

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Education to which was referred Senate Bill No. 40
3 entitled “An act relating to testing and remediation of lead in the drinking
4 water of schools and child care facilities” respectfully reports that it has
5 considered the same and recommends that the House propose to the Senate that
6 the bill be amended by striking out all after the enacting clause and inserting in
7 lieu thereof the following:

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

9 CHAPTER 24A. LEAD IN DRINKING WATER OF SCHOOLS AND

10 CHILD CARE FACILITIES

11 § 1241. PURPOSE

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

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

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

19 § 1242. DEFINITIONS

20 As used in this chapter:

21 (1) “Action level” means five parts per billion (ppb) of lead.

1 (2) “Alternative water source” means water suitable for consumption
2 and consistent with drinking water standards established by the Agency of
3 Natural Resources and below the action level standards established in this
4 chapter and for bottled water.

5 (3) “Building” means any structure, facility, addition, or wing that may
6 be occupied or used by children or students.

7 (4) “Child care provider” has the same meaning as in 33 V.S.A. § 3511.

8 (5) “Child care facility” or “facility” has the same meaning as in 33
9 V.S.A. § 3511.

10 (6) “Commissioner” means the Commissioner of Health.

11 (7) “Department” means the Department of Health.

12 (8) “Drinking water” has the same meaning as in 10 V.S.A. § 1671.

13 (9) “Independent school” has the same meaning as in 16 V.S.A. § 11.

14 (10) “Outlet” means a drinking water fixture currently or reasonably
15 expected to be used for consumption or cooking purposes, including a drinking
16 fountain, ice machine, or a faucet as determined by a school district,
17 supervisory union, or independent school.

18 (11) “School district” has the same meaning as in 16 V.S.A. § 11.

19 (12) “Supervisory union” has the same meaning as in 16 V.S.A. § 11.

20 § 1243. TESTING OF DRINKING WATER

21 (a) Scope of testing.

1 (1) Each school district, supervisory union, or independent school in the
2 State shall collect a drinking water sample from each outlet in the buildings it
3 owns, controls, or operates and shall submit the sample to the Department of
4 Health for testing for lead contamination as required under this chapter.

5 (2) Each child care provider in the State shall collect a drinking water
6 sample from each outlet in a child care facility it owns, controls, or operates
7 for lead contamination as required under this chapter.

8 (b) Initial sampling.

9 (1) On or before December 31, 2020, each school district, supervisory
10 union, independent school, or child care provider in the State shall collect a
11 first-draw sample and a flush sample from each outlet in each building or
12 facility it owns, controls, or operates. Sampling shall occur during the school
13 year of a school district, supervisory union, or independent school.

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

17 (A) the scheduled sampling;

18 (B) the requirements for testing, why testing is required, the potential
19 health effects from exposure to lead in drinking water, and information about
20 potential sources of lead exposure in addition to drinking water and schools
21 utilizing communication developed by the Department of Health;

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

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

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

9 (c) Continued sampling. After January 1, 2020, each school district,
10 supervisory union, independent school, or child care provider in the State shall
11 sample each outlet in each building or facility it owns, controls, or operates for
12 lead according to a schedule adopted by the Department by rule under section
13 1247 of this title.

14 (d) Interim methodology. Prior to adoption of the rules required under
15 section 1247 of this title, sampling under this section shall be conducted
16 according to a methodology established by the Department of Health, provided
17 that the methodology shall be at least as stringent as the sampling methodology
18 provided for under the U.S. Environmental Protection Agency's 3Ts for
19 Reducing Lead in Drinking Water in Schools and shall include a requirement
20 for a first draw sample and a second flush sample.

21 (e) Waiver.

1 (1) A school district, supervisory union, independent school, or child
2 care provide that has tested all outlets under this section is waived from the
3 requirements of subsection (b) of this section if the school district, supervisory
4 union, independent school, or child care provider:

5 (A) completed testing of all outlets in each building or facility it
6 owns, controls, or operates after November 1, 2017;

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

9 (C)(i) determined no outlet exceeded the action level for lead; or

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

12 (2) A school district, supervisory union, independent school, or child
13 care provider waived under this subsection shall provide written notice and
14 testing results to the Department of Health within 30 days of the effective date
15 of this act.

16 (3) A school district, supervisory union, independent school, or child
17 care provider waived under this subsection shall be eligible for assistance from
18 the State for the costs of remediation.

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

1 (g) Application; bottled water. Commercially available water is exempt
2 from the requirements of this chapter.

3 § 1244. RESPONSE TO ACTIONABLE LEVEL; NOTICE; REPORTING

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

10 (1) prohibit use of an outlet that exceeds the action level until a lead
11 remediation plan or other remediation measures published by the
12 Commissioner is implemented or consistent with the U.S. Environmental
13 Protection Agency's 3Ts for Reducing Lead in Drinking Water in Schools is
14 implemented and:

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

17 (B) the outlet is permanently removed, disabled, or otherwise cannot
18 be accessed by any person for the purposes of consumption;

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

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

4 (4) notify all staff and all parents or guardians of students directly of the
5 test results and the **proposed or taken remedial action** in writing or by
6 electronic means within 10 **school** days after receipt of the laboratory report;

7 (5) submit lead remediation plans to the Department as they are
8 completed;

9 **(6) notify all staff and all parents or guardians or students in writing or**
10 **by electronic means of what remedial actions have been taken; and**

11 **(7) submit notice to the Department of Health that remediation plans**
12 **have been completed.**

13 § 1245. RECORD KEEPING; PUBLIC NOTIFICATION; DATABASE

14 (a) Record keeping. The Department of Health shall retain all records of
15 test results, laboratory analyses, lead remediation plans, and waiver **notices** for
16 10 years following the creation or acquisition of the record. Records produced
17 or acquired by the Department under this chapter are public records subject to
18 inspection or copying under the Public Records Act.

19 (b) Public notification. On or before March 1, 2020, the Commissioner
20 shall publish on the Department website the data from testing under section
21 1243 of this title so that the results of sampling are fully transparent and

1 accessible to the public. The data published by the Department shall include a
2 list of all buildings or facilities owned, controlled, or operated by a school
3 district, supervisory union, independent school, or child care provider at which
4 an outlet exceeded the action level within the previous two years of reported
5 samples. The Commissioner shall publish all retesting data on the
6 Department’s website within two weeks of receipt of the relevant laboratory
7 analysis. The Secretary of Education shall include a link on the Agency of
8 Education website to the Department of Health website required under this
9 subsection.

10 § 1246. LEAD REMEDIATION PLAN; GUIDANCE; COMMUNICATION

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

17 (b) Guidance; lead remediation plan. The Commissioner, after consultation
18 with the Secretary of Natural Resources and the Secretary of Education, shall
19 issue guidance on development of a lead remediation plan by a school district,
20 supervisory union, independent school, or child care provider. The guidance

1 provided by the Commissioner shall reference the U.S. Environmental
2 Protection Agency’s 3Ts for Reducing Lead in Drinking Water in Schools.

3 (c) Communications: The Department of Health shall develop sample
4 communications for parents for use by school districts, supervisory unions,
5 independent schools, and child care providers concerning lead in water and
6 reducing exposure to lead under this chapter.

7 § 1247. RULEMAKING

8 (a) The Commissioner shall adopt rules under this chapter to achieve the
9 purposes of this chapter.

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

14 (1) requirements or guidance for the taking samples of drinking water
15 from outlets in a building or facility owned, controlled, or operated by a school
16 district, supervisory union, independent school, or child care provider that are
17 no less stringent than the requirements of the U.S. Environmental Protection
18 Agency’s 3Ts for Reducing Lead in Drinking Water in Schools and shall
19 include a first draw sample and second flush samples;

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

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

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

5 (5) requirement that each school district, supervisory union, independent
6 school, or child care facility develop and adopt a plan of action to prevent
7 elevated lead levels in all water used for drinking or cooking within six months
8 of the effective date of these rules. Each plan of action shall include, at a
9 minimum, the creation of an inventory of lead-bearing parts within the school
10 district, supervisory union, independent school, or child care facility's water
11 delivery system, including fixtures and plumbing with lead soldering, and a
12 plan to replace the lead-bearing parts within two years of the effective date of
13 the rules required by this subsection; and

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

16 § 1248. ENFORCEMENT; PENALTIES

17 In addition to any other authority provided by law, the Commissioner of
18 Health or a hearing officer designated by the Commissioner may, after notice
19 and an opportunity for hearing, impose an administrative penalty of up to
20 \$500.00 for a violation of the requirements of this chapter. The hearing before

1 the Commissioner shall be a contested case subject to the provisions of 3
2 V.S.A. chapter 25.

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

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

12 * * *

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

15 * * *

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

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

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

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

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

5 **Sec. 4. REPEAL**

6 **2018 Acts and Resolves No. 173, Sec. 21 (independent schools) is repealed.**

7 **Sec. 5.** 16 V.S.A. § 2973 is amended to read:

8 § 2973. INDEPENDENT ~~SCHOOL TUITION RATES~~ SCHOOLS

9 (a)(1) Notwithstanding any provision of law to the contrary, an approved
10 independent school that accepts public tuition shall enroll any student with an
11 individualized education program who requires special education services and
12 who is placed in the approved independent school as an appropriate placement
13 and least restrictive environment for the student by the student’s individualized
14 education program team or by the local education agency (LEA); provided,
15 however, that this requirement shall not apply to an independent school that
16 limits enrollment to students who are on an individualized education program
17 or a plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794,
18 and who are enrolled pursuant to a written agreement between the LEA and the
19 school.

1 (2) In placing a student with an independent school under subdivision
2 (1) of this subsection, the student’s individualized education program team and
3 the LEA shall comply with all applicable federal and State requirements.

4 (3) An approved independent school is not required to demonstrate that
5 it has the resources to serve every category of special education as defined
6 under State Board of Education rules in order to be approved or retain its
7 approval to receive public funding for general tuition.

8 (4) The terms “special education services,” “LEA,” and “individualized
9 education program” or “IEP” as used in this section shall have the same
10 meanings as defined by State Board rules.

11 (b)(1) The Secretary of Education shall establish minimum standards of
12 services for students receiving special education services in independent
13 schools in Vermont; shall set, after consultation with independent schools in
14 Vermont, the maximum rates to be paid by the Agency and school districts for
15 tuition, room, and board based on the level of services; and may advise
16 independent schools as to the need for certain special education services in
17 Vermont.

18 (2)(A) The Secretary of Education shall set, after consultation with
19 independent schools in Vermont, and based on the level of services provided
20 by the schools, the maximum rates to be paid by the Agency and supervisory
21 unions or school districts for tuition, room, and board for residential placement

1 of students who require special education services. The amount charged by an
2 independent school for tuition shall reflect the school's actual or anticipated
3 costs of providing special education services to the student and shall not
4 exceed the maximum rates set by the Secretary, provided that the Secretary
5 may permit charges in excess of these maximum rates where the Secretary
6 deems warranted.

7 (B)(i) An approved independent school that enrolls a student under
8 subdivision (a)(1) of this section may bill the responsible LEA for excess
9 special education costs incurred by the independent school in providing special
10 education services beyond those covered by general tuition. Reimbursement of
11 these excess special education costs shall be based on the direct-cost rates
12 approved by the Secretary for services actually provided to the student
13 consistent with the Agency of Education Technical Manual for special
14 education cost accounting. The Agency of Education shall publish specific
15 elements that must be included as part of an independent school's invoice for
16 excess special education costs, and these elements shall be included in the
17 written agreement required under subdivision (c)(2) of this section.

18 (ii) In establishing the direct-cost rates for reimbursement under
19 this subdivision (B), the Secretary shall apply the principle of treating an
20 approved independent school and a public school with parity in the amount of

1 federal, State, and local contributions to cover the costs of providing special
2 education services.

3 (iii) An approved independent school that enrolls a student under
4 subdivision (a)(1) of this section shall provide such documentation to the
5 Secretary as the Secretary deems necessary in order to ensure that amounts
6 payable under this subdivision (B) to the school are reasonable in relation to
7 the special education services provided by the school. The Secretary may
8 withhold, or direct an LEA to withhold, payment under this subdivision
9 pending the Secretary’s receipt of required documentation under this
10 subdivision, or may withhold, or direct an LEA to withhold, an amount
11 determined by the Secretary as not reasonable in relation to the special
12 education services provided by the school.

13 (C)(i) The Secretary shall set, after consultation with independent
14 schools in Vermont, the maximum tuition rates to be paid by the Agency and
15 supervisory unions or school districts to independent schools that limit
16 enrollment to students who are on an IEP or a plan under Section 504 of the
17 Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to
18 a written agreement between the LEA and the school. The maximum tuition
19 rates shall be based on the level of services provided by the school.

20 (ii) The tuition rates established by the Secretary under this
21 subdivision (C) shall be no more than the costs that are reasonably related to

1 the level of services provided by the school and shall be set forth on a form
2 prescribed for that purpose by the Secretary of Education. The Secretary shall
3 determine the relationship between costs and the level of services by using
4 generally accepted accounting principles, such as those set forth in the
5 Handbook (II) for Financial Accounting of Vermont School Systems.

6 (iii) After the Secretary approves a tuition rate for an independent
7 school under this subdivision (C), the school shall not exceed that tuition rate
8 until such time as a new tuition rate is approved by the Secretary.

9 (D) An approved independent school may, in calculating tuition rates
10 pursuant to § 2973, include all costs, including anticipated costs, related to or
11 arising from lead draws, testing and remediation as required under 18 V.S.A.
12 chapter 24A. The Secretary shall not deny approval of an application to
13 increase a tuition rate if such costs serve as the basis, in part, for the proposed
14 tuition rate.

15 (c)(1) In order to be approved as an independent school eligible to receive
16 State funding under subdivision (a)(1) of this section, the school shall
17 demonstrate the ability to serve students with disabilities by:

18 (A) demonstrating an understanding of special education
19 requirements, including the:

20 (i) provision of a free and appropriate public education in
21 accordance with federal and State law;

1 (ii) provision of education in the least restrictive environment in
2 accordance with federal and State law;

3 (iii) characteristics and educational needs associated with any of
4 the categories of disability or suspected disability under federal and State
5 law; and

6 (iv) procedural safeguards and parental rights, including discipline
7 procedures, specified in federal and State law;

8 (B) committing to implementing the IEP of an enrolled student with
9 special education needs, providing the required services, and appropriately
10 documenting the services and the student’s progress;

11 (C) employing or contracting with staff who have the required
12 licensure to provide special education services;

13 (D) agreeing to communicate with the responsible LEA concerning:

14 (i) the development of, and any changes to, the IEP;

15 (ii) services provided under the IEP and recommendations for a
16 change in the services provided;

17 (iii) the student’s progress;

18 (iv) the maintenance of the student’s enrollment in the
19 independent school; and

20 (v) the identification of students with suspected disabilities; and

1 (E) committing to participate in dispute resolution as provided under
2 federal and State law.

3 (2) An approved independent school that enrolls a student requiring
4 special education services who is placed with the school under subdivision
5 (a)(1) of this section:

6 (A) shall enter into a written agreement with the LEA committing to
7 the requirements under subdivision (1) of this subsection (c); and

8 (B) shall ensure that qualified school personnel attend planning
9 meetings and IEP meetings for the student.

10 (d)(1) If a student is placed with an approved independent school under
11 subsection (a) of this section and either the LEA and the school each certifies,
12 or the hearing officer under subdivision (3) of this subsection certifies, to the
13 Secretary of Education that the school is unable to provide required IEP
14 services due to its inability to retain qualified staff, then the LEA shall make
15 another placement that satisfies the federal requirements to provide the student
16 with a free and appropriate public education in the least restrictive
17 environment.

18 (2) If the conditions in subdivision (1) of this subsection are satisfied:

19 (A) the approved independent school shall not be subject to any
20 disciplinary action or the revocation of its approved status by the State Board
21 of Education due to its failure to enroll the student; and

1 (B) no private right of action shall be created on the part of the
2 student or his or her family members, or any other private party, to:

3 (i) require the LEA to place the student with the approved
4 independent school or the school to enroll the student; or

5 (ii) hold the LEA or the approved independent school responsible
6 for monetary damages due to the failure of the school to enroll the student or
7 the necessity for the LEA to make an alternative placement.

8 (3) If the LEA and approved independent school do not agree on
9 whether the school is unable to retain qualified staff under subdivision (1) of
10 this subsection, then the LEA and the school shall jointly contract with a
11 hearing officer to conduct a hearing with the parties and make a determination,
12 which shall be final. The cost for the hearing officer shall be split evenly
13 between the two parties.

14 ~~(b)~~(c) Neither ~~a school districts~~ district nor any State agency shall pay rates
15 for tuition, room, and board; for students receiving special education in
16 independent schools outside Vermont that are in excess of allowable costs
17 approved by the authorized body in the state in which the independent school
18 is located, except in exceptional circumstances or for a child who needs
19 exceptional services, as approved by the Secretary.

1 ~~(e)~~(f) The State Board is authorized to enter into interstate compacts with
2 other states to regulate rates for tuition, room, and board for students receiving
3 special education in independent schools.

4 Sec. 6. EFFECTIVE DATE

5 This act shall take effect on passage, except that Sec. 5 (independent
6 schools) shall take effect July 1, 2022.

7

8

9

10

11

12

13 (Committee vote: _____)

14

15

16

Representative _____

FOR THE COMMITTEE