HB 1253

Department of Legislative Services

Maryland General Assembly
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FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 1253 (Delegate Solomon, *et al.*)
Environment and Transportation Education, Health, and Environmental Affairs

Drinking Water Outlets in School Buildings – Lead Testing and Reporting Requirements and Grant Programs

This bill expresses the intent of the General Assembly that schools work proactively to reduce the lead concentration in drinking water outlets to a level below five parts per billion (ppb) and that specified funds be made available for this purpose. The bill establishes new reporting requirements for schools and alters existing reporting requirements for the Maryland Department of the Environment (MDE) and the Maryland State Department of Education (MSDE). MDE, in consultation with MSDE, must establish and administer a grant program to assist local school systems with specified remedial costs. The Interagency Commission on School Construction (IAC), in consultation with MDE, must establish and implement procedures for school systems to request funding from the existing Healthy School Facility Fund for specified remedial measures. **The bill takes effect June 1, 2019.**

Fiscal Summary

State Effect: General fund expenditures increase by at least $1.8 million in FY 2020. Future year expenditures reflect ongoing costs. Revenues are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	$0	$0	$0	$0	$0
GF Expenditure	1,799,200	1,696,300	1,702,600	1,709,400	1,716,400
Net Effect	($1,799,200)	($1,696,300)	($1,702,600)	($1,709,400)	($1,716,400)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local expenditures increase, likely significantly, for additional water testing and remediation costs. Local grant revenues may increase to offset a portion of these costs. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill expresses the intent of the General Assembly that State and federal funds be made available to schools to reduce the concentration of lead in drinking water outlets to a level below five ppb. The bill also expresses the intent of the General Assembly that a local school system is eligible for a grant award from the Healthy School Facility Fund or the new grant program established under the bill to implement remedial measures to address any finding of a lead concentration in drinking water outlets in a school building that exceeds five ppb.

New and Amended Reporting Requirements

The bill changes requirements for regulations related to lead water testing in schools. The regulations must require, if an analysis of a test sample of a drinking water outlet in a school indicates a concentration of lead above five ppb but less than the standard for an "elevated level of lead," that the results be reported to MDE, MSDE, the Maryland Department of Health, and the appropriate local health department. These new reporting requirements apply retroactively to require the reporting of the results of an analysis of a sample taken on or after June 1, 2017, if the testing indicates a concentration of lead that is more than five ppb.

The current annual report submitted by MDE and MSDE, beginning with the report due December 1, 2019, must include (1) the name and address of each school found to have a lead concentration above five ppb but less than the standard for an elevated level of lead and (2) the type, location in the building, and use of each affected drinking water outlet.

Grant Program to Address Elevated Levels of Lead in School Drinking Water Outlets

The required grant program must provide grants to local school systems to assist with the costs associated with implementing remedial measures to (1) address any findings of elevated levels of lead in drinking water outlets in school buildings; (2) address any findings of lead concentrations in drinking water outlets in school buildings that exceed five ppb; (3) install drinking water outlets in school buildings that do not have functioning drinking water outlets due to the presence of lead; or (4) repair, reconfigure, or replace the outlet plumbing or premises plumbing contributing to the presence of lead in drinking water.

MDE, in consultation with MSDE, must (1) establish application procedures for the grant program; (2) require each applicant to include a remedial measure implementation plan (including the location of the lead, as specified, and costs associated with the plan); (3) award grants on a competitive basis and based on the availability of funding to each local school system that applies for a grant and demonstrates that the local school system

has completed comprehensive testing for the presence of lead in drinking water outlets in school buildings, as specified; and (4) consistent with any applicable federal law or requirement, prioritize applications based on factors determined by MDE, as specified.

If MDE or MSDE receives any federal funding to address the presence of lead in drinking water outlets in school buildings, that federal funding must be made available to award grants in accordance with the new grant program. In addition to any federal funding, funding for the grant program consists of money appropriated in the State budget and any additional money made available for the grant program from any public or private source.

MDE may adopt regulations to implement the grant program in consultation with MSDE.

The Healthy School Facility Fund

IAC, in consultation with MDE, must establish application procedures for school systems to request funds from the Healthy School Facility Fund to assist with the costs of implementing remedial measures to address the presence of lead in drinking water outlets in school buildings. The application procedures must address the prioritization of applications and must give first priority to applications requesting funds for water fountains or bubblers, and then to applications requesting funds for (1) faucets or taps that are used or potentially used for drinking or food preparation; (2) ice makers; or (3) hot drink machines.

The bill establishes that addressing the presence of lead in drinking water outlets in school buildings is a priority for grant awards from the Healthy School Facility Fund.

Current Law/Background:

Testing for Lead in Drinking Water Outlets in Maryland Schools

Chapter 386 of 2017 required MDE, in consultation with MSDE, the Department of General Services, and Maryland Occupational Safety and Health, to adopt regulations to require periodic testing for the presence of lead in each "drinking water outlet" located in an occupied public or nonpublic school building. Among other things, the regulations must (1) require initial testing to be conducted by July 1, 2018; (2) phase in the testing in a certain way; and (3) establish specific follow-up actions for positive test results. A waiver from the required testing must be granted under certain conditions. Before adopting the required regulations, MDE must gather certain information and convene a stakeholder group. Chapter 386 also established reporting requirements.

"Elevated level of lead" means a lead concentration in drinking water that exceeds the standard recommended by the U.S. Environmental Protection Agency (EPA) technical

guidance. "Technical guidance" means the most recent technical guidance issued by EPA for reducing lead in drinking water in schools, including *3Ts for Reducing Lead in Drinking Water in Schools (2006)* and any subsequent technical guidance issued by EPA. Regulations establish that "elevated level of lead" means a lead concentration in drinking water that exceeds the concentration of 20 ppb.

MDE promulgated the required regulations, which became effective April 9, 2018. The first round of sampling required all school buildings serving students in prekindergarten through grade 5 and school buildings built before 1988 to complete lead testing by July 1, 2018. Every sample result of lead testing must be reported to MDE, MSDE, and the appropriate local health department within 30 days after the samples were analyzed. Among other things, the following information must be included with the sample reports: (1) the date and time the water was last used in the school building; (2) the date and time of sample collection; (3) the specific tap tested; (4) the sample collector name and contact information; and (5) the school building address.

According to MDE's website, MDE has received 710 applications for a 12-month deferral from initial testing and, in consultation with MSDE, has granted approval for such a deferral to 705 applications. Of the remaining 5 applications, 4 did not meet the requirements for approval and 1 is under review. MDE has received 115 applications for three-year deferrals in initial testing; 88 of these did not meet the requirements for approval, and the remaining 27 are under review. MDE has received 130 applications for waivers from testing; 114 did not meet the strict requirements for approval, and the remaining 16 are under review.

Healthy School Facility Fund

Chapter 561 of 2018 established the Healthy School Facility Fund, administered by IAC, to provide grants to public schools to improve the health of school facilities. When awarding grants, IAC is required to give priority to schools based on the severity of issues in the school, including (1) air conditioning; (2) heating; (3) indoor air quality; (4) mold remediation; (5) temperature regulation; (6) plumbing; and (7) windows. The fiscal 2020 operating budget includes $30 million for the Healthy School Facility Fund in the form of pay-as-you-go (PAYGO) general funds.

Federal Grant Funding

In 2016, EPA began implementing the Water Infrastructure Improvements for the Nation Act (WIIN Act), a grant program to assist states with costs to test for the presence of lead in drinking water at schools and child care facilities. According to MDE, the combined federal fiscal 2018 and 2019 Maryland allotment for lead testing in schools and child care

programs is $513,000. Maryland has also been allotted a WIIN grant of $777,000 for assistance to small and disadvantaged communities.

State Expenditures: General fund expenditures increase by *at least* $1,749,240 in fiscal 2020 (1) to provide a minimum amount of funding for the grant program; (2) for MDE's administrative costs to administer the grant program and implement changes related to the new intended five ppb standard for the concentration of lead in drinking water; and (3) for IAC's consulting costs to develop the required application and scoring system to evaluate requests for funding from the Healthy School Facility Fund. This analysis assumes there is no effect in fiscal 2019.

Grant Program Funding

General fund expenditures increase by *at least* $1.5 million annually beginning in fiscal 2020. The estimate reflects the minimum amount of funding needed to ensure a viable grant program for eligible schools and is based on a portion of the anticipated costs likely to be incurred by schools under the bill. Actual costs depend on the number of affected outlets and how schools choose to remediate the issue. Remediation measures can range from providing bottled water, to installing bottle refill stations, to replacing just the affected outlets, to replacing the plumbing for an entire school building.

MDE advises that parts to replace an outlet cost between $600 and $1,500 (based on information from Denver, Colorado). There are approximately 3,000 affected schools in the State, and there is an average of 70 samples, which means an average of 70 drinking water outlets per school. At the current action rate for lead (20 ppb), there has been an average failure rate of 3.8%. At the current failure rate, costs increase by between $4.7 million and $11.7 million to replace the outlets alone.

To replace outlets using the 5 ppb standard, costs are significantly higher; MDE estimates that the number of outlets that require remediation increases by 400%. Using MDE's estimate that the failure rate increases by 400% under the bill, costs to replace the outlets alone range from $19.2 million to $47.9 million. For further context, MDE advises that Montgomery County Public Schools estimate that the cost to replace drinking water outlets in county schools for outlets that have already been tested and have a lead concentration between 5 ppb and 20 ppb is approximately $2.5 million.

MDE also notes that in Prince George's County, more than 50% of the 7,200 samples that have already been collected show a lead concentration higher than five ppb. In response, the county is installing one bottle fill station at each school. The cost to install one station is $2,500. There are also costs associated with replacing water filters for each fill station, as well as costs for additional sampling before and after installing the filters.

Thus, although the specific remedial measures schools must take under the bill are unknown, the grant program likely only covers a portion of the costs incurred by school systems under the bill.

This analysis does not reflect any federal funds that might be able to be used to implement the bill. To the extent that MDE is able to use any existing or future federal grants to implement the bill, the need for general funds may decrease.

In addition, to the extent that funding from the Healthy School Facility Fund is used to provide grants under the bill (instead of the other priority uses of the fund under current law), special fund expenditures for remedial measures to address lead in drinking water outlets in schools displace special fund expenditures for other grants. To the extent this occurs, the need for general funds for the bill's grant program may be less. (The Healthy School Facility Fund is primarily intended to address heating/cooling and indoor air quality problems in public schools in the State.)

Administrative Expenditures

In addition to the general funds needed to provide grants, general fund expenditures for MDE increase by $249,240 in fiscal 2020, which reflects a 30-day start up delay. This estimate reflects the cost of hiring three full-time permanent staff: two administrative officers and one regulatory compliance engineer to (1) establish application procedures and award grants; (2) identify any available outside funding, including any additional federal funding that may be available; (3) track additional testing required pursuant to the new standard for lead concentration in drinking water outlets; (4) analyze and reanalyze data collected (both past and present); (5) monitor and track remedial actions taken by schools to address elevated lead levels at additional schools; and (6) provide project management for any remedial work identified. It includes salaries, fringe benefits, one-time start-up costs (including the purchase of a State vehicle), and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- the grant program is complex and requires significant oversight to review applications and ensure prioritization and funding is provided pursuant to the bill's requirements;
- the grant program requires continuing oversight for ongoing remedial work; and
- the intended change to the standard for the concentration of lead in drinking water outlets results in a significant increase in the number of drinking water outlets that need to be addressed, which significantly increases the administrative workload for MDE.

Positions	3.0
Salaries and Fringe Benefits	$189,030
Vehicle Purchase	22,000
Other Operating Expenses	38,210
Total FY 2020 MDE Administrative Costs	**$249,240**

Future year administrative expenditures reflect salaries with annual increases and employee turnover and ongoing operating expenses.

General fund expenditures also increase by $50,000 in fiscal 2020 only for IAC to hire a consultant to help the commission (1) develop application procedures for school systems to request funds from the Healthy School Facility Fund and (2) establish a scoring system to evaluate grant funding requests, as required by the bill. IAC did not receive additional staff to support the fund when it was originally established; therefore, additional resources are required.

MSDE can consult with MDE using existing budgeted resources and staff.

Local Fiscal Impact: Local expenditures increase, potentially significantly, beginning in fiscal 2020 to pay for (1) additional follow-up sampling and testing in response to the new intended drinking water standard for lead under the bill and (2) any necessary remedial actions to address findings of lead above five ppb. MDE advises that local school systems pay for the testing and remedial actions under the current program. Although costs will vary depending on the lead levels in a school's drinking water outlets, the number of outlets, and the status of a school's drinking water system, the costs incurred by local school systems under the bill could be significant.

For example, Baltimore City currently provides students with water bottles at a cost of approximately $500,000 annually. The city estimates that the bill results in additional costs of between $150,000 and $182,000 annually for testing, replacing failed outlets, data tracking from the increased water sampling, and preventative maintenance. Although plumbing upgrades are not necessarily required, the city estimates that purchasing and installing water fountains and conducting plumbing upgrades to provide drinking water to students will cost $107.9 million.

Anne Arundel County Public Schools estimates that the bill increases operating and capital budget expenses by between $1.0 million and $1.5 million.

As mentioned above, Montgomery County Public Schools estimates that replacing all drinking water outlets that have already been demonstrated to have lead water levels between 5 ppb and 20 ppb costs approximately $2.5 million.

To the extent that a local school system receives grant funding under the bill, these costs are mitigated somewhat. However, it is assumed that the total expenditures incurred by local school systems likely exceed the total grant revenues received under the bill (unless other significant sources of funding for the grant program are identified).

Small Business Impact: Small businesses in the plumbing and construction industries and small private laboratories may benefit from an increase in the demand for their services.

Additional Comments: Nonpublic schools also incur additional costs to conduct additional sampling and testing on drinking water outlets and to remediate drinking water outlets that are identified as having a lead water concentration above five ppb. To the extent that nonpublic schools receive grant funding under the bill, those costs are mitigated to some extent.

Additional Information

Prior Introductions: None.

Cross File: SB 481 (Senator McCray) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Association of Counties; Maryland State Department of Education; Maryland Department of the Environment; Baltimore City Public Schools; Baltimore County Public Schools; Anne Arundel County Public Schools; Montgomery County Public Schools; Talbot County Public Schools; Interagency Commission on School Construction; U.S. Environmental Protection Agency; Department of Legislative Services

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