

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 496 (Delegate Healey, *et al.*)
 Environment and Transportation

Department of the Environment - Public and Nonpublic Schools - Inspections for Environmental Hazards

This bill requires the Maryland Department of the Environment (MDE), in consultation with the Maryland State Department of Education (MSDE), the Department of General Services (DGS), and Maryland Occupational Safety and Health (MOSH), to adopt regulations to require periodic inspections for the presence of “environmental hazards” in each occupied public or nonpublic school facility in the State. The bill outlines the steps that must be taken if environmental hazards are present. Waivers from the required inspections may be granted under specified circumstances. Before adopting the required regulations, MDE must gather specified information and convene a stakeholder group. The bill also establishes reporting requirements. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: General fund expenditures increase by at least \$754,000 in FY 2020. Future years 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 | 754,000 | 709,800 | 733,400 | 758,600 | 784,600 |
| Net Effect | (\$754,000) | (\$709,800) | (\$733,400) | (\$758,600) | (\$784,600) |

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

Local Effect: Local school system expenditures increase, likely significantly, beginning in FY 2020 to conduct inspections and any required remediation. Revenues are not affected. **The bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Relevant Definitions

“Environmental hazard” means one or more toxic chemical, biological, or physical agents in the environment resulting from human activities or natural processes that may impact the health of exposed individuals. “Environmental hazard” includes air pollutants, asbestos, contaminated drinking water, industrial and home chemicals, lead, mercury, mold and mildew, pesticides, pests, polluted waters, polychlorinated biphenyls, radon, secondhand tobacco smoke, toxic waste, and any other environmental contaminant, hazardous substance, or pollutant emission that presents or may present a risk to the health of occupants of a school facility or environment.

“Technical guidance” means the most recent technical guidance issued by the U.S. Environmental Protection Agency (EPA) for reducing the presence of environmental hazards in schools.

Required Stakeholder Group and the Content of the Required Regulations

MDE must establish a stakeholder group, consisting of specified representatives, to provide advice and make recommendations regarding the development of the required regulations. Before adopting the regulations, MDE must gather information about the inspection processes, protocols, and efforts being undertaken by each local school system and nonpublic school to establish a safe environment free from the presence of environmental hazards, including whether the school system or nonpublic school has (1) knowledge of any environmental hazards present in a school facility and (2) a plan for inspection, and, if appropriate, remedial measures.

The regulations adopted pursuant to the bill must (1) phase in the implementation of the required inspections, beginning with schools known to have environmental hazards present; (2) require inspections of schools known to have environmental hazards present to be conducted by July 1, 2020; (3) establish an inspection method by MDE-approved entities that is consistent with EPA technical guidance; (4) establish the frequency for the required inspections; (5) address best practices and cost-effective inspections; (6) require MDE-approved entities to analyze the samples and information retrieved from inspections; and (7) require MDE to develop and maintain records detailing inspection results, the status of each school with regard to the presence of environmental hazards, and remedial measures taken or planned for each environmental hazard detected.

Actions to be Taken if Environmental Hazards are Present

If the analysis of the inspection data indicates the presence of an environmental hazard, the following steps must be taken: (1) the entity conducting the analysis must report the results to MDE, the school inspected, MSDE, and the appropriate local health department; (2) the school must take appropriate remedial actions in accordance with the regulations adopted under the bill; (3) an MDE-approved entity must conduct a follow-up inspection; and (4) notice of the presence of the environmental hazard must be provided to parents and guardians of students and faculty and staff employed at the school. Notice must also be posted on the school's website.

Complaints and Waivers Related to Inspections

MDE must develop and maintain a system for receiving and addressing public complaints concerning inspection practices, unaddressed environmental hazards, and incomplete remediation.

MDE, in consultation with MSDE, may grant a waiver from the required inspection to *a local school system* if the school system has (1) a plan in place for inspecting the school facilities within the local school system and addressing any present environmental hazards in a manner that substantially complies with the regulations adopted under the bill; (2) completed comprehensive inspections of the school facilities within the local school system, as specified; and (3) a comprehensive monitoring program to ensure an environment free from environmental hazards that substantially complies with the regulations adopted under the bill.

MDE, in consultation with MSDE, may grant a waiver from the required inspection to *an individual public or nonpublic school* if (1) the school facility has been inspected for the presence of environmental hazards in a manner that substantially complies with the regulations adopted under the bill and (2) the inspection results did not indicate the presence of an environmental hazard in the school facility.

Required Report

By December 1, 2020, and annually thereafter, MDE and MSDE must jointly report to the Governor and the General Assembly on the findings of the inspections required by the bill. The report must include the name and address of each school that was found to have an environmental hazard present, the type of environmental hazard detected and its location in the facility, and any remedial measures taken or planned for each environmental hazard detected.

Current Law/Background:

Public and Nonpublic Schools in Maryland

The only definition of “school” in the Environment Article is within the Asbestos Removal Subtitle, which defines “school” as any elementary or secondary school, as defined under 20 U.S.C. 7801; the federal definition is limited to nonprofit institutions. Under the Education Article, a “public school” means the public elementary and secondary education system. Elementary and secondary education includes preschool through the end of high school and their equivalent. According to MSDE, as of September 30, 2017, there were 1,428 public and 1,418 nonpublic schools in the State.

The Interagency Commission on School Construction and the Maintenance of Public School Buildings

The Interagency Commission on School Construction (IAC) is an independent commission within MSDE. Among other things, IAC is charged with establishing sufficiency standards, or a uniform set of criteria and measures for evaluating the physical attributes and educational suitability of public elementary and secondary school facilities in the State. IAC is also in the process of conducting an initial statewide facilities assessment using these sufficiency standards, which must be finished by July 1, 2019, as required by Chapter 14 of 2018. The fiscal and policy note for Chapter 14 of 2018 estimated that the one-time cost of this facilities assessment by a third-party vendor would be an estimated \$3.5 million.

IAC must also conduct periodic inspections of school buildings and report on their condition. Each local school system must develop and adopt preventative maintenance schedules for their public schools that are based on industry standards. By July 1 of each year, local school systems must report to IAC on their compliance with the maintenance schedules. IAC included sample inspection forms in its [Fiscal 2018 Annual Report](#) on the maintenance of Maryland’s public school buildings. The sample inspection forms include 35 items for inspection including fire and safety; air conditioning; ventilation equipment; heating units; steam distribution; heating, ventilation, and air-conditioning controls; plumbing fixtures/equipment; and restrooms.

Testing for Lead in Drinking Water in Public and Nonpublic Schools

Chapter 386 of 2017 established a program for the testing of lead in drinking water in public and nonpublic schools. Specifically, the Act required MDE, in consultation with MSDE, DGS, and MOSH, 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. The Act required the initial testing to be conducted by July 1, 2018, required

MDE's regulations to phase in the testing, and established specific follow-up actions for positive test results.

EPA Technical Guidance

The federal Energy Independence and Security Act of 2007 amended the Toxic Substances Control Act by adding a requirement for EPA, in consultation with relevant federal agencies, to develop voluntary guidelines to assist states in establishing and implementing environmental health programs for K-12 schools. As a result, on its [website](#), EPA has a host of programs and an extensive list of resources to help states assist school systems in creating comprehensive, sustainable strategies that promote healthy learning places for students. Among other things, these resources include a [Model K-12 School Environmental Health Program](#).

State Expenditures: General fund expenditures increase by *at least* \$754,000 in fiscal 2020 for MDE and MSDE to hire staff to implement the bill, as discussed below by agency. Future year expenditures reflect ongoing costs.

Maryland Department of the Environment

MDE advises that costs increase by roughly \$1 million annually beginning in fiscal 2020 to hire 15 new staff to establish the required regulations and implement the inspection program required by the bill. The Department of Legislative Services concurs that MDE needs to hire a significant number of new staff in order to implement the bill's changes. However, without actual experience under the bill, an *exact* estimate of the number of additional staff MDE needs cannot be determined at this time.

Regardless, the Department of Legislative Services advises that general fund expenditures for MDE increase by *at least* \$644,540 in fiscal 2020, which accounts for the bill's July 1, 2019 effective date. This estimate reflects the cost of hiring eight full-time permanent employees (one program manager, one administrative specialist, one office secretary, one environmental health specialist, one regulatory compliance specialist, one environmental compliance specialist, and two industrial hygienists) to (1) gather information on current inspection processes and procedures; (2) develop and promulgate regulations, (3) conduct compliance and enforcement activities, (4) conduct oversight of inspector and inspection contracts; (5) track and maintain school compliance records; and (6) complete the required annual reports. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- there are approximately 3,000 public and nonpublic school buildings in the State, and MDE is responsible for tracking and maintaining records on school compliance with the regulations;
- there are 15 environmental hazards specifically listed in the bill, but additional environmental hazards may be identified during the regulation development process;
- several of the environmental hazards listed in the bill, such as air pollutants, industrial and home chemicals, and mold and mildew, are broad in nature and do not have established trigger levels for corrective action, so establishing standards for these hazards takes significant effort on MDE's part; and
- MDE must enforce the standards established pursuant to the bill to ensure that school systems and nonpublic schools conduct the required inspections and remediate any found environmental hazards.

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| Positions | 8 |
| Salaries and Fringe Benefits | \$600,420 |
| Operating Expenses | <u>44,120</u> |
| Minimum FY 2020 MDE Expenditures | \$644,540 |

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

MDE assumes, and DLS concurs, that, under the bill, schools are responsible for paying for the required inspections. To the extent that MDE is responsible for paying for the inspections, general fund expenditures increase significantly further.

Maryland State Department of Education

General fund expenditures for MSDE increase by \$109,478 in fiscal 2020, which reflects the bill's July 1, 2019 effective date. This estimate reflects the cost of hiring one program coordinator to consult and coordinate with MDE on the required inspection program, including on the issuance of waivers and the required annual report. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. Among other things, this estimate is based on the time and staff resources that have been spent implementing the lead testing program established by Chapter 386 of 2017, which has many similar components.

| | |
|----------------------------------|------------------|
| Position | 1 |
| Salary and Fringe Benefits | \$103,963 |
| Operating Expenses | <u>5,515</u> |
| FY 2020 MSDE Expenditures | \$109,478 |

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

Department of General Services and Maryland Occupational Safety and Health

This estimate assumes that DGS and MOSH can consult with MDE to develop the required regulations using existing budgeted staff and resources.

Local Expenditures: This estimate assumes that local school systems are responsible for costs to conduct the required inspections (unless granted a waiver) and to remediate any environmental hazards found during the inspections. Given the breadth of environmental hazards that must be inspected under the bill, and the fact that inspection standards are established under regulations (including the frequency with which inspections must occur), a reliable estimate of the costs to local school systems to implement the bill cannot be made. However, inspection and remediation costs are likely significant.

Montgomery County Public Schools estimates that expenditures in fiscal 2020 increase by approximately \$18 million to hire 15 new staff members, contract to conduct initial inspections at facilities, dispose of hazardous materials such as chemical waste and mercury, and conduct remediation (including for lead paint mitigation). Out-year costs are expected to be \$4.3 million annually.

Anne Arundel County Public Schools estimates that inspections alone cost more than \$1 million annually and that remediation costs are unknown, but likely significant.

Frederick County Public Schools notes that since there are no measureable standards for many of the environmental hazards listed in the bill, inspection costs are difficult to estimate. Nevertheless, the county anticipates that local expenditures increase by almost \$3 million in fiscal 2020, by \$1.8 million in fiscal 2021, and by approximately \$880,000 in fiscal 2022 and future years.

St. Mary's County Public Schools anticipates that the county needs to hire two new staff members, which results in an increase in expenditures of almost \$100,000 annually beginning in fiscal 2020.

Because the bill requires that inspections be phased in, not all schools must be tested during the initial phase of testing. The number of public schools that have known environmental hazards present are unknown.

Small Business Effect: Certified industrial hygienists, other related professions, and environmental remediation companies may experience an increase in the demand for their services. Small private laboratories may also realize more business.

Additional Comments: Nonpublic schools also incur potentially significant additional costs to conduct inspections (unless granted a waiver) and complete any required mediation.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Association of County Health Officers; Maryland State Department of Education; Interagency Commission on School Construction; Maryland Department of the Environment; Department of General Services; Maryland Department of Health; Department of Labor, Licensing, and Regulation; Baltimore County Public Schools; Anne Arundel County Public Schools; Montgomery County Public Schools; Prince George's County Public Schools; St. Mary's County Public Schools; U.S. Environmental Protection Agency; Department of Legislative Services

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