

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 (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.

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

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Senator \_\_\_\_\_

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FOR THE COMMITTEE