

SENATE No. 456

The Commonwealth of Massachusetts

PRESENTED BY:

Joan B. Lovely

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act ensuring safe drinking water at schools and early childhood programs.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Joan B. Lovely</i>	<i>Second Essex</i>	
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>	<i>1/23/2017</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/25/2017</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	<i>1/26/2017</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>	<i>1/26/2017</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/27/2017</i>
<i>Paul Tucker</i>	<i>7th Essex</i>	<i>1/30/2017</i>
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>	<i>1/30/2017</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/30/2017</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	<i>1/31/2017</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/1/2017</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	<i>2/1/2017</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>2/2/2017</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/3/2017</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	<i>2/3/2017</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>2/3/2017</i>
<i>Kate D. Campanale</i>	<i>17th Worcester</i>	<i>2/3/2017</i>
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>	<i>2/3/2017</i>

<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/3/2017</i>
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>	<i>2/3/2017</i>
<i>Thomas P. Walsh</i>	<i>12th Essex</i>	<i>2/3/2017</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/3/2017</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/3/2017</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>2/3/2017</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>	<i>2/3/2017</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	<i>2/23/2017</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>	<i>5/2/2017</i>

SENATE No. 456

By Ms. Lovely, a petition (accompanied by bill, Senate, No. 456) of Joan B. Lovely, Carmine L. Gentile, Jason M. Lewis, Jay R. Kaufman and other members of the General Court for legislation to ensure safe drinking water at schools and early childhood programs. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act ensuring safe drinking water at schools and early childhood programs.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 111 of the General Laws is hereby amended by inserting after Section 160G the
2 following Section:-

3 Section 160H. The Safe Drinking Water at School Act

4 (a) Definitions

5 As used in this section, the following words shall have the following meanings unless the
6 context clearly requires otherwise:

7 “Commissioner,” the Commissioner of The Department of Environmental Protection.

8 “Department,” the Department of Environmental Protection.

9 “Drinking water outlet,” any water fountain, faucet, tap other end-point for delivery of
10 water regularly used for drinking or food preparation, including ice- making and hot drink
11 machines.

12 “Early childhood program,” a center-based child care facility.

13 “Elevated lead level,” a lead concentration in drinking water that exceeds one part per
14 billion.

15 “Lead service line,” a pipe and its fittings, which are not “lead free” as defined under
16 section 1417 of the federal Safe Drinking Water Act (42 U.S.C. 300g–6) that connect a drinking
17 water main to a building inlet.

18 “Local Board of Health,” any Board of Health authorized under Sections 26-33,
19 inclusive, of Chapter 111 of the Massachusetts General Laws

20 “NSF certified filters,” Any filter certified by the National Sanitation Foundation to
21 remove lead from drinking water.

22 “School,” any facility operating for the development and education of children – from
23 pre-school through high school, whether operated by a school district, charter, or non-public
24 entity.

25 “Technical guidance,” the technical guidance for detecting and remediating lead in
26 drinking water at schools issued the department pursuant to subsection (2) of section (f) of this
27 Act.

28 (b) Lead Service Line Replacement

29 (1) Public water systems shall fully replace lead service lines at every school district,
30 charter school, nonpublic school, and early childhood program they serve within three years of
31 the effective date of this act. Said replacement shall be paid for by the public water system,
32 regardless of ownership of any portion of the service line, and shall be performed in coordination
33 with the relevant municipality and school or early childhood center, and in conformity with the
34 department's technical guidance.

35 (2) Each public water system shall provide every school district, charter school,
36 nonpublic school, and early childhood program it serves with the information in its possession
37 relating to the location of lead service lines within 30 days of the effective date of this act. Each
38 school district, charter school, nonpublic school and early childhood program shall determine
39 which of its buildings receive drinking water through lead service lines and report the same to
40 the department within 60 days of the effective date of this act. Within 90 days of the effective
41 date of this Act, the department shall issue an enforceable order to each public water system to
42 replace all lead services lines at schools and early childhood programs.

43 (3) Lead service lines shall be disposed of in accord with hazardous waste laws, and shall
44 not be landfilled or incinerated.

45 (c) Preventing Lead Contamination.

46 Each school and early childhood program with one or more tests showing elevated lead
47 levels in water from any drinking water outlet, including but not limited to tests conducted under
48 the Commonwealth's "Assistance Program for Lead in School Drinking Water" or under section
49 (d) of this act, shall:

50 (1) immediately shut off the drinking water outlet(s) in question until measures are
51 undertaken to ensure that the water from the drinking water outlet(s) will no longer have elevated
52 lead levels

53 (2) within six months of receiving a test showing elevated lead levels, develop and adopt
54 a plan of action to prevent elevated lead levels in all water used for drinking or cooking. Said
55 plan of action shall include:

56 (i) installing and maintaining NSF certified filters at all faucets, fountains, or other
57 drinking water outlets within eighteen months of the effective date of this act. A school or early
58 childhood program may, consistent with other obligations in law, remove select drinking water
59 outlets from operation in lieu of installing filters on those drinking water outlets, so long as every
60 child has reasonable access to free, safe drinking water

61 (ii) replacing lead-bearing fixtures and plumbing with lead soldering where feasible and
62 cost-effective, within two years of receiving elevated lead level test results

63 (iii) may also include other measures to reduce lead contamination of water, consistent
64 with the department's technical guidance in section (f)(2) of this Act

65 (3) Aside from the requirement to install and maintain NSF filters at all drinking water
66 outlets in subsection (2)(i), nothing in this section shall prevent a school or early childhood
67 program from adjusting its plan of action, especially in response to public input, consistent with
68 the department's technical guidance.

69 (4) A school or early childhood program may seek the assistance of local board of health,
70 public water system, or the department to help ensure its compliance with the provisions of this
71 section.

72 (5) Nothing in this section contravenes requirements for more timely remediation when
73 tests show drinking water outlets with elevated lead levels, as provided in subsection (c)(2) of
74 this Act.

75 (d) Testing and Immediate Remediation

76 (1) Each school and early childhood program shall undertake annual testing of each
77 drinking water outlet in each school for the presence of lead. Each test for lead shall be
78 conducted by a laboratory certified for this purpose by the commissioner, in accordance with the
79 sampling and testing methods specified in the department's technical guidance. If a school or
80 childhood education program has not tested its drinking water outlets for lead under the
81 Commonwealth's "Assistance Program for Lead in School Drinking Water," it shall conduct
82 initial tests for lead at each drinking water outlet no later than 90 days after the effective date of
83 this act.

84 Unless the commissioner determines, on a case-by-case basis, that a greater or lesser
85 frequency of testing is necessary or sufficient to ensure the public health, including but not
86 limited to timely testing after replacement of lead service lines.

87 (2) Nothing in this section shall prevent a school district, charter school, or nonpublic
88 school from conducting more frequent testing than required pursuant to subsection (d)(1) of this
89 section.

90 (e) Transparency and Public Right to Know

91 (1) Each school and early childhood program shall:

92 (i) submit to the Department of Environmental Protection, the Department of Education,
93 and the Department of Health, as soon as practicable-

94 (A) its plan of action for preventing lead contamination of water, pursuant to section
95 (c)(2) of this Act, and modifications thereto

96 (B) progress on implementing its plan of action

97 (C) information on tests conducted pursuant to section (d), including, but not limited to,
98 the date the testing was completed, the location and type of each drinking water outlet tested, the
99 complete results of each test, and any immediate measures being taken in response to tests
100 showing drinking water outlet(s) with elevated lead levels.

101 (ii) maintain copies of the information submitted pursuant to paragraph (i) of this
102 subsection in a suitable location for inspection by the public, and on the Internet website of the
103 school or early childhood program.

104 (iii) notify parent, teacher, and employee organizations of the availability of the
105 information submitted pursuant to paragraph (i) of this subsection.

106 (iv) designate a person to serve as the contact person for communications with the
107 department and the public regarding the lead testing and remediation activities.

108 (v) If testing conducted pursuant to section (d) reveals an elevated lead level at a drinking
109 water outlet, the school or early childhood program shall, within one business day, notify

110 teachers, other school personnel, and parents directly, through written notice, electronic mail, or
111 other means approved by the department. Such notification shall include, but need not be limited
112 to:

113 (A) a summary of the results of the testing conducted, and information on the availability
114 of the complete test results for public inspection at a suitable location and on the Internet website
115 of the school or early childhood program

116 (B) a description of any remedial measures being taken pursuant to sections (c) and (d) of
117 this Act

118 (C) general information on the public health effects and risks posed by lead in drinking
119 water, and information on the availability of additional resources concerning lead in drinking
120 water, as

121 outlined in the technical guidance.

122 (D) the name and contact information of the person designated pursuant to subsection
123 (e)(1)(iv) of this section to communicate with the public.

124 (vi) At each drinking water outlet, the school or early childhood program shall post an
125 electronic QR code with access to information on testing and remediation for that drinking water
126 outlet. Said information shall include the maintenance schedule and log for installed NSF filters,
127 unless the drinking water outlet is equipped with a clearly visible indicator for filter replacement.

128 (f) Regulations

129 (1) Notwithstanding the provisions of the “Administrative Procedure Act” of Chapter
130 30A of the Massachusetts General Laws, to the contrary, the Department of Environmental
131 Protection, in

132 consultation with the Department of Education and the Department of Health, may adopt,
133 after notice, interim rules and regulations necessary to implement the provisions of this Act. The
134 rules and regulations shall be effective as regulations immediately upon filing with the Office of
135 Administrative Law and shall be effective for a period not to exceed 18 months, and may,
136 thereafter, be amended, adopted, or readopted by the department in accordance with the
137 provisions of the “Administrative Procedure Act.”

138 (2) The Department shall issue technical guidance that is at least as protective of the
139 public health as the technical guidance for reducing lead in drinking water at schools issued by
140 the United States Environmental Protection Agency. Provisions of the technical guidance related
141 to testing to determine the presence and levels of lead in water shall be designed to maximize
142 detection of lead in water, and therefore prohibit sampling or testing methods that tend to mask
143 lead contamination, including pre-stagnation flushing and removal of aerators prior to sampling.
144 The department shall provide the technical guidance, a list of laboratories certified to conduct
145 lead testing, and any other information the department deems appropriate, to each school district,
146 charter school, and nonpublic school and early childhood program, and post on the same on the
147 department’s website, within 45 days of the effective date of this bill.

148 (g) Hardship Waiver

149 (1) If a school district or early childhood program is unable to comply with some or all of
150 the requirements of this act, the superintendent of the school district, the administration of a

151 private day or residential school, or the board of trustees of a charter school, may request a
152 hardship waiver of some or all of the act's requirements from the commissioner. No less than 30
153 days prior to requesting a hardship waiver, a public school district or early childhood program
154 shall notify parents and hold at least one public meeting to present the proposed waiver in detail,
155 disclose health risks of lead in water, and allow meaningful public input on the decision to
156 request a waiver.

157 The Department, in consultation with the Department of Public Health and the
158 Department of Education, shall make available to public schools and childhood education
159 programs a list of funding sources that a public school or childhood education program may
160 access to facilitate compliance with requirements of this act.

161 (2) Nothing in this act shall be construed to place additional requirements on a school or
162 early childhood program that, prior to the effective date of this act, has already taken measures
163 which, in the judgment of the department, permanently eliminate the risk of elevated lead levels
164 in its water at all drinking water outlets.