

S.40. An Act Relating to Testing and Remediation of Lead in Drinking Water

House Conferees Proposal
(5/10/19)

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 five parts per billion (ppb) of lead.

(2) “Alternative water source” means:

(A) water from an outlet within the building or facility that is below the action level; or

(B) containerized, bottled, or packaged drinking water.

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

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

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

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

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(5/12/19)

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

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

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

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

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- (7) “Department” means the Department of Health.
- (8) “Drinking water” has the same meaning as in 10 V.S.A. § 1671.
- (9) “Independent school” has the same meaning as in 16 V.S.A. § 11.
- (10) “Outlet” means 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 district, supervisory union, independent school, or child care provider.
- (11) “School district” has the same meaning as in 16 V.S.A. § 11.
- (12) “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 collect a drinking water sample from each outlet in the buildings it owns, controls, or operates and shall submit the sample to the Department of Health for testing for lead contamination as required under this chapter.

(2) Each child care provider in the State shall collect a drinking water sample from each outlet 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 July 1, 2020, each school district, supervisory union, independent school, or child care provider in the State shall collect a first-draw sample and a second 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.

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- (7) “Department” means the Department of Health.
- (8) “Drinking water” has the same meaning as in 10 V.S.A. § 1671.
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(2) Each child care provider in the State shall collect a drinking water sample from each outlet 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 July 1, 2020, each school district, supervisory union, independent school, or child care provider in the State shall collect a first-draw sample and a second 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.

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(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:

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(A) the scheduled sampling;

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

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(C) information, provided by the Department of Health, regarding sources of lead exposure other than drinking water;

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

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

(E) how the school district, supervisory union, independent school, or child care provider shall respond to sample results that are at or above the action level.

(E) how the school district, supervisory union, independent school, or child care provider shall respond to sample results that exceed 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.

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(c) Continued sampling. Beginning July 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.

(c) Continued sampling. Beginning July 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

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Reducing Lead in Drinking Water in Schools and shall include a requirement for a first draw sample and a second flush sample.

(e) Exceptions.

(1) The testing requirements of subsection (b) of this section shall not apply to a school district, supervisory union, independent school, or child care provider that:

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

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

(C)(i) determined no outlet is at or above the action level for lead; or
(ii) implemented or scheduled remediation that ensures that drinking water from all outlets is below the action level.

(2) A school district, supervisory union, independent school, or child care provider that qualifies for the exception under subdivision (1) of this subsection shall, within 30 days of the effective date of this act, submit a written notice of exception to the Department of Health that shall include the results of testing and a summary of remediation implemented or scheduled.

(3) A school district, supervisory union, independent school, or child care provider that qualifies for the exception under subdivision (1) of this subsection shall be eligible for assistance from the State for the costs of remediation.

(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.

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Reducing Lead in Drinking Water in Schools and shall include a requirement for a first draw sample and a second flush sample.

(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 on or after November 1, 2017;

(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 after April 22, 2019.

(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.

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§ 1244. RESPONSE TO ACTION LEVEL; NOTICE; REPORTING

If a sample of drinking water under section 1243 of this title indicates that drinking water from an outlet is at or above the action level, 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. At a minimum, the school district, supervisory union, independent school, or child care provider shall:

(1)(A) prohibit use of an outlet that is at or above the action level until:

- (i) implementation of a lead remediation plan that is consistent with the U.S. Environmental Protection Agency's 3Ts for Reducing Lead in Drinking Water in Schools; and
 - (ii) sampling indicates that lead levels from the outlet are below the action level; or
- (B) prohibit use of an outlet that is at or above the action level until the outlet is permanently removed, disabled, or otherwise cannot be accessed by any person for the purposes of consumption or cooking;

(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 ACTION LEVEL; NOTICE; REPORTING

If a sample of drinking water under section 1243 of this title indicates that drinking water from an outlet exceeds the action level, 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. At a minimum, the school district, supervisory union, independent school, or child care provider shall:

(1)(A) prohibit use of an outlet that exceeds the action level until:

- (i) implementation of a lead remediation plan that is consistent with the U.S. Environmental Protection Agency's 3Ts for Reducing Lead in Drinking Water in Schools; and
 - (ii) sampling indicates that lead levels from the outlet are below the action level; or
- (B) prohibit use of an outlet that exceeds the action level until the outlet is permanently removed, disabled, or otherwise cannot be accessed by any person for the purposes of consumption or cooking;

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- (2) provide occupants of the building or child care facility an adequate alternative water source until remediation is performed;
- (3) notify all staff and all parents or guardians of students directly of the test results and the proposed or taken remedial action in writing or by electronic means within 10 school days after receipt of the laboratory report;
- (4) submit lead remediation plans to the Department as they are completed;
- (5) notify all staff and all parents or guardians or students in writing or by electronic means of what remedial actions have been taken; and
- (6) submit notice to the Department of Health that remediation plans have been 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 notices of exception 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 October 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 drinking water from an outlet tested is at or above 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

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- (2) provide occupants of the building or child care facility an adequate alternative water source until remediation is performed;
- (3) notify all staff and all parents or guardians of students directly of the test results and the proposed or taken remedial action in writing or by electronic means within 10 school days after receipt of the laboratory report;
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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; COMMUNICATION

(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 is at or above the action level, the school district, supervisory union, independent school, or child care provider may 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, the Commissioner for Children and Families, 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.

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

§ 1247. RULEMAKING

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

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(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 may 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, the Commissioner for Children and Families, 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.

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§ 1247. RULEMAKING

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

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(b) On or before November 1, 2020, the Commissioner, with continuing consultation with the Secretary of Natural Resources, the Commissioner for Children and Families, 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 that are no less stringent than the requirements of the U.S. Environmental Protection Agency's 3Ts for Reducing Lead in Drinking Water in Schools and that include a first draw sample and second flush sample;

(2) the frequency of continued sampling of outlets by school districts, supervisory unions, independent schools, and child care providers, provided that the Department may stagger when continued sampling shall occur by school or provider, school type or provider type, or initial sampling results;

(3) requirements for implementation of a lead mitigation plan or other necessary response to a report that drinking water from an outlet is at or above the action level;

(4) exemptions from the requirements for sampling or remediation under this chapter, including conditions or criteria for the exceptions from the sampling required under this chapter; and

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

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(b) On or before November 1, 2020, the Commissioner, with continuing consultation with the Secretary of Natural Resources, the Commissioner for Children and Families, 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 that are no less stringent than the requirements of the U.S. Environmental Protection Agency's 3Ts for Reducing Lead in Drinking Water in Schools and that include a first draw sample and second flush sample;

(2) the frequency of continued sampling of outlets by school districts, supervisory unions, independent schools, and child care providers, provided that the Department may stagger when continued sampling shall occur by school or provider, school type or provider type, or initial sampling results;

(3) requirements for implementation of a lead mitigation plan or other necessary response to a report that drinking water from an outlet exceeds the action level; and

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

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§ 1248. ENFORCEMENT; PENALTIES

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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.

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:

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.

(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.

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

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* * *

* * *

(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.

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

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

Sec. 3a. DEPARTMENT FOR CHILDREN AND FAMILIES; RULES FOR REGULATED CHILD CARE PROVIDERS

On or before December 31, 2020, the Commissioner for Children and Families shall amend the rules for regulated child care providers to comply with the requirements of 18 V.S.A. chapter 24A and rules adopted by the Department of Health under that chapter for the testing of lead in the drinking water of child care facilities.

Sec. 3a. DEPARTMENT FOR CHILDREN AND FAMILIES; RULES FOR REGULATED CHILD CARE PROVIDERS

On or before December 31, 2020, the Commissioner for Children and Families shall amend the rules for regulated child care providers to comply with the requirements of 18 V.S.A. chapter 24A and rules adopted by the Department of Health under that chapter for the testing of lead in the drinking water of child care facilities.

Sec. 4. STATUS OF REMEDIATION OF LEAD IN SCHOOLS AND CHILD CARE FACILITIES

On or before January 15, 2020, the Commissioner of Health, after consultation with the Secretary of Natural Resources, the Commissioner for Children and Families, and the Secretary of Education, shall provide written or oral testimony to the House Committee on Education and the Senate Committee on Education regarding the implementation, administration, and financing of the requirements under 18 V.S.A. chapter 24A that schools and child care providers sample for and remediate lead in drinking water. **The testimony shall include a recommendation of whether the requirements of 18 V.S.A. chapter 24A require continued implementation in fiscal year 2021**

Sec. 4. STATUS OF REMEDIATION OF LEAD IN SCHOOLS AND CHILD CARE FACILITIES

On or before January 15, 2020, the Commissioner of Health, after consultation with the Secretary of Natural Resources, the Commissioner for Children and Families, and the Secretary of Education, shall provide written or oral testimony to the House Committee on Education and the Senate Committee on Education regarding the implementation, administration, and financing of the requirements under 18 V.S.A. chapter 24A that schools and child care providers sample for and remediate lead in drinking water. The testimony may include recommendations for additional programmatic and technical requirements for sampling for and remediating lead in

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and, if so, what remains to be implemented and the proposed cost of implementation. The testimony may include recommendations for additional programmatic and technical requirements for sampling for and remediating lead in schools or child care facilities in the State.

Sec. 5. ALLOCATION OF FUNDS; REMEDIATION; ELIGIBLE COSTS

(a) For remediation required under 18 V.S.A. chapter 24A, the Department of Health shall pay a school district, supervisory union, independent school, or child care provider the actual cost of replacement of a drinking water fixture, as evidenced by a receipt submitted to the State, up to the following maximum amount for each type of fixture:

- (1) public drinking fountains and ice machines: **\$?.00;**
- (2) outlets used for cooking: **\$?.00;**
- (3) all other outlets: **\$?.00.**

(b) The State shall make payments to school districts, supervisory unions, independent schools, or child care providers under this section from one-time funds appropriated to the Department of Health in fiscal year 2020 for the costs of initial testing, retesting, and remediation under 18 V.S.A. chapter 24A. Funds appropriated to the Department of Health in Sec. 88 (a)(2) of H.532 of 2019 may be transferred to the State agency or department administering these payments.

Sec. 5a. Subdivision (a)(2) of 2019 Acts and Resolves No. 6, Sec. 88 is amended to read:

(2) To the Department of Health: \$2,400,000 to fund in fiscal year 2020 testing for lead in drinking water and additional support, retesting, and replacement of drinking water fixtures in schools and child care facilities consistent with the program established in requirements in S.40 of

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schools or child care facilities in the State.

Sec. 5. ALLOCATION OF FUNDS; REMEDIATION; ELIGIBLE COSTS

(a) For remediation required under 18 V.S.A. chapter 24A, the Department of Health shall pay a school district, supervisory union, independent school, or child care provider the actual cost of replacement of a drinking water fixture, as evidenced by a receipt submitted to the State, up to the following maximum amount for each type of fixture:

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2019. These funds are allocated as follows:

- (A) \$125,000 to fund the limited service program position established in S.40 of 2019.
- (B) \$150,000 to fund program start-up and data management costs for the program.
- (C) \$2,125,000 to fund the costs of initial testing and, retesting costs and to apply to tap

remediation costs, and replacement of drinking water fixtures.

Sec. 6. EFFECTIVE DATE

This act shall take effect on passage.

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This act shall take effect on passage.