

**S.40. An Act Relating to Testing and Remediation of Lead in the Drinking Water of Schools and Child Care Facilities**  
Section by Section Summary

**Overview: S.40 As Proposed by House Committee on Education**

- S.40 requires all schools and child care providers in the State to test for lead in the drinking water from all drinking water outlets.
- If testing indicates that lead is present at or above the action level of 5 parts per billion, the bill requires the school or child care provider to conduct remediation to eliminate or reduce lead levels in the drinking water.
- Schools and child care providers will collect samples, but the Department of Health (DOH) will conduct or contract for analyses and pay for testing.
- Parents and guardians will be notified of the testing and the testing results.
- The State shall reimburse schools and child care providers for the replacement of drinking water fixtures at a specified cost estimated to be 70% of the cost of replacement.
- House Human Services proposes to amend the reimbursement provision to pay for the actual cost of replacement of drinking water fixtures up to a maximum amount per fixture type.

**Section 1. 18 V.S.A. ch. 24. Adds a new chapter in Title 18 chapter 24 addressing lead in drinking water of schools and child care facilities.**

<p align="center"><b>Sec. 1</b></p> <p align="center"><b>18 V.S.A. § 1241</b></p> <p align="center">Purpose of Chapter</p>	<p>The purpose of the chapter is to require all school districts, supervisory unions, independent schools, and child care providers to:</p> <ol style="list-style-type: none"> <li>1. test drinking water in their buildings and child care facilities for lead contamination; and</li> <li>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</li> </ol>
<p align="center"><b>Sec. 1</b></p> <p align="center"><b>18 V.S.A. § 1242</b></p> <p align="center">Definitions for the Chapter</p>	<p>The key definitions are:</p> <ul style="list-style-type: none"> <li>➤ § 1242(1): “Action level” means 5 parts per billion (ppb) of lead.</li> <li>➤ § 1242(2): “Alternative water source” means: water from an outlet within the school building or child care facility that is below the action level; or containerized, bottled, or packaged drinking water.</li> <li>➤ § 1242(4): “Childcare provider” a person licensed or registered by DCF, or authorized by DCF, to provide child care</li> <li>➤ § 1242(11): “Outlet” a drinking water fixture currently or reasonably expected to be used for consumption or cooking purposes, including a drinking fountain, ice machine, or a faucet, as determined by a school or child care provider.</li> <li>➤ §§ 1242(9), (11), and (12): “Independent school,” “school district,” and “supervisory union” are defined according to the standard definition for each under the Title 16 education statutes.</li> </ul>

<p style="text-align: center;"><b>Sec. 1</b></p> <p style="text-align: center;"><b>18 V.S.A. § 1243</b></p> <p style="text-align: center;">Testing Of Drinking Water</p>	<ul style="list-style-type: none"> <li>➤ Requires each school district, supervisory union, independent school, or child care provider on or before December 31, 2020, to test each drinking water outlet in the buildings or facilities it owns, controls, or operates for lead.</li> <li>➤ At least 5 days before sampling, the school or child care provider shall notify all staff, parents, or guardians directly in writing or by electronic means of: (A) the scheduled sampling; (B) the requirements for testing, why testing is required, and potential health effects of exposure to lead in drinking water; (C) information regarding sources of lead other than drinking water; (D) information regarding how the school or child care provider shall provide notice of sample results; and (E) how the school or child care provider shall respond to a sample that exceeds the action level.</li> <li>➤ Beginning January 1, 2021, each school or child care provider shall sample each drinking outlet for lead according to a schedule adopted by the Department by rule under 18 V.S.A. § 1247.</li> <li>➤ Prior to adoption of rules, sampling shall be conducted according to an interim methodology established by DOH that must be at least as stringent as the EPA 3T standard and that includes a first draw sample and a second flush sample.</li> <li>➤ Schools or child care providers are excepted from testing under the bill if: they completed testing of all outlets after Nov. 1, 2017, conducted testing according to an acceptable methodology; and implemented or scheduled remediation or determined that no outlets exceed the action level. <ul style="list-style-type: none"> <li>○ These schools are still eligible for State assistance for costs of remediation that has been implemented or scheduled</li> </ul> </li> <li>➤ DOH shall conduct or contract for all of the required analyses of drinking water samples.</li> </ul>
<p style="text-align: center;"><b>Sec. 1</b></p> <p style="text-align: center;"><b>18 V.S.A. § 1244</b></p> <p style="text-align: center;">Response to Actionable Level; Notice; Reporting</p>	<ul style="list-style-type: none"> <li>➤ If a sample of drinking water indicates the presence of lead at or above the action level at an outlet, the school or child care provider shall conduct remediation to eliminate or reduce lead levels in the drinking water from the outlet.</li> <li>➤ At a minimum, the school or child care provider shall <ol style="list-style-type: none"> <li>1. prohibit use of an outlet that is at or above the action level until a lead remediation plan or other remediation is implemented and sampling indicates that lead levels from the outlet are below the action level; or prohibit use of the outlet until it is permanently removed and cannot be accessed for consumption or cooking.</li> <li>2. provide occupants of the building or facility an adequate alternative water source until remediation is performed;</li> <li>3. notify staff, parents, or guardians of test results in writing or electronic means within 10 school days of the report and actions to be taken; and</li> <li>4. submit lead remediation plans to the Department as they are completed.</li> </ol> </li> </ul>

<p style="text-align: center;"><b>Sec. 1</b></p> <p style="text-align: center;"><b>18 V.S.A. § 1245</b> Record Keeping; Public Notification; Database</p>	<ul style="list-style-type: none"> <li>➤ DOH shall retain all records of test results, laboratory analyses, lead remediation plans, and notices of exception for 10 years following the creation or acquisition of the record. The records will be publicly available.</li> <li>➤ On or before March 1, 2021, DOH shall publish on its website the data from testing so that the results of sampling are fully transparent and accessible to the public.</li> <li>➤ The data published shall include a list of all buildings or facilities owned, controlled, or operated by a school or child care provider at which an outlet exceeded the action level within the previous 2 years of reported samples.</li> <li>➤ DOH shall publish all retesting data on its website within 2 weeks of receipt of the relevant laboratory analysis.</li> <li>➤ The Secretary of Education shall include a link on the Agency of Education website to the DOH website.</li> </ul>
<p style="text-align: center;"><b>Sec. 1</b></p> <p style="text-align: center;"><b>18 V.S.A. § 1246</b> Lead Remediation Plan; Guidance</p>	<ul style="list-style-type: none"> <li>➤ When a lab analysis of a drinking water sample from an outlet at a building or facility is at or above the action level, the school or child care provider may consult with DOH about developing a lead remediation plan or other response.</li> <li>➤ DOH shall issue guidance on developing a lead remediation plan by a school or child care provider. The guidance shall reference U.S. EPA's 3Ts for Reducing Lead in Drinking Water in Schools.</li> </ul>
<p style="text-align: center;"><b>Sec. 1</b></p> <p style="text-align: center;"><b>18 V.S.A. § 1247</b> Rulemaking</p>	<ul style="list-style-type: none"> <li>➤ DOH shall adopt rules for implementation of testing. It is the intent of the General Assembly that the rules shall be no less stringent than U.S. EPA's 3Ts for Reducing Lead in Drinking Water in Schools.</li> <li>➤ DOH shall adopt the rules on or before November 1, 2020, the rules shall address: <ul style="list-style-type: none"> <li>❖ requirements or guidance for taking samples of drinking water from outlets in a building or facility;</li> <li>❖ frequency of sampling, including additional sampling when lead levels are at or above the action level;</li> <li>❖ requirements for implementation of a lead mitigation plan or other necessary response to an exceedance;</li> <li>❖ conditions or criteria for exceptions to the sampling required under this chapter; and</li> <li>❖ any other requirements that DOH deems necessary for the implementation.</li> </ul> </li> </ul>
<p style="text-align: center;"><b>Sec. 1</b></p> <p style="text-align: center;"><b>18 V.S.A. § 1248</b> Enforcement</p>	<ul style="list-style-type: none"> <li>➤ In addition to any other authority provided by law, DOH, after notice and an opportunity for hearing, may impose an administrative penalty of up to \$500.00 for a violation of the testing requirements of this chapter.</li> </ul>

**Section 2. 32 V.S.A. § 4001. Excess Spending Calculation**

**Sec. 2**  
**32 V.S.A. § 4001(6)**  
Education Spending

- Amends the definition of Education Spending in Title 32 to clarify that the costs incurred by a school shall not be considered education spending for the purposes of calculating excess spending.

**Section 3. Positions**

**Sec. 3**  
**Session Law**

- Authorizes 2 new limited service positions in FY19—1 ANR environmental analyst and 1 DOH public health analyst.

**Section 4. Status of Remediation**

**Sec. 4**  
**Session Law**

- Requires DOH to report to testify to the General Assembly on or before Jan. 15, 2020 regarding the status of the requirements for testing for lead in the drinking water of schools or childcare facilities.

**Section 5. Allocation of Funds; Remediation; Eligible Costs**

**Sec. 5.**  
**Session Law**

- For remediation of drinking water fixtures, DOH shall reimburse a school at 70% of the cost of replacement of a drinking water fixture, which is set forth in sec. 5 at the following amount listed amount for each type of fixture:
  - public drinking fountains and ice machines: \$1,849.00;
  - outlets used for cooking: \$554.00;
  - all other outlets: \$319.00.
- DOH shall pay a child care provider \$454.00 for replacement of a drinking water fixture—also a 70% cost share.
- Payment to schools or providers shall be from funds appropriated in H.532 of 2019 to DOH for costs of testing, retesting, and remediation. Funds may be transferred from DOH to other agencies to administer reimbursement.

**Sec. 6. Effective Date**

- The act takes effect on passage.