

Journal of the Senate

WEDNESDAY, FEBRUARY 13, 2019

Pursuant to the Senate Rules, in the absence of the President, the Senate was called to order by the President *pro tempore*.

Devotional Exercises

Devotional exercises were conducted by the Reverend Peter Plagge of Waterbury.

Message from the Governor Appointments Referred

A message was received from the Governor, by Brittney L. Wilson, Secretary of Civil and Military Affairs, submitting the following appointments, which were referred to committees as indicated:

The nomination of

Hildebrant, Rick A. of Clarendon - Member of the Board of Medical Practice - from February 5, 2019 to December 31, 2023.

To the Committee on Health and Welfare.

The nomination of

Tortolani, Robert E. of Brattleboro - Member of the Board of Medical Practice - from February 5, 2019 to December 31, 2023.

To the Committee on Health and Welfare.

Bills Introduced

Senate bills of the following titles were severally introduced, read the first time and referred:

President Assumes the Chair

S. 102.

By Senator Lyons,

An act relating to the evaluation of the carbon impact on business tax credits in Vermont.

To the Committee on Finance.

S. 103.

By Senator Lyons,

An act relating to calculating premium rates for fully insured association health plans.

To the Committee on Finance.

S. 104.

By Senators Parent, Benning, Brock, Collamore, McNeil and Rodgers,

An act relating to various amendments to Act 250.

To the Committee on Natural Resources and Energy.

S. 105.

By Senator Sears,

An act relating to miscellaneous judiciary procedures.

To the Committee on Judiciary.

Proposal of Amendment; Bill Passed in Concurrence with Proposal of Amendment

H. 97.

House bill entitled:

An act relating to fiscal year 2019 budget adjustments.

Was taken up.

Thereupon, pending third reading of the bill, Senators Kitchel, Ashe, McCormack, Nitka, Sears, Starr and Westman moved to amend the Senate proposal of amendment as follows:

First: By striking out Sec. 50 in its entirety and inserting in lieu thereof a new Sec. 50 to read as follows:

Sec. 50. 2018 (Sp. Sess.) Acts and Resolves No. 11, Sec. B.903 is amended to read:

Sec. B.903 Transportation - program development

Personal services	50,457,603	50,457,603
Operating expenses	216,263,480	218,063,480
Grants	<u>34,168,390</u>	<u>34,168,390</u>
Total	300,889,473	<u>302,689,473</u>
Source of funds		
Transportation fund	42,549,882	43,723,252

TIB fund	11,894,706	12,521,336
Federal funds	244,766,072	244,766,072
Interdepartmental transfers	239,345	239,345
Local match	<u>1,439,468</u>	<u>1,439,468</u>
Total	300,889,473	302,689,473

Second: by striking out Sec. 55 in its entirety and inserting in lieu thereof a new Sec. 55 to read as follows:

Sec. 55. 2018 (Sp. Sess.) Acts and Resolves No. 11, Sec. B.922 is amended to read:

Sec. B.922 Total transportation

Source of funds

Transportation fund	251,072,742	257,165,781
TIB fund	13,202,337	13,828,967
Special funds	3,819,457	1,419,457
Federal funds	318,917,135	318,917,135
Internal service funds	20,684,524	20,684,524
Interdepartmental transfers	1,053,100	1,053,100
Local match	<u>2,131,800</u>	<u>2,131,800</u>
Total	610,881,095	615,200,764

Third: By striking out Sec. 91 in its entirety and inserting in lieu thereof a new Sec. 91 to read as follows:

Sec. 91. 2018 (Sp. Sess.) Acts and Resolves No. 11, Sec. C.106 is amended to read:

Sec. C.106 CHINS CASES SYSTEM-WIDE REFORM

(a) The sum of \$7,000,000 is appropriated from the Tobacco Litigation Settlement Fund to the Judiciary in fiscal year 2018 and shall carry forward for the uses and based on the allocations set forth in subsections (b) and (c) of this section. The purpose of the funds is to make strategic investments to transform the adjudication of CHINS cases in Vermont.

(b) The sum appropriated from the Tobacco Litigation Settlement Fund in subsection (a) of this section shall be allocated as follows:

(1) ~~\$1,250,000 for use in fiscal year 2019, which shall not be distributed until the group defined in subsection (c) of this section provides proposed expenditures as part of its fiscal year 2019 budget adjustment request. or to be carried forward as follows:~~

(A) \$125,000 in fiscal year 2019 for the Judiciary, in consultation with the CHINS workgroup to contract with an entity with expertise in justice

reform to review and propose changes to the systems by which CHINS cases are processed and adjudicated. Models used in other countries, states, or cities shall be considered and a proposal to provide holistic reform, procedural justice, and strategies to reduce the need for intervention by DCF and the courts shall be submitted to the General Assembly. In developing the proposal, the consultant shall seek input from community members, service providers, and people involved in family court proceedings. The proposal shall recommend a budget and evaluation system and a specific evaluation methodology for determining the long-term continuation of the judicial master pilot programs funded in subdivision (1)(C) of this subsection.

(B) \$25,000 in fiscal year 2019 for the Department for Children and Families, in consultation with the CHINS workgroup to engage a consultant of to evaluate existing home visiting models, including a review of programs currently offered in Vermont and those offered in other states and countries, particularly those that focus on public health and the social welfare of the whole family, including housing, employment, mental health and substance use disorders. The consultant shall recommend model pilots in two or more districts for testing the proposal. The proposal shall include a two-year budget and a proposal for evaluation, for funding in fiscal year 2020.

(C) \$400,000 in fiscal year 2019 to the Judiciary for a multi-unit judicial master pilot to encourage parents to follow case plans and to remain engaged in treatment. The judicial master in this pilot may conduct proceedings including, but not limited to, parent-child contact; status conferences; screening cases for mediation or restorative processes such as family group conferencing, and preliminary hearings.

(D) \$700,000 allocated in fiscal year 2019 and carried forward to fiscal year 2020 pending, submission of a proposal. The CHINS workgroup shall continue its evaluation of strategic reforms to the CHINS system and may submit proposals upon which they have reached agreement to the General Assembly for approval. These proposals may include the use of judicial masters, alternative dispute resolution, and peer navigators. The proposals shall have a budget and proposed method of evaluation.

(2) \$2,500,000 for fiscal year 2020, for which the group shall provide proposed expenditures as part of its fiscal year 2020 budget request or budget adjustment request, or both;

(3) \$2,500,000 for fiscal year 2021, for which the group shall provide proposed expenditures as part of its fiscal year 2021 budget request or budget adjustment request, or both; and

(4) \$750,000 in fiscal year 2022 or after as needed.

* * *

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment.

Bill Amended; Third Reading Ordered

S. 40.

Senator Baruth, for the Committee on Education, to which was referred Senate bill entitled:

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

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

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.

§ 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. APPROPRIATIONS; POSITIONS; SAMPLING OF DRINKING WATER OUTLETS IN SCHOOLS

(a) In addition to any other funds appropriated to the Department of Health (Department) in fiscal year 2019, the following amounts are appropriated to the Department in fiscal year 2019 for the purposes of implementing the requirements in 18 V.S.A. chapter 24A that a school district, supervisory union, independent school, or child care provider test drinking water outlets for lead:

(1) \$1,350,000.00 for the costs of sampling drinking water outlets by school districts, supervisory unions, independent schools, or child care providers;

(2) \$190,000.00 for the costs of retesting drinking water outlets by school districts, supervisory unions, independent schools, or child care providers;

(3) \$700,000.00 to cost share with school districts, supervisory unions, independent schools, or child care providers the costs of implementing remediation.

(b) In addition to any other funds appropriated to the Agency of Natural Resources in fiscal year 2019, \$125,000.00 is appropriated to the Agency in fiscal year 2019 to hire an environmental analyst to assist in remediation required under 18 V.S.A. chapter 24A.

(c) The establishment of the following new classified limited service positions is 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.

And that when so amended the bill ought to pass.

Senator Westman, for the Committee on Appropriations, to which the bill was referred, reported that the bill be amended as recommended by the Committee on Education with the following amendment thereto:

By striking out Sec. 3 (appropriations) in its entirety and inserting in lieu thereof the following:

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.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment of the Committee on Education was amended as recommended by the Committee on Appropriations.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Education, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

Message from the House No. 14

A message was received from the House of Representatives by Ms. Rebecca Silbernagel, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

H. 146. An act relating to increasing the number of examiners on the Board of Bar Examiners from nine to 11 members.

In the passage of which the concurrence of the Senate is requested.

The House has considered joint resolution originating in the Senate of the following title:

J.R.S. 15. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

Adjournment

On motion of Senator Ashe, the Senate adjourned until one o'clock in the afternoon on Thursday, February 14, 2019.