

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 below the action  
3 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 meets or exceeds the action  
6 level.

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

10           (c) Continued sampling. Beginning January 1, 2021, each school district,  
11 supervisory union, independent school, or child care provider in the State shall  
12 sample each outlet in each building or facility it owns, controls, or operates for  
13 lead according to a schedule adopted by the Department by rule under section  
14 1247 of this title.

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

1           (e) Exceptions.

2           (1) A school district, supervisory union, independent school, or child  
3 care provider shall not be subject to the testing requirements of subsection (b)  
4 of this section if the school district, supervisory union, independent school, or  
5 child care provider:

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

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

10          (C)(i) determined no outlet met or exceeded the action level for lead;  
11 or

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

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

19          (3) A school district, supervisory union, independent school, or child  
20 care provider that qualifies for the exception under subdivision (1) of this

1 subsection shall be eligible for assistance from the State for the costs of  
2 remediation.

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

6 (g) Application; bottled water. Containerized, bottled, or packaged  
7 drinking water is exempt from the requirements of this chapter.

8 § 1244. RESPONSE TO ACTION LEVEL; NOTICE; REPORTING

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

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

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

1                   (ii) sampling indicates that lead levels from the outlet are below  
2 the action level; or

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

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

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

11                   (4) submit lead remediation plans to the Department as they are  
12 completed;

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

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

17 § 1245. RECORD KEEPING; PUBLIC NOTIFICATION; DATABASE

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

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

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

15 § 1246. LEAD REMEDIATION PLAN; GUIDANCE; COMMUNICATION

16 (a) Consultation. When a laboratory analysis of a sample of drinking water  
17 from an outlet at a building or facility owned, controlled, or operated by a  
18 school district, supervisory union, independent school, or child care provider  
19 meets or exceeds the action level, the school district, supervisory union,  
20 independent school, or child care provider may consult with the Commissioner



1 regarding the development of a lead remediation plan or other necessary  
2 response.

3 (b) Guidance; lead remediation plan. The Commissioner, after consultation  
4 with the Secretary of Natural Resources and the Secretary of Education, shall  
5 issue guidance on development of a lead remediation plan by a school district,  
6 supervisory union, independent school, or child care provider. The guidance  
7 provided by the Commissioner shall reference the U.S. Environmental  
8 Protection Agency’s 3Ts for Reducing Lead in Drinking Water in Schools.

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

13 § 1247. RULEMAKING

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

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

20 (1) requirements or guidance for taking samples of drinking water from  
21 outlets in a building or facility owned, controlled, or operated by a school

1 district, supervisory union, independent school, or child care provider that are  
2 no less stringent than the requirements of the U.S. Environmental Protection  
3 Agency’s 3Ts for Reducing Lead in Drinking Water in Schools and that  
4 include a first draw sample and second flush sample;

5 (2) the frequency of sampling required, including additional sampling  
6 requirements when drinking water from an outlet meets or exceeds the action  
7 level;

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

11 (4) conditions or criteria for the exceptions from the sampling required  
12 under this chapter; and

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

15 § 1248. ENFORCEMENT; PENALTIES

16 In addition to any other authority provided by law, the Commissioner of  
17 Health or a hearing officer designated by the Commissioner may, after notice  
18 and an opportunity for hearing, impose an administrative penalty of up to  
19 \$500.00 for a violation of the requirements of this chapter. The hearing before  
20 the Commissioner shall be a contested case subject to the provisions of  
21 3 V.S.A. chapter 25.



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

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

4           On or before January 15, 2020, the Commissioner of Health, after  
5           consultation with the Secretary of Natural Resources and the Secretary of  
6           Education, shall provide written or oral testimony to the House Committee on  
7           Education and the Senate Committee on Education regarding the  
8           implementation, administration, and financing of the requirements under  
9           18 V.S.A. chapter 24A that schools and child care providers sample for and  
10          remediate lead in drinking water. The testimony may include  
11          recommendations for additional programmatic and technical requirements for  
12          sampling for and remediating lead in schools or child care facilities in the  
13          State.

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

15          (a) For remediation required under 18 V.S.A. chapter 24A, the Department  
16          of Health shall reimburse a school district, supervisory union, independent  
17          school, or childcare provider for 70 percent of the standard cost established  
18          under subsection (b) of this section of replacing a drinking water fixture or  
19          removing a drinking water outlet from service.

20          (b) The Department shall establish a standard cost to be paid to a school  
21          district, supervisory union, independent school, or childcare provider for

1 replacement of a fixture or removal from service of the following types of  
2 drinking water outlets:

3 (1) drinking fountains;

4 (2) outlets used for cooking;

5 (3) ice machines; and

6 (4) all other outlets.

7 (c) The Department of Health shall reimburse school districts, supervisory  
8 unions, independent schools, or childcare facilities under this section from  
9 funds appropriated to the Department for the costs of initial testing, retesting,  
10 and remediation under 18 V.S.A. Chapter 24A.

11 **Sec. 6. EFFECTIVE DATE**

12 This act shall take effect on passage.

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

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Representative \_\_\_\_\_

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FOR THE COMMITTEE