

1 S.40

2 Introduced by Senators Campion, Ashe, Bray, Clarkson, Lyons, and Sears

3 Referred to Committee on Education

4 Date: January 18, 2019

5 Subject: Conservation and development; education; public health; drinking
6 water; lead in school drinking water

7 Statement of purpose of bill as introduced: This bill proposes to require all
8 schools and child care facilities in Vermont to test drinking water outlets at the
9 school or facility for lead contamination. If samples indicate lead at levels
10 exceeding the defined action level, the bill would require the school or child
11 care facility to develop and implement an appropriate response or lead
12 remediation plan.

13 An act relating to testing and remediation of lead in the drinking water of
14 schools and child care facilities

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 Sec. 1. 10 V.S.A. chapter 56A is added to read:

3 CHAPTER 56A. LEAD IN DRINKING WATER OF SCHOOLS AND
4 CHILD CARE FACILITIES

5 § 1691. PURPOSE

6 The purpose of this chapter is to require all schools and child care facilities
7 in Vermont to:

8 (1) test drinking water for lead contamination; and

9 (2) develop and implement an appropriate response or lead remediation
10 plan when sampling indicates unsafe lead levels in drinking water at the school
11 or child care facility.

12 § 1692. DEFINITIONS

13 As used in this chapter:

14 (1) "Action level" means one part per billion (ppb) of lead.

15 (2) "Agency" means the Agency of Natural Resources.

16 (3) "Building" means any structure, facility, addition, or wing of a
17 school that may be occupied or used by children or students. "Building" shall
18 not include any structure, facility, addition, or wing of a school that is lead
19 free, as defined in section 1417 of the Federal Safe Drinking Water Act.

20 (4) "Child care facility" has the same meaning as in 33 V.S.A. § 3511.

21 (5) "Commissioner" means the Commissioner of Health.

1 (6) "Department" means the Department of Health.

2 (7) "Drinking water" has the same meaning as in subdivision 1671(1) of
3 this title.

4 (8) "First-draw sample" means a 250 milliliter sample of drinking water
5 that has been standing in plumbing pipes at least six hours and that is collected
6 without flushing the tap.

7 (9) "Independent school" has the same meaning as in 16 V.S.A. § 11.

8 (10) "Outlet" means a drinking water fixture currently or potentially
9 used for drinking or cooking purposes, including a drinking fountain or a
10 faucet.

11 (11) "Public school" has the same meaning as in 16 V.S.A. § 11.

12 (12) "School" means any public school or independent school in the
13 State.

14 (13) "Secretary" means the Secretary of Natural Resources.

15 § 1693. TESTING OF DRINKING WATER

16 (a) Scope of testing.

17 (1) Schools in the State shall test drinking water for lead contamination
18 as required under this chapter.

19 (2) Child care facilities in the State shall test drinking water for lead
20 contamination as required under this chapter, unless otherwise required to test
21 for lead in drinking water under State law.

1 (b) Initial sampling. On or before January 1, 2020, each school or child
2 care facility in the State shall collect a first draw sample from each outlet in
3 each building of the school or child care facility.

4 (c) Continued sampling. After January 1, 2020, each school or child care
5 facility in the State shall sample each outlet in each building of the school or
6 child care facility for lead according to a schedule adopted by the Agency of
7 Natural Resources by rule under section 1697 of this title.

8 (d) Laboratory analysis. All first-draw samples required under this section
9 shall be sent to a laboratory approved by the Commissioner of Health to
10 conduct analyses of drinking water under this chapter.

11 (e) Record keeping. A school or child care facility shall retain all records
12 of test results, laboratory analyses, lead remediation plans, determinations that
13 a building is lead free, and waiver requests for 10 years following the creation
14 of the record. Records produced or acquired under this chapter are public
15 records subject to inspection or copying under the Public Records Act.

16 § 1694. RESPONSE TO ACTIONABLE LEVEL; NOTICE; REPORTING

17 If laboratory analyses of a sample of drinking water from an outlet at a
18 school or child care facility exceeds the action level, the school or child care
19 facility shall:

20 (1) prohibit use of the outlet until a lead remediation plan or other
21 remediation approved by the Secretary is implemented to mitigate the lead

1 level of the outlet and subsequent test results indicate that the lead levels are at
2 or below the action level;

3 (2) provide occupants of the school or child care facility an adequate
4 supply of potable water for drinking and cooking until remediation is
5 performed;

6 (3) report the results of the laboratory analyses to the Agency and to the
7 Department within one business day of receiving the laboratory report; and

8 (4) notify all staff and all parents or guardians of students of the test
9 results, in writing or by electronic means, within 10 business days after receipt
10 of the laboratory report.

11 § 1695. PUBLIC NOTIFICATION; AGENCY WEBSITE

12 On or before March 1, 2020, the Secretary shall publish on the Agency's
13 website a list of all schools and child care facilities that reported an outlet that
14 exceeded the action level within the previous two years of reported samples.

15 The Secretary shall publish on the Agency's website a report of an outlet that
16 exceeds the action level within two weeks of receipt of the report under section
17 1694 of this title.

18 § 1696. LEAD REMEDIATION PLAN; RESPONSE

19 (a) Consultation. When a laboratory analyses of a sample of drinking
20 water from an outlet at a school or child care facility exceeds the action level,
21 the school or child care facility shall consult with the Secretary and the

1 Commissioner regarding the development of a lead remediation plan or other
2 necessary response.

3 (b) Model plan. The Secretary, after consultation with the Commissioner,
4 shall publish a model lead remediation plan to inform and assist schools and
5 child care facilities of the potential requirements for response to a sample of
6 drinking water from an outlet that exceeds the action level.

7 § 1697. RULEMAKING

8 On or before November 1, 2020, the Secretary, after consultation with the
9 Commissioner, shall adopt rules regarding the implementation of the
10 requirements of this chapter. The rules shall include:

11 (1) requirements or guidance for taking samples of drinking water from
12 outlets in buildings of schools and child care facilities;

13 (2) the frequency of sampling required, including additional sampling
14 requirements for schools that report an exceedance of the action level;

15 (3) requirements or guidance for sending samples to laboratories;

16 (4) requirements for approval of a laboratory to conduct sampling under
17 this chapter;

18 (5) the method or form for reporting an exceedance of the action level
19 to the Secretary;

20 (6) requirements for implementation of a lead mitigation plan or other
21 necessary response to a reported exceedance of the action level,

1 ~~(7) conditions or criteria for the waiver of sampling required under this~~
2 ~~chapter; and~~

3 ~~(c) any other requirements that the Secretary deems necessary for the~~
4 ~~implementation of the requirements of this chapter.~~

5 Sec. 2. 10 V.S.A. § 8003 is amended to read:

6 § 8003. APPLICABILITY

7 (a) The Secretary may take action under this chapter to enforce the
8 following statutes and rules, permits, assurances, or orders implementing the
9 following statutes, and the Board may take such action with respect to
10 subdivision (10) of this subsection:

11 * * *

12 (28) 30 V.S.A. § 255, relating to regional coordination to reduce
13 greenhouse gases; and

14 (29) 10 V.S.A. § 1420, relating to abandoned vessels; and

15 (30) 10 V.S.A. chapter 56A, relating to testing of drinking water in
16 school and child care facilities for lead.

17 * * *

18 Sec. 3. 10 V.S.A. § 8503 is amended to read:

19 § 8503. APPLICABILITY

20 (a) This chapter shall govern all appeals of an act or decision of the
21 Secretary, excluding enforcement actions under chapters 201 and 211 of this

1 ~~title and rulemaking, under the following authorities and under the rules~~

2 adopted under those authorities:

3 (1) The following provisions of this title:

4 * * *

5 (U) chapter 168 (product stewardship for primary batteries and
6 rechargeable batteries);

7 (V) chapter 56A (testing of drinking water in school and child care
8 facilities for lead).

9 (2) 29 V.S.A. chapter 11 (management of lakes and ponds).

10 (3) 24 V.S.A. chapter 61, subchapter 10 (relating to salvage yards).

11 * * *

12 Sec. 4. EFFECTIVE DATE

13 ~~This act shall take effect on passage.~~

Sec. 1. 18 V.S.A. chapter 24A is added to read:

*CHAPTER 24A. LEAD IN DRINKING WATER OF SCHOOLS AND CHILD
CARE FACILITIES*

§ 1241. PURPOSE

*The purpose of this chapter is to require all school districts, supervisory
unions, independent schools, and child care providers in Vermont to:*

*(1) test drinking water in their buildings and child care facilities for
lead contamination; and*

*(2) develop and implement an appropriate response or lead remediation
plan when sampling indicates unsafe lead levels in drinking water at a school
or child care facility.*

§ 1242. DEFINITIONS

As used in this chapter:

- (1) “Action level” means three parts per billion (ppb) of lead.
- (2) “Building” means any structure, facility, addition, or wing that may be occupied or used by children or students.
- (3) “Child care provider” has the same meaning as in 33 V.S.A. § 3511.
- (4) “Child care facility” or “facility” has the same meaning as in 33 V.S.A. § 3511.
- (5) “Commissioner” means the Commissioner of Health.
- (6) “Department” means the Department of Health.
- (7) “Drinking water” has the same meaning as in 10 V.S.A. § 1671.
- (8) “First-draw sample” means a 250 milliliter sample of drinking water that:
- (A) has been standing in plumbing pipes at least eight hours;
- (B) is collected without flushing the tap; and
- (C) is conducted before a building or child care facility opens or is in use.
- (9) “Flush sample” means a sample of drinking water from an outlet that:
- (A) is taken from the outlet after the water has run for 30 seconds;
- and
- (B) is conducted before a building or child care facility opens or is in use.
- (10) “Independent school” has the same meaning as in 16 V.S.A. § 11.
- (11) “Outlet” means a drinking water fixture currently or potentially used for consumption or cooking purposes, including a drinking fountain, ice machine, or a faucet.
- (12) “Potable water” means water sufficient for consumption and free from impurities in amounts sufficient to cause disease or harmful physiological effects with the bacteriological, chemical, physical, or radiological quality conforming to applicable rules or standards adopted by the Agency of Natural Resources and the Department of Health.
- (13) “School district” has the same meaning as in 16 V.S.A. § 11.
- (14) “Supervisory union” has the same meaning as in 16 V.S.A. § 11.

§ 1243. TESTING OF DRINKING WATER

(a) Scope of testing.

(1) Each school district, supervisory union, or independent school in the State shall test drinking water in the buildings it owns, controls, or operates for lead contamination as required under this chapter.

(2) Each child care provider in the State shall test drinking water in a child care facility it owns, controls, or operates for lead contamination as required under this chapter.

(b) Initial sampling.

(1) On or before January 1, 2020, each school district, supervisory union, independent school, or child care provider in the State shall collect a first-draw sample and a flush sample from each outlet in each building or facility it owns, controls, or operates. Sampling shall occur during the school year of a school district, supervisory union, or independent school.

(2) At least five days prior to sampling, the school district, supervisory union, independent school, or child care provider shall notify all staff and all parents or guardians of students directly in writing or by electronic means of:

(A) the scheduled sampling;

(B) the requirements for testing, why testing is required, and the potential health effects from exposure to lead in drinking water;

(C) information regarding how the school district, supervisory union, independent school, or child care provider shall provide notice of the sample results; and

(D) how the school district, supervisory union, independent school, or child care provider shall respond to a sample that exceeds the action level.

(3) The Department may adopt a schedule for the initial sampling by school districts, supervisory unions, independent schools, and child care providers.

(c) Continued sampling. After January 1, 2020, each school district, supervisory union, independent school, or child care provider in the State shall sample each outlet in each building or facility it owns, controls, or operates for lead according to a schedule adopted by the Department by rule under section 1247 of this title.

(d) Interim methodology. Prior to adoption of the rules required under section 1247 of this title, sampling under this section shall be conducted according to a methodology established by the Department of Health, provided

that the methodology shall be at least as stringent as the sampling methodology provided for under the U.S. Environmental Protection Agency's 3Ts for Reducing Lead in Drinking Water in Schools.

(e) Waiver.

(1) The Commissioner shall waive the requirement that a school district, supervisory union, independent school, or child care provider sample drinking water under this section upon a finding that the school district, supervisory union, independent school, or child care provider:

(A) completed sampling of all outlets in each building or facility it owns, controls, or operates in the calendar year preceding January 1, 2020;

(B) conducted sampling according to a methodology consistent with the Department methodology established under subsection (d) of this section; and

(C) implemented or scheduled remediation that ensures that drinking water from all outlets does not exceed the action level.

(2) A school district, supervisory union, independent school, or child care provider that receives a waiver under this subsection shall be eligible for assistance from the State for the costs of remediation that has been implemented or scheduled as a result of sampling conducted in the calendar year preceding January 1, 2020.

(f) Laboratory analysis. The analyses of drinking water samples required under this chapter shall be conducted by the Vermont Department of Health Laboratory or by a certified laboratory under contract to the Department.

(g) Application; bottled water. Although the intent of the Vermont General Assembly is to achieve significant reductions in lead levels in all drinking water provided to children by school districts, supervisory unions, independent schools, or child care providers, the acceptable lead level in bottled water is regulated by the U.S. Food and Drug Administration; consequently, bottled water from a vending machine or bottled water from a water dispenser shall be exempt from the requirements of this chapter.

§ 1244. RESPONSE TO ACTIONABLE LEVEL; NOTICE; REPORTING

If a sample of drinking water under section 1243 of this title indicates an exceedance of the action level at an outlet, the school district, supervisory union, independent school, or child care provider that owns, controls, or operates the building or facility in which the outlet is located shall conduct remediation to eliminate or reduce lead levels in the drinking water from the outlet. In conducting remediation, a school district, supervisory union,

independent school, or child care provider shall strive to achieve the lowest level of lead possible in drinking water and, at a minimum, shall:

(1) prohibit use of an outlet that exceeds the action level until a lead remediation plan or other remediation approved by the Commissioner is implemented and:

(A) sampling indicates that lead levels from the outlet are below the action level; or

(B) the outlet is permanently removed and cannot be accessed by any person;

(2) after a lead remediation plan or other approved remediation is implemented, retest the outlet until results indicate that the lead levels are at or below the action level;

(3) provide occupants of the building or child care facility an adequate supply of potable water for drinking and cooking until remediation is performed;

(4) notify all staff and all parents or guardians of students directly of the test results, in writing or by electronic means, within 10 business days after receipt of the laboratory report; and

(5) submit lead remediation plans to the Department as they are completed.

§ 1245. RECORD KEEPING; PUBLIC NOTIFICATION; DATABASE

(a) Record keeping. The Department of Health shall retain all records of test results, laboratory analyses, lead remediation plans, and waiver requests for 10 years following the creation or acquisition of the record. Records produced or acquired by the Department under this chapter are public records subject to inspection or copying under the Public Records Act.

(b) Public notification. On or before March 1, 2020, the Commissioner shall publish on the Department website the data from testing under section 1243 of this title so that the results of sampling are fully transparent and accessible to the public. The data published by the Department shall include a list of all buildings or facilities owned, controlled, or operated by a school district, supervisory union, independent school, or child care provider at which an outlet exceeded the action level within the previous two years of reported samples. The Commissioner shall publish all retesting data on the Department's website within two weeks of receipt of the relevant laboratory analysis. The Secretary of Education shall include a link on the Agency of Education website to the Department of Health website required under this subsection.

§ 1246. LEAD REMEDIATION PLAN; GUIDANCE

(a) Consultation. When a laboratory analysis of a sample of drinking water from an outlet at a building or facility owned, controlled, or operated by a school district, supervisory union, independent school, or child care provider exceeds the action level, the school district, supervisory union, independent school, or child care provider shall consult with the Commissioner regarding the development of a lead remediation plan or other necessary response.

(b) Guidance; lead remediation plan. The Commissioner, after consultation with the Secretary of Natural Resources and the Secretary of Education, shall issue guidance on development of a lead remediation plan by a school district, supervisory union, independent school, or child care provider. The guidance provided by the Commissioner shall reference the U.S. Environmental Protection Agency's 3Ts for Reducing Lead in Drinking Water in Schools.

§ 1247. RULEMAKING

(a) The Commissioner shall adopt rules under this chapter to achieve the purposes of this chapter. It is the intent of the General Assembly that the rules adopted under this section shall be no less stringent than the requirements of the U.S. Environmental Protection Agency's 3Ts for Reducing Lead in Drinking Water in Schools.

(b) On or before November 1, 2020, the Commissioner, with continuing consultation with the Secretary of Natural Resources and the Secretary of Education, shall adopt rules regarding the implementation of the requirements of this chapter. The rules shall include:

(1) requirements or guidance for taking samples of drinking water from outlets in a building or facility owned, controlled, or operated by a school district, supervisory union, independent school, or child care provider;

(2) the frequency of sampling required, including additional sampling requirements when there is an exceedance of the action level at an outlet;

(3) requirements for implementation of a lead mitigation plan or other necessary response to a reported exceedance of the action level;

(4) conditions or criteria for the waiver of sampling required under this chapter; and

(5) any other requirements that the Commissioner deems necessary for the implementation of the requirements of this chapter.

§ 1248. ENFORCEMENT; PENALTIES

In addition to any other authority provided by law, the Commissioner of Health or a hearing officer designated by the Commissioner may, after notice and an opportunity for hearing, impose an administrative penalty of up to \$500.00 for a violation of the requirements of this chapter. The hearing before the Commissioner shall be a contested case subject to the provisions of 3 V.S.A. chapter 25.

Sec. 2. 16 V.S.A. § 4001(6) is amended to read:

(6) “Education spending” means the amount of the school district budget, any assessment for a joint contract school, career technical center payments made on behalf of the district under subsection 1561(b) of this title, and any amount added to pay a deficit pursuant to 24 V.S.A. § 1523(b) that is paid for by the school district, but excluding any portion of the school budget paid for from any other sources such as endowments, parental fundraising, federal funds, nongovernmental grants, or other State funds such as special education funds paid under chapter 101 of this title.

* * *

(B) For purposes of calculating excess spending pursuant to 32 V.S.A. § 5401(12), “education spending” shall not include:

* * *

(xi) Costs incurred by a school district or supervisory union when sampling drinking water outlets, implementing lead remediation, or retesting drinking water outlets as required under 18 V.S.A. chapter 24A.

Sec. 3. POSITIONS; SAMPLING OF DRINKING WATER OUTLETS IN SCHOOLS

The establishment of the following new classified limited service positions are authorized in fiscal year 2019:

(1) In the Agency of Natural Resources – environmental analyst V.

(2) In the Department of Health – public health analyst.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.