Legislative Analysis

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DRINKING WATER MANAGEMENT PLANS FOR SCHOOLS AND CHILD CARE CENTERS

House Bill 4340 as introduced
Sponsor: Rep. Curt S. VanderWall

House Bill 4341 as introduced
Sponsor: Rep. Ranjeev Puri

House Bill 4342 as introduced
Sponsor: Rep. Cynthia Neeley

Committee: Health Policy
Revised 4-20-23

BRIEF SUMMARY:

House Bill 4340 would amend the child care licensing act (1973 PA 116) to require each child care center to develop a drinking water management plan, require the plan to be reviewed and updated at least every five years, and require a water inspection to be conducted at least once every two years by a local health department or the Department of Licensing and Regulatory Affairs (LARA).

House Bill 4341 would create a new act to require public and nonpublic schools to develop a drinking water management plan, require a school to review and update its plan at least every five years, require the water from water sources to be sampled and tested for the presence of lead, prescribe steps to take if a lead concentration level is above certain levels, allow only filtered bottle-filling stations and filtered faucets to provide water for human consumption by the end of the 2025-2026 school year, and create the School and Child Care Center Clean Drinking Water Fund, among other provisions.

House Bill 4342 would amend the child care licensing act to require a child care center to post a sign near each water outlet as to whether the outlet is intended to provide water for human consumption, ensure that water furnished to children is filtered from a source meeting National Sanitation Foundation/American National Standards Institute (NSF/ANSI) standards regarding lead reduction and particulate removal, make water sampling and testing results available to parents and guardians, require LARA to assist child care centers in maintaining compliance through guidance documents and other means, and provide training for staff of child care centers on filter cartridge use, installation, and maintenance and water sampling protocol.

DETAILED SUMMARY:

House Bill 4340 would amend the child care licensing act to require child care centers to develop a drinking water management plan within one year of the bill's effective date. The plan would have to be available upon request to LARA, a staff member, or a parent or guardian of a child enrolled in the center. Locations where water outlets will be maintained to deliver water for human consumption (as drinking water or a component of a food or beverage) would have to be specified in the plan according to categories such as locations where filtered bottle-filling stations, filtered faucets, filtered pitchers, and water from a water delivery service will be maintained as well as the location of unfiltered sources of water, water for purposes other than human consumption, and where water outlets will be shut off or rendered permanently inoperable. Compliance with manufacturer instructions or recommendations of the Department

of Environment, Great Lakes, and Energy (EGLE) regarding regular replacement of filter cartridges would also have to be specified in the plan.

Plans would have to be reviewed and updated by each child care center at least once every five years. Changes would have to be made as needed or as directed by LARA.

Water inspections

At least every two years, LARA or a local health department would have to conduct a water inspection at each child care center. As part of the inspection, water collected from all filtered bottle-filling stations and filtered faucets would have to be tested. If a concentration of lead at more than five parts per billion were detected, EGLE would have to be alerted. The child care center would have to develop a remediation plan and incorporate it into the drinking water management plan. Water would be collected by the child care center in 250-milliliter bottles provided by LARA or the local health department as provided in the bill.

If, on a continual basis, a health inspection delays LARA from issuing or denying a license for a child care center, LARA could complete the water inspection instead of the local health department.

Requirements of a child care center

The bill would require a child care center to do both of the following:

- Install, operate, and maintain a filtered bottle-filling station, filtered faucet, filtered pitcher, or other filtered source in accordance with manufacturer instructions or recommendations of EGLE.
- Retain the following documents for three years or until after a health inspection of the water sources occurs, whichever is sooner, and make the documents available to LARA upon request:
    - Original copies of the results of any water inspection 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

House Bill 4341 would create the Clean Drinking Water Access Act to require each public or nonpublic school to develop a drinking water management plan within 15 months after the bill's effective date. The plan would have to be made available to EGLE, school staff, parents and guardians, and the general public upon request. Beginning 15 months after the bill's effective date, a school would be prohibited from installing a drinking fountain other than a filtered-bottle filling station.

The plan would have to specify the location of each water outlet using one of the following categories:

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

    - The location where a filtered faucet will be maintained. The faucets could only be maintained 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.

The plan also would have to establish a schedule for when each of the following will occur:

- Annual water sampling and testing of the filtered water at each station and filtered faucet to ensure filters are properly installed and provide water with a lead concentration of not more than five parts per billion. Filtered water collected for sampling and testing would have to be drawn from the ***bubbler*** of a filtered bottle-filling station or the outlet of a filtered faucet as prescribed in the bill. (A ***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.)
- Regular replacement of the filter cartridge for each filtered bottle-filling station and filtered faucet in compliance with the manufacturer instructions or recommendations of EGLE.

Schools would have to review and update their plans at least once every five years, making changes as directed by EGLE or to comply with the bill's provisions. A school also would have to comply with the schedules for annual water testing and replacement of filter cartridges as provided in the bill.

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 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 retest indicates 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 both of the following:

- Send 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 to EGLE.
- Consult with EGLE and the manufacturer of the filtered bottle-filling station or filtered faucet manufacturer.

If a test sample 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 otherwise render it inoperable.
- Post a conspicuous sign near the water outlet stating that the water outlet is inoperable because of high lead concentration. The sign would have to be maintained until the water outlet is returned to service.
- Replace the filter cartridge in the station or faucet.
- Resample and retest the filtered water.

- Return the water outlet to service if the retest indicates the presence of lead at a concentration of not more than five parts per billion.
- If the resample indicates the presence of lead at a concentration of at least one part per billion but less than 5 parts per billion, post the sign stating the water outlet is inoperable due to high lead concentration and replace the filter cartridge.
- If the resample indicates the presence of lead at concentrations of more than five parts per billion, do both of the following:
    - Within 30 days after receiving the test results, send a copy of the results to EGLE and the parent or guardian of each student enrolled in the school. The copy of the test results would have to contain a notice that includes 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.

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 or render permanently inoperable any water outlet providing water for human consumption that is not a filtered bottle-filling station or filtered faucet.
- 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.

Duties of EGLE

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 of the bill's enactment:

- 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 or render permanently inoperable a water outlet.
    - How to sample and test water from a filtered bottle-billing station and filtered faucet for lead.

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 cost savings over independent purchases could be achieved, EGLE could purchase and provide to program beneficiaries filtered bottle-filling stations, filtered faucets, point-of-use filters, or filter cartridges.
- Maintenance of the stations and faucets and replacement of filter cartridges.
- Costs associated with water sampling and testing.

EGLE could award grants to operate the program described above and could require matching contributions for the program.

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 on future legislatures 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: It is unclear who would make this determination of sufficiency, how it would be made, and when in the fiscal year it would be made in order to give schools sufficient notice as to their responsibilities under the law.]

House Bill 4342 would add several new sections to the child care licensing act. Within two years of the bill's effective date, each child care center would have to do all of the following in a manner consistent with the drinking water management plan created under House Bill 4340:

- Post a conspicuous sign near each water outlet and drinking fountain indicating whether 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 have to state that the water is unfiltered and could contain lead.
- Ensure that water furnished to children for consumption by the child care center is 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, or from a water delivery service.
- Make available to the public and notify each parent or guardian of a child enrolled in the child care center of the availability of all water sampling and testing results and also all filter and filter cartridge replacement dates for each filtered bottle-filling station, filtered faucet, filtered pitcher, or other filtered source.

If located in a school building that complies with House Bill 4341, the child care center would be considered to comply with section 3i and the requirements described above.

LARA, in coordination with EGLE, would have to assist each child care center in maintaining compliance by providing all of the following:

- A template for the required drinking water management plan.
- A template for tracking filter and filter cartridge replacement dates and water inspection results.
- 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 or render permanently inoperable a water outlet.
- 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.

The guidance documents would have to be provided and made available by LARA not later than six months after the bill takes effect. Before providing the guidance documents, LARA would have to issue the guidance documents as *proposed guidance documents* on its website and allow for a 30-day public comment period.

LARA also would have to provide training for the staff of child care centers 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, and every five years thereafter, all child care center staff responsible for providing or overseeing children's access to drinking water would be required to participate in this training.

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

None of the bills can take effect unless all three are enacted.

FISCAL IMPACT:

House Bills 4340 and 4342 would create indeterminate, though likely significant, costs for LARA and local health departments. Under House Bill 4340, local health departments or LARA would be required to sample and test water collected from bottle-filling stations and filtered faucets in child care centers every two years. Additionally, the local health departments or LARA would need to supply the child care centers with 250 mL bottles to collect the samples. All together, the total fiscal cost is estimated to be $2.0 million to $3.6 million, though the actual cost could vary, depending on the entity that is ultimately selected to process the samples and how the samples are submitted.

House Bill 4341 would create indeterminate 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.

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. It is not clear if this would include an appropriation to schools to cover their costs.

House Bills 4341 and 4342 will increase costs for EGLE by requiring the department to assist schools with their respective drinking water management plans, test drinking water samples, 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 school. The bill also provides 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 2022-23 EGLE budget totals $941.2 million Gross ($99.3 million GF/GP), which includes $33.8 million Gross ($13.2 million GF/GP) for drinking water and environmental health programs.

House Bill 4342 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.

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