

Model State Legislation: “Get the Lead Out of School Drinking Water Act”

SECTION 1. SHORT TITLE. This act may be cited as the “Get the Lead Out of School Drinking Water Act.”

SECTION 2. DEFINITIONS. In this act:

- (a) “Adequate supply of water” means provision of and access to safe, potable water provided in sufficient volume for cooking purposes and to maintain normal hydration for children and staff.
- (b) “Building” means any structure, facility, addition, or wing of a school or child care facility that may be occupied by children or staff.
- (c) “Certified point-of-use filter” means a filter (i) installed at the point where water is dispensed from an outlet, is (ii) certified to the latest version of NSF/ANSI 53 for lead reduction and NSF/ANSI 42 for particulate reduction (Class I), and (iii) the certification body shall be accredited by the American National Standards Institute National Accreditation Board (ANAB).
- (d) “Child care facility” means a licensed or approved child care center, at-risk afterschool care center, day care home, emergency shelter, or outside-school-hours care center under the auspices of a sponsoring organization, as further defined in 7 C.F.R. section 226.2.
- (e) “Drinking water source” means a potable water outlet or fixture currently or potentially used for drinking or cooking purposes, including a drinking water fountain, faucet, outdoor spigot, ice machine, hot drinks machine, and pour-through device.
- (f) “Lead service line” means a service line made of lead, or any portion made of lead, including any lead pigtail, lead gooseneck, or other lead fitting that is connected to the service line, from the discharge of the corporation fitting to the building plumbing at the first shut-off valve inside the building, or 18 inches inside the building, whichever is shorter. A lead service line may be owned by the water system, owned by the property owner, or both. For the purposes of this subpart, a galvanized

service line is considered a lead service line if it ever was or is currently downstream of any lead service line or service line of unknown material.

(g) “Public water system” shall have the same meaning as that term is defined under the Safe Drinking Water Act, 42 U.S.C. section 300f(4).

(h) “Remediation steps” means, at a minimum,¹ actions to:

- (1) install certified point-of-use filters for drinking water outlets;
- (2) install water filtration stations, with certified point-of-use filters and automatic shutoff mechanisms when the filters need to be replaced;
- (3) preclude people from consuming or cooking with water from a drinking water source containing over one part per billion of lead; and
- (4) ensure that an adequate alternative supply of free, safe drinking and cooking water is made available at no cost to students or staff, such as the provision of bottled water , until adequate² safe drinking water sources are available.

(i) “School” means any public school, charter school, or nonpublic school enrolling children ages 0-3 and 3-5, and in kindergarten through twelfth grade (K-12) educational programs.

SECTION 3. ENSURING LEAD-SAFE WATER.

(a) **School and child care facility responsibilities.** Each school and child care facility shall:

- (1) provide drinking water with a lead concentration level below the American Academy of Pediatrics’ recommended maximum level for schools of one part per billion in sufficient amounts to meet the drinking water needs of all students and staff;

¹ Legislatures may also be inclined to include the replacement of plumbing pipes, fixtures, fittings, etc., as remediation. However, there are currently few or none truly lead-free plumbing products on the market; this type of remediation can be very costly and still contain lead. In contrast, an effective remediation technique is to install point-of-use filters or hydration stations that provide filtered drinking water, which this model bill includes. Filters are effective when they are certified to remove lead and are properly installed and maintained.

² Some states require a ratio of drinking water outlets per a certain number of students, e.g. one water fountain per each 100 students. A cross reference could be added here for a state that has such a requirement.

- (2) within sixty days of the effective date of this act,
 - (A) conduct an inventory of all drinking and non-drinking water sources in each of its buildings;
 - (B) mark each water source on a floor plan; and
 - (C) assign a unique code to each water source;
- (3) within sixty days of the effective date of this act, remove any drinking water coolers that the United States Environmental Protection Agency has determined are not lead-free pursuant to the Lead Contamination Control Act (Pub. L. No. 100-572, 102 Stat. 2884) (EPA Fact Sheet: Lead in Drinking Water Coolers, EPA 810/F-90-021 (Feb 1990));
- (4) within sixty days of the effective date of this act, for each water outlet that is not to be used for cooking or drinking water purposes, post a conspicuous warning sign at each water outlet stating that it is not to be used for cooking or drinking water purposes;
- (5) within ninety days of the effective date of this act, install a certified point-of-use filter that reduces lead in drinking water on each drinking water source and thereafter maintain the filters to ensure that lead concentration levels are below one part per billion, and in any event, replace the filters no less frequently than provided for in the manufacturer's instructions.
- (6) These filters and any replacement filters shall incorporate an integral performance indication device as specified in section 6.1 of NSF/ANSI standard 53-2017, or any more stringent requirements adopted thereafter. A sufficient amount of filtered water shall be available to meet the drinking water needs of all students and staff;
- (7) within sixty days after filters are installed as required by section 3(a)(5) of this act, and on an annual basis thereafter, conduct testing for lead by first-draw and follow-up flush samples of all drinking water sources as recommended by the United States Environmental Protection Agency in its Training, Testing, and Taking Action program (September 2018). The

testing shall be conducted, and the results analyzed for both types of tests, by an entity or entities approved by the Commissioner of Health; and

(8) at the start of each school year,

(A) provide a schedule for annual testing of drinking water sources at each school or child care facility for distribution to employees and parents and or guardians of children at each school or child care facility; and

(B) provide general information on the health effects of lead contamination and additional informational resources for employees and parents and guardians of children at each school and child care facility.

(b) **More frequent testing permitted.** Nothing in subsection (a) of this section shall prevent a school or child care facility from conducting more frequent testing than required by this act.

(c) **Publication of results.** Within two weeks after receiving test results, each school and child care facility shall:

(1) make all testing results and any lead remediation plans available on the school or child care facility's website and offer parents an opportunity for a public meeting to discuss the results;

(2) if the school or child care facility has no website or if families in those schools or child care facilities have no access to the internet, the school or child care facility shall notify employees and parents and guardians of children at the school or child care facility that these documents are available in hard copy, and offer parents an opportunity for a public meeting to discuss the results; and

(3) record the test results on a common form developed by the state department of health and transmit electronically a copy of the results of all testing to the state department of health and either the state department of education or the [state agency that regulates child care

facilities], and to the county department of health in the local jurisdiction of the school building or day care facility. The commissioner of health shall post the data in a common electronic format on the department's website within thirty days of the electronic filing and shall identify any school or child care facility for which a test report is missing or incomplete.

(d) Lead contamination detected. If a test conducted pursuant to section (3)(a)(6) of this act shows a lead concentration of one part per billion or greater, the affected school or child care facility shall:

(1) as soon as possible, but no later than one business day after receiving the test result, shut off the drinking water source; label it with a warning stating that it contains lead and should not be used for human consumption; and close the outlet to use and keep the drinking water source shut off until it has been remediated and a subsequent test shows that the lead concentration level is below one part per billion;

(2) within one business day of receiving the test result, provide school or child care facility occupants with an adequate supply of safe water for drinking and cooking until a subsequent test shows that the lead concentration level is below one part per billion;

(3) within thirty days of receiving the test result, determine remediation steps that should be implemented to address the elevated lead concentration level;

(4) within ninety days of receiving the test result, develop a written plan for remediation, which is posted to the school's or child care facility's website or otherwise made available if there is no website;

(5) provide, within five business days, to school or child care facility employees and parents and guardians of children at the affected school or child care facility with a written notification of:

- (A) a summary of the test results and information on the availability of the complete test results;
 - (B) a description of any remediation steps taken; and
 - (C) general information on the health effects and risks posed by lead in drinking water and information on the availability of additional resources concerning lead in drinking water, including how and where individuals may seek blood-lead level testing if they are concerned.
- (e) **Removal of lead from service line connections.**
- (1) Public water systems shall fully replace lead service lines at every school and child care facility they serve, prioritizing schools and facilities located in lower income or disadvantaged communities. Within sixty days of the effective date of this act, the [state agency responsible for licensing child care facilities] shall provide to the public water systems a registry of licensed child care centers within the water systems' geographic areas. Within six months of receipt of this registry, each public water system shall inventory lead service lines for all schools and child care facilities, confirm in the field whether there is a lead service line at each site, and fully replace those confirmed lead service lines no later than three years after the effective date of this act.
 - (2) Within three years of the effective date of this act, each public water system shall certify to the commissioner of health that all customer service meters serving schools and licensed child care facilities within its service area are models that have been listed as compliant with NSF International/American National Standards Institute ("ANSI") Standard 372-2016, "Drinking Water System Components – Lead Content" and NSF/ANSI Standard 61-2017, "Drinking Water System Components – Health Effects," published by NSF International.

(3) To the extent permitted by federal law, a public water system may seek funds for replacement of lead service lines, replacement of water meters containing lead, and other costs of implementing this subsection under the State Revolving Fund program of the Safe Drinking Water Act, 42 U.S.C. section 300j-12, or any other applicable federal law.

(f) Funds for testing, filtering, remediation, and compliance costs incurred pursuant to this act by drinking water systems, schools, and child care facilities.

(1) In addition to the apportionments payable to a school district pursuant to [school funding law], the commissioner of education is hereby authorized to apportion to any school or publicly-funded child care facility additional building aid for the filtration, testing, and other remediation of drinking water systems required pursuant to section 3(a) of this act.

(2) To the extent permitted by federal law, a school district or child care facility may seek reimbursement or other funds for compliance incurred under this act pursuant to any applicable federal law including America’s Water Infrastructure Act of 2018 (P.L. 115-270) and the Water Infrastructure Finance and Innovation Act, 33 U.S.C. section 3901 et seq.

(3) To the extent permitted by federal law, a school district may also pursue reimbursement or other funds for compliance incurred under this act from a tax-exempt hospital as a community benefit or community building activity pursuant to the Affordable Care Act, P.L. 111-148, 124 Stat. 119 (2010) (adding section 501(r) to the Internal Revenue Code), and as allowable expenses in the national school breakfast program, 7 C.F.R. section 220.8(a)(1), and national school lunch program, 7 C.F.R. section 210.10(a)(1).

(4) To the extent permitted by federal law, a child care facility may seek reimbursement or other funds for compliance incurred under this act as allowable expenses in the Child and Adult Care Food Program, 7 C.F.R. section 226.25(i).

(5) Such funds as are necessary to implement this act are hereby authorized.³

(g) **Biennial report.** The commissioner of health, in conjunction with the commissioner of education and the [commissioner of the agency that is responsible for licensing child care facilities], shall publish a report biennially based on the findings from the tap water testing conducted according to the provisions of this act. This report shall be sent to the Governor, the [President pro tempore of the Senate], and the [Speaker of the Assembly], and shall be made available on the websites of the department of health, department of education, and the [department that is responsible for licensing child care facilities].

(h) **Regulations, Guidance, and Training.** The commissioner of health [or the state agency that has assumed primacy of a state’s drinking water program pursuant to section 1413 of the Safe Drinking Water Act, 42 U.S.C. §300g-2], in consultation with the commissioner of education, shall, notwithstanding any other provision of law:

(1) promulgate such regulations as deemed necessary to carry out the provisions of this act, including recordkeeping requirements;

(2) provide, within 180 days of the effective date of this act, guidance to schools and child care facilities regarding the maintenance of filters and filtration systems, and the development and implementation of flushing plans. This guidance shall include recommendations for flushing after stagnant times, including the morning of each school day and after weekends, school holidays, and summer break. Flushing plans shall include details for flushing the incoming water line and the filter. The guidance shall take into consideration that maintenance practices are likely to vary depending upon factors specific to each water source, treatment system, distribution line, and premise plumbing, including but not limited to age of the

³ Funding is key to the success of this legislation. While this model bill identifies federal sources of funding, this legislation must be accompanied by sufficient state funding.

distribution system and building plumbing, pipe materials, system water quality characteristics, water age, and distribution system hydraulic features. The guidance may include suggestions for beneficial use of flushed water; and

(3) carry out, within 210 days of the effective date of this act, a program to provide annual training for custodial staff or designated contractors on the maintenance of filters and the implementation of flushing plans, emphasizing that proper maintenance is critical to improved drinking water quality and safety.⁴

(i) **Plan for Maintenance of Filters and for Flushing.** Within 270 days of the effective date of this act, schools are required to develop and implement a plan for maintenance of filters and establishment of flushing processes, drawing upon the guidance and training issued by the state department of health [or the state agency that has assumed primacy of a state’s drinking water program pursuant to section 1413 of the Safe Drinking Water Act, 42 U.S.C. §300g-2].

(j) **Certification of Experts to Develop Remediation Plans.** The commissioner of health [or the state agency that has assumed primacy of a state’s drinking water program pursuant to section 1413 of the Safe Drinking Water Act, 42 U.S.C. §300g-2] may also certify, or authorize schools to certify, individuals to develop remediation plans. Certified individuals may be licensed architects or engineers.

SECTION 4. COMPLIANCE AND ENFORCEMENT.

(a) For public schools, the [state agency that has assumed primacy of a state’s drinking water program pursuant to section 1413 of the Safe Drinking Water Act, 42 U.S.C. §300g-2] shall ensure

⁴ Training is important to the proper functioning and replacement of certified point-of-use filters. Some states have green procurement policies. If these filters are placed on the green procurement list, the Legislature may wish to consider requiring manufacturers of these filters to provide the training.

compliance with this act. The local education agency, as defined in 34 C.F.R. section 302.23(a), shall be responsible for ensuring compliance within each school within its jurisdiction.

(b) For all other schools and child care centers, the head administrators shall be responsible for ensuring compliance with this act for schools and childcare centers within their jurisdiction.

(c) The state or local health department and [the state agency that has assumed primacy of a state's drinking water program pursuant to section 1413 of the Safe Drinking Water Act, 42 U.S.C. §300g-2] shall have the authority to enter a school building or other property covered by this act to determine compliance with this act and take enforcement action authorized by law, including issuing administrative orders and assessment of penalties [in accordance with *insert cross-reference to state Safe Drinking Water Act and/or other appropriate state law*] for noncompliance.

(d) The provisions of this act shall be considered provisions of the [State Safe Drinking Water Act] for purposes of ensuring compliance and enforcement.

SECTION 5. EFFECTIVE DATE. This act shall take effect ninety days from enactment; provided, however, effective immediately, the commissioner of health is authorized to promulgate rules and regulations necessary to implement this act on its effective date.