

Department of Legislative Services  
Maryland General Assembly  
2008 Session

FISCAL AND POLICY NOTE

House Bill 741 (Queen Anne's County Delegation)  
Environmental Matters

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Environment - Drinking Water - Provision of Bottled Water

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This bill requires a public facility served by a public water system to provide bottled water on-site whenever the public water system fails to comply with the maximum contaminant level (MCL) set for arsenic, notwithstanding the provision of State law that prohibits State regulations governing drinking water from being more stringent than the complete interim or revised federal regulations in effect at the time.

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Fiscal Summary

**State Effect:** Potential increase in State expenditures for affected State facilities to provide bottled water in accordance with the bill. No direct effect on revenues.

**Local Effect:** Expenditures for affected local facilities would increase to provide bottled water in accordance with the bill.

**Small Business Effect:** Potential meaningful impact to the extent the term "public facility" includes private facilities that are open to the public.

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Analysis

**Current Law:** The Maryland Department of the Environment is responsible for primary enforcement of the federal Safe Drinking Water Act. Among other things, MDE ensures that public water systems meet strict safe drinking water standards. State regulations governing drinking water may not be more stringent than the complete interim or revised federal regulations in effect at the time.

State regulations establish MCLs for inorganic chemicals in drinking water; the levels are generally based on potential adverse health effects resulting from long-term exposure to the contaminant in drinking water. Under current regulations, the MCL that has been established for arsenic is 0.01 milligrams per liter (mg/l). All suppliers of water to community water systems (public water systems that serve at least 15 service connections used by year-round residents, or regularly serve at least 25 year-round residents) and nontransient noncommunity water systems (public water systems that are not community water systems and that regularly serve at least 25 of the same individuals over 6 months per year) must comply with the MCL for arsenic.

In accordance with federal regulations, State regulations require monitoring by the water supplier for the purpose of determining compliance with the MCLs.

Under current State regulations, “public water system” means a system that provides water for human consumption to the public through pipes or other constructed conveyances, if the system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year.

**Background:** In January 2001, the federal government lowered the standard for arsenic in drinking water from 0.05 mg/l to 0.01 mg/l; it required that primacy states, such as Maryland, adopt the new standard by 2003 and that water systems meet the new standard by January 23, 2006. According to MDE, this change affected 55 public water systems, most of which had been in compliance with the previous standard. According to MDE, 20 public water systems that serve a population of 46,697 currently exceed the arsenic standard, although not all of those systems are technically in violation of the new standard. Several systems are completing work (either installing treatment or developing a new water source) to avoid violations through an agreement signed with MDE.

The presence of arsenic above the MCL has been found in some schools in Queen Anne’s County. The Queen Anne’s Board of County Commissioners recommended that the State require boards of education to provide bottled or purified water free of charge to the children while at school. In an August 2007 letter to the county commissioners, MDE noted that this is an appropriate recommendation for significant water quality concerns and that, in fact, federal and State regulations state that bottled water *may* be used on a temporary basis to avoid an unreasonable risk to health. MDE indicated that in practice, bottled water or an alternative water source may be required for an acute water concern such as *E. coli* contamination; however, some drinking water contaminants such as arsenic are only a problem if they are consumed over a long period of time and do not present an immediate unreasonable risk to health. Under the federal Safe Drinking Water Act, provision of bottled water is not mandatory for arsenic and its use by water systems is considered a proactive response that may be taken at the discretion of the water system owner. MDE concluded that, in the case concerning the schools in Queen Anne’s

County, it does not have the authority to require the board of education to provide bottled water.

**State Fiscal Effect:** State expenditures could increase for affected State facilities to provide bottled water in accordance with the bill. The number of State facilities served by public water systems in violation of the MCL for arsenic is unknown, as is the population served by those facilities. In addition, the length of time for which bottled water would need to be provided is unknown. Accordingly, a reliable estimate of any increase in expenditures cannot be made at this time.

The Department of General Services advises that Blind Industries' contract price for 24 half-liter bottles is \$6.25 per case (or roughly 26 cents per half-liter); five gallon bottles are available at \$5.50 per bottle (or \$1.10 per gallon).

MDE advises that it would need to hire two inspectors to enforce the bill. However, the bill does not require MDE to do anything. Because current regulations require monitoring by the water supplier for the purpose of determining compliance with the MCLs, it is assumed that suppliers (and not MDE) would notify their customers when they fail to comply with the MCL for arsenic, thus triggering the bill's requirement to provide bottled water. MDE could enforce that requirement on a complaint basis using existing resources.

**Local Expenditures:** According to MDE, many of the public water systems with elevated arsenic levels are owned by counties and municipalities. However, the number of facilities served by these systems that are owned by local governments is unknown, as is the population served by those facilities. In addition, the length of time for which bottled water would need to be provided is unknown. Accordingly, a reliable estimate of any increase in local expenditures cannot be made at this time.

Queen Anne's County advises that there are four Centreville area schools that would be affected by the bill, and that the cost to provide bottled water, coolers, and cups at those schools is expected to cost approximately \$46,000 annually, not including the cost of electricity to run the coolers.

**Small Business Effect:** The bill does not define the term "public facility." Accordingly, it is unclear if the term means publicly owned facilities or *all* facilities that are open to the public. If the bill applies to all facilities that are open to the public, the bill could have a significant impact on any small businesses served by public water systems that are in violation of the MCL for arsenic. The number of small businesses served by public water systems in violation of the MCL for arsenic is unknown, as is the population served by those businesses.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Department of the Environment, Department of General Services, Department of Budget and Management, Maryland Association of Counties, Charles County, Frederick County, Montgomery County, Queen Anne's County, Somerset County, Maryland Municipal League, City of Frederick, City of Havre de Grace, Department of Legislative Services

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