

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

Senate Bill 546

(Senator McCray)

Education, Health, and Environmental Affairs

Environment and Transportation

School Buildings - Drinking Water Outlets - Elevated Level of Lead (Safe School Drinking Water Act)

This bill (1) redefines “elevated level of lead” to mean a lead concentration in drinking water that exceeds 5 parts per billion (ppb) for the purposes of required lead water testing and remedial measures in public and nonpublic schools and (2) makes conforming changes to existing notice and remediation requirements. If a water test sample for a drinking water outlet was analyzed on or before June 1, 2021, and the analysis indicated a concentration of lead that was more than 5 ppb but less than 20 ppb, a school must take appropriate remedial measures by August 1, 2022. The bill may not be construed to alter the priority for awarding grants from the Healthy School Facility Fund. **The bill takes effect June 1, 2021.**

Fiscal Summary

State Effect: General fund expenditures increase by \$380,000 in FY 2022 for staff and one-time expenses; out-years reflect ongoing costs. Potential increase in special fund grant expenditures from the Healthy School Facility Fund beginning in FY 2022. Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	380,000	204,200	210,300	217,900	225,700
SF Expenditure	-	-	-	-	-
Net Effect	(-)	(-)	(-)	(-)	(-)

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

Local Effect: Local expenditures increase, likely significantly, beginning in FY 2022. 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

Current Law:

Testing for Lead in Drinking Water Outlets in Maryland Schools

Chapter 386 of 2017 required the Maryland Department of the Environment (MDE), in consultation with the Maryland State Department of Education (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 a public or nonpublic school building. Chapter 386 also established reporting requirements, which were amended pursuant to Chapter 557 of 2019, to require additional reporting for samples that indicate a concentration of lead above five ppb but less than the standard for an “elevated level of lead.”

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 must be reported to MDE, MSDE, and the appropriate local health department within 30 days after analysis. Schools must conduct lead monitoring on every drinking water outlet every three years, unless a waiver is granted, and lead monitoring must also be conducted within one year of substantive plumbing upgrades or renovations. MDE notes that this required frequency of testing is more stringent than related federal standards.

“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. EPA updated the 2006 version of the Training, Testing, and Taking Action Approach (3Ts) manual in 2018, which is available [online](#). Regulations establish that “elevated level of lead” means a lead concentration in drinking water that exceeds the concentration of 20 ppb. However, Chapter 557 expressed the intent of the General Assembly that schools work proactively to reduce the lead concentration in drinking water outlets to a level below 5 ppb and that specified funds be made available for this purpose.

The Healthy School Facility Fund

Chapter 557 required the Interagency Commission on School Construction (IAC), in consultation with MDE, to 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 schools. IAC has developed the required procedures, which are available on its [website](#). Current procedures establish funding eligibility for consumption outlets that test above 5 ppb. However, outlets with lead water levels between 5 and 20 ppb are not considered immediate threats to safety and are prioritized below remediation projects for consumption outlets with lead water levels above 20 ppb and other significant facilities issues, such as heating, ventilation, and air conditioning, and mold problems.

State Expenditures:

Administrative Costs

The change to the standard for the concentration of lead in drinking water outlets under the bill results in a substantial increase in the number of drinking water outlets that need to be addressed, which significantly increases the administrative workload for MDE. Prior estimates of staffing levels necessary to implement the school drinking water outlet testing program have not been provided to MDE, and existing staff are already fully subscribed. Thus, additional staff are necessary to implement the bill.

Accordingly, MDE general fund expenditures increase by \$379,995 in fiscal 2022, which accounts for a 30-day start-up delay from the bill's June 1, 2021 effective date. This estimate reflects the cost of hiring three full-time regulatory compliance engineers to (1) review, analyze, and track additional testing data; (2) follow up on and address testing results from outlets that exceed five ppb; and (3) generally implement the more stringent lead water concentration standard under the bill. It includes salaries, fringe benefits, one-time start-up costs (including a one-time cost to update MDE's existing tracking database), and ongoing operating expenses.

Positions	3.0
Salaries and Fringe Benefits	\$211,710
One-time Cost to Update Tracking Database	150,000
Other Operating Expenses	<u>18,285</u>
Total FY 2022 MDE Administrative Costs	\$379,995

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

MSDE can continue to consult with MDE and receive testing results using existing budgeted staff and resources.

Healthy School Facility Fund Expenditures

Depending on available funding, special fund grant expenditures from the Healthy School Facility Fund increase beginning in fiscal 2022 to assist with the costs of remedial measures to address the presence of lead concentrations above five ppb in drinking water outlets in schools. Actual expenditures 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, replacing just the affected outlets, or replacing the plumbing for an entire school building. It is assumed that special fund expenditures do not begin until fiscal 2022, despite the bill's June 1, 2021 effective date. Additionally, the bill may not be construed to alter the priority in awarding grants under the Healthy School Facility Fund; thus, any available funding depends on current grant priorities.

For context, IAC advises that, in fiscal 2020 (the last fiscal year that funding was not affected by the COVID-19 pandemic), the commission allocated funding from the Healthy School Facility Fund for slightly less than \$24 million to projects that were considered immediate risk and \$6 million for nonimmediate risk projects. The nonimmediate risk projects included \$84,000 to fund lead remediation projects below the current law 20 ppb elevated lead level. IAC expects to release applications for fiscal 2021 funding in May 2021 (these allocations were delayed due to budget uncertainty as a result of the COVID-19 pandemic).

Local Fiscal Effect: Local expenditures increase, potentially significantly, beginning in fiscal 2022 (assuming a one-month delay in implementation) to pay for any necessary remedial actions to address findings of lead above five ppb. 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. IAC estimates that it could cost \$30 million or more to fully remediate affected schools.

To the extent that a local school system receives grant funding, these costs are mitigated somewhat. However, it is assumed that the total expenditures incurred by local school systems likely exceed the total grant revenues available.

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

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

Additional Information

Prior Introductions: SB 992 of 2020, a similar bill, passed the Senate with amendments and was referred to the House Environment and Transportation and Ways and Means committees, but no further action was taken. Its cross file, HB 1475, received a hearing in the House Environment and Transportation Committee, but no further action was taken.

Designated Cross File: HB 636 (Delegate Solomon) - Environment and Transportation and Appropriations.

Information Source(s): Harford and Montgomery counties; Maryland Association of County Health Officers; Maryland Association of Counties; Maryland State Department of Education; Maryland Department of the Environment; Department of General Services; Maryland Department of Health; Interagency Commission on School Construction; Anne Arundel County Public Schools; St. Mary's County Public Schools; Department of Legislative Services

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