

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 and no  
12          more than 18 hours;

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

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

16           (9) “Flush sample” means a sample of drinking water from an outlet  
17          that:

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

19          and

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

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

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

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

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

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

12           § 1243. TESTING OF DRINKING WATER

13           (a) Scope of testing.

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

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

21           (b) Initial sampling.

1           (1) On or before January 1, 2020, each school district, supervisory  
2           union, independent school, or child care provider in the State shall collect a  
3           first-draw sample and a flush sample from each outlet in each building it owns,  
4           controls, or operates. Sampling shall occur during the school year of a school  
5           district, supervisory union, or independent school.

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

9                   (A) the scheduled sampling;

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

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

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

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

20           (c) Continued sampling. After January 1, 2020, each school district,  
21           supervisory union, independent school, or child care provider in the State shall

1 sample each outlet in each building or facility it owns, controls, or operates for  
2 lead according to a schedule adopted by the Department by rule under section  
3 1247 of this title.

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

10 (e) Laboratory analysis. **The analyses of drinking water samples required**  
11 **under this chapter shall be conducted by the Vermont Department of Health**  
12 **Laboratory or by a certified laboratory under contract to the Department.**

13 § 1244. RESPONSE TO ACTIONABLE LEVEL; NOTICE; REPORTING

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

1           (1) prohibit use of the outlet until a lead remediation plan or other  
2           remediation approved by the Commissioner is implemented to mitigate the  
3           lead level of the outlet;

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

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

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

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

15           § 1245. RECORD KEEPING; PUBLIC NOTIFICATION; DATABASE

16           (a) Record keeping. The Department of Health shall retain all records of  
17           test results, laboratory analyses, lead remediation plans, and waiver requests  
18           for 10 years following the creation or acquisition of the record. Records  
19           produced or acquired by the Department under this chapter are public records  
20           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. When results of retesting required under section 1244 of this title  
9        indicate an exceedance of the action level at an outlet, the Commissioner shall  
10       publish the retesting data on the Department’s website within two weeks of  
11       receipt of the relevant laboratory analysis. The Secretary of Education shall  
12       include a link on the Agency of Education website to the Department of Health  
13       website required under this subsection.

14       § 1246. LEAD REMEDIATION PLAN; GUIDANCE

15       (a) Consultation. When a laboratory analysis of a sample of drinking water  
16       from an outlet at a building or facility owned, controlled, or operated by a  
17       school district, supervisory union, independent school, or child care provider  
18       exceeds the action level, the school district, supervisory union, independent  
19       school, or child care provider shall consult with the Commissioner regarding  
20       the development of a lead remediation plan or other necessary response.

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

7        § 1247. RULEMAKING

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

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

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

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

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

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

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

7           § 1248. ENFORCEMENT; PENALTIES

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

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

15           (6) “Education spending” means the amount of the school district  
16           budget, any assessment for a joint contract school, career technical center  
17           payments made on behalf of the district under subsection 1561(b) of this title,  
18           and any amount added to pay a deficit pursuant to 24 V.S.A. § 1523(b) that is  
19           paid for by the school district, but excluding any portion of the school budget  
20           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 32  
5 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. APPROPRIATIONS; POSITIONS; SAMPLING OF DRINKING  
11 WATER OUTLETS IN SCHOOLS

12 (a) In addition to any other funds appropriated to the Department of Health  
13 (Department) in fiscal year 2019, the following amounts are appropriated to  
14 the Department in fiscal year 2019 for the purposes of implementing the  
15 requirements of 18 V.S.A. chapter 24A to test drinking water outlets in schools  
16 for lead:

17 (1) \$1,350,000.00 for the costs of sampling drinking water outlets in  
18 schools;

19 (2) \$190,000.00 for the costs of retesting drinking water outlets in  
20 schools;

1           (3) \$700,000.00 to cost share with schools the costs of implementing  
2           remediation.

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

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

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

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

11           Sec. 4. EFFECTIVE DATE

12           This act shall take effect on passage.

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

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Senator \_\_\_\_\_

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FOR THE COMMITTEE