

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H.B. 386
Mar 19, 2019
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH10193-MH-37

Short Title: Ensure Safety of School Drinking Water. (Public)

Sponsors: Representatives Warren and B. Turner (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE CERTAIN PUBLIC SCHOOLS AND CHILD CARE FACILITIES IN
3 NORTH CAROLINA TO TEST DRINKING WATER FOR THE PRESENCE OF LEAD.

4 Whereas, lead is a metal known for its toxicity and harm to human health and has
5 been shown to negatively affect almost every organ system in the human body; and

6 Whereas, the most sensitive organ system affected by lead is the central nervous
7 system, and the nervous systems of children six years of age and younger are particularly at risk
8 when exposed to lead; and

9 Whereas, even low blood lead levels in children have been associated with reduced
10 IQ and attention span, learning disabilities, poor classroom performance, hyperactivity,
11 behavioral problems, impaired growth, and hearing loss; and

12 Whereas, the United States Centers for Disease Control and Prevention and the United
13 States Environmental Protection Agency have determined that there is no safe blood lead level
14 in children; and

15 Whereas, the Centers for Disease Control and Prevention recommends that all sources
16 of lead exposure to children be controlled or eliminated; and

17 Whereas, the lead testing protocols prescribed by the federal Lead and Copper Rule
18 that are employed by public water supply systems are aimed at identifying systemwide lead
19 problems rather than the presence of lead in outlets and taps within individual buildings; and

20 Whereas, neither the federal Lead and Copper Rule nor North Carolina law requires
21 testing for the presence of lead in drinking water in schools or child care facilities; and

22 Whereas, effective June 19, 1986, section 1417 of the federal Safe Drinking Water
23 Act prohibited the use of any pipe, any pipe or plumbing fitting or fixture, any solder, or any flux
24 that is not lead-free in the installation or repair of facilities that provide water for human
25 consumption; and

26 Whereas, the United States Environmental Protection Agency strongly recommends
27 that schools and child care facilities test drinking water in their buildings and infrastructure for
28 lead; and

29 Whereas, Section 2107 of Public Law 114-332 (Water Infrastructure Improvements
30 for the Nation (WIIN) Act) directs the Administrator of the United States Environmental
31 Protection Agency to establish a voluntary school and child care facility lead testing grant
32 program to make grants available to states to assist local education agencies in testing for lead
33 contamination in drinking water in schools and child care facilities; Now, therefore,
34 The General Assembly of North Carolina enacts:

35
36 **PART I. PROTECT NORTH CAROLINA'S CHILDREN FROM LEAD EXPOSURE**



1 **SECTION 1.(a)** Chapter 130A of the General Statutes is amended by adding a new
 2 Article to read:

3 "Article 10A.

4 "Protect North Carolina's Children From Lead Exposure Act.

5 "§ 130A-332.1. Short title.

6 This Article shall be known as the "Protect North Carolina's Children from Lead Exposure
 7 Act."

8 "§ 130A-332.2. Definitions.

9 In addition to the terms defined in Article 10 of this Chapter, the following definitions shall
 10 apply in this Article:

- 11 (1) 3Ts technical guidance. – The Agency's revised technical guidance document
 12 "3Ts for Reducing Lead in Drinking Water in Schools," (October 2006, EPA
 13 816-B-05-008) or any subsequent revision.
- 14 (2) Agency. – The United States Environmental Protection Agency.
- 15 (3) Child care facility. – A facility as defined in G.S. 110-86 and licensed
 16 pursuant to Article 7 of Chapter 110 of the General Statutes that receives water
 17 service from a supplier of water. For purposes of this section, child care
 18 facility shall not include those facilities that are operated in a private
 19 residence.
- 20 (4) Division. – The Division of Public Health in the Department of Health and
 21 Human Services.
- 22 (5) Drinking water outlet. – Any water fountain, faucet, or tap that is regularly
 23 used for drinking or food preparation, including ice-making and hot drink
 24 machines.
- 25 (6) Elevated lead level. – A lead concentration in drinking water that exceeds the
 26 lead trigger level.
- 27 (7) Federal Lead and Copper Rule. – The federal regulation to minimize lead and
 28 copper in drinking water in 40 C.F.R., Subpart I.
- 29 (8) Lead trigger level. – A lead concentration of 5 parts per billion in drinking
 30 water.
- 31 (9) Local health department. – A district health department, a public health
 32 authority, or a county health department.
- 33 (10) Public school unit. – A public school under the direction of a local board of
 34 education, a charter school, a regional school, a high school operated as part
 35 of The University of North Carolina, a school operated by the Department of
 36 Health and Human Services, or a school operated by the State Board of
 37 Education that serves students in kindergarten through grade five.
- 38 (11) School authority. – The local board of education or other governing body for
 39 a public school unit.

40 "§ 130A-332.3. Required testing for lead in drinking water outlets.

41 (a) Each school authority and child care facility shall test drinking water for the presence
 42 of lead at drinking water outlets in each school or child care facility. This requirement shall not
 43 apply to any school or child care facility meeting either of the following:

- 44 (1) It is a supplier of water and already subject to monitoring for lead under
 45 Article 10 of this Chapter.
- 46 (2) It was constructed or substantially renovated after December 31, 1990. For
 47 purposes of this subdivision, a substantial renovation is a renovation that
 48 included the complete removal and replacement of the plumbing system.

49 (b) Each test for the presence of lead shall be analyzed by a laboratory certified to analyze
 50 for lead in drinking water samples by the North Carolina State Laboratory for Public Health.

(c) The testing required by this section shall be in accordance with the following timetable:

<u>Date on which the school or child care facility was constructed</u>	<u>Testing deadline</u>
---	--------------------------------

<u>On or before December 31, 1960</u>	<u>June 30, 2021</u>
---------------------------------------	----------------------

<u>Between January 1, 1961, and December 31, 1990</u>	<u>June 30, 2022</u>
---	----------------------

"§ 130A-332.4. Use of the 3Ts technical guidance.

School authorities and child care facilities shall use the Agency's 3Ts technical guidance to establish drinking water sampling collection criteria and protocols to satisfy the requirements of this section.

"§ 130A-332.5. Sampling locations

(a) Sample Locations. – School authorities and child care facilities shall select sampling locations from those drinking water outlets that are identified as used the most, in the highest frequency, and reflect those outlets to which children are exposed, in the school or child care facility. Sample locations and outlets shall satisfy the following criteria:

- (1) At least one sample from the cold water drinking water outlet in the food preparation area.
- (2) At least one sample from a cold water drinking water outlet that is located as close as possible to the service connection to the public water supply.
- (3) At least three samples from cold water drinking water outlets in areas of the school or child care facility where drinking water is accessible and available to children.

In the event that five separate drinking water outlets are not available for sampling in accordance with this subsection, samples shall be collected from the same locations on different days and collected in priority based on the most frequently accessed drinking water outlets available to children. This sampling procedure shall be followed until such time as five samples are collected.

(b) Additional Sampling, Monitoring, and Reporting. – The school authority or child care facility shall conduct subsequent flush sampling, in accordance with the 3Ts technical guidance, for any school or child care facility that reveals a drinking water outlet with elevated lead levels pursuant to subsection (a) of this section.

"§ 130A-332.6. Notification requirements for schools and day care facilities.

Upon receipt of the test results, schools and child care facilities shall notify teachers, other school or facility personnel, and the parents or guardians of children attending the school or child care facility of the results of the sampling and analysis based on the concentration of lead in drinking water, as applicable:

- (1) Lead concentration in drinking water is at or below lead trigger level. – Within 10 business days of receiving the results of the drinking water analyses, each school and each child care facility shall make the test results available to the public, free of charge, and shall notify the parents or guardians of the children attending each school and each child care facility of the test results. To meet the requirements of this subdivision, the test results may be posted on the Web site for the school, local school administrative unit, or child care facility, as applicable.
- (2) Lead concentration in drinking water is above lead trigger level. – Within 48 hours of receipt of a drinking water test result that indicates an elevated lead level at a drinking water outlet or other locations within or outside the

1 building, the school or child care facility shall notify teachers, other school or
2 facility personnel, and the parents or guardians of children attending the
3 school or child care facility directly through written notice, electronic mail, or
4 other means approved by the Department of Public Instruction or the Division
5 of Child Development and Early Education of the Department of Health and
6 Human Services, as applicable. The notification shall include all of the
7 following:

- 8 a. A summary of the results of the tests conducted pursuant to this Article
9 and information as to the availability of the complete drinking water
10 test results for review at a public location and on the Web site for the
11 school, the local school administrative unit, or the child care facility,
12 as applicable.
13 b. A description of measures taken to restrict access to drinking water
14 outlets with elevated lead levels and actions taken to ensure the
15 provision of fresh, clean drinking water in the school or child care
16 facility, in accordance with G.S. 130A-332.7.

17 **"§ 130A-332.7. Corrective action for drinking water with elevated lead levels.**

18 When a drinking water outlet subject to the requirements of this Part is sampled and analyzed
19 pursuant to G.S. 130A-332.5 and reveals an elevated lead level, the school or child care facility
20 shall do all of the following:

- 21 (1) Immediately restrict access to (i) any drinking water outlet with lead
22 concentrations above the lead trigger level and (ii) similar drinking water
23 outlets located on the same wing or floor of the building of the outlet revealed
24 to have elevated lead levels.
25 (2) Immediately take remedial action to ensure that all students and children have
26 access to free, fresh, and clean drinking water in the school or child care
27 facility and are not exposed to drinking water with elevated lead levels.
28 Alternate drinking water supplies shall be provided until (i) the drinking water
29 is further analyzed and lead levels are found to be below the trigger level and
30 (ii) the Division determines and provides written documentation to the school
31 or child care facility, the Department of Public Instruction, or the Division of
32 Child Development and Early Education of the Department of Health and
33 Human Services, as appropriate, that the elevated lead levels have been
34 mitigated and the drinking water is safe for human consumption.
35 (3) With the assistance of the Division, Department, the Department of Public
36 Instruction, and the Division of Child Development and Early Education of
37 the Department of Health and Human Services, as applicable, determine the
38 source of lead and identify the necessary corrective action, including specific
39 measures that will be taken and an estimate of the costs of those measures, to
40 address the lead contamination.

41 **"§ 130A-332.8. Recordkeeping.**

42 Each school authority and child care facility subject to this Part shall maintain records in a
43 manner readily accessible to the public that include all of the following:

- 44 (1) The name of each school and child care facility tested.
45 (2) The number of drinking water outlets tested at each school and child care
46 facility.
47 (3) Aggregate results for the drinking water testing performed at each school and
48 child care facility.
49 (4) The identity of each school and child care facility that has drinking water
50 outlets with elevated lead levels and for each school and facility so identified:

- 1 a. The actions taken to remediate or restrict access to the source of lead
2 exposure.
3 b. An overview of the actions taken to notify students, their families, and
4 school and child care facility personnel of the findings of the lead tests
5 as required by G.S. 130A-332.6.

- 6 (5) A summary of the required corrective action and associated costs for a school
7 or child care facility to address confirmed lead contamination.

8 **"§ 130A-332.9. Enforcement powers and remedies.**

9 (a) The Department may enforce the requirements of this Article through the powers and
10 remedies provided in Article 10 of this Chapter.

11 (b) The Department of Health and Human Services may enforce the requirements of this
12 Article applicable to certified laboratories, schools, and child care facilities under the powers and
13 remedies provided by Part 2 of Article 1 of this Chapter.

14 **"§ 130A-332.10. Rule making.**

15 The Commission for Public Health may adopt rules to implement this Article."

16 **SECTION 1.(b)** G.S. 115C-12 is amended by adding a new subdivision to read:

17 "(47) Rules to implement Protect North Carolina's Children from Lead Act. – The
18 State Board of Education shall adopt rules to implement testing, notification,
19 and corrective action related to lead in school water supplies as provided in
20 Article 10A of Chapter 130A of the General Statutes. These rules shall apply
21 to public schools and charter schools."

22 **SECTION 1.(c)** State Agencies to Provide Technical and Advisory Assistance. – On
23 or before July 1, 2020, the Department of Environmental Quality and the Division of Public
24 Health of the Department of Health and Human Services shall develop and provide the following
25 information to the Department of Public Instruction and the Division of Child Development and
26 Early Education of the Department of Health and Human Services:

- 27 (1) The 3Ts technical guidance and best management practices documents for
28 reducing lead in drinking water at schools and child care facilities issued by
29 the Agency.
30 (2) General guidance on water line flushing after long periods of stagnation, such
31 as holidays, summer breaks, and track out.
32 (3) Any other information the Department and the Division deem appropriate.

33 **SECTION 1.(d)** G.S. 130A-24(e) reads as rewritten:

34 "(e) The appeals procedures enumerated in this section shall apply to appeals concerning
35 the enforcement of rules, the imposition of administrative penalties, or any other action taken by
36 the Department of Environmental Quality pursuant to Articles 8, 9, 10, 10A, 11, and 12 of this
37 Chapter."
38

39 **PART II. SAMPLE DRINKING WATER FOR LEAD IN EXISTING BUILDINGS AND**
40 **STRUCTURES REPURPOSED FOR SCHOOLS**

41 **SECTION 2.(a)** Article 37 of Chapter 115C of the General Statutes is amended by
42 adding a new section to read:

43 **"§ 115C-532.1. Sample drinking water for lead.**

44 (a) Sampling Protocol. – Whenever a local board of education acquires existing sites or
45 existing property for use as a schoolhouse or other school facility in accordance with this Article,
46 the board shall provide for the sampling of the widest variety of drinking water outlets and
47 locations in the proposed site or property for the presence of lead, provided the sample locations
48 and outlets satisfy the following criteria:

- 49 (1) At least one sample is taken from the cold water drinking water outlet in the
50 proposed food preparation area.

1 (2) At least one sample is taken from a cold water drinking water outlet that is
2 located as close as possible to the service connection to the public water
3 supply.

4 (3) At least three samples are taken from cold water drinking water outlets in areas
5 of the school where drinking water will be accessible and available to children.

6 (b) The local board of education shall sample, analyze, and report the results of the
7 analyses conducted pursuant to this section in accordance with Article 10A of Chapter 130A of
8 the General Statutes."

9 **SECTION 2.(b)** G.S. 115C-218.1(b) reads as rewritten:

10 (b) The application shall contain at least the following information:

11 ...

12 (14) Information regarding the facilities to be used by the ~~school~~-school, including
13 documentation that shows drinking water in the facilities has been sampled
14 and analyzed, and the results of the analyses are reported pursuant to (i)
15 G.S. 115C-218.35(e) and, as applicable, (ii) Article 10A of Chapter 130A of
16 the General Statutes, and the manner in which administrative services of the
17 school are to be provided.

18 "

19 **SECTION 2.(c)** G.S. 115C-218.35 is amended by adding a new subsection to read:

20 "**§ 115C-218.35. Charter school facilities.**

21 ...

22 (e) If the charter school moves to a location or space different from that which was
23 approved pursuant to G.S. 115C-218.5, and is permitted in accordance with either G.S. 153A-357
24 or G.S. 160A-417, then the charter school shall sample the widest variety of drinking water
25 outlets and locations in the proposed location or space for the presence of lead, provided the
26 sample locations and outlets satisfy the following criteria:

27 (1) At least one sample is taken from the cold water drinking water outlet in the
28 proposed food preparation area.

29 (2) At least one sample is taken from a cold water drinking water outlet that is
30 located as close as possible to the service connection to the public water
31 supply.

32 (3) At least three samples are taken from cold water drinking water outlets in areas
33 of the school where drinking water will be accessible and available to children.

34 In the event that five separate drinking water outlets are not available for sampling in
35 accordance with this subsection, samples shall be collected from the same locations on different
36 days, and collected in priority based on the most accessible drinking water outlets that will be
37 available to children. This sampling procedure shall be followed until such time as five samples
38 are collected."

39 **SECTION 2.(d)** G.S. 115C-218.5 is amended by adding a new subsection to read:

40 (a1) The State Board shall not grant final approval of an application if it finds that, based
41 on the results of drinking water analyses submitted pursuant to G.S. 115C-218.1(b)(14), the
42 drinking water in the location or space intended for the school reveals lead in concentrations
43 above the lead trigger level. The State Board may authorize the applicant additional time to
44 identify and implement any necessary corrective action to remove the source of lead from
45 drinking water outlets and other locations within or outside the location or space intended for the
46 school."

47 **SECTION 2.(e)** G.S. 115C-218.6(b) reads as rewritten:

48 (b) The State Board of Education shall renew a charter upon the request of the chartering
49 entity for subsequent periods of 10 years, unless one of the following applies:

50 (1) The charter school has not provided financially sound audits for the
51 immediately preceding three years.

- 1 (2) The charter school's student academic outcomes for the immediately
2 preceding three years have not been comparable to the academic outcomes of
3 students in the local school administrative unit in which the charter school is
4 located.
- 5 (3) The charter school is not, at the time of the request for renewal of the charter,
6 substantially in compliance with State law, federal law, the school's own
7 bylaws, or the provisions set forth in its charter granted by the State Board of
8 Education.
- 9 (4) The charter school elects to move to a new location or space that is different
10 from the location or space previously approved pursuant G.S. 115C-218.5,
11 without conducting the sampling, analysis, and reporting required pursuant to
12 G.S. 115C-218.35(e).

13 If one of the conditions set forth in subdivisions (1) through ~~(3)~~(4) of this subsection applies,
14 then the State Board may renew the charter for a period of less than 10 years or not renew the
15 charter."
16

17 PART III. FUNDING

18 **SECTION 3.(a)** Article 10A of Chapter 130A of the General Statutes, as established
19 by Section 1 of this act, is amended by adding a new section to read:

20 **"§ 130A-332.11. Child Lead Exposure Prevention Fund.**

21 (a) Fund Established. – The Child Lead Exposure Prevention Fund is established as a
22 special revenue fund under the control and direction of the Department. The Fund shall consist
23 of monies appropriated by the General Assembly or made available to the Fund from any other
24 source.

25 (b) The Fund may be used to pay for the State share of any of the following:

- 26 (1) The costs of testing required by this Article, including any additional testing
27 to confirm the results of a previous test.
- 28 (2) The temporary or permanent provision of alternative drinking water supplies
29 to schools and child care facilities detecting elevated lead levels. Under this
30 section, an alternative drinking water supply includes the repair, such as use
31 of a filtration system, or replacement of water fixtures or pipes.
- 32 (3) Monitoring of filtration systems used in connection with temporary or
33 permanent alternative drinking water supplies provided pursuant to this
34 section.

35 (c) Cost-Share. – Any project funded by revenue from the Fund must be cost-shared with
36 non-State dollars as follows:

- 37 (1) The cost-share for schools or child care facilities located, in whole or part, in
38 a development tier one area, as defined in G.S. 143B-437.08, shall be at least
39 one non-State dollar for every two dollars from the Fund.
- 40 (2) The cost-share for schools or child care facilities not located, in whole or part,
41 in a development tier one area shall be at least one non-State dollar for every
42 dollar from the Fund.

43 (d) Report. – The Department shall report annually no later than October 1 regarding
44 projects funded under this section to the Fiscal Research Division and the Joint Legislative
45 Oversight Committee on Agriculture and Natural and Economic Resources. The report shall
46 include project type (school or child care facility), project location, brief project description,
47 entity receiving the funding, and amount of funding provided."

48 **SECTION 3.(b)** The sum of eight million dollars (\$8,000,000) in nonrecurring funds
49 for the 2019-2020 fiscal year is appropriated from the General Fund to the Child Lead Exposure
50 Prevention Fund established by subsection (a) of this section.

51 **SECTION 3.(c)** This section becomes effective July 1, 2019.

1
2
3
4

PART IV. EFFECTIVE DATE

SECTION 4. Except as otherwise provided, this act is effective when it becomes law.