



Vermont
Superintendents
Association



Senate Education Committee

S.40 - Testing for Lead in Water Supplies (Schools; Childcare Facilities)

January 24, 2019

Testimony of the Vermont Superintendents Association; the Vermont School Boards Association; and the Vermont Principals' Association

Good afternoon. I am Jeffrey Francis, the executive director for the Vermont Superintendents Association. I am joined by my colleague Jay Nichols, Executive Director for the Vermont Principals' Association. Nicole Mace, Executive Director for the Vermont School Boards Association is not able to be here today but has reviewed and contributed to this testimony.

First, I want to present a core set of principles reflecting our collective thinking on the matter of testing for lead in potable water provided in school facilities.

- 1) Our associations are committed to supporting safe and healthy learning environments in educational settings, funded, in whole or in part, by taxpayer dollars. This includes Vermont's public schools as well as private and independent institutions that provide education and related services to publicly funded students.
- 2) Our associations recognize the importance of commitment to, and public investment in, achieving safe learning environments.
- 3) Our associations understand and wish to convey the absolute necessity of close and careful coordination between and among state agencies (in this case the Department of Health, the Department of Environmental Conservation and the Agency of Education) for an initiative of this type.
- 4) Our associations recognize the necessity of state agencies working effectively and efficiently with school districts and school personnel in a program where school districts and school officials will be integrally involved. In other words, the participating agencies must have their collective acts together and must pay attention to implementation details as they affect schools and school districts.
- 5) Our associations believe that any new public health initiative established by the State should come with state resources. In this case, from testing to remediation, the State should take responsibility for funding the work.
- 6) Our associations believe that the most efficient and expedient method for getting this work done is to streamline the process by simplifying the funding and payment models.

- 7) Our associations have an interest in the determination of levels at which remediation is required. This is a matter for state policy-makers if this initiative is fully-funded by the State. To the extent possible, there should be agreement on the methods and purpose for determining actionable levels. Those levels should be informed by science and research.

With respect to S.40 specifically, we offer the following comments:

- 1) We support the purpose of the bill as written.
- 2) We support the inclusion of child care facilities as subject to the requirements of the bill.
- 3) We reserve comment on the proposed action level of one part per billion while we await further analysis and state determinations as informed by the science addressing actionable levels.
- 4) Regarding the sampling protocols, it cannot be determined by the bill whether sampling subsequent to the initial sampling will be paid for by the state. We request that any and all sampling be funded by the state.
- 5) With respect to record keeping, we believe that the best approach for the retention and maintenance of lead-related records for a school or child care facility would be for the state to establish a central database for that information. Important records like these should be held in a central repository, not at a school.
- 6) The bill lacks any reference to school district. It needs one. Records, and actions to create records, should be the responsibility of a school district or a supervisory union - not a school.
- 7) We generally support the section on response to Actionable Level; Notice; Reporting although we note the absence of any reference to, or inclusion of, the Vermont Agency of Education - see more specific comments on that issue below.
- 8) Section on Public Notification; Agency Website - We note that the logical place for a parent or family to start researching school environmental safety might be the Agency of Education website. We suggest that the Agency of Education be directed to include a link to the Agency of Natural Resource lead findings website on the Agency of Education website.
- 9) Lead Remediation Response - Our associations are seeking assurances that the process for consulting with the Secretary of Natural Resources will be sufficiently resourced. If this initiative is a priority, it is important that it be treated that way and that appropriate staffing levels and staff training be addressed in the bill.
- 10) Model Plan - Our associations question whether a model plan is the best approach to supporting efficient and effective remediation methods. We believe that a better approach would be situation-specific recommended protocols/remediation measures provided by the appropriate state agency. This may be a matter of interpretation/use of language and may be resolved through clarification of intent.
- 11) Timing - The bill calls for initial testing to be completed by January 1, 2020, but the Agency of Natural Resources is not required to complete rulemaking until November 1,

2020. The content of the rules is intended to provide “requirements or guidance for taking samples of drinking water from outlets in buildings of schools and child care facilities” and “requirements or guidance for sending samples to laboratories” and “requirements for approval of a laboratory to conduct sampling” and “requirements for implementation of a lead mitigation plan or other necessary response to a reported exceedance of the action level.” It seems ill-timed to have the first round of testing move forward in the absence of these rules.

- 12) Rulemaking - In light of its statutory authorities relative to the oversight of public education and school districts, the Vermont Agency of Education should be party to the rulemaking process.
- 13) Rulemaking - S.40 should explicitly state that our associations should be formally consulted with. Our associations need direct input into the rulemaking process so that considerations and recommendations on behalf of school districts receive due consideration.
- 14) S.40 lacks any reference to an appropriation. We are requesting a clear statement in the bill indicating that costs for testing and remediation will be covered by the state.
- 15) S.40 may benefit from a specific reference to [3 V.S.A. § 832b](#) which requires that cost impacts to schools indicating that the appropriate fiscal note be considered and referred to with respect to rulemaking, both for direct and indirect costs.

Concluding thought: In our collective view, it is imperative that involved state agencies make the effort to understand school operations and involve school leaders as they develop a program of this scope and importance.

[3 V.S.A. § 832b.](#)

§ 832b. Administrative rules affecting school districts

If a rule affects or provides for the regulation of public education and public schools, the agency proposing the rule shall evaluate the cost implications to local school districts and school taxpayers, clearly state the associated costs, and report them in a local school cost impact statement to be filed with the economic impact statement on the rule required by subsection 838(c) of this title. An agency proposing a rule affecting school districts shall also consider and include in the local school cost impact statement an evaluation of alternatives to the rule, including no rule on the subject which would reduce or ameliorate costs to local school districts while achieving the objectives or purposes of the proposed rule. The legislative committee on administrative rules may object to any proposed rule if a local school cost impact statement is not filed with the proposed rule, or the committee finds the statement to be inadequate, in the same manner in which the committee may object to an economic impact statement under section 842 of this title. (Added 2003, No. 68, § 44.)