schedule a public hearing at the August 2008 Board meeting.