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BILL ANALYSIS

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Senate Bill 88 (Substitute S-3 as passed by the Senate)
Senate Bill 89 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Sylvia Santana (S.B. 88)
 Senator John Cherry (S.B. 89)
Committee: Energy and Environment

Date Completed: 4-24-23

INTRODUCTION

Collectively, the bills would enact the Clean Drinking Water Access Act and amend the child care licensing Act to require schools and child care centers, respectively, to develop a drinking water management plan within 15 months after each bills' effective date. Under management plans, schools and child care centers would have to designate water outlets, filtered bottle-filling stations, filtered faucets, or filtered pitchers, as applicable, as outlets maintained to deliver water for human consumption. Plans would have to provide for the regular replacement of these outlets' filter cartridges and for regular water sampling and testing. The bills also would require the Department of Environment, Great Lakes, and Energy (EGLE) to administer the proposed Act's provisions for schools and the Department of Licensing and Regulatory Affairs (LARA) to provide biannual inspections for child care centers. The bill specifies that schools would not have to comply with the Act if the Legislature did not appropriate money to EGLE for its implementation.

Senate Bill 88 is tie-barred to Senate Bill 89.

BRIEF RATIONALE

According to the American Academy of Pediatrics, even low levels of lead in blood can negatively affect children's intellectual development and academic achievement.¹ Some people believe that filters on water outlets are the most effective way to prevent lead exposure. Given the amount of time children spend at schools and child care centers, it has been suggested that these places be required to install filtration devices in water outlets.

BRIEF FISCAL IMPACT

The bills would have an indeterminate negative fiscal impact on State and local government. Because the bills include both implementation and oversight requirements for drinking water management plans, the bills likely would result in additional administrative costs for LARA, EGLE, and local health departments. Additionally, the bills would require the Legislature to appropriate sufficient dollars to administer the program.

MCL 722.111 et al. (S.B. 88)

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¹"Lead Exposure", www.aap.org/en/patient-care/lead-exposure/. Retrieved 3-19-23.

CONTENT

Senate Bill 89 (S-2) would enact the "Clean Drinking Water Access Act", which would do the following:

- Require each school, within 15 months of the Act's effective date, to develop a drinking water safety plan and to make that plan available to EGLE, school staff, parents, and the general public upon request.
- Require a drinking water safety plan to specify the location of water outlets and to establish a schedule for annual water sampling and testing and regular replacement of water filter cartridges.
- Require a school to review and update the plan once every five years and to make changes as directed by EGLE or as needed to comply with the Act.
- Prescribe procedures for a school to follow if water sampling indicated the presence of lead at a concentration of one to five parts per billion, or higher.
- Require each school, by the end of the 2024-2025 school year, to install all filtered bottle-filling stations and faucets in the school's plan, shut off any water outlet that provided unfiltered drinking water, and post specified signage.
- Require the Legislature to appropriate annually to EGLE an amount sufficient to administer and comply with the Act and specify that schools would not have to comply with the Act until the Legislature did so.
- Require EGLE to assist schools in maintaining compliance with the Act and to provide a template for drinking water safety plans.
- Require EGLE to provide annual training for school staff and school official regarding water sampling protocol, reporting sampling results, and other relevant activities, and to provide guidance related to selecting equipment, shutting off water outlets, and sampling and testing water.
- Prohibit a school from installing a drinking fountain that was not a filtered bottle-filling stations beginning 15 months after the Act's effective date.
- Create the "School and Child Care Center Clean Drinking Water Fund" and provide for the distribution of money from the Fund.

Senate Bill 88 (S-3) would amend the child care licensing Act to do the following:

- Require a child care center to develop a drinking water management plan within fifteen months of the bill's effective date and to make that plan available to LARA, center staff, and parents upon request.
- Require a drinking water management plan to specify the location of water outlets and to establish a schedule for regular replacement of water filter cartridges.
- Require a child care center to review and update its plan at least once every five years and to make changes as directed by LARA or as needed to comply with the bill.
- Require LARA to conduct a water inspection at each child care center at least once every two years.
- Prescribe procedures for a child care center to follow if water sampling indicated the presence of lead at a concentration of one to five parts per billion, or higher.
- Require a child care center to retain specified records related to water sampling and testing for at least three years and make those documents available to LARA.
- Require each child care center, within two years of the bill's effective date, to convert all faucets for drinking water to filtered faucets, place certain signage, and ensure that any water given to children at a child care center was from a filtered source that met the bill's requirements.

- **Specify that if a child care center were located in a school building that complied with the Clean Drinking Water Access Act, the child care center would be considered compliant with the bill's provisions.**

Senate Bill 89 (S-2)

Drinking Water Safety Plan; Schools

The Clean Drinking Water Access Act would require each school, within 15 months of the Act's effective date, to develop a drinking water management plan. The school would have to make that plan available to EGLE, school staff, parents and guardians of children enrolled in the school, and the general public upon request. The plan would have to specify the location of each water outlet using one of the following categories:

- The location where a water outlet would be maintained to deliver water for human consumption, whether as drinking water or a component of a food or beverage, using either a) the location where filtered bottle-filling station would be maintained (the plan would have to provide for the maintenance of at least one filtered bottle-filling station for every 100 occupants of the school); or b) the location where a filtered faucet would be maintained (filtered faucets could be used only when the installation of a bottle-filling station was not feasible but a water outlet was necessary).
- The location where a water outlet would be maintained for purposes other than for human consumption.
- The location where a water outlet would be shut off or rendered permanently inoperable.

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

- Is connected to customer site piping.
- Filters water and is certified to meet NSF/ANSI standard 53 for lead reduction and NSF/ANSI standard 42 for particulate removal.
- The flow rate through the station is paired to the specified flow rate of the filter cartridge.
- Has a light or other device to indicate filter cartridge replacement status.
- Is designed to fill drinking bottles or other containers used for personal water consumption.
- Includes a drinking fountain.

"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. "Filtered faucet" would mean a faucet 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.

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

- Annual water sampling and testing of the filtered water at each bottle-filling station and filtered faucet in the school to ensure that the filters were properly installed and provided water with a lead concentration for up to five parts per billion.
- Regular replacement of the filter cartridge for each bottle-filling station and filtered faucet in compliance with the manufacturer instructions or EGLE recommendations.

Each school would have to review and update the plan at least once every five years and would have to make changes as directed by EGLE or as needed to comply with the Act. A school also would have to comply with the schedules described above.

By the end of the 2024-2025 school year, each school would have to do 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 that provided water for human consumption that was not a filtered bottle-filling station or filtered faucet.
- Post a conspicuous sign near each water outlet that indicated whether the outlet was intended to provide water for human consumption.

By the end of the 2024-2025 school year, and annually thereafter, each school would have to submit to EGLE documentation, on a form and in a manner prescribed by EGLE, that certified that the school had complied with the Act's requirement.

A school could not install a drinking fountain beginning 15 months after the Act's effective date, unless it was a filtered bottle-filling station. "Drinking fountain" would mean a plumbing fixture that is connected to the potable water distribution system and drainage system that allows a user to obtain a drink directly from a stream of flowing water without the use of any accessory.

Water Sampling and Testing; Procedures

The Act would require a school to collect the water for the water sampling and testing. The water would have to be drawn from all the bubbler fixtures of the filtered bottle-filling stations and filtered faucets and would have to be collected in 250-milliliter bottles after at least an 8-hour stagnation period and before any water use occurred at the school. After the school collected the water, EGLE would have to collect all the 250-milliliter bottles and conduct the water testing. 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.

If the water sampling and testing indicated the presence of lead at a concentration of one part per billion or more but *not more* than five parts per billion, the school would have to do all 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 indicated that replacement was or would soon be required.
- Ensure that the bottle-filling station or filtered faucet was properly installed.
- Resample and retest the filtered water.

If the retest indicated the presence of lead at concentration of one part per billion or more but no more than five parts per billion, the school would have to do both the following:

- Send a copy of the test results and document that listed the make and model of the bottle-filling station or filtered faucet and filter cartridge to EGLE.
- Consult with EGLE and the bottle-filling or filtered faucet manufacturer.

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

- Immediately shut off or otherwise render inoperable the water outlet.
- Post a conspicuous sign near the water outlet that stated the water outlet was inoperable because of high lead concentration and maintain the sign until it was returned to service.
- Replace the filter cartridge in the bottle-filling station or filtered faucet.
- Resample and retest the water.
- Return the water outlet to service if the testing indicated the presence of lead at a concentration of one part per billion or more but not more than five parts per billion.

If the retesting indicated the presence of lead at a concentration of more than five parts per billion, the school would have to 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 would have to contain a notice that included information provided by EGLE and 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 drinking water management plan.

Department Responsibilities

The Legislature would have to appropriate to EGLE an amount sufficient to administer and comply with the Act's requirements each year. Schools would not have to comply with the Act unless the Legislature had appropriated sufficient funds.

The Department would have to assist each school in maintaining compliance with the Act and, within six months of the Act's effective date, would have to do all the following:

- 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 Act.

The Department also would have to provide guidance on all the following:

- Factors that a school should consider when selecting bottle-filling stations, filtered faucets, and filter cartridges.
- 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.

EGLE would have to provide and make available required guidance documents not later than six months after the Act's effective date. Before EGLE provided these guidance documents, it would have to issue the guidance documents as proposed guidance documents on its website and allow for a 30-day public comment period.

The School and Child Care Center Clean Drinking Water Fund

The School and Child Care Center Clean Drinking Water Fund would be created within the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the Fund. The Treasurer would have to credit to the Fund interest and earnings from Fund investments. Money in the Fund at the close of the fiscal year would remain in the Fund and would not lapse into the General Fund.

The Department would be the administrator of the School and Child Care Center Clean Drinking Water Fund for auditing purposes. The Department would have to spend money from the Fund, upon appropriation, only to create and operate a program to assist child care centers and schools with all the following:

- The one-time acquisition and installation of bottle-filling stations and filtered faucets, in compliance with the plan.
- Maintenance of bottle-filling stations and filtered faucets and replacements of filter cartridges.
- Costs associated with water sampling and testing.

The Department could award grants to operate the program. If it would achieve cost savings over independent purchases, EGLE could purchase and provide to program beneficiaries bottle-filling stations, filtered faucets, point-of-use filters, or filter cartridges.

"Child care center" would mean that term as defined in Section 1 of the child care licensing Act: a facility, other than a private residence, receiving one or more children under 13 years of age for care for periods of less than 24 hours a day, where the parents or guardians are not immediately available to the child.

Senate Bill 88 (S-3)

Drinking Water Safety Plan; Child Care Centers

The bill would amend the child care licensing Act to require each child care center to develop a drinking water management plan within 15 months of the bill's effective date. The child care center would have to make the plan available upon request to LARA, a staff member, and a parent or guardian of a child enrolled in the child care center on request. The plan would have to specify the locations water outlets would be maintained to deliver water for human consumption, whether as drinking water or a component of a food or beverage, using the following categories, if applicable:

- Locations where filtered bottle-filling stations would be maintained.
- Locations where filtered faucets would be maintained.
- Locations where filtered pitchers would be maintained.
- Locations where unfiltered drinking fountains or unfiltered faucets would be maintained.
- Locations where drinking water from a water delivery service would be maintained.

The plan would have to specify, by category, locations where water outlets would be maintained for purposes other than to deliver water for human consumption and where water outlets would be shut off or rendered permanently inoperable, if applicable. The plan also would have to specify the regular replacement of the filter cartridge for each filtered bottle-filling station, filtered faucet, and filtered pitcher in compliance with the manufacturer instructions or EGLE recommendations.

"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.

The bill would require each child care center to review and update the drinking water management plan at least once every five years and make changes as needed or as directed by LARA.

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

Inspection Requirements and Remediation

Under the bill, a local health department or LARA would have to conduct a water inspection at each child care center at least once every two years. The child care center would have to collect the water for water sampling and testing. The water would have to be drawn from all of the bubble fixtures of the filtered bottle-filling stations and filtered faucets and would have to be collected in 250-milliliter bottles after at least an 8-hour stagnation period and before any water use occurred at the child care center. Upon request, LARA would have to provide the child care center with a sufficient number of 250-milliliter bottles before the water was collected. After the child care center collected the water, the child care center would have to deliver, through the mail or in person, all of the 250-milliliter bottles for water testing. Water testing would have to be conducted at a laboratory certified for lead and copper testing for the approved EPA method.

If the water inspection indicated the presence of lead at a concentration of one part per billion or more but not more than five parts per billion, the child care center would have to do the following:

- Immediately check the status of the filter or filters at the filtered bottle-filling station or filtered faucet and replace the filter cartridge if the status light indicated that replacement was or would soon be required.
- Ensure the filtered bottle-filling station or filtered faucet was properly installed.
- Resample and retest the water.

If the second test found once more the presence of lead at a concentration of one part per billion or more but not more than five parts per billion, the child care center would have to send a copy of the test results and a document that listed the make and model of the filtered bottle-filling station or filtered faucet and filter cartridge to LARA and EGLE and consult with EGLE and the filtered bottle-filling station or filtered faucet manufacturer.

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

- Immediately shut off or render inoperable the water outlet.
- Post a conspicuous sign near the water outlet stating that the water outlet was inoperable because of high lead concentration and maintain the sign until the water outlet was returned to service.
- Replace the filter cartridge in the filtered bottle filling station or filtered faucet.
- Resample and retest the water.

If the retest indicated the presence of lead at a concentration of one part per billion or more but not more than five parts per billion, the child care center could return the water outlet to service. If the retest found the presence of lead at a concentration of more than five parts per billion, the child care center would have to do the following:

- Within 30 days after receiving the secondary test 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 drinking water management plan.

Documentation

Under the bill, a child care center would have to retain the following documents for three years or until after a water inspection occurred, whichever was sooner, and make the documents available to LARA upon request:

- Original copies of the results of all water sampling and testing conducted, if applicable.
- Records of the dates when 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.

Additional Requirements

The bill would require each child care center to do all the following in a manner consistent with the drinking water management plan within two years of the bill's effective date:

- Post a conspicuous sign near each water outlet and drinking fountain indicating whether the outlet was intended to provide water for human consumption, and if the water outlet or drinking fountain were intended to provide water for human consumption but was unfiltered, the sign also would have to state that the water was unfiltered and could contain lead.
- Ensure that any water furnished to children for human consumption by the child care center was from a filtered faucet or other filtered source that was 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 each child enrolled in the child care center of the availability of the results of all water inspections and all filter and filter cartridge replacement dates for each filtered bottle-filling station, filtered faucet, filtered pitcher, or other filtered source.

If a child care center was located in a school building that complied with the Clean Drinking Water Access Act, the child care center would be considered compliant with the bill's provisions.

"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 Safe Drinking Water Act.

Department Responsibilities

Under the bill, LARA, in coordination with EGLE, would have to assist each child care center in maintaining compliance with the bill by providing a template for the drinking water management plan and a template for tracking filter and filter cartridge replacement dates and

the results of water sampling and testing. In addition, LARA would have to provide guidance documents for the following:

- Factors that a child care 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.

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

The bill would require LARA to provide and make available the guidance documents within six months after the bill's effective date. Before LARA provided the guidance documents, it would have to issue the guidance documents as proposed guidance documents on its website and allow for a 30-day public comment period.

PREVIOUS LEGISLATION

(Please note: The information in this summary provides a cursory overview of previous legislation and its progress. It does not provide a comprehensive account of all previous legislative efforts on the relevant subject matter.)

Senate Bills 88 and Senate Bill 89 are similar to substitute versions of Senate Bills 185 and Senate Bill 184, respectively, from the 2021-2022 Legislative Session. The bills were reported out of the Senate Committee on Environmental Quality and were passed by the Senate but received no further action.

FISCAL IMPACT

Senate Bill 88 (S-3)

This bill would have an indeterminate but negative fiscal impact on LARA and EGLE. The impact would depend on the cost to administer required training for all child care center staff, the labor required to review the drinking water management plans for each child care center, and the creation and maintenance of required guidance documents. Therefore, the bill likely would result in minor administrative costs for both departments. However, the extent of those costs is unknown.

This bill also would have a negative fiscal impact on LARA, which would be responsible for fulfilling the water testing requirements at least once every two years.

Costs for the installation of filtered water fillers and faucets and water testing for schools and child care centers are discussed below.

Senate Bill 89 (S-2)

The bill would have an indeterminate fiscal impact on State and local government. It would require the Legislature to appropriate sufficient dollars to administer the program. This means that the Legislature would need to appropriate enough funding to install filtered bottle-filling and water faucets in all schools by the end of the 2024-2025 school year and to fund annual water sampling and testing. The cost to install filtered bottle-fillers and water faucets in every school is based on maintaining the one bottle-filler/faucet-to-every-100-student ratio and the cost for purchase and installation. The total cost is estimated to be around \$58.0 million; however, many schools already have replaced bottle-fillers and faucets in school buildings, so the final costs could be lower. The cost to install filtered water fillers and faucets at every child care center under Senate Bill 88 (S-1) could be between \$20.0 million and \$30.0 million. This means the total costs to install filtered bottle-fillers and faucets in every school building and child care center could be between \$78.0 and \$88.0 million. However, the final costs could be lower if a significant number of schools and child care centers already have replaced bottle-fillers and faucets, if a child care center was located in a school building, or if the State were able to lower the purchasing cost by purchasing this equipment in bulk. The annual cost to conduct and water sampling and testing could be between \$3.0 million and \$5.0 million.

Local schools would see a negative fiscal impact to create and update their drinking water safety plans, install filtered bottle-fillers and water faucets, and conduct annual sampling and testing. These costs would be covered by the School and Child Care Center Clean Drinking Water Fund, otherwise schools would not have to meet Senate Bill 89's requirements.

The bills would have an indeterminate negative impact on EGLE. The bills would require schools and child care centers, respectively, to make their drinking water management plans available to EGLE upon request. They would have to send EGLE a copy of any test results showing the presence of lead in drinking water in a concentration of between one and five parts per billion. If tests showed the presence of lead in drinking water of greater than five parts per billion, the report would have to be provided to EGLE and it would have to be consulted on a remediation plan. The Department also would have to provide training and guidance to schools and child care centers as specified in the bills. All these components would result in minor administrative costs for EGLE.

The bill would have a minor fiscal impact on the Department of Treasury, which would result from the requirement to administer the Fund. The amount needed would be within current appropriations.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.