

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 or facility that is below
3 the 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 **second** flush sample from each outlet in each building
12 or facility it owns, controls, or operates. Sampling shall occur during the
13 school 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 sample results that are at or above the
6 action 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) The testing requirements of subsection (b) of this section shall not
3 apply to a school district, supervisory union, independent school, or child care
4 provider that:

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 is at or above the action level for lead; or

10 (ii) implemented or scheduled remediation that ensures that
11 drinking water from all outlets is below 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, within 30 days of the effective date of this act, submit a
15 written notice of exception to the Department of Health 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 § 1244. RESPONSE TO ACTION LEVEL; NOTICE; REPORTING

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

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

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

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

19 (B) prohibit use of an outlet that is at or above the action level until
20 the outlet is permanently removed, disabled, or otherwise cannot be accessed
21 by any person for the purposes of consumption or cooking;

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

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

6 (4) submit lead remediation plans to the Department as they are
7 completed;

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

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

12 § 1245. RECORD KEEPING; PUBLIC NOTIFICATION; DATABASE

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

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

18 (b) Public notification. On or before March 1, 2021, the Commissioner
19 shall publish on the Department website the data from testing under section
20 1243 of this title so that the results of sampling are fully transparent and
21 accessible to the public. The data published by the Department shall include a

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

9 § 1246. LEAD REMEDIATION PLAN; GUIDANCE; COMMUNICATION

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

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

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

5 § 1247. RULEMAKING

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

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

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

18 (2) the frequency of sampling required, including additional sampling
19 requirements when drinking water from an outlet is at or above the action
20 level;

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

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

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

8 § 1248. ENFORCEMENT; PENALTIES

9 In addition to any other authority provided by law, the Commissioner of
10 Health or a hearing officer designated by the Commissioner may, after notice
11 and an opportunity for hearing, impose an administrative penalty of up to
12 \$500.00 for a violation of the requirements of this chapter. The hearing before
13 the Commissioner shall be a contested case subject to the provisions of
14 3 V.S.A. chapter 25.

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

16 (6) “Education spending” means the amount of the school district
17 budget, any assessment for a joint contract school, career technical center
18 payments made on behalf of the district under subsection 1561(b) of this title,
19 and any amount added to pay a deficit pursuant to 24 V.S.A. § 1523(b) that is
20 paid for by the school district, but excluding any portion of the school budget
21 paid for from any other sources such as endowments, parental fundraising,

1 federal funds, nongovernmental grants, or other State funds such as special
2 education funds paid under chapter 101 of this title.

3 * * *

4 (B) For purposes of calculating excess spending pursuant to
5 32 V.S.A. § 5401(12), “education spending” shall not include:

6 * * *

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

10 Sec. 3. POSITIONS; SAMPLING OF DRINKING WATER OUTLETS IN
11 SCHOOLS

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

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

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

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

18 On or before January 15, 2020, the Commissioner of Health, after
19 consultation with the Secretary of Natural Resources and the Secretary of
20 Education, shall provide written or oral testimony to the House Committee on
21 Education and the Senate Committee on Education regarding the

1 implementation, administration, and financing of the requirements under
2 18 V.S.A. chapter 24A that schools and child care providers sample for and
3 remediate lead in drinking water. The testimony may include
4 recommendations for additional programmatic and technical requirements for
5 sampling for and remediating lead in schools or child care facilities in the
6 State.

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

8 (a) For remediation required under 18 V.S.A. chapter 24A, the Department
9 of Health shall pay a school district, supervisory union, or independent school
10 for replacement of a drinking water fixture at the following amount listed for
11 each type of fixture:

12 (1) public drinking fountains and ice machines: \$1,849.00;

13 (2) outlets used for cooking: \$554.00;

14 (3) all other outlets: \$319.00.

15 (b) For remediation required under 18 V.S.A. chapter 24A, the Department
16 of Health shall pay a child care provider \$454.00 for replacement of a drinking
17 water fixture.

18 (c) The State shall make payments to school districts, supervisory unions,
19 independent schools, or child care facilities under this section from funds
20 appropriated to the Department of Health for the costs of initial testing,
21 retesting, and remediation under 18 V.S.A. chapter 24A. Funds appropriated to

1 the Department of Health in Sec. 88 (a)(2) of H.532 of 2019 may be
2 transferred to the State agency or department administering these payments.

3 Sec. 6. EFFECTIVE DATE

4 This act shall take effect on passage.

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11 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE