

SENATE No. 500**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>Lori A. Ehrlich</i>	<i>8th Essex</i>	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/24/2019</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/24/2019</i>
<i>Donald H. Wong</i>	<i>9th Essex</i>	<i>1/24/2019</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>1/25/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/28/2019</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/28/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/29/2019</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>1/29/2019</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>1/29/2019</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>1/30/2019</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>1/30/2019</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>1/30/2019</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>1/30/2019</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>	<i>1/30/2019</i>
<i>Diana DiZoglio</i>	<i>First Essex</i>	<i>1/30/2019</i>

<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>1/31/2019</i>
<i>Edward J. Kennedy</i>	<i>First Middlesex</i>	<i>1/31/2019</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>	<i>1/31/2019</i>
<i>John Barrett, III</i>	<i>1st Berkshire</i>	<i>1/31/2019</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	<i>1/31/2019</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>2/1/2019</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>2/1/2019</i>
<i>Paul F. Tucker</i>	<i>7th Essex</i>	<i>2/4/2019</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/4/2019</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/5/2019</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/7/2019</i>
<i>Dean A. Tran</i>	<i>Worcester and Middlesex</i>	<i>2/20/2019</i>

SENATE No. 500

By Ms. Lovely, a petition (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. Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 456 OF 2017-2018.]

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Each school and child care center shall permanently shut-off existing water fountains and provide in their place filtered, bottle-filling stations, equipped with water fountain outputs as appropriate, at the rate of one per 100 students.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 2WWW. (a) There shall be established and set up on the books of the commonwealth a separate fund to be known as the Lead in School Drinking Water Trust Fund. The fund shall be administered by the commissioner of elementary and secondary education in consultation with the department. The fund shall be credited with: (i) revenue from appropriations or other money authorized by the general court and specifically designated to be credited to the fund; (ii) interest earned on such revenues; and (iii) funds from public and private sources such as gifts, grants and donations to further school districts to remove lead from school 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.