

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:

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

4                   (B) containerized, bottled, or packaged drinking 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  
9 33 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, independent school, or child care provider.

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, and the  
19          potential health effects from exposure to lead in drinking water;

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

1           (D) 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           (E) how the school district, supervisory union, independent school, or  
5 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. Beginning January 1, 2021, 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) Exceptions.

1           (1) A school district, supervisory union, independent school, or child  
2           care provider shall not be subject to the testing requirements of subsection (b)  
3           of this section if the school district, supervisory union, independent school, or  
4           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 that qualifies for the exception under subdivision (1) of this  
14           subsection shall submit a written notice of exception to the Department of  
15           Health within 30 days of the effective date of this act that shall include the  
16           results of testing and a summary of remediation implemented or scheduled.

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

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

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

6       § 1244. RESPONSE TO ACTION LEVEL; NOTICE; REPORTING

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

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

15       (i) implementation of a lead remediation plan or other remediation  
16       measure that was published or approved by the Commissioner or that is  
17       consistent with the U.S. Environmental Protection Agency's 3Ts for Reducing  
18       Lead in Drinking Water in Schools; and

19       (ii) sampling indicates that lead levels from the outlet are at or  
20       below the action level; or

1           (B) prohibit use of an outlet that exceeds the action level until the  
2           outlet is permanently removed, disabled, or otherwise cannot be accessed by  
3           any person for the purposes of consumption or cooking;

4           (2) provide occupants of the building or child care facility an adequate  
5           alternative water source until remediation is performed;

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

9           (4) submit lead remediation plans to the Department as they are  
10          completed;

11          (5) notify all staff and all parents or guardians or students in writing or  
12          by electronic means of what remedial actions have been taken; and

13          (6) submit notice to the Department of Health that remediation plans  
14          have been completed.

15          § 1245. RECORD KEEPING; PUBLIC NOTIFICATION; DATABASE

16          (a) Record keeping. The Department of Health shall retain all records of  
17          test results, laboratory analyses, lead remediation plans, and notices of  
18          exception for 10 years following the creation or acquisition of the record.

19          Records produced or acquired by the Department under this chapter are public  
20          records subject to inspection or copying under the Public Records Act.

1        (b) Public notification. On or before March 1, 2021, the Commissioner  
2        shall publish on the Department website the data from testing under section  
3        1243 of this title so that the results of sampling are fully transparent and  
4        accessible to the public. The data published by the Department shall include a  
5        list of all buildings or facilities owned, controlled, or operated by a school  
6        district, supervisory union, independent school, or child care provider at which  
7        an outlet exceeded the action level within the previous two years of reported  
8        samples. The Commissioner shall publish all retesting data on the  
9        Department’s website within two weeks of receipt of the relevant laboratory  
10       analysis. The Secretary of Education shall include a link on the Agency of  
11       Education website to the Department of Health website required under this  
12       subsection.

13       § 1246. LEAD REMEDIATION PLAN; GUIDANCE; COMMUNICATION

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

20       (b) Guidance; lead remediation plan. The Commissioner, after consultation  
21       with the Secretary of Natural Resources and the Secretary of Education, shall

1 issue guidance on development of a lead remediation plan by a school district,  
2 supervisory union, independent school, or child care provider. The guidance  
3 provided by the Commissioner shall reference the U.S. Environmental  
4 Protection Agency’s 3Ts for Reducing Lead in Drinking Water in Schools.

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

9 § 1247. RULEMAKING

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

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

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

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

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

5           (4) conditions or criteria for the exceptions from the sampling required  
6           under this chapter;

7           (5) a requirement that each school district, supervisory union,  
8           independent school, or child care facility develop and adopt a plan of action to  
9           prevent elevated lead levels in all water used for consumption or cooking  
10           within six months of the effective date of the rules required under this section.

11           Each plan of action shall include, at a minimum, the creation of an inventory of  
12           lead-bearing parts within the water delivery system of the buildings or facilities  
13           owned, controlled, or operated by a school district, supervisory union,  
14           independent school, or child care provider, including fixtures and plumbing  
15           with lead soldering, and a plan to replace the lead-bearing parts within two  
16           years of the effective date of the rules required by this subsection; and

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

19           § 1248. ENFORCEMENT; PENALTIES

20           In addition to any other authority provided by law, the Commissioner of  
21           Health or a hearing officer designated by the Commissioner may, after notice

1 and an opportunity for hearing, impose an administrative penalty of up to  
2 \$500.00 for a violation of the requirements of this chapter. The hearing before  
3 the Commissioner shall be a contested case subject to the provisions of  
4 3 V.S.A. chapter 25.

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

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

14 \* \* \*

15 (B) For purposes of calculating excess spending pursuant to  
16 32 V.S.A. § 5401(12), “education spending” shall not include:

17 \* \* \*

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

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

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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.

(Committee vote: \_\_\_\_\_)

\_\_\_\_\_

Representative \_\_\_\_\_

FOR THE COMMITTEE