

SENATE No. 580

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 in schools.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Joan B. Lovely</i>	<i>Second Essex</i>	
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>2/24/2021</i>
<i>Diana DiZoglio</i>	<i>First Essex</i>	<i>2/25/2021</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>2/26/2021</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>3/3/2021</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>3/4/2021</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>3/5/2021</i>
<i>Adam J. Scanlon</i>	<i>14th Bristol</i>	<i>3/5/2021</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>3/15/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/16/2021</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>3/24/2021</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	<i>5/3/2021</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>7/26/2021</i>
<i>Danillo A. Sena</i>	<i>37th Middlesex</i>	<i>7/26/2021</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>7/29/2021</i>

SENATE No. 580

By Ms. Lovely, a petition (accompanied by bill, Senate, No. 580) of Joan B. Lovely, Angelo J. Puppolo, Jr., Diana DiZoglio, Kay Khan and other members of the General Court for legislation to ensure safe drinking water in schools. Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 2503 OF 2019-2020.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

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 of the General Laws is hereby amended by inserting after
2 section 160G the 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 “Certified point-of-use filter”, a filter installed at the point where water is dispensed from
7 an outlet and is (i) certified as compliant with NSF International/American National Standards
8 Institute Standard 53-2017 and incorporates an integral performance indication device as

9 specified in section 6.1 of NSF/ANSI standard 53-2017; or (ii) meets more stringent
10 requirements adopted thereafter.

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

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

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

16 “Department”, the department of environmental protection.

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

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

22 “Lead service line”, a pipe and its fittings that are not “lead free” as defined under section
23 1417 of the federal Safe Drinking Water Act (42 U.S.C. 300g–6) and that connect a drinking
24 water main to a building inlet.

25 “Local board of health”, any board of health authorized under sections 26-33, inclusive,
26 of chapter 111.

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

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

31 “Technical guidance”, the specifications for detecting and remediating lead in drinking
32 water at schools issued by the department pursuant to subsection (f) of this section.

33 (b)(1) Each school and child care center shall annually test each drinking water outlet for
34 elevated lead levels. Samples shall be taken according to methods specified in the department’s
35 technical guidance. A school or child care center that has not tested its drinking water outlets for
36 lead under the commonwealth’s “Assistance Program for Lead in School Drinking Water” shall
37 complete lead testing at each drinking water outlet according to the department’s technical
38 guidance no later than six months after the effective date of this section.

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

44 (c)(1) Each school and child care center with one or more tests showing elevated lead
45 levels in water from any drinking water outlet, including but not limited to tests conducted under
46 the commonwealth’s “Assistance Program for Lead in School Drinking Water” or under
47 subsection (d) shall remediate the elevated lead levels by implementing the following measures:

48 (i) Each school and child care center shall immediately shut off drinking water outlets
49 showing elevated lead levels. A drinking water outlet that has been shut-off may be turned on
50 once it has produced at least two sets of certified test results showing no elevated lead levels;

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

57 (iii) Each school and child care center shall permanently shut-off existing water fountains
58 and provide in their place filtered, bottle-filling stations, equipped with water fountain outputs as
59 appropriate, at the rate of one per 75 students;

60 (iv) Each school and child care center shall set up a filter maintenance and oversight
61 schedule for all certified point-of-use filters installed pursuant to this section and according to the
62 department's technical guidance;

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

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

72 (2) Notwithstanding the requirements outlined in this subsection, nothing in this
73 subsection shall prevent a school or child care center from pursuing additional methods of
74 remediation, especially in response to public input, consistent with the department's technical
75 guidance.

76 (3) A school or child care center may seek the assistance of local board of health, public
77 water system, or the department to comply with the provisions of this subsection.

78 (d)(1) Each school and child care center shall submit to the department of environmental
79 protection and the department of public health, as soon as practicable, the following information:

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

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

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

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

91 (e) Each school and child care center shall designate an employee to serve as the contact
92 person for communications with the department and the public regarding the lead testing and

93 remediation activities and notify, within one business day, teachers, other school personnel, and
94 parents directly, through written notice, electronic mail or other means approved by the
95 department, if testing conducted pursuant to subsection (c) reveals an elevated lead level at a
96 drinking water outlet. Such notification shall include, but need not be limited to:

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

100 (2) a description of any remedial measures being taken pursuant to subsection (c);

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

104 (4) the name and contact information of the person designated pursuant to subsection (e)
105 to communicate with the public.

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

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

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

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

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

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

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

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

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

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

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

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

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

152 (k)(1) If a school or child care center is unable to comply with some or all of the
153 requirements of this section, the superintendent of the school district, the administration of a
154 private day or residential school or the board of trustees of a charter school may request a
155 hardship waiver of some or all of the section's requirements from the commissioner. No less than

156 30 days prior to requesting a hardship waiver, a public school district or child care center shall
157 notify parents of their intention to request a waiver and hold at least one public meeting to
158 present the proposed waiver in detail, disclose health risks of lead in water and allow meaningful
159 public input on the decision to request a waiver.

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

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

167 SECTION 2. Chapter 29 of the General Laws is hereby amended by inserting after
168 section 2CCCCC the following section:-

169 Section 2DDDDD. (a) There shall be established and set up on the books of the
170 commonwealth a separate fund to be known as the Get the Lead Out of School Drinking Water
171 Trust Fund. The fund shall be administered by the commissioner of the department of
172 environmental protection. The fund shall be credited with: (i) revenue from appropriations or
173 other money authorized by the general court and specifically designated to be credited to the
174 fund; (ii) interest earned on such revenues; and (iii) funds from public and private sources such
175 as gifts, grants and donations to help school districts remove lead from school drinking water.
176 Amounts credited to the fund shall not be subject to further appropriation, and any money
177 remaining in the fund at the end of the fiscal year shall not revert to the General 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 the
183 department of environmental protection and subject to review before being deposited in the fund
184 to 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 the department of
188 environmental protection shall report to the clerks of the house of representatives and senate, the
189 joint committee on public health and the house and senate committees on ways and means on the
190 fund's 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 child care centers in meeting the
193 requirements in section 160H of chapter 111; (iii) any grants provided to school districts and
194 child care centers; and (iv) anticipated revenue and expenditure projections for the next year.