

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, independent schools, and child care providers in Vermont to:

13 (1) test drinking water in their buildings 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 parts per billion (ppb) of lead.

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

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

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

6 (5) “Commissioner” means the Commissioner of Health.

7 (6) “Department” means the Department of Health.

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

9 (8) “First-draw sample” means a 250 milliliter sample of drinking water
10 that:

11 (A) has been standing in plumbing pipes at least eight **hours**;

12 (B) is collected without flushing the tap; and

13 (C) is conducted before a building or child care facility opens or is in
14 use.

15 (9) “Flush sample” means a sample of drinking water from an outlet

16 that:

17 (A) is taken from the outlet after the water has run for 30 seconds;

18 and

19 (B) is conducted before a building or child care facility opens or is in
20 use.

21 (10) “Independent school” has the same meaning as in 16 V.S.A. § 11.

1 (11) “Outlet” means a drinking water fixture currently or potentially
2 used for consumption or cooking purposes, including a drinking fountain, ice
3 machine, or a faucet.

4 (12) “Potable water” means water sufficient for consumption and free
5 from impurities in amounts sufficient to cause disease or harmful physiological
6 effects with the bacteriological, chemical, physical, or radiological quality
7 conforming to applicable rules or standards adopted by the Agency of Natural
8 Resources and the Department of Health.

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

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

11 § 1243. TESTING OF DRINKING WATER

12 (a) Scope of testing.

13 (1) Each school district, supervisory union, or independent school in the
14 State shall test drinking water in the buildings it owns, controls, or operates for
15 lead contamination as required under this chapter.

16 (2) Each child care provider in the State shall test drinking water in a
17 child care facility it owns, controls, or operates for lead contamination as
18 required under this chapter.

19 (b) Initial sampling.

20 (1) On or before January 1, 2020, each school district, supervisory
21 union, independent school, or child care provider in the State shall collect a

1 first-draw sample and a flush sample from each outlet in each building or
2 facility it owns, controls, or operates. Sampling shall occur during the school
3 year of a school district, supervisory union, or independent school.

4 (2) At least five days prior to sampling, the school district, supervisory
5 union, independent school, or child care provider shall notify all staff and all
6 parents or guardians of students directly in writing or by electronic means of:

7 (A) the scheduled sampling;

8 (B) the requirements for testing, why testing is required, and the
9 potential health effects from exposure to lead in drinking water;

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

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

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

18 (c) Continued sampling. After January 1, 2020, each school district,
19 supervisory union, independent school, or child care provider in the State shall
20 sample each outlet in each building or facility it owns, controls, or operates for

1 lead according to a schedule adopted by the Department by rule under section
2 1247 of this title.

3 (d) Interim methodology. Prior to adoption of the rules required under
4 section 1247 of this title, sampling under this section shall be conducted
5 according to a methodology established by the Department of Health, provided
6 that the methodology shall be at least as stringent as the sampling methodology
7 provided for under the U.S. Environmental Protection Agency’s 3Ts for
8 Reducing Lead in Drinking Water in Schools.

9 (e) Waiver.

10 (1) The Commissioner shall waive the requirement that a school district,
11 supervisory union, independent school, or child care provider sample drinking
12 water under this section upon a finding that the school district, supervisory
13 union, independent school, or child care provider:

14 (A) completed sampling of all outlets in each building or facility it
15 owns, controls, or operates in the calendar year preceding January 1, 2020;

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

18 and

19 (C) implemented or scheduled remediation that ensures that drinking
20 water from all outlets does not exceed the action level.

1 (2) A school district, supervisory union, independent school, or child
2 care provider that receives a waiver under this subsection shall be eligible for
3 assistance from the State for the costs of remediation that has been
4 implemented or scheduled as a result of sampling conducted in the calendar
5 year preceding January 1, 2020.

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

9 § 1244. RESPONSE TO ACTIONABLE LEVEL; NOTICE; REPORTING

10 If a sample of drinking water under section 1243 of this title indicates an
11 exceedance of the action level at an outlet, the school district, supervisory
12 union, independent school, or child care provider that owns, controls, or
13 operates the building or facility in which the outlet is located shall conduct
14 remediation to eliminate or reduce lead levels in the drinking water from the
15 outlet. In conducting remediation, a school district, supervisory union,
16 independent school, or child care provider shall strive to achieve the lowest
17 level of lead possible in drinking water and, at a minimum, shall:

18 (1) prohibit use of an outlet that exceeds the action level until a lead
19 remediation plan or other remediation approved by the Commissioner is
20 implemented and:

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

3 (B) the outlet is permanently removed and cannot be accessed by any
4 person;

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

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

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

14 (5) submit lead remediation plans to the Department as they are
15 completed.

16 § 1245. RECORD KEEPING; PUBLIC NOTIFICATION; DATABASE

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

1 (b) Public notification. On or before March 1, 2020, 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

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 shall 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 § 1247. RULEMAKING

6 (a) The Commissioner shall adopt rules under this chapter to achieve the
7 purposes of this chapter. It is the intent of the General Assembly that the rules
8 adopted under this section shall be no less stringent than the requirements of
9 the U.S. Environmental Protection Agency’s 3Ts for Reducing Lead in
10 Drinking Water in Schools.

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

15 (1) requirements or guidance for taking samples of drinking water from
16 outlets in a building or facility owned, controlled, or operated by a school
17 district, supervisory union, independent school, or child care provider;

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

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

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

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

5 § 1248. ENFORCEMENT; PENALTIES

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

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

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

21 * * *

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

3 * * *

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

7 Sec. 3. APPROPRIATIONS; POSITIONS; SAMPLING OF DRINKING
8 WATER OUTLETS IN SCHOOLS

9 (a) In addition to any other funds appropriated to the Department of Health
10 (Department) in fiscal year 2019, the following amounts are appropriated to
11 the Department in fiscal year 2019 for the purposes of implementing the
12 requirements in 18 V.S.A. chapter 24A that a school district, supervisory
13 union, independent school, or child care provider test drinking water outlets for
14 lead:

15 (1) \$1,350,000.00 for the costs of sampling drinking water outlets by
16 school districts, supervisory unions, independent schools, or child care
17 providers;

18 (2) \$190,000.00 for the costs of retesting drinking water outlets by
19 school districts, supervisory unions, independent schools, or child care
20 providers;

1 (3) \$700,000.00 to cost share with school districts, supervisory unions,
2 independent schools, or child care providers the costs of implementing
3 remediation.

4 (b) In addition to any other funds appropriated to the Agency of Natural
5 Resources in fiscal year 2019, \$125,000.00 is appropriated to the Agency in
6 fiscal year 2019 to hire an environmental analyst to assist in remediation
7 required under 18 V.S.A. chapter 24A.

8 (c) The establishment of the following new classified limited service
9 positions is authorized in fiscal year 2019:

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

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

12 Sec. 4. EFFECTIVE DATE

13 This act shall take effect on passage.

14

15

16

17

18

19 (Committee vote: _____)

20

21

Senator _____

1

FOR THE COMMITTEE