

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 11

(Delegate Stewart)

Environment and Transportation

Education, Energy, and the Environment

Private Well Safety Act of 2023

This bill requires the Maryland Department of the Environment (MDE), by December 31, 2026, to adopt regulations to identify a list of additional standards for water quality testing that MDE deems necessary for each county or a specific area within a county. Additionally, *subject to the availability of funding*, and in consultation with the Department of Information Technology (DoIT), MDE must utilize an online portal to receive specified water quality testing results, upload certificates of potability and other water quality testing results, and provide public access to that information. MDE must also conduct a study on long-term funding options for the detailed monitoring and analysis of groundwater resources in the State, submit a related report, and assist in identifying a funding source for a private well grant fund. The bill also establishes water quality testing requirements for contracts for the sale of real property that has a private or domestic water supply well. **The bill takes effect October 1, 2024.**

Fiscal Summary

State Effect: General fund expenditures increase by at least \$186,800 in FY 2025; future years reflect annualization, inflation, and minimum ongoing costs. Funding related to the establishment of the online portal – which has been requested even in the absence of the bill – is discussed below. State revenues are not affected.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	186,800	217,400	227,200	239,300	250,700
Net Effect	(\$186,800)	(\$217,400)	(\$227,200)	(\$239,300)	(\$250,700)

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

Local Effect: Local governments may be affected by the additional water quality testing standards developed under the bill. However, any such impact ultimately depends on the standards that are developed and cannot be reliably estimated at this time.

Small Business Effect: Minimal.

Analysis

Bill Summary: “Private well” is defined to mean a private or domestic water supply well that is a source of potable water. The bill makes conforming changes to existing § 9-4A-01 of the Environment Article, which is renumbered as § 9-4A-04 by the bill.

Water Quality Testing Standards and Online Portal

By December 31, 2026, MDE must adopt regulations to identify a list of additional water quality testing standards that it deems necessary for each county or any specific area within a county. The regulations may require, as appropriate, testing for (1) manganese; (2) arsenic; (3) radon; (4) mercury; and (5) other volatile organic compounds for which there is a maximum contaminant level.

Subject to the availability of funding for the planning and implementation of an online portal, and in consultation with DoIT, MDE must use an online portal to (1) receive water quality testing results, as specified; (2) upload certificates of potability (which are required under related State regulations), results of water quality testing, and other relevant information submitted to MDE related to private wells (on at least a quarterly basis); and (3) provide public access to the information in a manner that is easy to use and categorized by county. On implementation of the online portal, a county may submit to MDE records of required certificates of potability and any results of water quality testing received voluntarily from residents. A State-certified laboratory that conducts water quality testing of private wells must submit testing results to MDE in a manner determined by MDE. MDE must (1) consistently share the information that is collected under these provisions with the Maryland Department of Health (MDH) and local health departments (LHDs) and (2) encourage MDH and LHDs to share relevant information to the online portal.

Water Testing as a Condition of Sale of Real Property and State-certified Laboratory Responsibilities

The bill requires that as a condition of sale, a contract for the sale of real property on which a private or domestic water supply well is located must include a provision requiring that the purchaser ensure that the well undergo water quality testing. Settlement on the contract may not occur until the vendor and purchaser have both received and reviewed the results of the water quality testing. At settlement, the vendor and purchaser must each certify in writing that they have received and reviewed the results. Testing results are valid for

three years. However, a purchaser may waive the water quality testing requirements in writing.

The bill establishes several reporting requirements for a State-certified laboratory that conducts water quality tests pursuant to the bill. Among other things, a State-certified laboratory must submit the results of the water quality testing to MDE within five business days of completing the testing, along with (1) a statement that the water quality testing is for the purpose of complying with the bill and (2) the location of the real property, as specified. The bill specifies who is entitled to receive water quality testing results.

Study on Long-term Funding Options for Groundwater Monitoring and Analysis

MDE must conduct a study on long-term funding options for the detailed monitoring and analysis of groundwater resources in the State. MDE must submit a report of its findings and recommendations to the Governor and the General Assembly by December 1, 2025.

Current Law:

Private and Public Water Systems Water Quality Standards

MDE is responsible for primary enforcement of the federal Safe Drinking Water Act, which, among other things, ensures that public water systems meet strict safe drinking water standards. These standards generally do not apply to private drinking water wells. Rather, private well owners are responsible for the safety of their own wells after initial construction and certification is completed. However, Chapter 622 of 2021 requires the owner of residential rental property that is served by a private water supply well to provide for water quality testing every three years and to disclose the results to current and prospective tenants. When a water quality test reveals that a private water supply well is contaminated, the owner must notify MDE and the local health department (LHD) and resolve the issue. As of the writing of this fiscal and policy note, MDE has not promulgated regulations to implement Chapter 622.

Water Well Construction in the State, Generally

MDE's water well construction program regulates the permitting and installation of water wells in the State, including for potable and nonpotable supply wells. Wells must be installed by a Maryland-licensed well driller, and the licensed well driller must obtain a well construction permit prior to drilling. MDE delegates authority to enforce the State's water well construction regulations to LHDs and other local permitting agencies, which are referred to as approving authorities. Licensed well drillers apply to the local approving authority to obtain a well construction permit prior to drilling. After obtaining a permit to drill, the well driller must also submit a completion report to the approving authority. If the

well is to be used as a potable water supply, a Certificate of Potability is required before the well is put into service.

Mandatory Notices and Disclosures for a Contract of Sale of Real Property

Statutory provisions set forth numerous requirements regarding statements, disclosures, and notices in contracts for the sale of property, including provisions relating to:

- notice of estimated deferred water and sewer charges;
- notice of costs of recordation or transfer taxes;
- notice that the subject property may be located in a “critical area” of the Chesapeake Bay and Atlantic Coastal Bays;
- notice of specified development impact fees;
- notice of protection by the Real Estate Guaranty Fund;
- notices related to deposits, specified contractual provisions, and warranties; and
- notice that the subject property may be located in a zone of dewatering influence.

Many requirements regarding such statements, disclosures, and notices vary depending on the type of property at issue and/or the jurisdiction where the property is located. Generally, unless otherwise specifically established, a contract of sale is not rendered invalid by the omission of any statement, disclosure, or notice.

State Expenditures:

Maryland Department of the Environment – Administrative Costs

General fund administrative expenditures for MDE increase by \$186,766 in fiscal 2025, which accounts for the bill’s October 1, 2024 effective date. This estimate reflects the cost of hiring three regular employees (one administrative specialist, one geologist, and one environmental health specialist) to (1) develop and adopt the required standards (through regulation) for water quality testing deemed necessary for each county (or specified areas within a county); (2) conduct customer service needs associated with the standards and the online portal; (3) assist counties in implementing the standards and utilizing the portal; (4) generally implement the standards (by conducting any necessary monitoring and/or remediation assessments); (5) administer and maintain the portal and share the information collected; (6) conduct the study on long-term funding options for the detailed monitoring and analysis of groundwater resources in the State and submit the related report; and (7) assist in identifying a funding source for a private well grant fund. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	3.0
Salaries and Fringe Benefits	\$164,539
Operating Expenses	<u>22,227</u>
Total FY 2025 MDE Admin. Expenditures	\$186,766

Future year administrative expenditures, which range from \$217,405 in fiscal 2026 to \$250,655 in fiscal 2029, reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

The Department of Legislative Services notes that to the extent that MDE does not obtain sufficient funding for the planning and implementation of the online portal (as discussed below), necessary staffing levels for MDE – and associated administrative costs – may be lower.

Private Well Water Quality Online Portal

MDE advises that – even in the absence of the bill – it is planning to develop a portal-type permitting database that will track well and septic system permits (as well as other MDE permits). It is anticipated that this database, if established, will meet the bill’s requirements relating to the online portal. Although MDE has requested initial funding for the development of the database, MDE advises that funding has not yet been secured. Based on preliminary estimates, contractual costs to develop the database (which includes outreach to counties to gather relevant available information) are estimated to total approximately \$3.4 million over a two-year period.

Because the bill’s requirements regarding the online portal are *subject to the availability of funding*, this analysis assumes that if MDE does *not* receive the funding *it has already requested* for the database (as discussed above), MDE does not otherwise need to establish an online portal under the bill. To the extent it must do so, however, general fund expenditures increase.

Maryland Department of Health

The Maryland Department of Health’s (MDH) Laboratories Administration provides analytical support services for State agencies and program offices throughout the State and is the primary laboratory in the State that conducts water testing for MDE and LHDs. As such, the Laboratories Administration may need to conduct additional testing pursuant to the additional standards for water quality testing developed under the bill. Although any such impact ultimately depends on the standards that are developed and cannot be reliably estimated at this time, given the large number of private wells in the State, and the fact that the State laboratories are fully subscribed, to the extent that the Laboratories

Administration must conduct additional testing as a result of the bill, MDH likely needs to hire additional staff, and general fund expenditures increase accordingly.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 483 (Senator Lewis Young, *et al.*) - Education, Energy, and the Environment.

Information Source(s): Department of Information Technology; Maryland Association of County Health Officers; Baltimore City; Caroline, Howard, and Prince George's counties; Maryland Association of Counties; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Maryland Department of the Environment; Maryland Department of Health; Department of Legislative Services

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