

**CITY OF OAKLAND**  
**AGENDA REPORT**

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2008 MAY -1 PM 2:46

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Community and Economic Development Agency  
DATE: May 6, 2008

RE: **Supplement Report For A Resolution Supporting Senate Bill 1334 (Calderon), As Amended, Requiring Independent Testing Of Lead Content In Products Conveying And Dispensing Water For Human Consumption**

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**SUMMARY**

On April 24, 2008, the Rules and Legislation Committee requested additional information clarifying a staff recommendation supporting California Senate Bill 1334 (author Calderon), as amended on April 8.

In 2006, Assembly Bill 1953 (Chan, et al.) amended the California Health and Safety Code (beginning in 2010) to reduce the lead content of piping and fixtures sold in California for conveying and dispensing drinking water by sixteen (16) to thirty-two (32) times from the current levels allowed by federal regulations. AB 1953, which the East Bay Municipal Utility District (EBMUD) helped draft, will reduce a primary source of ingested lead. Because federal law does not have a lead-content quality control program for manufacturers, two (2) senate bills were introduced in this legislative session to establish testing and sampling protocols to implement AB 1953.

EBMUD has helped draft SB 1395 (Corbett), which would require the state Department of Toxic Substances Control to establish lead content standards for faucets and to independently test the manufactured products. The Plumbing Manufacturers Institute has helped draft SB 1334 (Calderon), which would establish private testing standards for and require independent third-party testing of lead content in piping and faucets. Senator Calderon's bill has been opposed by water agencies and environmental groups throughout the state. SB 1334 was recently amended in the Senate Health Committee, and the revised legislation is now supported by EBMUD, Alameda County Supervisors, and Alameda County Lead Poisoning Prevention Program (ACLPPP), and is not opposed by the Environmental Defense Fund, the National Resources Defense Council, and the Planning and Conservation League.

AB 1953, SB 1334, and SB 1395 will control lead content in drinking water plumbing (meter to a faucet) permitted by the California Plumbing Code (CPC). The CPC also requires that pipes and fittings supplying drinking water meet the requirements of the National Sanitary Foundation.

**FISCAL IMPACT**

There is no direct fiscal impact for the City.

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## KEY ISSUES AND IMPACTS

### ▪ Existing Legislation - Reduction Of Lead Content In Drinking Water Plumbing

The United States Environmental Protection Agency (EPA) estimates that drinking water plumbing accounts for fifteen percent (15%) to twenty percent (20%) of lead ingested by Americans. Drinking water plumbing represents the most common source of lead exposure, and low concentrations of lead can result in damaging health effects, including kidney disease, hypertension, hearing loss, and fetal damage to the brain. The EPA has specifically identified brass or chrome-plated brass faucets and fixtures as the most common source of lead which can leach into drinking water (particularly hot water).

Assembly Bill 1953 (Chan, et al.), which amended Health and Safety Code (H&S) section 116875 (in 2006), will reduce the lead content in piping, fittings, and fixtures conveying and dispensing drinking (potable) water below the federal standards of eight percent (8%) and (4%), respectively, to a single California standard of one-quarter of one percent (0.25%). EBMUD helped draft AB 1953 to reduce a primary source of ingested lead from corroded materials leaching into drinking water. California's new standard will become effective in January 2010.

### ▪ Amending Legislation - Standards For Measuring Lead Content In Plumbing Materials

Neither federal law nor AB 1953 have any quality control program to ensure that drinking water plumbing, including faucets, conforms to state and federal lead content standards. In the two (2) years since Governor Schwarzenegger signed AB 1953, three (3) bills have been introduced in the state senate to add testing methods and measuring protocols to the Health and Safety Code. SB 651, which was introduced last year by Senator Calderon, remained in the Senate Health Committee without recommendation due its opposition from water agencies and environmental groups. This year, Senator Calderon reintroduced SB 651 as SB 1334. With EBMUD's support, Senator Corbett introduced alternate legislation as SB 1395.

SB 1395 requires that the state Department of Toxic Substances Control establish sampling protocols for measuring lead content in materials dispensing drinking water and to independently test faucets. SB 1334, as originally written, required that manufactures use testing methods certified by and independent third-party testers accredited by the American National Standards Institute (ANSI) and the National Sanitary Foundation (NSF). Opponents of SB 1334 again raised their previous concern with codifying private standards over which the state Department of Public Health has no regulatory control and with accepting third-party testing and certification without independent corroboration by the state.

SB 1334 was amended in committee on April 8 to address these concerns by requiring that manufactures use ANSI/ NSF standards which have been certified by the state Department of Toxic Substances Control, as proposed in SB 1395. SB 1334 also now includes a legal clarification any tests developed by an independent ANSI accredited third-party shall have no weight of authority under California law. As a further safeguard, SB 1334 and SB 1395 must both be passed for each to become law.

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EBMUD led the original opposition to SB 1334. As amended, SB 1334 is now supported by EBMUD, Alameda County Supervisors, and Alameda County Lead Poisoning Prevention Program (ACLPPP). Councilmember Henry Chang is a Board Director of ACLPPP. The National Resources Defense Council, the Environmental Defense Fund, and the Planning and Conservation League have advised EBMUD they will withdraw their opposition to SB 1334.

▪ Opposition To SB 1334, As Amended

On April 22, Building Services staff received a communication (e-mail) from a staff member for the City of Berkeley who expressed his concern with the April 8 amendments of SB 1334. He remarked that allowing the ANSI/ NSF standards in the Health and Safety Code will provide manufacturers an opportunity to circumvent AB 1953. Of particular concern to him is the potential for third-party testers to certify lead content based on their testing of less-corroded materials. The communication did not clearly articulate how such an eventuality would be possible, given that SB 1334 cannot pass without SB 1395 also passing and that SB 1334 has specific provisions protecting a legal challenge to state control of ANSI/ NSF standards and third-party testing.

He spoke with EBMUD's lobbyist in Sacramento and with the director of ACLPPP, who had spoken with the Special Assistant to EBMUD's General Manager, but he was not dissuaded by their support of the amended bill. Building Services staff concurs with EBMUD and ACLPPP that the amendments will provide domestic and overseas manufactures with established testing methods and sampling protocols while assuring that the requirements of AB 1953 are not compromised or circumvented by requiring state approval of lead content testing standards and state testing of manufactured products.

## SUSTAINABLE OPPORTUNITIES

**Economic:** As amended, SB 1334 will not directly affect the short-term economic vitality of the City or citizens of Oakland, but the bill will support the long-term health of the community.

**Environmental:** As amended, SB 1334 will support the pending change to the Health and Safety Code which will reduce the amount of lead ingested from drinking water by California consumers.

**Social Equity:** As amended, SB 1334 will promote equal protection from health hazards for the citizens of Oakland.

## DISABILITY AND SENIOR CITIZEN ACCESS

As amended, SB 1334 will not directly affect disability or senior citizen access.

## RECOMMENDATIONS

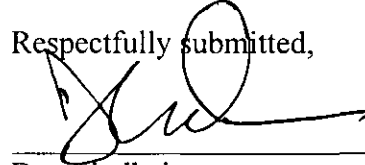
Staff recommends that the Council adopt the proposed Resolution.

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**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council accept this supplemental report and adopt the proposed resolution supporting the passage of Senate Bill 1334 (Calderon), as amended on April 8, 2008.

Respectfully submitted,



Dan Lindheim

Director

Community and Economic Development Agency

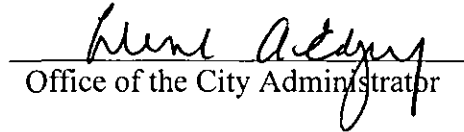
Prepared by:

Raymond M. Derania

Interim Building Official

Building Services Division

APPROVED AND FORWARDED  
TO THE CITY COUNCIL:



Office of the City Administrator

- Attachments: A - AB 1953, legislative counsel's digest and analysis  
B - SB 1334, legislative counsel's digest and analysis  
C - SB 1395, legislative counsel's digest and analysis  
D - City of Berkeley e-mail  
E - Alameda County Lead Poisoning Prevention Program letter

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# ATTACHMENT A

## BILL ANALYSIS

Bill No: AB 1953  
Author: Chan (D), et al

SUBJECT: Lead plumbing

SOURCE: East Bay Municipal Utility District

DIGEST: This bill changes the meaning of the term lead free in the Health and Safety Code from eight percent lead for pipes or pipe fittings, and four percent lead for plumbing fittings and fixtures to a weighted average of not more than 0.25 percent lead content within each component that comes into contact with the wetted surfaces of pipes and pipe fittings, plumbing fittings and fixtures effective July 1, 2010.

Senate Floor Amendments of 8/28/06 clarify the scope of "lead free" to different types of water conveyances and the lead standards that apply to such conveyances.

### ANALYSIS :

#### Existing Law

1. Establishes the Childhood Lead Poisoning Prevention Program in the Department of Health Services to compile information, identify target areas, and implement a program of medical treatment and environmental abatement to reduce childhood lead exposure.
2. Prohibits the manufacture, sale, or exchange of toys exceeding a certain lead content.
3. Implements a lead poisoning prevention and protection program for California schools to survey and ascertain risk factors that predict lead contamination in public schools.
4. Defines "lead free" to mean not more than 8 percent with reference to pipes and pipe fittings. With reference to plumbing fittings and fixtures, "lead free" means not more than 4 percent by dry weight after August 6, 2002, unless the Department of Health Services has adopted a standard, based on health effects, for the leaching of lead.

#### This bill:

1. Revises the meaning of "lead free" from 8 percent lead for pipes or pipe fittings, and 4 percent lead for plumbing fittings and fixtures to .25 percent lead content within each component that comes into contact with the wetted surfaces of pipes and pipe fittings, plumbing fittings and fixtures effective January 1, 2010.
2. Prohibits a person from using specified materials that are not lead free in the installation or repair of any public water system or any plumbing in a facility providing water for human consumption, except when necessary for the repair of leaded joints of cast iron pipes.
3. Prohibits a person from introducing into commerce any pipe, pipe or plumbing fitting, or fixture intended to convey or dispense water for human consumption through drinking or cooking that is not lead free, as defined in subdivision. This includes kitchen faucets, bathroom faucets, and any other end-use devices intended to convey or dispense water for human consumption through drinking or cooking, but excludes service saddles, backflow preventers for nonpotable services such as irrigation and industrial, and water distribution main gate valves that are two inches in diameter and above.
4. Exempts plumbing fixtures and related devices that are used in manufacturing; industrial processing, for irrigation purposes, and any other uses where the water is not intended for human consumption.
5. Prohibits a person engaged in the business of selling plumbing supplies, except manufacturers, from selling solder or flux that is not lead free, unless accompanied by a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.

6. Defines "lead free" as materials containing not more than 0.2 percent lead when used with respect to solder and flux and not more than a weighted average of 0.25 percent when used with respect to the wetted surfaces of pipes and pipe fittings, plumbing fittings, and fixtures, providing a specified definition and formula for determining "weighted average."

7. Provides declaratory language regarding state mandates and the procedure for local agencies to receive reimbursement.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

Fiscal Effects . The Department of Health Service, which promulgates regulations to implement the standards, would incur some costs to develop and promulgate new regulations. These General Fund costs, likely to be incurred in 2009-10, would be minor. Local inspectors may incur costs to comply with the new standards, but the costs could be covered by inspection fees and therefore would be non-reimbursable.

SUPPORT : (Verified 8/18/06)

East Bay Municipal Utility District (source)  
East Bay Municipal Utility District (Sponsor)  
Alice Lai-Bitker, Supervisor of Alameda County  
American Federation of State, County, Municipal Employees (AFSCME)  
Breast Cancer Fund  
California Association of Environmental Health Officers  
California Association of Sanitation Agencies  
California Communities Against Toxics  
California Municipal Utilities Association  
California League of Conservation Voters  
California Rural Legal Assistance Foundation  
California Special Districts Association (Public Policy Advocates)  
City and County of San Francisco  
City of Los Angeles  
Clean Water Action Commonweal  
Contra Costa Water District  
County of Alameda  
Defenders of Wildlife  
Environment California  
Environmental Justice Coalition for Water  
Healthy Children Organization Project  
Marin Municipal Water District  
Major Antonio Villaraigosa  
Natural Resources Defense Council (NRDC)  
Orange County Water District  
Physicians for Social Responsibility, San Francisco Bay  
Area Chapter  
Planning and Conservation League  
San Francisco Public Utilities Commission  
Santa Clara Valley Water District  
Sierra Club California  
Sonoma County Water Agency

OPPOSITION : (Verified 8/18/06)

Alsons Corporation

American Faucet & Coating Corporation  
American Standard, Inc.  
Black & Decker  
Building Owners and Managers Association of California  
Buttes Pipe & Supply Company  
California Building Industry Association  
California Business Properties Association  
California Chamber of Commerce  
California Home Builders  
California Professional Association of Specialty Contractors  
California Retailers Association  
Center State Pipe & Supply Co.  
Copper Development Association  
Delta Faucet Company  
Dornbracht USA, Inc.  
ELKAY Manufacturing Company  
Haws Corporation  
Kohler Company  
Los Angeles Unified School District  
Moen  
Non-Ferrous Founders' Society  
Pacific Water Quality Association  
Plastic Pipe and Fittings Association  
Plumbing Heating Cooling Contractors National Association  
Plumbing Manufacturers Institute  
Sloan Valve Company  
Southern California Water Committee  
Symmons Industries  
Tempress Ltd.  
T&S Brass and Bronze Works, Inc.  
Water Quality Association

ARGUMENTS IN SUPPORT : Proponents contend that the gradual phase-out of the use of lead-containing products within the drinking water system will help to alleviate this ongoing public health risk and that lead-free alternatives will reduce in price as the market expands and manufacturers develop new products as a consequence of the phase-in of lead-free materials.

ARGUMENTS IN OPPOSITION : The opponents' arguments are largely contained in the following points:

1. No provision exists for testing or certifying according to a standard.
2. No method is in place for effectively restricting transshipping of nonconforming products into the state.
3. The bill ignores issues with respect to machining, metal finishing, and durability of products utilizing the prescribed alloys:
4. The enactment of AB 1953 would force manufacturers who wish to comply with the letter and spirit of the bill to nationally standardize all products to the California requirements.

The more general source of opposition, however, focuses on the financial impacts of this bill. The Copper Development Association, for example, states, "AB 1953 proposes an unprecedented, artificially low standard that would prohibit virtually all faucets, valves, and backflow preventers currently on the market. Although low-lead brass casting alloys have been introduced in very limited plumbing applications. They are not widely utilized in most plumbing products."

## ATTACHMENT A

BILL NUMBER: AB 1953

FEBRUARY 2, 2006

An act to amend, repeal, and add Section 116875 of the Health and Safety Code, relating to lead plumbing.

### LEGISLATIVE COUNSEL'S DIGEST

#### AB 1953 (Chan) Lead Plumbing

Existing law prohibits the use of any pipe, pipe or plumbing fitting or fixture, solder, or flux that is not lead free in the installation or repair of any public water system or any plumbing in a facility providing water for human consumption, except as specified.

Existing law prohibits the introduction into commerce of any pipe, pipe or plumbing fitting, or fixture that is not lead free, except for a pipe that is used in manufacturing or industrial processing. This bill would, commencing on January 1, 2010, revise this prohibition to apply to any pipe or plumbing fitting, or fixture intended to convey or dispense water for human consumption, but would exclude from this prohibition specified devices. Existing law defines lead free as not more than 8% lead when used with respect to pipes and fittings and not more than 4% by dry weight with respect to plumbing fittings and fixtures.

This bill would, commencing on January 1, 2010, revise the term "lead free," for purposes of manufacturing, industrial processing, and conveying or dispensing water for human consumption, to refer not to the lead content of pipes and pipe fittings, plumbing fittings, and fixtures but to a weighted average lead content of the wetted surface area of the pipes, fittings, and fixtures of not more than 0.25%, to be determined pursuant to a prescribed formula.

Existing law requires the State Department of Health Services to adopt building standards to implement the above prohibitions. Appropriate state and local building and health officials are required to enforce these standards. By increasing the duties of local officials, this bill would impose a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 116875 of the Health and Safety Code is amended to read:

#### **116875**

- (a) No person shall use any pipe, pipe or plumbing fitting or fixture, solder, or flux that is not lead free in the installation or repair of any public water system or any plumbing in a facility providing water for human consumption, except when necessary for the repair of leaded joints of cast iron pipes.
- (b) No person shall introduce into commerce any pipe, pipe or plumbing fitting, or fixture, that is not lead free, except for a pipe that is used in manufacturing or industrial processing.



- (c) No person engaged in the business of selling plumbing supplies, except manufacturers, shall sell solder or flux that is not lead free.
- (d) No person shall introduce into commerce any solder or flux that is not lead free unless the solder or flux bears a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.
- (e) For the purposes of this section, "lead free" means not more than 0.2 percent lead when used with respect to solder and flux and not more than 8 percent when used with respect to pipes and pipe fittings. With respect to plumbing fittings and fixtures, "lead free" means not more than 4 percent by dry weight after August 6, 2002, unless the department has adopted a standard, based on health effects, for the leaching of lead.
- (f) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

**SECTION 2.** Section 116875 is added to the Health and Safety Code, to read:

**116875**

- (a) No person shall use any pipe, pipe or plumbing fitting or fixture, solder, or flux that is not lead free in the installation or repair of any public water system or any plumbing in a facility providing water for human consumption, except when necessary for the repair of leaded joints of cast iron pipes.
- (b) (1) No person shall introduce into commerce any pipe, pipe or plumbing fitting, or fixture intended to convey or dispense water for human consumption through drinking or cooking that is not lead free, as defined in subdivision (e). This includes kitchen faucets, bathroom faucets, and any other end-use devices intended to convey or dispense water for human consumption through drinking or cooking, but excludes service saddles, backflow preventers for nonpotable services such as irrigation and industrial, and water distribution main gate valves that are two inches in diameter and above.  
  
(2) Pipes, pipe or plumbing fittings, or fixtures that are used in manufacturing, industrial processing, for irrigation purposes, and any other uses where the water is not intended for human consumption through drinking or cooking are not subject to the requirements of paragraph (1).  
  
(3) For all purposes other than manufacturing, industrial processing, or to convey or dispense water for human consumption, "lead free" is defined in subdivision (f).
- (c) No person engaged in the business of selling plumbing supplies, except manufacturers, shall sell solder or flux that is not lead free.
- (d) No person shall introduce into commerce any solder or flux that is not lead free unless the solder or flux bears a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.
- (e) For the purposes of this section, "lead free" means not more than 0.2 percent lead when used with respect to solder and flux and not more than a weighted average of 0.25 percent when used with respect to the wetted surfaces of pipes and pipe fittings, plumbing fittings, and fixtures. The weighted average lead content of a pipe and pipe fitting, plumbing fitting, and fixture shall be calculated by using the following formula: The percentage of lead

content within each component that comes into contact with water shall be multiplied by the percent of the total wetted surface of the entire pipe and pipe fitting, plumbing fitting, or fixture represented in each component containing lead. These percentages shall be added and the sum shall constitute the weighted average lead content of the pipe and pipe fitting, plumbing fitting, or fixture.

(f) For the purposes of paragraph (3) of subdivision (b), "lead free," consistent with the requirements of federal law, means not more than 0.2 percent lead when used with respect to solder and flux and not more than 8 percent when used with respect to pipes and pipe fittings. With respect to plumbing fittings and fixtures, "lead free" means not more than 4 percent by dry weight after August 6, 2002, unless the department has adopted a standard, based on health effects, for the leaching of lead.

(g) This section shall become operative on January 1, 2010.

**SECTION 3.** If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code .

## ATTACHMENT B

Bill No: **SB 1334**  
Author: Calderon (D)  
Amended: 4/16/08

SENATE HEALTH COMMITTEE: 10-0, 4/9/08

AYES: Kuehl, Aanestad, Alquist, Cedillo, Cox, Maldonado,  
Negrete McLeod, Steinberg, Wyland, Yee

NO VOTE RECORDED: Ridley-Thomas

SENATE ENVIRONMENTAL QUALITY COMMITTEE : 7-0, 4/14/08

AYES: Simitian, Runner, Aanestad, Florez, Kuehl,  
Lowenthal, Steinberg

SUBJECT: Drinking water: pipes and fittings: lead content

SOURCE: Plumbing Manufacturers Institute

DIGEST: This bill provides a process for the certification of compliant pipe, pipe or plumbing fittings or fixtures, solder, or flux by an American National Standards Institute accredited third-party, including, but not limited to, the National Sanitation Foundation International.

### ANALYSIS :

Existing law:

1. Defines "lead free," as of January 1, 2010, for the purpose of manufacturing, industrial processing, and conveying or dispensing water for human consumption, to refer to a weighted average lead content of the wetted surface area of the pipes, fittings, and fixtures of not more than 0.25 percent, to be determined pursuant to a prescribed formula.
2. Prohibits, commencing January 1, 2010, the introduction into commerce any pipe, pipe or plumbing fitting, or fixture that is not lead free, except for a pipe that is used in manufacturing or industrial processing.

This bill:

1. Provides a process for the certification of compliant pipe, pipe or plumbing fittings or fixtures, solder, or flux by an American National Standards Institute (ANSI) accredited third-party, including, but not limited to, the National Sanitation Foundation International.
  - A. Provides that, at a minimum, the testing of materials shall be in accordance with the specified protocols used by the Department of Toxic Substances Control, i.e., in accordance with the lead plumbing monitoring and compliance testing protocols as contained in SB 1395.
  - B. Stipulates that the certification process shall not interfere with either the department's exercise of its independent authority to protect public health or the department's exercise of its independent authority to implement SB 1395.

- C. Provides Legislative intent that the foregoing provisions provide guidance and assistance to the entities that use an independent ANSI accredited third-party to demonstrate compliance and that any tests developed by an independent ANSI accredited third-party shall have no weight of authority under California statute.
  - D. States that the department shall retain its independent authority to administer this article, notwithstanding provisions providing for the certification of compliant product by a third-party described in this act.
  - E. Repeals the provisions relating to the California "lead free" standard as of January 1, 2010, unless otherwise changed by subsequent enactment of another statute effecting these provisions.
  - F. Makes operative a set of essentially parallel provisions as of January 1, 2010 and mandates that the third-party certification process shall not be construed in any manner to justify as delay in compliance with the lead-free standard set forth in the original legislation.
2. Makes the enactment of this bill contingent on the enactment of SB 1395 during the 2007-08 Regular Session; and, that SB 1395 becomes operative on or before January 1, 2009.

### **Background**

Lead is a highly toxic substance, and exposure to it can produce a wide range of adverse health effects. There are many ways in which humans are exposed to lead, including through deteriorating paint, household dust, bare soil, air, drinking water, food, ceramics, home remedies, hair dyes and other cosmetics. Young children under the age of six are especially vulnerable to lead's harmful health effects, because their brains and central nervous system are still being formed. Even very low levels of exposure can result in reduced IQ, learning disabilities, attention deficit disorders, behavioral problems, stunted growth, impaired hearing, and kidney damage in children. According to the Centers for Disease Control and Prevention (CDC), there is no level of lead in a child's blood that can be specified as safe, and the CDC has emphasized the need to make primary prevention of lead poisoning, through interventions that control or eliminate lead hazards before children are exposed, a high priority for health, housing, and environmental agencies. It is estimated that 14 percent to 20 percent of total childhood lead exposure is from drinking water. It takes a significantly greater level of exposure to lead for adults than for children to sustain adverse health effects. However, in adults, lead can increase blood pressure and cause fertility problems, nerve disorders, muscle and joint pain, irritability, and memory or concentration problems.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: No Local: No

**SUPPORT:** (Verified 4/15/08)

Plumbing Manufacturers Institute (source)  
California Building Industry Association  
California State Pipe Trade Council

**OPPOSITION:** (Verified 4/15/08)

Plastic Pipe and Fitting Association

**ARGUMENTS IN SUPPORT:**

The Plumbing Manufacturers Institute (PMI) writes that this bill would work pro-actively to help prevent consumers from unknowingly purchasing water faucets and other fixtures that do not comply with the new state standard that takes effect on January 1, 2010. PMI further states that this bill provides a measure of protection so that California consumers purchasing products, including drinking water faucets, will not be buying products that have more than .25 percent lead as set forth in the law.

**ARGUMENTS IN OPPOSITION:**

The Plastic Pipe and Fittings Association is requesting that the bill be modified so that any new certification applies only to components that use lead in the manufacture of the item; and, to state that the certification does not apply to plastic or copper pipe, fittings and fixtures.

CTW:nl 4/15/08 Senate Floor Analyses

## ATTACHMENT B

BILL NUMBER: SB 1334 AMENDED

AMENDED IN SENATE APRIL 16, 2008

AMENDED IN SENATE APRIL 7, 2008

INTRODUCED BY Senator Calderon

FEBRUARY 20, 2008

An act to amend Section 116875 of the Health and Safety Code, relating to drinking water.

### LEGISLATIVE COUNSEL'S DIGEST

SB 1334, as amended, Calderon. Drinking water: pipes and fittings: lead content.

Existing law, with certain exceptions, prohibits the use of any pipe, pipe or plumbing fitting or fixture, solder, or flux that is not lead free, as defined, in the installation or repair of any public water system or any plumbing in a facility providing water for human consumption. Existing law, commencing on January 1, 2010, revises this prohibition to, with certain exceptions, apply to any pipe or plumbing fitting, or fixture intended to convey or dispense water for human consumption. Existing law prohibits the introduction into commerce of any pipe, pipe or plumbing fitting, or fixture that is not lead free, except for a pipe that is used in manufacturing or industrial processing. Existing law defines lead free as not more than 8% lead when used with respect to pipes and fittings, and not more than 4% by dry weight with respect to plumbing fittings and fixtures. Existing law, commencing on January 1, 2010, revises the term "lead free," for purposes of manufacturing, industrial processing, and conveying or dispensing water for human consumption, to refer not to the lead content of pipes and pipe fittings, plumbing fittings, and fixtures, but instead, to refer to a weighted average lead content of the wetted surface area of the pipes, fittings, and fixtures of not more than 0.25%, to be determined pursuant to a prescribed formula. Existing law requires the State Department of Public Health to develop building standards to implement the above-described provisions, and requires these standards to be enforced by the appropriate state and local building and health officials. This bill would also require that the plumbing material be certified for compliance with these provisions by an independent 3<sup>rd</sup> party, as provided, and would specify that, notwithstanding this requirement, the department shall retain its authority in implementing the above-described provisions.

The bill would provide that its provisions shall only become operative if SB 1395, of the 2007-08 Regular Session, is enacted and becomes operative on or before January 1, 2009.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 116875 of the Health and Safety Code, as amended by Section 1 of Chapter 853 of the Statutes of 2006, is amended to read:

**116875.**

(a) No person shall use any pipe, pipe or plumbing fitting or fixture, solder, or flux that is not lead free in the installation or repair of any public water system or any plumbing in a facility

providing water for human consumption, except when necessary for the repair of leaded joints of cast iron pipes.

- (b) No person shall introduce into commerce any pipe, pipe or plumbing fitting, or fixture, that is not lead free, except for a pipe that is used in manufacturing or industrial processing.
- (c) No person engaged in the business of selling plumbing supplies, except manufacturers, shall sell solder or flux that is not lead free.
- (d) No person shall introduce into commerce any solder or flux that is not lead free unless the solder or flux bears a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.
- (e) For the purposes of this section, "lead free" means not more than 0.2 percent lead when used with respect to solder and flux and not more than 8 percent when used with respect to pipes and pipe fittings. With respect to plumbing fittings and fixtures, "lead free" means not more than 4 percent by dry weight after August 6, 2002, unless the department has adopted a standard, based on health effects, for the leaching of lead.
- (f) (1) All pipe, pipe or plumbing fittings or fixtures, solder, or flux shall be certified by an independent American National Standards Institute (ANSI) accredited third-party, including, but not limited to, NSF International, as being in compliance with this section.
  - (2) (A) The certification described in paragraph (1) shall, at a minimum, include testing of materials in accordance with the protocols used by the Department of Toxic Substances Control in implementing Article 10.1.2 (commencing with Section 25214.4.3) of Chapter 6.5 of Division 20.
  - (B) The certification required pursuant to this subdivision shall not interfere with either the department's exercise of its independent authority to protect public health pursuant to this section, or the Department of Toxic Substances Control's exercise of its independent authority to implement Article 10.1.2 (commencing with Section 25214.4.3) of Chapter 6.5 of Division 20.
- (3) It is the intent of the Legislature that this subdivision only provide guidance and assistance to the entities that use an independent ANSI accredited third-party to demonstrate compliance with this section. Any tests developed by an independent ANSI accredited third-party in accordance with this subdivision shall have no weight of authority under California statute.
- (4) Notwithstanding paragraph (1), the department shall retain its independent authority in administering this article. (g) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

**SEC. 2.** Section 116875 of the Health and Safety Code, as added by Section 2 of Chapter 853 of the Statutes of 2006, is amended to read:

**116875.**

- (a) No person shall use any pipe, pipe or plumbing fitting or fixture, solder, or flux that is not lead free in the installation or repair of any public water system or any plumbing in a facility providing water for human consumption, except when necessary for the repair of leaded joints of cast iron pipes.

- (b) (1)** No person shall introduce into commerce any pipe, pipe or plumbing fitting, or fixture intended to convey or dispense water for human consumption through drinking or cooking that is not lead free, as defined in subdivision (e). This includes kitchen faucets, bathroom faucets, and any other end-use devices intended to convey or dispense water for human consumption through drinking or cooking, but excludes service saddles, backflow preventers for nonpotable services such as irrigation and industrial, and water distribution main gate valves that are two inches in diameter and above.
- (2)** Pipes, pipe or plumbing fittings, or fixtures that are used in manufacturing, industrial processing, for irrigation purposes, and any other uses where the water is not intended for human consumption through drinking or cooking are not subject to the requirements of paragraph (1).
- (3)** For all purposes other than manufacturing, industrial processing, or to convey or dispense water for human consumption, "lead free" is defined in subdivision (f).
- (c)** No person engaged in the business of selling plumbing supplies, except manufacturers, shall sell solder or flux that is not lead free.
- (d)** No person shall introduce into commerce any solder or flux that is not lead free unless the solder or flux bears a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.
- (e)** For the purposes of this section, "lead free" means not more than 0.2 percent lead when used with respect to solder and flux and not more than a weighted average of 0.25 percent when used with respect to the wetted surfaces of pipes and pipe fittings, plumbing fittings, and fixtures. The weighted average lead content of a pipe and pipe fitting, plumbing fitting, and fixture shall be calculated by using the following formula: The percentage of lead content within each component that comes into contact with water shall be multiplied by the percent of the total wetted surface of the entire pipe and pipe fitting, plumbing fitting, or fixture represented in each component containing lead. These percentages shall be added and the sum shall constitute the weighted average lead content of the pipe and pipe fitting, plumbing fitting, or fixture.
- (f)** For the purposes of paragraph (3) of subdivision (b), "lead free," consistent with the requirements of federal law, means not more than 0.2 percent lead when used with respect to solder and flux and not more than 8 percent when used with respect to pipes and pipe fittings. With respect to plumbing fittings and fixtures, "lead free" means not more than 4 percent by dry weight after August 6, 2002, unless the department has adopted a standard, based on health effects, for the leaching of lead.
- (g) (1)** All pipe, pipe or plumbing fittings or fixtures, solder, or flux shall be certified by an independent American National Standards Institute (ANSI) accredited third-party, including, but not limited to, NSF International, as being in compliance with this section.
- (2) (A)** The certification described in paragraph (1) shall, at a minimum, include testing of materials in accordance with the protocols used by the Department of Toxic Substances Control in implementing Article 10.1.2 (commencing with Section 25214.4.3) of Chapter 6.5 of Division 20.
- (B)** The certification required pursuant to this subdivision shall not interfere with either the department's exercise of its independent authority to protect public health pursuant to



this section, or the Department of Toxic Substances Control's exercise of its independent authority to implement Article 10.1.2 (commencing with Section 25214.4.3) of Chapter 6.5 of Division 20.

**(3)** It is the intent of the Legislature that this subdivision only provide guidance and assistance to the entities that use an independent ANSI accredited third-party to demonstrate compliance with this section. Any tests developed by an independent ANSI accredited third-party in accordance with this subdivision shall have no weight of authority under California statute.

**(4)** Notwithstanding paragraph (1), the department shall retain its independent authority in administering this article.

**(h)** This section shall become operative on January 1, 2010. The ~~certification~~ requirement described in subdivision

**(g)** shall not be construed in any manner as to justify a delay in compliance with the lead-free standard set forth in subdivision (e).

**SEC. 3.** This act shall only become operative if Senate Bill 1395, of the 2007-08 Regular Session, is enacted and becomes operative on or before January 1, 2009.

## ATTACHMENT C

### BILL ANALYSIS

SB 1395

SENATE COMMITTEE ON ENVIRONMENTAL QUALITY  
Senator S. Joseph Simitian, Chairman  
2007-2008 Regular Session

BILL NO: SB 1395  
AUTHOR: Corbett  
AMENDED: April 8, 2008  
FISCAL: Yes            HEARING DATE: April 14, 2008  
URGENCY: No            CONSULTANT: Bruce Jennings

SUBJECT: LEAD PLUMBING: COMPLIANCE PROGRAM

SUMMARY:

Existing law , pursuant to AB 1953, (Chan) (Chapter 853, Statutes of 2006):

- 1) Prohibits, commencing January 1, 2010, the introduction into commerce any pipe, pipe or plumbing fitting, or fixture that is not lead free, except for a pipe that is used in manufacturing or industrial processing.
- 2) Revises the term "lead free," as of January 1, 2010, for the purpose of manufacturing, industrial processing, and conveying or dispensing water for human consumption, to refer to a weighted average lead content of the wetted surface area of the pipes, fittings, and fixtures of not more than 0.25%, to be determined pursuant to a prescribed formula (referred to hereafter as the California lead standard or AB 1953 standards).

This bill:

- 1) Makes various findings relative the need to protect the public against threats of lead in drinking water, including the absence of an existing quality control program in state or federal law to ensure that drinking water plumbing, including faucets, conforms to existing state and federal standards.
- 2) Requires the Department of Toxic Substances Control to conduct a lead plumbing monitoring and compliance testing program as a part of the Department's existing program for reducing toxic substances from the environment.
- 3) Requires the department to annually select drinking water faucets or other drinking water plumbing fittings and fixtures for testing and evaluation to determine compliance with the California lead standard (AB 1953).
- 4) Requires the department to determine a sampling methodology for evaluating faucets, fittings, and fixtures, based on available resources and staffing.
- 5) Requires the department to establish test methods, protocols, and sample preparation procedures necessary to determine total lead concentration in a drinking water plumbing fitting or fixture to evaluate compliance with the standards for maximum allowable lead pursuant to the California lead standard (AB 1953).

6) Requires the department to exercise its judgment regarding the sampling and evaluation of plumbing fittings or fixtures as required by this act.

a) Stipulates that the act does not require the department to evaluate or sample based on either a random or representative sample of plumbing fixtures or fittings.

b) Requires the department to acquire its samples of fittings and fixtures from locations that are readily accessible to the public from retail and wholesale sources.

7) Requires the department to annually post the results of testing and evaluation on its Internet web site and to transmit these results in an annual report to the State Department of Public Health.

#### COMMENTS:

1) Purpose of Bill . In 2006, the Legislature passed and the Governor signed into law a bill that required the phase out, starting in 2010, of lead in faucets, pipes, pipe fittings and plumbing fittings that are used to convey water for human consumption. AB 1953 was signed into law by Governor Schwarzenegger in September 2006 to reduce the amount of lead that can be present in pipes and pipe fittings, plumbing fittings, and fixtures that are used to convey water for human consumption. Although AB 1953, as enacted, did not include an explicitly defined enforcement program, the provisions are enforceable under the unfair business practices (see Section 17200 of the Business & Professions Code).

SB 1395 requires a testing program through the Department of Toxic Substances Control (DTSC) to ensure that faucets and fittings sold in California do not contain lead. SB 1395 requires DTSC to select faucets or other drinking water plumbing fittings to determine compliance with the requirement that takes effect in 2010. DTSC is also required to annually prepare a report on the result of their testing and post information on their website and provide a report to the Department of Public Health.

2) Background . According the US EPA, drinking water plumbing remains a significant source of lead exposure, accounting for some 15 to 20 % of ingested lead. Drinking water plumbing represents the most common source of lead exposures. Exposure to low concentrations of lead in drinking water can result in many damaging health effects, including kidney disease, hypertension, hearing loss, and fetal damage to the brain. Over the past several decades lead regulatory levels considered at the time to be "safe" have been readjusted to more restrictive levels as mounting evidence has indicated more subtle levels of damage to public health.

Since 1997, state and federal law has provided that pipes and pipe fittings used to convey drinking water can contain no more than 8% lead, while faucets and faucet fittings can contain no more than 4% lead. Starting in 2010, only pipes, faucets, and fittings meeting the AB 1953 0.25% lead standard can be sold in California.

With the increased number of imported products, and recalls of contaminated and defective products from overseas, the US EPA has started to focus on lead in faucets.

Until the early 1990s, most faucets sold in the United States were manufactured in the US. After the enactment of the North American Free Trade Agreement, American manufacturers, including plumbing fixture manufacturers, began moving their manufacturing processes out of the country. In 2005, China exported more than \$220 million worth of faucets to the United States.

The author's office notes that the US EPA has recently stated they have reason to believe some imported faucets may contain lead in excess of levels that violate the existing federal standards under the Safe Drinking Water Act. This, combined with numerous documented studies of lead in toys, illustrates the fact that standards alone do not guarantee they will be met. On-going regulatory monitoring and compliance programs are needed to verify compliance with regulatory standards.

3) Related and Prior Legislation . SB 1334 (Calderon) was introduced this year to require that plumbing material be certified for compliance with the existing law requirements for reducing lead in fixtures by an independent, third party. As introduced, SB 1334 was essentially a reintroduction of the author's SB 651 of 2007, a measure that was held in this committee without recommendation. A significant and unresolved issue of that measure, like SB 1334, revolves around the question of whether the use of third party certification is a proper procedure for ensuring compliance with the requirements of AB 1953 (see the discussion section of SB 1334 for a fuller elaboration of this issue).

Both SB 1334 and SB 1395 were heard by the Senate Health Committee prior to their referral to this committee and extensive amendments taken which appear to have resulted in an agreement among proponents and opponents of measures introduced on this topic earlier this year.

4) Proposed Amendment - Contingent Enactment . In order to provide a parallel construction in both bills for contingent enactment, the authors have proposed that the contingent enactment provision in SB 1334 be added to SB 1395 as well. The amendment would read as follows: "This act shall only become operative if Senate Bill 1334 of the 2007-08 Regular Session is enacted and becomes operative on or before January 1, 2009."

SOURCE : East Bay Municipal Utility District

SUPPORT : None on file

OPPOSITION : None on file

## ATTACHMENT C

BILL NUMBER: SB 1395 AMENDED  
INTRODUCED BY Senator Corbett

FEBRUARY 21, 2008

An act to add Article 10.1.2 (commencing with Section 25214.4.3) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to lead plumbing.

### LEGISLATIVE COUNSEL'S DIGEST.

SB 1395, as amended, Corbett. Lead plumbing: monitoring and compliance testing.

Existing law provides for various restrictions and prohibitions relating to the use of any pipe, pipe or plumbing fitting or fixture, solder, or flux that is not lead free, as defined, in regard to public water systems and plumbing used to provide water for human consumption. Existing law requires the State Department of Public Health to adopt building standards to implement these prohibitions. Appropriate state and local building and health officials are required to enforce these standards.

Under existing law, the Department of Toxic Substances Control (department) enforces hazardous waste control laws that regulate the disposal of discarded appliances, lead acid batteries, small household batteries, recyclable latex paint, and household hazardous waste. The department is also authorized to implement and enforce provisions establishing prohibitions relating to jewelry for retail sale that contains specified amounts of lead.

This bill would establish lead plumbing monitoring and compliance testing as a part of the department's ongoing program to reduce toxic substances from the environment. The bill would require the department to annually select drinking water faucets or other drinking water plumbing fittings and fixtures for testing and evaluation to determine compliance with specified lead plumbing standards established pursuant to a separate provision of existing law.

The bill would require the department to, based on its available resources and staffing, determine the number and the locations from which to select samples of faucets, fittings, and fixtures to test and evaluate. The department would be required to ~~establish necessary~~ use test methods, protocols, and sample preparation procedures for the adequate determination of total lead concentration in a drinking water plumbing fitting or fixture. The bill would require the department to annually post the results of its testing and evaluation on its Internet Web site, and to transmit the results in an annual report to the State Department of Public Health.

The bill would provide that its provisions shall become operative only if SB 1334, of the 2007-08 Regular Session, is enacted and takes effect on or before January 1, 2009.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** The Legislature finds and declares all of the following:

(a) Californians expect that the public health standards applicable to drinking water plumbing adopted by state government to protect against lead leaching into drinking water are being complied with.

**(b)** There is not currently an existing quality control program in state or federal law to ensure that drinking water plumbing, including faucets, conforms to existing state and federal standards.

**(c)** Without monitoring and compliance testing, consumers have no way of knowing whether the drinking water plumbing and faucets they purchase meet California's safe lead content standard.

**(d)** Recent medical research studies conclusively show that lead in the bloodstream is dangerous at any level.

**(e)** The United States Environmental Protection Agency has concluded that drinking water plumbing remains a significant source of lead exposure and has specifically identified, as the most common problem, brass or chrome-plated brass faucets and fixtures, which can leak considerable amounts of lead into the water, particularly hot water.

**(f)** Chapter 853 of the Statutes of 2006 will, commencing January 1, 2010, phase out the use of lead in faucets, pipes and pipe fittings, and plumbing fittings that are used to convey water for human consumption.

**(g)** The collection and testing of faucets would help ensure compliance with California's lead content standard for plumbing and increase consumer confidence that the faucets purchased for their homes are not a source of dangerous lead levels in their blood.

**SECTION. 2.** Article 10.1.2 (commencing with Section 25214.4.3) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 10.1.2. Lead Plumbing Monitoring and Compliance Testing

**25214.4.3**

**(a)** Lead plumbing monitoring and compliance testing shall be undertaken by the department, as a part of the department's ongoing program for reducing toxic substances from the environment.

**(b)** For purposes of implementing this article, the department shall annually select drinking water faucets or other drinking water plumbing fittings and fixtures for testing and evaluation to determine compliance with Section 116875.

**(c)** The department shall, based on its available resources and staffing, determine the appropriate number of drinking water faucets or other drinking water plumbing fittings and fixtures to annually test and evaluate, as well as the locations from which to select the faucets, fittings, and fixtures.

**(d)** In implementing this article, the department shall ~~establish necessary~~ use test methods, protocols, and sample preparation procedures that are adequate to determine total lead concentration in a drinking water plumbing fitting or fixture to determine compliance with the standards for the maximum allowable total lead content set forth in Section 116875.

**(e) (1)** In selecting drinking water faucets and other drinking water plumbing fittings and fixtures to test and evaluate pursuant to this article, the department shall exercise its judgment regarding the specific drinking water plumbing fittings or fixtures to test.

**(2)** This article does not require the department's selection to be either random or representative of all available plumbing fittings or fixtures.

**(3)** The department shall acquire its samples of fittings and fixtures from locations that are readily accessible to the public at either retail or wholesale sources.

**(f)** The department shall annually post the results of the testing and evaluation conducted pursuant to this article on its Internet Web site and shall transmit these results in an annual report to the State Department of Public Health.

**SECTION. 3.** This act shall become operative only if Senate Bill 1334, of the 2007-08 Regular Session, is enacted and takes effect on or before January 1, 2009.

## ATTACHMENT D

**From:** Al-Hadithy, Nabil  
**Sent:** Tuesday, April 22, 2008 4:45 PM  
**To:** Marks, Daniel S.  
**Subject:** Calderon SB 1334  
**Importance:** High

After talking to EBMUD's legislative lobbyist in Sacramento (Marlene Dumaine MDumaine@ebmud.com) I now have a full picture of the problem.

- a. Wilma Chan's codes SB 1953 are the best language - straight forward 0.25% lead in all pipes and fixtures by 2010.
- b. Calderon came back this year with a new bill SB 1334 and it sidestepped the 0.25% and allowed a leachability test known as ANSI/NSF 61. This is a bad test for it allows manufacturers to test pipes with up to 4% lead (federal standard) in the factory as new. This may well pass the ANSI/NSF test. But corroded pipes will fail ANSI/NSF at 4% lead content.
- c. EBMUD and Mark Allen opposed Calderon 1334.
- d. EBMUD met with Calderon and came up with a compromise amended SB 1334. This is the worst language. It leaves both standards in the law. They cannot co-exist in the same law. It is either 0.25% or ANSI/NSF 61 leach test. It is counter intuitive. But, EBMUD believes that SB 1953 is assured in the compromise bill. I do not believe it. And if Marlene Dumaine is correct, then at best it is some of the worst language for a bill. At worst, Marlene is wrong and the plumbing industry will find a way to impose ANSI/NSF 61 and say that is the way they read it. I believe the industry - I think EBMUD has it wrong. But I am not a legislative analyst and Marlene is.
- e. I would like to oppose Calderon 1334 because it is very badly worded and opens the door for ANSI/NSF 61. I think the City should support the simpler Chan SB 1953 as a stand alone bill.

Mark Allen will be telling Councilmember Olds to change her language and support the amended SB 1334.

Nabil Al-Hadithy, PhD  
Toxics Management Division  
City of Berkeley  
2118 Milvia Street  
Berkeley CA 94704



ATTACHMENT E

**ALAMEDA COUNTY  
LEAD POISONING PREVENTION PROGRAM**

*Serving the Cities of Alameda, Berkeley, Emeryville and Oakland*

2000 Embarcadero, Suite #300 • Oakland, CA 94606-5300 • (510) 567-8282

WWW.ACLPPP.ORG

April 24, 2008

To: Ray Derania, Interim Building Official  
City of Oakland

From: Mark Allen, Director  
Alameda County Lead Poisoning Prevention Program

Re: SB 1334

Dear Mr. Derania:

I wanted to inform you of the unanimous action taken today by the Joint Powers Authority Board of Directors of the Alameda County Lead Poisoning Prevention Program.

At its General Board meeting today, the Directors voted to reaffirm its support for Senate Bill 1334, as amended. It further voted to endorse the City of Oakland Community and Economic Development Agency's recommendation to support SB 1334, as amended, and its Bill Analysis, dated April 24, 2008.

Both the Board of Directors and ACLPPP staff had the opportunity to review the communication from the staff person from the City of Berkeley's Toxic Division and disagreed with his conclusions.

Please let me know if you have any further questions, and thank you for your effort on this complex but nonetheless important legislation.