

1 TO THE HONORABLE SENATE:

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 bill be amended by striking out  
6 all after the enacting clause and inserting in lieu thereof the following:

7 Sec. 1. 18 V.S.A. chapter 24A is added to read:

8 CHAPTER 24A. LEAD IN DRINKING WATER OF SCHOOLS AND  
9 CHILD CARE FACILITIES

10 § 1241. PURPOSE

11 The purpose of this chapter is to require all school districts, supervisory  
12 unions, and child care facilities in Vermont to:

13 (1) test drinking water in schools and child care facilities for lead  
14 contamination; and

15 (2) develop and implement an appropriate response or lead remediation  
16 plan when sampling indicates unsafe lead levels in drinking water at a school  
17 or child care facility.

18 § 1242. DEFINITIONS

19 As used in this chapter:

20 (1) “Action level” means three part per billion (ppb) of lead.

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

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

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

5           (5) “Department” means the Department of Health.

6           (6) “Drinking water” has the same meaning as in 10 V.S.A. § 1671.

7           (7) “First-draw sample” means a 250 milliliter sample of drinking water  
8           that has been standing in plumbing pipes at least eight hours and no more than  
9           18 hours and that is collected without flushing the tap.

10           (8) “Follow-up flush sample” means a sample of drinking water from an  
11           outlet that is conducted before a building or child care facility opens and or is  
12           in use and that is taken from the outlet after the water has run for 30 seconds.

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 potentially  
15           used for consumption or cooking purposes, including a drinking fountain, ice  
16           machine, or a faucet.

17           (11) “Potable water” means water sufficient for consumption and free  
18           from impurities in amounts sufficient to cause disease or harmful physiological  
19           effects with the bacteriological, chemical, physical, or radiological quality  
20           conforming to applicable rules or standards adopted by the Agency of Natural  
21           Resources and the Department of Health.

1           (12) “Public school” has the same meaning as in 16 V.S.A. § 11.

2           (13) “School” shall mean any public school or independent school.

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

4           (15) “Supervisory union” has the same meaning as in 16 V.S.A. § 11.

5   § 1243. TESTING OF DRINKING WATER

6           (a) Scope of testing.

7           (1) School districts and supervisory unions in the State shall test  
8   drinking water in schools for lead contamination as required under this chapter.

9           (2) Child care facilities in the State shall test drinking water for lead  
10   contamination as required under this chapter, unless otherwise required to test  
11   for lead in drinking water under State law.

12          (b) Initial sampling.

13          (1) On or before January 1, 2020, each school district, supervisory  
14   union, or child care facility in the State shall collect a first draw sample from  
15   each outlet in each building of a school or child care facility. Sampling shall  
16   occur during the school year of a school district or supervisory union.

17          (2) At least five days prior to sampling, the school district, supervisory  
18   union, or child care facility shall notify all staff and all parents or guardians of  
19   students in writing or by electronic means of:

20               (A) the scheduled sampling;

21               (B) the requirements for testing;

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

3           (D) how the school district, supervisory union, or child care facility  
4 shall respond to a sample that exceeds the action level.

5           (3) The Department may adopt a schedule for the initial sampling by  
6 school districts and supervisory unions.

7           (c) Continued sampling. After January 1, 2020, each school district,  
8 supervisory union, or child care facility in the State shall sample each outlet in  
9 each building of a school or child care facility for lead according to a schedule  
10 adopted by the Department by rule under section 1247 of this title.

11           (d) Follow-up flush sample. If a first draw sample from an outlet  
12 conducted under subsection (b) or (c) of this section exceeds the action level,  
13 the school district, supervisory union, or child care facility shall conduct a  
14 follow-up flush sample of the outlet to determine if the source of the lead in the  
15 drinking water is the outlet fixture or the plumbing of the building or facility.

16           (e) Methodology. 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.

1        (f) Laboratory analysis. All first-draw samples and follow-up flush  
2        samples required under this section shall be sent to a laboratory approved by  
3        the Commissioner to conduct analyses of drinking water under this chapter.

4        § 1244. RESPONSE TO ACTIONABLE LEVEL; NOTICE; REPORTING

5        If a laboratory analysis of a sample of drinking water from an outlet at a  
6        school or a child care facility exceeds the action level, the school district,  
7        supervisory union, or child care facility shall:

8            (1) prohibit use of the outlet until a lead remediation plan or other  
9            remediation approved by the Commissioner is implemented to mitigate the  
10           lead level of the outlet and subsequent test results indicate that the lead levels  
11           are at or below the action level;

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

15           (3) submit any laboratory analysis to the Department and the Agency of  
16           Education within one business day of receiving the laboratory report;

17           (4) notify all staff and all parents or guardians of students of the test  
18           results, in writing or by electronic means, within 10 business days after receipt  
19           of the laboratory report; and

20           (5) submit subsequent laboratory analyses and lead remediation plans to  
21           the Department and the Agency of Education as they are completed.

1 § 1245. RECORD KEEPING; PUBLIC NOTIFICATION; DATABASE

2 (a) Record keeping. The Department of Health shall retain all records of  
3 test results, laboratory analyses, lead remediation plans, and waiver requests  
4 for 10 years following the creation of the record. Records produced or  
5 acquired by the Department under this chapter are public records subject to  
6 inspection or copying under the Public Records Act.

7 (b) Public notification. On or before March 1, 2020, the Commissioner  
8 shall publish on the Department website the data received from school  
9 districts, supervisory unions, and child care facilities so that the results of  
10 sampling are fully transparent and accessible to the public. The data published  
11 by the Department shall include a list of all school districts, supervisory  
12 unions, and child care facilities that reported an outlet that exceeded the action  
13 level within the previous two years of reported samples. The Commissioner  
14 shall publish on the Department's website a report of an outlet that exceeds the  
15 action level within two weeks of receipt of the report under section 1244 of  
16 this title. The Secretary of Education shall include a link on the Agency of  
17 Education website to the Department of Health website required under this  
18 subsection.

19 § 1246. LEAD REMEDIATION PLAN; GUIDANCE

20 (a) Consultation. When a laboratory analyses of a sample of drinking  
21 water from an outlet at a school or child care facility exceeds the action level,

1 the school district, supervisory union, or child care facility shall consult with  
2 the Commissioner regarding the development of a lead remediation plan or  
3 other necessary response.

4 (b) Guidance; lead remediation plan. The Commissioner, after consultation  
5 with the Secretary of Natural Resources and the Secretary of Education, shall  
6 issue guidance on development of a lead remediation plan by a school district,  
7 supervisory union, or child care facility. The guidance provided by the  
8 Commissioner shall reference the U.S. Environmental Protection Agency's  
9 3Ts for Reducing Lead in Drinking Water in Schools.

10 § 1247. RULEMAKING

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

15 (1) requirements or guidance for taking samples of drinking water from  
16 outlets in buildings of schools and child care facilities;

17 (2) the frequency of sampling required, including additional sampling  
18 requirements for schools that report an exceedance of the action level;

19 (3) requirements or guidance for sending samples to laboratories;

20 (4) requirements for approval of a laboratory to conduct sampling under  
21 this chapter;

1           (5) the method or form for reporting an exceedance of the action level to  
2 the Department;

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

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

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

9   § 1248. ENFORCEMENT; PENALTIES

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

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

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



1 paid for from any other sources such as endowments, parental fundraising,  
2 federal funds, nongovernmental grants, or other State funds such as special  
3 education funds paid under chapter 101 of this title.

4 \* \* \*

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

7 \* \* \*

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

11 Sec. 3. APPROPRIATIONS; SAMPLING OF DRINKING WATER

12 OUTLETS IN SCHOOLS

13 In addition to any other funds appropriated to the Department of Health  
14 (Department) in fiscal year 2019, \$1,000,000.00 is appropriated to the  
15 Department in fiscal year 2019 for the purpose of paying for or reimbursing  
16 schools for the costs of sampling drinking water outlets, implementing  
17 remediation, and retesting drinking water outlets under the requirements of 18  
18 V.S.A. chapter 24A.

19 Sec. 4. EFFECTIVE DATE

20 This act shall take effect on passage.

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

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Senator \_\_\_\_\_

FOR THE COMMITTEE