

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 513 (Senator Lam)
Education, Energy, and the Environment

**Environment – Collection and Reporting of Drinking Water and Wastewater
Data and Information – Requirements**

This bill requires the Maryland Department of the Environment (MDE) to create, operate, and maintain a statewide Open Water Data Reporting Platform to make public specified data related to the provision of drinking water and wastewater services in the State. A “water utility” operating in the State must provide MDE with specified data and information to be published on the platform. Among other things, the bill establishes provisions governing the platform, the data and information required to be reported by water utilities, penalties for violations, and a required annual report. MDE is authorized to develop specified regulations.

Fiscal Summary

State Effect: General fund expenditures for MDE increase significantly (potentially by more than \$1.0 million annually) beginning in FY 2024. State expenditures (all/multiple fund types) increase beginning in FY 2024 to comply with the bill’s data and information reporting requirements. Nonbudgeted expenditures and revenues for the Maryland Environmental Service (MES) increase correspondingly beginning in FY 2024. The bill’s penalty provisions are not anticipated to materially affect State finances.

Local Effect: Local expenditures increase, likely significantly for at least some jurisdictions, beginning in FY 2024 to comply with the bill’s data and information reporting requirements. Local revenues are not directly affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Key Definitions

A “water utility” is a public or private entity that provides water or wastewater service to customers in a service area. The bill lists examples of entities that are specifically included in the definition. A “small water utility” is a public or private entity that provides water or wastewater service for up to 10,000 customers in a service area. A “large water utility” means a public or private entity that provides water or wastewater service to at least 10,001 customers in a service area.

Purpose and Development of the Open Water Data Reporting Platform

MDE must create, operate, and maintain an Open Water Data Reporting Platform to (1) make available to the public data related to the provision of drinking water and wastewater services in the State; (2) improve the equitable provision of drinking and wastewater services in the State; (3) bring transparency to water access and the provision of drinking water and wastewater services in the State; and (4) enable more inclusive participation of residents in the provision of drinking water and wastewater services and the protection of water resources.

By January 1, 2024, MDE must release any request for proposals necessary for the development of the platform. MDE is authorized to partner with an existing nonprofit organization or a State agency to create, operate, or maintain the platform. By July 1, 2025, MDE must provide on its website a webpage for the public to (1) comment on the development and implementation of the platform and (2) propose additional data for the platform to collect.

Development of a Protocol for Providing and Reporting Data and Information

MDE must develop a protocol for providing and reporting the required data and information. As part of the protocol, MDE must develop and publish a form for a water utility to report to MDE data and information related to the provision of drinking water and wastewater services. The form must include instructions for complying with the bill’s reporting requirements. By January 1, 2024, MDE must publish the required protocol.

Data and Information Required to Be Collected and Included in the Platform

A water utility operating in the State must provide MDE with the data and information required under the bill. On request of a water utility, a local government of the jurisdiction

within which the water utility is located must provide the water utility with the required data and information for which it has access. The bill may not be construed to prevent a State agency or local government from disseminating, managing, or publishing data separately from the platform.

The bill lists 55 enumerated items that must be included in the platform. Each water utility must provide to MDE the data and information included on that list either on a monthly or annual basis, depending on the size of the water utility and the item. To the extent practicable, a water utility must report the data disaggregated by nine-digit zip code. Among other things, a map and a detailed description of service area boundaries of each water utility must be included. The map must include (1) for the first reporting period, the data for the preceding 15 years and (2) after the first reporting period, the data for the prior calendar year, disaggregated by drinking water and wastewater service.

MDE must collect and consolidate the drinking water and wastewater data and information reported by water utilities. By August 1, 2025, MDE must begin making the data and information available on the platform. By July 1, 2026, and every two years thereafter, MDE must review the data and information included on the platform and (1) identify additional data that should be collected and included on the platform or (2) provide an explanation for why no additional data collection is necessary. MDE may adopt related regulations, as specified.

Incomplete Reporting and Penalties

If a water utility reports incomplete data or information, the water utility must include the following information with the report: (1) a statement identifying any data that was not included and an explanation for why the data was not included; and (2) a plan for collecting the data to complete the report and for the next reporting period.

A water utility that fails to report the required data or information is subject to a civil penalty. Specifically, a water utility that fails to report the data and information is subject to an initial fine of up to \$1,000. In addition to that civil penalty, a large water utility that fails to report the required data is subject to a fine of up to \$2,500 for each 15 days that pass (1) after assessment of the initial fine and (2) until the water utility provides the required data or information. In addition to the civil penalty described above, a small water utility that fails to report the required data is subject to a fine of up to \$1,000 for each four months that pass (1) after assessment of the initial fine and (2) until the water utility provides the required data or information. MDE may waive the fines under specified circumstances.

Fine revenue must be distributed to a special fund and used only to ensure households with low income have access to drink water and wastewater services.

Annual Report

By October 1, 2024, and annually thereafter, MDE must submit a report to the Governor and the General Assembly that (1) analyzes the data and information reported by water utilities under the bill and (2) substantively addresses each public comment received during the reporting period. The annual report must be published on MDE's website.

Current Law: According to MDE, most of the data that must be reported under the bill is not currently required to be collected or reported.

Federal Safe Drinking Water Act and State Implementation

MDE is responsible for the primary enforcement (primacy) of the federal Safe Drinking Water Act in Maryland. This means MDE is charged with ensuring that the water quality and quantity at all public water systems meet the needs of the public and are in compliance with federal and state regulations. According to MDE's [Safe Drinking Water Act Annual Compliance Report for Calendar Year 2021](#) to the U.S. Environmental Protection Agency (EPA), routine compliance activities include regular on-site inspections of water systems to identify any sanitary defects in the systems, technical assistance, and a permitting process that helps ensure that systems obtain the best possible source of water. Maryland regulates 3,253 public water systems (461 community water systems, 550 nontransient noncommunity water systems, and 2,242 transient noncommunity water systems).

Federal Clean Water Act and State Implementation

The federal Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into U.S. waters. The National Pollutant Discharge Elimination System (NPDES), a component of CWA, is a permit program that addresses water pollution by regulating point sources that discharge pollutants to U.S. waters. In Maryland, EPA delegates authority to issue NPDES permits to MDE. Federal regulations (40 C.F.R. § 122.41) specify conditions applicable to all NPDES permits, which must be incorporated into the permit, either expressly or by reference. Further, the permittee must comply with all permit conditions; any noncompliance constitutes a violation of CWA.

MDE's Water and Science Administration and Land and Materials Administration issue discharge permits to protect Maryland's water resources by controlling industrial and municipal wastewater discharges. Surface water discharges are regulated through combined State and federal permits under NPDES. Groundwater discharges are regulated through State-issued groundwater discharge permits. "Discharge permit" is defined in statute as a permit issued by MDE for the discharge of any pollutant or combination of pollutants into the waters of the State.

State/Local/Small Business Effect:

Maryland Department of the Environment Administrative Costs

MDE advises that its general fund expenditures increase by \$1.2 million in fiscal 2024 and by more than \$1.4 million annually thereafter to hire 17 employees (natural resources planners, regulatory and compliance engineers, environmental compliance specialists, and programmer analysts) to (1) develop and maintain the Open Water Data Reporting Platform, provide related customer service support and instructions for water utilities and interested citizens, and make the required data and information public on the platform; (2) develop the required forms for data submission; (3) update MDE's website to accommodate the bill's data submission, public comment, and reporting requirements; (4) collect and consolidate data and information reported by water utilities on an ongoing basis and conduct the biannual review; (5) adopt related regulations; and (6) submit the required annual report to the Governor and the General Assembly. MDE's estimate is based on the following information and assumptions:

- the bill affects thousands of water utilities (there are 33 known large water utilities and more than 3,000 known small water utilities in the State);
- most of the data that must be reported, collected, published, and reviewed under the bill is not currently reported or necessarily available;
- wastewater service providers are not permitted based on the number of customers who are served, so determining which wastewater service providers are considered large versus small water utilities requires additional research;
- although large utilities likely have some or most of the required data and information available, most of the small water utilities need to compile the required data and information, requiring substantial work on MDE's part to assist the utilities and provide oversight; and
- overall, the increase in workload is significant and MDE does not have sufficient staff or expertise to fulfill the bill's requirements without additional resources.

MDE's estimate assumes that the programmer analysts included in the estimate above will build and maintain the platform in-house. However, the Department of Legislative Services (DLS) notes that the bill authorizes MDE to partner with an existing nonprofit organization or a State agency to create, operate, or maintain the platform and that this effort likely requires consultation with the Department of Information Technology. Any additional costs for contractual services to build and maintain the platform are not included in MDE's estimate.

DLS concurs that the bill establishes substantial new responsibilities for MDE and that general fund expenditures increase *significantly* for MDE to hire staff to implement the

bill. However, without actual experience under the bill, a reliable estimate of the increase in MDE's costs – including costs for staff and potentially for contractual services to build and maintain the platform – cannot be made at this time. DLS anticipates, however, that general fund expenditures for staff alone increase significantly, potentially by more than \$1.0 million annually beginning in fiscal 2024.

Effect on Owners and Operators of Water Utilities Operating in the State

The bill establishes significant new data and information collection and reporting requirements for water utilities operating in the State. Water utilities can be owned by a variety of entities, including the federal government, State agencies, local governments, private entities, and entities with mixed ownership. The bill's requirements result in a potentially significant increase in expenditures for some water utilities. It is anticipated that the impact is most pronounced for smaller water utilities that are unlikely to collect or have the resources to obtain much of the required data and information. It is anticipated that many of these water utilities need to hire staff and/or consultants to fulfill the data and information reporting requirements. DLS notes that implementation costs borne by water utilities under the bill are likely to be passed on to consumers through an increase in rates.

MES owns and operates one water system in Harford County that has approximately 93 connections. MES also operates a number of other water systems for State, county, municipal, and private sector clients. MES advises that costs increase to fulfill the bill's data and information collection and reporting requirements but that a reliable estimate of the increase in costs cannot be made at this time. Since MES is a fee-for-service entity, any costs incurred by MES are ultimately borne by the entities that contract for MES services through an increase in fees. Therefore, MES nonbudgeted expenditures and revenues increase correspondingly beginning in fiscal 2024. Expenditures for State agencies, local governments, and small businesses that contract with MES increase correspondingly.

Additional Information

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

Designated Cross File: None.

Information Source(s): Maryland Department of the Environment; Maryland Environmental Service; Prince George's County; Maryland Association of Counties; City of Annapolis; Maryland Municipal League; Department of Legislative Services

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