

SENATE No. 2503

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

SENATE, January 31, 2020.

The committee on Environment, Natural Resources and Agriculture, to whom was referred the petitions (accompanied by bill, Senate, No. 500) of Joan B. Lovely, Lori A. Ehrlich, Jason M. Lewis, Kay Khan and other members of the General Court for legislation to ensure safe drinking water at schools and early childhood programs; and (accompanied by bill, House, No. 774) of Lori A. Ehrlich, Joan B. Lovely and others relative to safe drinking water in schools, report the accompanying Bill (Senate, No. 2503).

For the committee,
Anne M. Gobi

SENATE No. 2503

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act ensuring safe drinking water in schools..

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

1 SECTION 1. Chapter 111 is hereby amended by inserting after section 160G the
2 following section:-

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

4 (a) As used in this section, the following words shall have the following meanings unless
5 the context clearly requires otherwise:-

6 “Commissioner,” the commissioner of the department of environmental protection.

7 “Department,” the department of environmental protection.

8 “Drinking water outlet,” any drinking fountain, faucet, tap or other end-point for delivery
9 of water used for drinking or food preparation, including, but not limited to, ice-making and hot-
10 drink machines.

11 “Child care center,” as defined in section 1A of chapter 15D.

12 “Elevated lead level,” a health-based standard for schools and child care centers in which
13 lead concentration in drinking water exceeds one part per billion.

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

17 “Local Board of Health,” any Board of Health authorized under sections 26-33, inclusive,
18 of chapter 111.

19 “Non-drinking water outlet,” any faucet, tap, or other end-point for delivery of water used
20 for any purpose other than drinking or food preparation.

21 “Certified point-of-use filter,” any point-of-use filter certified by an agency accredited by
22 the Occupational Safety and Health Administration (OSHA).

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

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

27 “Certified test results,” outcomes from samplings conducted by a laboratory certified for
28 this purpose by the commissioner in accordance with the methods specified in the department’s
29 technical guidance. Each test for lead under this section shall be a “certified test result.”

30 (b)(1) Each school and child care center shall annually test each drinking water outlet for
31 elevated lead levels. Samples shall be taken according to methods specified in the department’s
32 technical guidance. A school or child care center that has not tested its drinking water outlets for

33 lead under the Commonwealth’s “Assistance Program for Lead in School Drinking Water” shall
34 complete lead testing at each drinking water outlet according to the department’s technical
35 guidance no later than six months after the effective date of this section.

36 (2) On a case-by-case basis, the commissioner may determine that more or less frequent
37 testing is necessary or sufficient to ensure public health and safety. This may include, but shall
38 not be limited to, timely testing after replacement of lead-bearing parts and installation of
39 certified filters. Nothing in this section shall prevent a school district, charter school, or
40 nonpublic school from conducting more frequent testing.

41 (c) Each school and child care center with one or more tests showing elevated lead levels
42 in water from any drinking water outlet, including but not limited to tests conducted under the
43 Commonwealth’s “Assistance Program for Lead in School Drinking Water” or under section (d)
44 of this act, shall remediate the elevated lead levels based on the following section.

45 (1) Each school and child care center shall immediately shut off drinking water outlets
46 showing elevated lead levels. A shut-off drinking water outlet may be turned on once it has
47 produced at least two sets of certified test results showing no elevated lead levels.

48 (2) Each school and child care center shall install and maintain certified point-of-use
49 filters at all drinking water outlets, with the exception of water fountains, within eighteen months
50 of the effective date of this section. A school or child care center may, consistent with other
51 obligations in law, remove select drinking water outlets from operation in lieu of installing filters
52 on those drinking water outlets, so long as every child has reasonable access to free, lead-free,
53 and safe drinking water.

54 (3) Each school and child care center shall permanently shut-off existing water fountains
55 and provide in their place filtered, bottle-filling stations, equipped with water fountain outputs as
56 appropriate, at the rate of one per 75 students.

57 (4) Each school and child care center shall set up a filter maintenance and oversight
58 schedule for all filters installed pursuant to this section and according to the department's
59 technical guidance.

60 (5) Should any drinking water outlet fail to produce at least two sets of certified test
61 results showing no elevated lead levels within six months of the installation of filters, the school
62 or child care center where the outlet is located shall pursue other methods of remediation in
63 addition to certified point-of-use filters until the water from said drinking water outlet has
64 produced two sets of certified test results showing no elevated lead levels.

65 (6) The school or child care center may choose from a list of methods including, but not
66 limited to, replacing lead-bearing fixtures and plumbing with lead soldering or replacing the
67 drinking water outlet with a lead-free fixture, and other methods found in the department's
68 technical guidance.

69 (7) Aside from the requirements outlined in this section, nothing in this section shall
70 prevent a school or child care center from pursuing additional methods of remediation, especially
71 in response to public input, consistent with the department's technical guidance.

72 (8) A school or child care center may seek the assistance of local board of health, public
73 water system, or the department to comply with the provisions of this section.

74 (d)(1) Each school and child care center shall submit to the department of environmental
75 protection, the executive office of education, and the department of public health, as soon as
76 practicable, the following information:

77 (i) a plan of action for preventing lead contamination of water, including, but not limited
78 to, actions already taken pursuant to this section;

79 (ii) a progress report on the implementation status of its plan of action; and

80 (iii) information on tests conducted pursuant to subsection (b), including, but not limited
81 to, the date the testing was completed, the location and type of each drinking water outlet tested,
82 the complete results of each test, and any immediate measures being taken in response to tests
83 showing a drinking water outlet or outlets with elevated lead levels.

84 (2) Each school and child care center shall maintain copies of the information submitted
85 under this subsection in a suitable location for inspection by the public; post this information on
86 the website of the school or child care center; and shall notify parents, teachers, and employee
87 organizations of the availability of said information.

88 (e) Each school and child care center shall designate an employee to serve as the contact
89 person for communications with the department and the public regarding the lead testing and
90 remediation activities and notify, within one business day, teachers, other school personnel, and
91 parents directly, through written notice, electronic mail, or other means approved by the
92 department, if testing conducted pursuant to section (c) reveals an elevated lead level at a
93 drinking water outlet. Such notification shall include, but need not be limited to:

94 (1) a summary of the results of the testing conducted, and information on the availability
95 of the complete test results for public inspection at a suitable location and on the website of the
96 school or child care center;

97 (2) a description of any remedial measures being taken pursuant to subsection (c) of this
98 section;

99 (3) information on the public health effects and risks posed by lead in drinking water and
100 information on the availability of additional resources concerning lead in drinking water, as
101 outlined in the technical guidance; and

102 (4) the name and contact information of the person designated pursuant to subsection (e)
103 of this section to communicate with the public.

104 (f) The department shall develop and issue guidance to every school and child care center
105 about how to display information about lead at each drinking water outlet, including, but not
106 limited to, posted warnings of the presence of lead at each drinking water outlet where one or
107 more lead test results has shown elevated lead levels; and how to display information regarding
108 maintenance, testing, and filters at each drinking water outlet.

109 (g) Each school and child care center shall publish at each drinking water outlet the
110 following information:

111 (1) the maintenance schedule and log for installed certified point-of-use filters at that
112 drinking water outlet;

113 (2) the most recent lead test conducted at that drinking water outlet;

114 (3) the date of the next scheduled test at that drinking water outlet; and

115 (4) whether the drinking water outlet is closed due to the presence of elevated lead levels.

116 (h) Each school and child care center shall post every non-drinking water outlet as “not
117 for drinking.”

118 (i)(1) Public water systems shall fully replace lead service lines at every school district,
119 charter school, nonpublic school, and child care center they serve within three years of the
120 effective date of this act. Said replacement shall be performed in coordination with the relevant
121 municipality and school or early childhood program; and shall take place in conformity with the
122 department’s technical guidance.

123 (2) Each public water system shall provide every school district, charter school,
124 nonpublic school, and child care center it serves with the information in its possession relating to
125 the location of lead service lines within 90 days of the effective date of this section. Each school
126 district, charter school, nonpublic school and child care center shall determine which of its
127 buildings receive drinking water through lead service lines and report the same to the department
128 within 120 days of the effective date of this section. Within 150 days of the effective date of this
129 section, the department shall issue an enforceable order to each public water system to replace all
130 lead services lines at schools and child care centers served by each water system pursuant to
131 paragraph (1).

132 (3) The department shall notify every water authority of its obligations pursuant to
133 subsection (i) of this section within 30 days of the effective date of this section.

134 (4) Lead service lines shall be properly disposed of or recycled.

135 (j)(1) The department, in consultation with the department of education and the
136 department of health, may adopt, after notice, interim rules and regulations necessary to
137 implement the provisions of this section. The rules and regulations shall be effective immediately
138 upon filing with the office of administrative law and shall be effective for no more than 18
139 months, and may, thereafter, be amended, adopted, or readopted by the department.

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

150 (k)(1) If a school or child care center is unable to comply with some or all of the
151 requirements of this section, the superintendent of the school district, the administration of a
152 private day or residential school, or the board of trustees of a charter school may request a
153 hardship waiver of some or all of the section's requirements from the commissioner. No less than
154 30 days prior to requesting a hardship waiver, a public school district or child care center shall
155 notify parents of their intention to request a waiver and hold at least one public meeting to
156 present the proposed waiver in detail, disclose health risks of lead in water, and allow
157 meaningful public input on the decision to request a waiver.

158 (2) The department, in consultation with the department of public health and the
159 department of education, shall make available to public schools and child care centers a list of
160 funding sources that a public school or child care center may access to facilitate compliance with
161 requirements of this act.

162 (1) Nothing in this section shall be construed to place additional requirements on a school
163 or child care center that, prior to the effective date of this section, has already taken measures,
164 which, in the judgment of the department, permanently eliminates the risk of elevated lead levels
165 in its water at all drinking water outlets.

166 SECTION 2. Chapter 29, as appearing in the 2016 Official Edition of the General Laws,
167 is hereby amended by inserting after section 2VVVV the following section:-

168 Section 2WWW. (a) There shall be established and set up on the books of the
169 commonwealth a separate fund to be known as the Lead in School Drinking Water Trust Fund.
170 The fund shall be administered by the commissioner of elementary and secondary education in
171 consultation with the department. The fund shall be credited with: (i) revenue from
172 appropriations or other money authorized by the general court and specifically designated to be
173 credited to the fund; (ii) interest earned on such revenues; and (iii) funds from public and private
174 sources such as gifts, grants and donations to further school districts to remove lead from school
175 drinking water. Amounts credited to the fund shall not be subject to further appropriation and
176 any money remaining in the fund at the end of the fiscal year shall not revert to the General
177 Fund.

178 (b) Amounts credited to the fund may be expended, without further appropriation, by the
179 commissioner to assist with the implementation of section 160H of chapter 111. The

180 commissioner shall promulgate rules and regulations related to disbursement and expenditures of
181 funds by school districts to assist in meeting the requirements of section 160H of chapter 111.

182 (c) Amounts received from private sources shall be approved by the commissioner of
183 elementary and secondary education and subject to review before being deposited in the fund to
184 ensure that pledged funds are not accompanied by conditions, explicit or implicit, on the
185 implementing of removing lead from school drinking water. The review shall be made publicly
186 available.

187 (d) Annually, not later than October 1, the commissioner of elementary and secondary
188 education shall report to the clerks of the house of representatives and senate, the joint
189 committee on education and the house and senate committees on ways and means on the fund's
190 activity. The report shall include, but not be limited to: (i) the source and amount of funds
191 received; (ii) the amounts distributed and the purpose of expenditures from the fund, including,
192 but not limited to, funds expended to assist school districts and in meeting the requirements in
193 section 160H of chapter 111; (iii) any grants provided to public schools; and (iv) anticipated
194 revenue and expenditure projections for the next year.