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

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

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

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

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

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

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

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

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

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

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

The General Assembly of North Carolina enacts:

PART I. PROTECT NORTH CAROLINA'S CHILDREN FROM LEAD EXPOSURE
SECTION 1. (a) Chapter 130A of the General Statutes is amended by adding a new Article to read:

"Article 10A.

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


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

§ 130A-332.2. Definitions.

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

(1) 3Ts technical guidance. – The Agency's revised technical guidance document "3Ts for Reducing Lead in Drinking Water in Schools," (October 2006, EPA 816-B-05-008) or any subsequent revision.

(2) Agency. – The United States Environmental Protection Agency.

(3) Child care facility. – A facility as defined in G.S. 110-86 and licensed pursuant to Article 7 of Chapter 110 of the General Statutes that receives water service from a supplier of water. For purposes of this section, child care facility shall not include those facilities that are operated in a private residence.

(4) Division. – The Division of Public Health in the Department of Health and Human Services.

(5) Drinking water outlet. – Any water fountain, faucet, or tap that is regularly used for drinking or food preparation, including ice-making and hot drink machines.

(6) Elevated lead level. – A lead concentration in drinking water that exceeds the lead trigger level.

(7) Federal Lead and Copper Rule. – The federal regulation to minimize lead and copper in drinking water in 40 C.F.R., Subpart I.

(8) Lead trigger level. – A lead concentration of 5 parts per billion in drinking water.

(9) Local health department. – A district health department, a public health authority, or a county health department.

(10) Public school unit. – A public school under the direction of a local board of education, a charter school, a regional school, a high school operated as part of The University of North Carolina, a school operated by the Department of Health and Human Services, or a school operated by the State Board of Education that serves students in kindergarten through grade five.

(11) School authority. – The local board of education or other governing body for a public school unit.

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

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

(1) It is a supplier of water and already subject to monitoring for lead under Article 10 of this Chapter.

(2) It was constructed or substantially renovated after December 31, 1990. For purposes of this subdivision, a substantial renovation is a renovation that included the complete removal and replacement of the plumbing system.

(b) Each test for the presence of lead shall be analyzed by a laboratory certified to analyze 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:

<table>
<thead>
<tr>
<th>Date on which the school or child care facility was constructed</th>
<th>Testing deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>On or before December 31, 1960</td>
<td>June 30, 2021</td>
</tr>
<tr>
<td>Between January 1, 1961, and December 31, 1990</td>
<td>June 30, 2022</td>
</tr>
</tbody>
</table>

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

a. A summary of the results of the tests conducted pursuant to this Article
and information as to the availability of the complete drinking water
test results for review at a public location and on the Web site for the
school, the local school administrative unit, or the child care facility,
as applicable.

b. A description of measures taken to restrict access to drinking water
outlets with elevated lead levels and actions taken to ensure the
provision of fresh, clean drinking water in the school or child care
facility, in accordance with G.S. 130A-332.7.

§ 130A-332.7. Corrective action for drinking water with elevated lead levels.
When a drinking water outlet subject to the requirements of this Part is sampled and analyzed
pursuant to G.S. 130A-332.5 and reveals an elevated lead level, the school or child care facility
shall do all of the following:

(1) Immediately restrict access to (i) any drinking water outlet with lead
concentrations above the lead trigger level and (ii) similar drinking water
outlets located on the same wing or floor of the building of the outlet revealed
to have elevated lead levels.

(2) Immediately take remedial action to ensure that all students and children have
access to free, fresh, and clean drinking water in the school or child care
facility and are not exposed to drinking water with elevated lead levels.
Alternate drinking water supplies shall be provided until (i) the drinking water
is further analyzed and lead levels are found to be below the trigger level and
(ii) the Division determines and provides written documentation to the school
or child care facility, the Department of Public Instruction, or the Division of
Child Development and Early Education of the Department of Health and
Human Services, as appropriate, that the elevated lead levels have been
mitigated and the drinking water is safe for human consumption.

(3) With the assistance of the Division, Department, the Department of Public
Instruction, and the Division of Child Development and Early Education of
the Department of Health and Human Services, as applicable, determine the
source of lead and identify the necessary corrective action, including specific
measures that will be taken and an estimate of the costs of those measures, to
address the lead contamination.

§ 130A-332.8. Recordkeeping.
Each school authority and child care facility subject to this Part shall maintain records in a
manner readily accessible to the public that include all of the following:

(1) The name of each school and child care facility tested.
(2) The number of drinking water outlets tested at each school and child care
facility.
(3) Aggregate results for the drinking water testing performed at each school and
child care facility.
(4) The identity of each school and child care facility that has drinking water
outlets with elevated lead levels and for each school and facility so identified:
a. The actions taken to remediate or restrict access to the source of lead exposure.
b. An overview of the actions taken to notify students, their families, and school and child care facility personnel of the findings of the lead tests as required by G.S. 130A-332.6.

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

"§ 130A-332.9. Enforcement powers and remedies."
(a) The Department may enforce the requirements of this Article through the powers and remedies provided in Article 10 of this Chapter.
(b) The Department of Health and Human Services may enforce the requirements of this Article applicable to certified laboratories, schools, and child care facilities under the powers and remedies provided by Part 2 of Article 1 of this Chapter.

"§ 130A-332.10. Rule making."
The Commission for Public Health may adopt rules to implement this Article."

SECTION 1.(b) G.S. 115C-12 is amended by adding a new subdivision to read: "(47) Rules to implement Protect North Carolina's Children from Lead Act. – The State Board of Education shall adopt rules to implement testing, notification, and corrective action related to lead in school water supplies as provided in Article 10A of Chapter 130A of the General Statutes. These rules shall apply to public schools and charter schools."

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

(1) The 3Ts technical guidance and best management practices documents for reducing lead in drinking water at schools and child care facilities issued by the Agency.

(2) General guidance on water line flushing after long periods of stagnation, such as holidays, summer breaks, and track out.

(3) Any other information the Department and the Division deem appropriate.

SECTION 1.(d) G.S. 130A-24(e) reads as rewritten: "(e) The appeals procedures enumerated in this section shall apply to appeals concerning the enforcement of rules, the imposition of administrative penalties, or any other action taken by the Department of Environmental Quality pursuant to Articles 8, 9, 10, 10A, 11, and 12 of this Chapter."

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

SECTION 2.(a) Article 37 of Chapter 115C of the General Statutes is amended by adding a new section to read: "§ 115C-532.1. Sample drinking water for lead."
(a) Sampling Protocol. – Whenever a local board of education acquires existing sites or existing property for use as a schoolhouse or other school facility in accordance with this Article, the board shall provide for the sampling of the widest variety of drinking water outlets and locations in the proposed site or property for the presence of lead, provided the sample locations and outlets satisfy the following criteria:

(1) At least one sample is taken from the cold water drinking water outlet in the proposed food preparation area.
At least one sample is taken from a cold water drinking water outlet that is located as close as possible to the service connection to the public water supply.

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

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

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

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

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

..."

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

"§ 115C-218.35. Charter school facilities.

..."

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

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

(2) At least one sample is taken 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 are taken from cold water drinking water outlets in areas of the school where drinking water will be 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 accessible drinking water outlets that will be available to children. This sampling procedure shall be followed until such time as five samples are collected."

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

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

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

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

(1) The charter school has not provided financially sound audits for the immediately preceding three years."
(2) The charter school's student academic outcomes for the immediately preceding three years have not been comparable to the academic outcomes of students in the local school administrative unit in which the charter school is located.

(3) The charter school is not, at the time of the request for renewal of the charter, substantially in compliance with State law, federal law, the school's own bylaws, or the provisions set forth in its charter granted by the State Board of Education.

(4) The charter school elects to move to a new location or space that is different from the location or space previously approved pursuant G.S. 115C-218.5, without conducting the sampling, analysis, and reporting required pursuant to G.S. 115C-218.35(e).

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

PART III. FUNDING

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

§ 130A-332.11. Child Lead Exposure Prevention Fund.

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

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

(1) The costs of testing required by this Article, including any additional testing to confirm the results of a previous test.

(2) The temporary or permanent provision of alternative drinking water supplies to schools and child care facilities detecting elevated lead levels. Under this section, an alternative drinking water supply includes the repair, such as use of a filtration system, or replacement of water fixtures or pipes.

(3) Monitoring of filtration systems used in connection with temporary or permanent alternative drinking water supplies provided pursuant to this section.

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

(1) The cost-share for schools or child care facilities located, in whole or part, in a development tier one area, as defined in G.S. 143B-437.08, shall be at least one non-State dollar for every two dollars from the Fund.

(2) The cost-share for schools or child care facilities not located, in whole or part, in a development tier one area shall be at least one non-State dollar for every two dollars from the Fund.

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

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

SECTION 3.(c) This section becomes effective July 1, 2019.
PART IV. EFFECTIVE DATE

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