

S.40

An act relating to testing and remediation of lead in the drinking water of schools and child care facilities

It is hereby enacted by the General Assembly of the State of Vermont:

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 [three-five](#) parts per billion (ppb) of lead.

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

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

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(4311) “School district” has the same meaning as in 16 V.S.A. § 11.

(4412) “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 draw~~ a drinking water sample from each outlet in the buildings it owns, controls, or operates and submit the sample to the Department of Health for testing for lead contamination as required under this chapter

~~Each school district, supervisory union, or independent school in the State shall test drinking water in the buildings it owns, controls, or operates 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 ~~January~~ December 31, 2020, each school district, supervisory union, independent school, or child care provider in the State shall collect a first-draw sample and a 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:

(A) the scheduled sampling;

(B) the requirements for testing, why testing is required, the potential health effects from exposure to lead in drinking water, and information about potential sources of lead exposure in addition to drinking water and schools utilizing communications developed by the Department of Health;

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

(D) how the school district, supervisory union, independent school, or child care provider shall respond to a sample that exceeds 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.

(c) Continued sampling. After January 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.

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(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 Reducing Lead in Drinking Water in Schools and shall include a first draw and and second flush samples.

(e) Waiver.

(1) ~~The Commissioner shall waive the requirement that a~~ school district, supervisory union, independent school, or child care provider have tested ~~sample drinking water~~ all outlets under this section are waived from the requirements of subsection (b) of this section ~~upon a finding~~ if that the school district, supervisory union, independent school, or child care provider:

(A) ~~has completed sampling testing~~ of all outlets in each building or facility it owns, controls, or operates in ~~the calendar year preceding January 1, 2020~~ after November 1, 2017;

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

and

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(C) ~~has~~ implemented or scheduled remediation that ensures that drinking water from all outlets does not exceed the action level or no action levels of lead were found at an outlet.

(2) A school district, supervisory union, independent school, or child care provider waived under this subsection shall provide written notice and testing results to the Department of Health prior to ~~XXX~~

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(23) 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 in the calendar year preceding January 1, 2020.~~

(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.

(g) Application; bottled water. ~~Commercially available 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~~

§ 1244. RESPONSE TO ACTIONABLE LEVEL; NOTICE; REPORTING

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If a sample of drinking water under section 1243 of this title indicates an exceedance of the action level at an outlet, 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. In conducting remediation, a school district, supervisory union, independent school, or child care provider shall strive to achieve the lowest level of lead possible in drinking water and, at a minimum, shall:

(1) prohibit use of an outlet that exceeds the action level until a lead remediation plan or other remediation measures published by the Commissioner or consistent with the U.S. Environmental Protection Agency's 3Ts for Reducing Lead in Drinking Water in Schools is implemented and:

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

(B) the outlet is permanently removed, or disabled, or otherwise ~~and~~ cannot be accessed by any person [BN: student and staff];

(2) after a lead remediation plan or other approved remediation is implemented, retest the outlet until results indicate that the lead levels are at or below the action level;

(3) provide occupants of the building or child care facility an adequate supply of potable water for drinking and cooking until remediation is performed;

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(4) 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 business-school days after receipt of the laboratory report; and

(5) submit lead remediation plans to the Department as they are completed;-

(6) notify all staff and all parents or guardians of students in writing or by electronic means of completed remedial actions; and

(7) submit notice to the Department 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 waiver requests notices 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 March 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

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district, supervisory union, independent school, or child care provider at which an outlet exceeded 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 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 exceeds the action level, the school district, supervisory union, independent school, or child care provider shall 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 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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(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. ~~It is the intent of the General Assembly that the rules adopted under this section shall be no less stringent than the requirements of the U.S. Environmental Protection Agency's 3Ts for Reducing Lead in Drinking Water in Schools.~~

(b) On or before November 1, 2020, the Commissioner, with continuing consultation with the Secretary of Natural Resources 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 the 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 shall include a first draw and second flush samples;

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

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

(4) conditions or criteria for the waiver of sampling required under this chapter; and

(5) requirement that each school district, supervisory union, independent school, or child care facility develop and adopt a plan of action to prevent elevated lead levels in all water used for drinking or cooking within six months of the effective date of these rules. Each plan of action shall include, at a minimum, the creation of an inventory of lead-bearing parts within the school district, supervisory union, independent school, or child care facility's water delivery system (including but not limited to fixtures and plumbing with lead soldering), and a plan to replace same within two years of the effective date of these rules.

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

(c) The Commissioner may lower the action level pursuant to rules adopted under 3 V.S.A. chapter 25.

§ 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.

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.

* * *

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

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~~Chapter 16 V.S.A. § 2973 (b) is amended to read:~~

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 4.

Sec. 3. 16 V.S.A. § 2973 (b) is amended to read:

(b)(2)(D) An approved independent school may, in calculating tuition rates pursuant to § 2973, include all costs, including anticipated costs, related to or arising from lead draws, testing and remediation as required under 18 V.S.A. chapter 24A. The Secretary shall not deny approval of an application to increase a tuition rate if such costs serve as the basis, in part, for the proposed tuition rate.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

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