Legislative Analysis

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DRINKING WATER PLANS AND TESTING FOR SCHOOLS AND CHILD CARE CENTERS ("FILTER FIRST")

House Bill 4341 as enrolled
Sponsor: Rep. Ranjeev Puri

House Bill 4342 as enrolled
Sponsor: Rep. Cynthia Neeley

Senate Bill 88 as enrolled
Sponsor: Sen. Sylvia A. Santana

House Committee (HBs 4341 and 4342): Health Policy
House Committee (SB 88): Natural Resources, Environmental, Tourism and Outdoor Recreation [Discharged]
Senate Committee (HBs 4341 and 4342): Committee of the Whole
Senate Committee (SB 88): Energy and Environment

Complete to 10-18-23

(Enacted as Public Acts 154, 155, and 173 of 2023)

SUMMARY:

Taken together, House Bills 4341 and 4342 and Senate Bill 88 would require schools and child care centers to develop a drinking water management plan within fifteen months after the bills take effect and update the plan at least every five years. The plan would specify the locations of water outlets, by water use and type of filtration, and regular replacement of filter cartridges. Water would have to be tested every year (schools) or two years (child care centers), and water could be provided for drinking only if the presence of lead was shown to be below specified levels. The bills include signage, notification, and reporting requirements. By the end of the 2025-2026 school year, outlets in schools providing water for human consumption would have to be either a filtered bottle-filling station or filtered faucet. The Department of Licensing and Regulatory Affairs (LARA) and the Department of Environment, Great Lakes, and Energy (EGLE) would have advisory responsibilities under the bills, and EGLE or its representative would have to create a program to assist schools and child care centers in meeting the bills' requirements.

House Bill 4341 would create a new act called the Clean Drinking Water Access Act. The bill would require all public and nonpublic schools to develop a drinking water management plan within 15 months after the effective date of the bill and make it available upon request to EGLE,[1] school staff, parents and guardians of children enrolled in the school, and the general public. The plan would have to specify the location of each water outlet, categorized as follows:

- The location where a water outlet to deliver water for human consumption will be maintained, categorized as follows:
  - The location where a ***filtered bottle-filling station*** will be maintained. At least one station would have to be maintained for every 100 occupants of the school, not including visitors or individuals attending special events.

[1] References to EGLE in describing HB 4341 also include authorized agents or representatives of EGLE.

    - The location where a ***filtered faucet*** will be maintained. The faucets could be maintained only when the installation of a filtered bottle-filling station is not feasible but a water outlet for human consumption is necessary, such as in kitchens, nurses' stations, preschool classrooms, and teachers' lounges.
- The location where a water outlet is maintained for purposes other than the above.
- The location where a water outlet will be shut off or rendered permanently inoperable.

Filtered bottle-filling station would mean an apparatus that meets all of the following requirements:

- It is connected to customer site plumbing.
- It filters water and is certified to meet National Sanitation Foundation/ American National Standards Institute (NSF/ANSI) standard 53 for lead reduction and NSF/ANSI standard 42 for particulate removal.[2]
- The flow rate through it is paired to the specified flow rate of the filter cartridge.
- It has a light or other device to indicate filter cartridge replacement status.
- It is designed to fill containers for personal water consumption.
- It includes a ***drinking fountain***.

Drinking fountain would mean a plumbing fixture that is connected to the potable water distribution system and drainage system that allows a user to get a drink directly from a stream of flowing water without using any accessory.

Filtered faucet would mean a faucet that includes at the point of use a filter that is certified to meet NSF/ANSI standard 53 for lead reduction and NSF/ANSI standard 42 for particulate removal.

Each school would have to review and update the plan at least once every five years and make changes as directed by EGLE or as needed to comply with the bill.

The plan also would have to establish a schedule for when each of the following will occur, and schools would be required to comply with these schedules:

- Annual water sampling and testing of the filtered water at each filtered bottle-filling station and filtered faucet to ensure that the filters are properly installed and provide water with a lead concentration of not more than five parts per billion.
- Regular replacement of the filter cartridge for each filtered bottle-filling station and filtered faucet in compliance with the manufacturer's instructions or recommendations of EGLE.

Water sampling and testing

The school would have to collect the water for the water sampling and testing required as described above. The water would have to be drawn from all of the ***bubbler fixtures*** of the filtered bottle-filling stations and filtered faucets and would have to be collected in 250-milliliter bottles after a stagnation period of at least eight hours and before any water use occurs at the school. Water testing would have to be conducted at a laboratory certified for lead and copper testing for the approved U.S. Environmental Protection Agency (EPA) method.

[2] See https://www.nsf.org/consumer-resources/articles/standards-water-treatment-systems
Also https://www.epa.gov/sites/default/files/2018-12/documents/consumer_tool_for_identifying_drinking_water_filters_certified_to_reduce_lead.pdf

Bubbler fixture would mean a fixture on a *drinking water fountain* through which water is forced up in a small arc from a nozzle that allows an individual to drink from the arc directly.

If water sampling and testing indicate the presence of lead at a concentration of at least one part per billion but not more than five parts per billion, the school would have to do all of the following:

- Immediately check the status of the filter or filters at the bottle-filling station or filtered faucet and replace the filter cartridge if the status light indicates that replacement is or will soon be required.
- Ensure that the station or faucet is properly installed.
- Resample and retest the filtered water.
- If the resample and retest still indicate the presence of lead at a concentration of at least one part per billion but not more than five parts per billion, do both of the following:
    - Send EGLE a copy of the test results and a document listing the make and model of the filtered bottle-filling station or filtered faucet and filter cartridge.
    - Consult with EGLE and the manufacturer of the filtered bottle-filling station or filtered faucet.

If water sampling and testing indicates the presence of lead at a concentration of more than five parts per billion, the school would have to do all of the following:

- Immediately shut off the water outlet or render it inoperable.
- Post a conspicuous sign near the water outlet stating that it is inoperable because of high lead concentration and maintain the sign until the outlet is returned to service.
- Replace the filter cartridge in the filtered bottle-filling station or filtered faucet.
- Resample and retest the water.
- If the resample and retest indicate the presence of lead at a concentration of at least one part per billion but not more than five parts per billion, return the water outlet to service and comply with the requirements described above for water with that level of lead.
- If the resample and retest still indicate the presence of lead at concentrations of more than five parts per billion, do both of the following:
    - Within 30 days after receiving the results, send EGLE a copy of the results and send a notice to school staff and each parent or guardian of a student enrolled in the school, in a manner determined by the school district, stating the amount of lead in the water and including information provided by EGLE on the health effects of lead exposure and ways to reduce childhood lead exposure.
    - Develop a remediation plan in consultation with EGLE and incorporate the remediation plan into the school's drinking water management plan.

<u>Duties of EGLE</u>

EGLE would have to assist each school in maintaining compliance with the bill and would have to do all of the following within six months after the bill takes effect:

- Provide a template for the plan.
- Make available annual training for school staff and school officials regarding the sampling and testing protocol, reporting process for sampling and testing results, and other activities relevant to compliance with the bill.
- Provide guidance on all of the following:
    - Factors a school should consider with selecting filtered bottle-filling stations, filtered faucets, and filter cartridges.

- How to shut off a water outlet or render it permanently inoperable.
- How to flush a building's cold water plumbing before installing new filtered bottle-filling stations and filtered faucets.
- Common filtered bottle-filling station or filtered faucet installation and operation errors and how to avoid them.

EGLE would have to provide and make available documents providing the guidance described above no later than six months after the act takes effect. Before providing the documents, EGLE would have to issue them as proposed guidance documents on its website and allow for a 30-day public comment period.

School and Child Care Center Clean Drinking Water Fund

The bill would create the School and Child Care Center Clean Drinking Water Fund in the state treasury. The treasurer could receive money or other assets from any source for deposit into the fund and would have to credit to the fund interest and earnings from fund investments. Money in the fund at the close of a fiscal year would remain in the fund and not lapse to the general fund. EGLE would be the administrator of the fund for auditing purposes.

EGLE could expend money from the fund, upon appropriation, only to create and operate a program to assist child care centers and schools with all of the following:

- The one-time acquisition and installation of filtered bottle-filling stations and filtered faucets, in compliance with the plan. (If it would achieve cost savings over independent purchases, EGLE could purchase and provide to program beneficiaries filtered bottle-filling stations, filtered faucets, point-of-use filters, or filter cartridges.)
- Maintenance of filtered bottle-filling stations and filtered faucets and replacement of filter cartridges, incompliance with the plan.
- Costs associated with water sampling and testing.
- Costs associated with mailing or delivering any water collected for water sampling and testing.

EGLE could award grants to operate the program described above.

Other prohibitions and requirements for schools

Beginning 15 months after the bill's effective date, a school would be prohibited from installing a drinking fountain that is not a filtered-bottle filling station.

By the end of the 2025-2026 school year, each school would have to do all of the following:

- Install all filtered bottle-filling stations and filtered faucets as indicated in the plan and not already in existence.
- Shut off any water outlet providing water for human consumption that is not a filtered bottle-filling station or filtered faucet or render the outlet permanently inoperable.
- Post a conspicuous sign near each water outlet indicating whether or not the outlet is intended to provide water for human consumption.

At the end of the 2025-2026 school year and annually thereafter, each school would have to submit a document to EGLE, on a form and in a manner prescribed by EGLE, that certifies that the school has complied with the requirements of the bill.

Other provisions

Finally, the bill states that the legislature would have to annually appropriate to EGLE an amount sufficient to administer and comply with the bill. This provision, in itself, would not

be binding and could function only as an expression of legislative intent. However, the bill also provides that if, in a given fiscal year, the legislature has *not* appropriated sufficient funds to EGLE to administer and comply with the bill, then schools are not required to comply with the bill.

[Note that the bill does not specify who would make this determination of sufficiency, how it would be made, or when in the fiscal year it would be made in order to ensure that schools are given adequate notice of their responsibilities under the law.]

House Bill 4342 would amend the child care licensing act to require each child care center to do all of the following, in a manner consistent with its drinking water management plan, within two years after the bill takes effect:

- Post a conspicuous sign near each water outlet and drinking fountain indicating whether or not the outlet is intended to provide water for human consumption. If the water is intended for human consumption but the outlet is unfiltered, the sign would also have to state that the water is unfiltered and could contain lead.
- Ensure that water the child care center furnishes to children for consumption is from a water delivery service or from a filtered faucet or other filtered source certified to meet NSF/ANSI standard 53 for lead reduction and NSF/ANSI standard 42 for particulate removal.
- Make available to the public the results of all water sampling and testing conducted under SB 88 and all filter and filter cartridge replacement dates for each filtered bottle-filling station, faucet, or pitcher or other filtered source. The child care center would have to notify the parent or guardian of each child enrolled in the child care center of the availability of this information.

A child care center that is located in a school building that complies with HB 4341 would be considered to comply with SB 88 and the requirements described above.

Duties of LARA

LARA, in coordination with EGLE, would have to assist each child care center in maintaining compliance with SB 88 and the requirements described above by providing all of the following:

- A template for the drinking water management plan.
- A template for tracking filter and filter cartridge replacement dates and the results of all water sampling and testing conducted under SB 88.
- Guidance documents on all of the following:
    - Factors a center should consider when selecting filtered bottle-filling stations, filtered faucets, and filters.
    - How to shut off a water outlet or render it permanently inoperable.
    - How to flush a building's cold water plumbing before installing new filtered bottle-filling stations and filtered faucets.
    - Common filtered bottle-filling station or filtered faucet installation and operation errors and how to avoid them.

LARA would have to provide and make available the guidance documents described above no later than six months after the bill takes effect. Before providing the guidance documents, LARA would have to issue them as proposed guidance documents on its website and allow for a 30-day public comment period.

LARA also would have to provide training for child care center staff on filter cartridge use, installation, and maintenance and water sampling protocol. The training could be provided as a webinar or incorporated into existing training programs. Within two years after the bill takes effect, and every five years thereafter, all child care center staff responsible for providing or overseeing children's access to drinking water would have to participate in this training.

Proposed MCL 722.113j, 722.113k, and 722.113*l*

Senate Bill 88 would amend 1973 PA 116, the child care licensing act, to require child care centers to develop a drinking water management plan and prescribe requirements regarding water filtering, water testing, and recordkeeping, among other things.

Specifically, the bill would require ***child care centers*** to develop a drinking water management plan within 15 months after the effective date of the bill and make it available upon request to the Department of Licensing and Regulatory Affairs (LARA), child care center staff, and parents and guardians of children enrolled in the center. The plan would have to specify all of the following:

- Locations where water outlets will be maintained to deliver water for human consumption, as drinking water or as a component of a food or beverage, categorized as follows:
    - Locations where filtered bottle-filling stations will be maintained.
    - Locations where filtered faucets will be maintained.
    - Locations where ***filtered pitchers*** will be maintained.
    - Locations where unfiltered drinking fountains or unfiltered ***faucets*** will be maintained.
    - Locations where drinking water from a ***water delivery service*** will be maintained.
- Locations where water outlets will be maintained for purposes other than the above.
- Locations where water outlets will be shut off or rendered permanently inoperable.
- Regular replacement of the filter cartridge for each filtered bottle-filling station, filtered faucet, and filtered pitcher in compliance with the manufacturer's instructions or recommendations of the Department of Environment, Great Lakes, and Energy (EGLE).

Child care center means a facility that is not a private home that receives one or more children under 13 years of age for care for periods of less than 24 hours a day. Child care center includes a facility that provides care for at least two consecutive weeks, regardless of the number of hours of care per day. Such a facility is generally described as a child care center, day care center, day nursery, nursery school, parent cooperative preschool, play group, before- or after-school program, or drop-in center.

Filtered pitcher would mean a container used for holding and pouring liquids that at the point of use includes a filter that is certified to meet NSF/ANSI standard 53 for lead reduction and NSF/ANSI standard 42 for particulate removal.

Faucet means a valve end of a water pipe by which water is drawn from the pipe or held within it.

Water delivery service would mean a service that delivers drinking water to a child care center and provides drinking water that meets the standards of the federal Safe Drinking Water Act.

Each child care center would have to review and update its plan at least once every five years and make changes as directed by LARA or as needed to comply with the bill.

Water sampling and testing

Water sampling and testing would have to be conducted at each child care center at least once every two years and as otherwise required by the bill. The child care center would have to collect the water for the water sampling and testing. The water would have to be drawn from all of the bubbler fixtures of the filtered bottle-filling stations and filtered faucets and would have to be collected in 250-milliliter bottles after a stagnation period of at least eight hours and before any water use occurs at the child care center. LARA would have to provide a child care center with a sufficient number of 250-milliliter bottles upon request. After the child care center collects the water, it would have to deliver, through the mail or in person, all of the bottles for water testing. The testing would have to be conducted at a laboratory certified for lead and copper testing for the approved EPA method.

If water sampling and testing indicates the presence of lead at a concentration of at least one part per billion but not more than five parts per billion, the child care center would have to do all of the following:

- Immediately check the status of the filter or filters at the bottle-filling station or filtered faucet and replace the filter cartridge if the status light indicates that replacement is or will soon be required.
- Ensure that the station or faucet is properly installed.
- Resample and retest the filtered water.
- If the resample and retest still indicate the presence of lead at a concentration of at least one part per billion but not more than five parts per billion, do both of the following:
    - Send LARA and EGLE a copy of the results and a document listing the make and model of the bottle-filling station or faucet and filter cartridge.
    - Consult with EGLE and the manufacturer of the bottle-filling station or faucet.

If water sampling and testing indicates the presence of lead at a concentration of more than five parts per billion, the child care center would have to do all of the following:

- Immediately shut off the water outlet or render it inoperable.
- Post a conspicuous sign near the water outlet stating that it is inoperable because of high lead concentration and maintain the sign until the outlet is returned to service.
- Replace the filter cartridge in the filtered bottle-filling station or filtered faucet.
- Resample and retest the water.
- If the resample and retest indicate the presence of lead at a concentration of at least one part per billion but not more than five parts per billion, return the water outlet to service and comply with the requirements described above for water with that level of lead.
- If the resample and retest still indicate the presence of lead at concentrations of more than five parts per billion, do both of the following:
    - Within 30 days after receiving the results, send a copy of the results to LARA, EGLE, and each parent or guardian of a child enrolled in the child care center.

- Develop a remediation plan in consultation with LARA and EGLE and incorporate the remediation plan into the child care center's drinking water management plan.

Other duties of a child care center

A child care center that installs a filtered bottle-filling station, filtered faucet, filtered putcher, or other filtered source would have to install, operate, and maintain them in accordance with the manufacturer's instructions or recommendations of EGLE.

A child care center would have to retain the following documents for three years or until after any water sampling and testing occurs as described above, whichever is sooner, and make the documents available to LARA upon request:

- Original copies of the results of all water sampling and testing conducted under the bill.
- Records of the dates and locations where filters or filter cartridges were installed or replaced.
- Installation instructions for each filter and filter cartridge installed by the child care center.

MCL 722.111 and proposed MCL 722.113i

None of the bills could take effect unless all three of them were enacted.

FISCAL IMPACT:

House Bill 4341 would create costs for schools to develop, make available, and regularly update a drinking water management plan; install and maintain at least one filtered bottle-filling station for every 100 occupants, including annual testing and regular filter replacement; maintain filtered faucets for all other water outlets for human consumption; post signage for water outlets that are not intended for human consumption; and annually submit documentation of compliance with the requirements of the bill.

Based on an estimated cost of $3,450 to install and maintain a bottle filling station for one year, the bill would require an estimated $65.0 million for schools to install and maintain at least one station for every 100 occupants. This estimate does not account for any existing bottle filling stations, which would reduce the total estimated cost. The cost could also vary based on whether schools experience unanticipated construction costs during installation. Schools would incur an estimated ongoing cost of $265 per year to continue to maintain and test the stations. The bill states that schools are not required to comply with the requirements of the bill unless the legislature has appropriated sufficient funds to EGLE to administer and comply with this act.

House Bills 4341 and 4342 would increase costs for EGLE by requiring the department to assist schools with their respective drinking water management plans, provide annual water sampling and testing protocol training for school staff, assist with water sampling and testing costs, and provide and maintain filtered drinking water hardware. The extent of this cost increase is unclear at present and likely to vary by year and by school. The bills also provide for an avenue for the department to cover the aforementioned costs by establishing the School and Child Care Center Clean Drinking Water Fund, although no revenue source is identified beyond an annual appropriation by the legislature "sufficient to administer and comply with

this act." The FY 2023-24 EGLE budget totals $1.1 billion Gross ($246.0 million GF/GP), which includes $36.8 million Gross ($15.4 million GF/GP) for drinking water and environmental health programs.

House Bill 4342 also would create indeterminate costs for LARA, primarily stemming from providing the required training and tracking provider completion. The department currently estimates that at least two additional FTE positions would be required to implement the provisions of the bill package, at an annual cost of $315,000.

Senate Bill 88 would create indeterminate, though potentially significant, costs for LARA. Under the bill, LARA would be required to supply child care centers, upon request, with 250-milliliter bottles to collect water samples. The cost of providing these bottles is currently indeterminate, as the total cost would depend on the unit price for the bottles, the number of child care centers that request bottles, and the number of fixtures in the child care centers that require testing. LARA would also have responsibility for consulting with child care centers on drinking water remediation plans (in cooperation with EGLE), as well as completing other administrative functions.

Senate Bill 88 would also create additional costs for local units of government that operate child care centers by requiring centers to develop a drinking water management plan; make the plan available to LARA, staff members, and parents or guardians of a child enrolled in the center; conduct water sampling and testing at least once every two years; and update the water management plan at least once every five years.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.