

SENATE No. 526

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>Patrick M. O'Connor</i>	<i>First Plymouth and Norfolk</i>	<i>2/8/2023</i>
<i>Anne M. Gobi</i>	<i>Worcester and Hampshire</i>	<i>2/8/2023</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/8/2023</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/21/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/21/2023</i>
<i>Lydia Edwards</i>	<i>Third Suffolk</i>	<i>2/21/2023</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/21/2023</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>2/21/2023</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/21/2023</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>2/21/2023</i>
<i>Adam Gomez</i>	<i>Hampden</i>	<i>2/22/2023</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>3/23/2023</i>
<i>Christopher M. Markey</i>	<i>9th Bristol</i>	<i>3/23/2023</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Plymouth and Bristol</i>	<i>3/23/2023</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>4/3/2023</i>
<i>Susan L. Moran</i>	<i>Plymouth and Barnstable</i>	<i>4/7/2023</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>5/22/2023</i>

SENATE No. 526

By Ms. Lovely, a petition (accompanied by bill, Senate, No. 526) of Joan B. Lovely, Patrick M. O'Connor, Anne M. Gobi, Jack Patrick Lewis and other members of the General Court for legislation to ensure safe drinking water in schools. Environment and Natural Resources.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 580 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

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 to the latest version of NSF/ANSI 53 for lead reduction and
8 NSF/ANSI 42 for particulate reduction (Class I), and the certification body shall be accredited by

9 the American National Standards Institute National Accreditation Board (ANAB) ; or (ii) meets
10 more stringent 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 “Local board of health”, any board of health authorized under sections 26-33, inclusive,
23 of chapter 111.

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

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

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

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 nonpublic
40 school from conducting more frequent testing.

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

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

48 (ii) 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
52 certified point-of-use filters on those drinking water outlets, so long as every child has
53 reasonable access to free, lead-free and safe drinking water;

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

60 (v) 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 certified point-of-
62 use filters, the school or child care center where the outlet is located shall pursue other methods
63 of remediation in addition to certified point-of-use filters until the water from said drinking water
64 outlet has produced two sets of certified test results showing no elevated lead levels; and

65 (vi) 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 (2) Notwithstanding the requirements outlined in this subsection, nothing in this
70 subsection shall prevent a school or child care center from pursuing additional methods of

71 remediation, especially in response to public input, consistent with the department's technical
72 guidance.

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

75 (d)(1) Each school and child care center shall submit to the department of environmental
76 protection and the department of public health, as soon as 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 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 subsection (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);

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

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

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

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

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

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

113 (3) the date of the next scheduled test at that drinking water outlet; and
114 (4) whether the drinking water outlet is closed due to the presence of elevated lead levels.

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

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

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

132 (j)(1) If a school or child care center is unable to comply with some or all of the
133 requirements of this section, the superintendent of the school district, the administration of a
134 private day or residential school or the board of trustees of a charter school may request a

135 hardship waiver of some or all of the section’s requirements from the commissioner. No less than
136 30 days prior to requesting a hardship waiver, a public school district or child care center shall
137 notify parents of their intention to request a waiver and hold at least one public meeting to
138 present the proposed waiver in detail, disclose health risks of lead in water and allow meaningful
139 public input on the decision to request a waiver.

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

144 SECTION 2. Section 2L of Chapter 29 of the General Laws, as appearing in the 2020
145 Official Edition, is hereby amended by inserting after the word “chapter”, in line 8, the
146 following:-

147 “and for the purposes described in section 160H of chapter 111”.