

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: March 18, 2021
To: Joint Standing Committee on Health & Human Services
From: Erin Dooling, Esq., Legislative Analyst

LD 206 Resolve, Regarding Legislative Review of Portions of Chapter 234: Lead Testing in School Drinking Water Rule, a Major Substantive Rule of the Department of Health and Human Services, Maine Center for Disease Control and Prevention

SUMMARY: This resolve provides for legislative review of portions of Chapter 234: Lead Testing in School Drinking Water Rule, a major substantive rule of the Department of Health and Human Services, Maine Center for Disease Control and Prevention. It was developed as a result of P.L. 2019, c. 158, which directed the Department of Health and Human Services to:

- Provide resources for water testing kits for lead to public and private schools so as not to expand or modify a school's activities in a way that would necessitate additional expenditures
- Adopt rules to implement the testing, including establishing water lead levels, testing protocols, including the frequency of testing, abatement or mitigation methods, guidance to reduce lead exposure and public notification procedures
- May not require through rule that a school to expand or modify its activities to necessitate additional expenditures
- Within existing resources, provide resources to schools to accomplish the the testing and mitigation purposes
- Consider the U.S. EPA's recommendations for reducing lead in school drinking water ([3Ts for Reducing Lead in Drinking Water in Schools and Child Care Facilities](#))

P.L. 2019, c. 158 also added water lead abatement or mitigation as a Priority 1 status for receipt of funds under the School Revolving Renovation Fund.

The proposed rule:

- Requires schools to test drinking water outlets (fixtures used for drinking or cooking purposes) at least once by contacting a designated laboratory
- Provides that the Department will cover the costs of the sample bottles, shipping and delivery charges and analyses
- Establishes testing protocols, including who does the test, the volume of the sample, the temperature of the water, required documentation, etc.
- Provides that the Department is available for technical assistance with sampling or other rule provisions
- Establishes a water lead level of 15ppb
- Establishes abatement and mitigation measures if the water lead level exceeds 15ppb, including the provision of Department outreach materials, a recommendation that the school develop a remediation plan (with the Department's assistance, if requested) and a recommendation of a Do Not Drink sign at affected outlets
- Provides that the Department will assist schools who choose to engage in abatement and mitigation measures regardless of the water lead level
- Establishes public notification requirements, including a fillable standard notice with the details of the testing protocols and abatement and mitigation measures anticipated, outreach materials from the Department, and a link to the Department's website that contains every school's results. The notice must be distributed within 10 days of receiving the lab results.
- Provides that schools must certify to the Department that public notification was completed within 7 days of distribution. If no certification is received the Department may post the results in the newspaper.
- Provides record keeping of test results and remediation plans for 12 years.

PROPOSED AMENDMENTS FROM TESTIMONY:

- *DHHS*: Amend Section 1(B)(4):
 4. **First-Draw Sample** means a lead water sample that is collected from an outlet where the water has sat motionless in the school's plumbing for a minimum of 8 hours and a recommended maximum of no more than 18 hours.
- Several organizations suggested directing the Department to amend its rule to:
 - Replace 15ppb with 1ppb everywhere it occurs in the rule
 - Discourage pre-stagnation flushing; remove 18-hour maximums and provide for normal usage before testing
 - Provide for a 5-year rotating testing schedule
 - Share results within 3 days

ADDITIONAL INFORMATION REQUESTED BY COMMITTEE:

- What is the current balance in the School Revolving Renovation Fund? \$1,037,982 (*Source: Testimony from Maine School Boards Association and Maine School Superintendents Association*)
 - Rep. R. Millett has a bond bill ([LD 702](#)) that would increase the fund by \$30 million
- *Submitted to and answered by DHHS in attached materials:*
 - The Committee heard testimony that the rule affects about 700 schools – Are any of those schools private schools? And if so, how many? Are the lead testing kits provided by the Department free for private schools, too? Would private schools be eligible to mitigate using the funds made available?
 - How many schools are part of a city or municipal water system? How would changing the ppb level affect them?
 - What is VT doing around notifying parents and the preflushing issue?

- What are the lead testing regimes in other New England States? How are the programs administered?
- What could actual mitigation costs be?
- Does VT or other states doing lead testing have information on how much it's been costing schools?

FISCAL IMPACT: No fiscal impact, no fiscal note required

VOTING PROCEDURE FOR A MAJOR SUBSTANTIVE RULE FILED WITHIN THE RULE

ACCEPTANCE PERIOD: After reviewing the rule, the committee has the following options for voting on the resolve:

- OTP to authorize adoption of the rule with no changes.
 - ONTP – A failure to act on a rule filed within the acceptance period authorizes adoption; killing the resolve is considered a failure to act on the rule; if the committee wishes to authorize the rule, an OTP vote is generally recommended.
- OTP-A
 - To authorize adoption of the rule if changes are made to the rule; or
 - Not to authorize adoption of the rule.