



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 88 (as enacted)
House Bill 4341 (as enacted)
House Bill 4342 (as enacted)

PUBLIC ACT 173 of 2023
PUBLIC ACT 154 of 2023
PUBLIC ACT 155 of 2023

Sponsor: Senator Sylvia Santana (S.B. 88)
Representative Ranjeev Puri (H.B. 4341)
Representative Cynthia Neeley (H.B. 4342)
Senate Committee: Energy and Environment (S.B. 88)
Committee of the Whole (H.B. 4341 & 4342)
House Committee: Natural Resources, Environment, Tourism and Outdoor Recreation
Health Policy (H.B. 4341 & 4342)

Date Completed: 2-29-24

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 installing filters in drinking water outlets is the most effective way to prevent lead exposure in schools and child caring centers; however, many school districts and child care centers in Michigan do not have the funding or the expertise to implement lead filter programs without appropriations from the State or help from the Department of Environment, Great Lakes, and Energy (EGLE). Given the amount of time children spend at schools and child care centers, it was suggested that these institutions be required to install filters in drinking water outlets and be afforded access to expertise in implementing plans to reduce exposure to lead in drinking water.

CONTENT

House Bill 4341 enacted the "Clean Drinking Water Access Act" to do the following:

- **Require each school, by January 24, 2025, 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 (ppb), or higher.**
- **Require each school, by the end of the 2025-2026 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 do not have to comply with the Act until the Legislature does so.**

¹ American Academy of Pediatrics, *Lead Exposure*, July 2021.

- **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 officials 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 is not a filtered bottle-filling stations beginning January 24, 2025.**
- **Create the School and Child Care Center Clean Drinking Water Fund and provide for the distribution of money from the Fund.**

Senate Bill 88 amended the child care licensing Act to do the following:

- **Require a child care center to develop a drinking water management plan by January 24, 2025 and to make that plan available to the Department of Licensing and Regulatory Affairs (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 ppb, 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.**

House Bill 4342 amended the child care licensing Act to do the following:

- **Require each child care center, by October 24, 2025, 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 is from a filtered source that meets the bill's requirements.**
- **Require LARA to assist child care centers in remaining compliant with the drinking water management plan by providing a template for the drinking water management plan, a template for tracking filter and filter cartridge replacement dates and the results of water sampling and testing, and training for child care center staff on filter cartridge use, installation, and maintenance and water sampling protocol.**
- **Require LARA to provide and make available the guidance documents described above by April 24, 2024.**

The bills took effect October 24, 2023.

Senate Bill 88

Drinking Water Safety Plan; Child Care Centers

The bill amended the child care licensing Act to require each child care center to develop a drinking water management plan by January 24, 2025. The child care center must 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 must specify the locations water outlets

will 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 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.

("Water delivery service" means 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.)

The plan must specify, by category, locations where water outlets will be maintained for purposes other than to deliver water for human consumption and where water outlets will be shut off or rendered permanently inoperable, if applicable. The plan also must 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" means 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 requires 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 installs a filtered bottle-filling station, filtered faucet, filtered pitcher, or other filtered source must 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 must conduct a water inspection at each child care center at least once every two years. The child care center must collect the water for water sampling and testing. The water must be drawn from all of the bubble fixtures of the filtered bottle-filling stations and filtered faucets and must be collected in 250-milliliter bottles after at least an eight-hour stagnation period and before any water use occurs at the child care center. Upon request, LARA must provide the child care center with a sufficient number of 250-milliliter bottles before the water is collected. After the child care center collected the water, the child care center must deliver, through the mail or in person, all of the 250-milliliter bottles for water testing. Water testing must be conducted at a laboratory certified for lead and copper testing for the approved Environmental Protection Agency (EPA) method.

If the water inspection indicated the presence of lead at a concentration of one ppb or more but not more than five ppb, the child care center must 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 indicates that replacement is or will soon be required.
- Ensure the filtered bottle-filling station or filtered faucet is properly installed.
- Resample and retest the water.

If the second test finds once more the presence of lead at a concentration of one ppb or more but not more than five ppb, the child care center must send a copy of the test results and a document that lists 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 indicates the presence of lead at a concentration of more than five ppb, the child care center must 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 is inoperable because of high lead concentration and maintain the sign until the water 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 retest indicates the presence of lead at a concentration of one ppb or more but not more than five ppb, the child care center may return the water outlet to service. If the retest found the presence of lead at a concentration of more than five ppb, the child care center must 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 must retain the following documents for three years or until after a water inspection occurred, whichever is 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.

House Bill 4341

Drinking Water Safety Plan; Schools

The Clean Drinking Water Access Act requires each school, by January 24, 2025, to develop a drinking water management plan. The school must 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 must specify the location of each water outlet using one of the following categories:

- The location where a water outlet is 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 is maintained (the plan must 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 is maintained (filtered faucets may be

used only when the installation of a bottle-filling station is not feasible but a water outlet is necessary).

- The location where a water outlet is maintained for purposes other than for human consumption.
- The location where a water outlet is shut off or rendered permanently inoperable.

"Filtered bottle-filling station" or "station" means 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" means 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" means 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 must establish a schedule for when each of the following occurs:

- 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 are properly installed and provide water with a lead concentration for up to five ppb.
- 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 must review and update the plan at least once every five years and must make changes as directed by EGLE or as needed to comply with the Act. A school also must comply with the schedules described above.

By the end of the 2025-2026 school year, each school must 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 provides water for human consumption that is not a filtered bottle-filling station or filtered faucet.
- Post a conspicuous sign near each water outlet that indicates whether the outlet is intended to provide water for human consumption.

By the end of the 2025-2026 school year, and annually thereafter, each school must submit to EGLE documentation, on a form and in a manner prescribed by EGLE, that certifies that the school has complied with the Act's requirement.

Beginning January 24, 2025, a school may not install a drinking fountain unless it was a filtered bottle-filling station. "Drinking fountain" means 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 requires a school to collect the water for the water sampling and testing. The water must be drawn from all the bubbler fixtures of the filtered bottle-filling stations and filtered faucets and must be collected in 250-milliliter bottles after at least an eight-hour stagnation period and before any water use occurs at the school. Water testing must be conducted at a laboratory certified for lead and copper testing for the approved EPA method.

If the water sampling and testing indicates the presence of lead at a concentration of between one ppb and five ppb, the school must 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 indicates that replacement is or will soon be required.
- Ensure that the bottle-filling station or filtered faucet is properly installed.
- Resample and retest the filtered water.

If the retest indicated the presence of lead at concentration of between one ppb and five ppb, the school must do both the following:

- Send a copy of the test results and document that lists 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 indicates the presence of lead at a concentration of *more than* five ppb, the school must do all the following:

- Immediately shut off or otherwise render inoperable the water outlet.
- Post a conspicuous sign near the water outlet that states the water outlet is inoperable because of high lead concentration and maintain the sign until it is 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 indicates the presence of lead at a concentration of between one ppb and five ppb.

If the retesting indicates the presence of lead at a concentration of more than five ppb, the school must do the following:

- Within 30 days after receiving the test results, send a copy of the results to EGLE and send a notice to school staff and each parent or guardian of each student enrolled in the school; the notice must contain the amount of lead found in the water and 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 drinking water management plan.

Department Responsibilities

The Legislature must appropriate to EGLE an amount sufficient to administer and comply with

the Act's requirements each year. Schools do not have to comply with the Act unless the Legislature has appropriated sufficient funds.

The Department must assist each school in maintaining compliance with the Act and, by April 24, 2024, must 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 must 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.

The Department must provide and make available required guidance documents by April 24, 2024. Before EGLE provides these guidance documents, it must 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 are created within the State Treasury. The State Treasurer may receive money or other assets from any source for deposit into the Fund. The Treasurer must credit to the Fund interest and earnings from Fund investments. Money in the Fund at the close of the fiscal year must remain in the Fund and does not lapse into the General Fund.

The Department is the administrator of the School and Child Care Center Clean Drinking Water Fund for auditing purposes. The Department must 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.
- Costs associated with mailing or delivering any water collected for water sampling and testing.

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

"Child care center" means 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.

House Bill 4342

Two-Year Requirements for Drinking Water Management Plan

The bill requires each child care center to do all the following in a manner consistent with the drinking water management plan by October 24, 2025:

- Post a conspicuous sign near each water outlet and drinking fountain indicating whether the outlet is intended to provide water for human consumption, and if the water outlet or drinking fountain is intended to provide water for human consumption but is unfiltered, the sign also must state that the water is unfiltered and may contain lead.
- Ensure that any water furnished to children for human consumption by the child care center is from a filtered faucet or other filtered source that is 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 is located in a school building that complies with the Clean Drinking Water Access Act, the child care center is considered compliant with the bill's provisions.

"Water delivery service" means 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, must 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 must 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 requires LARA to provide training for child care center staff on filter cartridge use, installation, and maintenance and water sampling protocol. Training may be provided as a webinar or incorporated into existing training programs. By October 24, 2025, and every five years after that, all child care center staff responsible for providing or overseeing children's access to drinking water must participate in training provided by LARA.

The bill requires LARA to provide and make available the guidance documents by April 24, 2024. Before LARA provided the guidance documents, it must issue the guidance documents as proposed guidance documents on its website and allow for a 30-day public comment period.

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

MCL 380.1901 – 380.1911 (H.B. 4341)
MCL 722.113j et al. (H.B. 4342)

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

Senate Bill 88 and House Bill 4341 are similar to the substitute version of Senate Bill 185 from the 2021-2022 Legislative Session. Senate Bill 185 the Senate but received no further action.

House Bill 4342 is similar to the substitute version of Senate Bill 184 from the 2021-2022 Legislative Session. The bill was reported out of the Senate Committee on Environmental Quality and passed by the Senate but received no further action.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The "filter first" method is the best and most cost-effective method of reducing lead content in drinking water. According to testimony before the Senate Committee on Energy and Environment, a method called "test, chase, and replace" was historically thought of as the best method to prevent lead poisoning. Broadly speaking, this method refers to the strategy of routinely testing a water supply for lead content, tracking down the source of lead contamination, and replacing the implements that are responsible for the lead contamination; however, given a new understanding about lead pipes, lead distribution, and the cost of testing, this method now is considered to be less effective than the "filter first" method.

The "filter first" is healthier and more cost-effective for a few reasons. Firstly, quality testing requires long-term sampling due to the inconsistent, sporadic distribution of lead, making testing expensive. In addition, replacing lead pipes does not guarantee a lead-free water source because non-lead piping can still contain 0.25% lead. Finally, corrosion control is ineffective at schools and child care centers because water must flow consistently for corrosion control to be effective, and these facilities often sit unused in the summer months. Testimony also indicates that this method would save approximately \$331.0 million over 10 years when compared to the "test, chase, and replace" strategy.² The bills will reduce lead exposure in children in the most efficient manner.

Legislative Analyst: Nathan Leaman

FISCAL IMPACT

Senate Bill 88

The bill will have an indeterminate but negative fiscal impact on LARA and EGLE. The impact will 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 will result in minor administrative costs for both departments; however, the extent of those costs is unknown. The bill also will have a negative fiscal impact on LARA, which is 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.

² National Resources Defense Council, *Michigan Filter First Cost Estimate*. Retrieved 2-27-24.

House Bill 4341

The bill will have an indeterminate fiscal impact on State and local government. It requires the Legislature to appropriate sufficient dollars to administer the program. This means that the Legislature needs to appropriate enough funding to install filtered bottle-filling and water faucets in all schools by the end of the 2025-2026 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 bottler-filler/faucet-to-every-100-student ratio and the cost for purchase and installation. The total cost is estimated to be around \$58 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 House Bill 4342 could be between \$20.0 million and \$30.0 million. This means the total costs to install filtered bottler-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 is located in a school building, or if the State is able to lower the purchasing cost by purchasing this equipment in bulk. The annual cost to conduct water sampling and testing could be between \$3.0 million and \$5.0 million.

Local schools will see a negative fiscal impact to create and update their drinking water safety plans, install filtered bottler-fillers and water faucets, and conduct annual sampling and testing. These costs must be covered by the School and Child Care Center Clean Drinking Water Fund, otherwise schools will not have to meet House Bill 4341's requirements.

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

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

House Bill 4342

The bill will have a minor fiscal impact on LARA and no fiscal impact on local units of government. The Department estimates that two FTE positions will be required to meet the training and other requirements under the bill. These positions likely would be ongoing and cost approximately \$315,000 per year.

The bills will have an indeterminate negative fiscal impact for EGLE. There will be administrative costs incurred to assist schools in developing their plans, providing guidance documents within six months of the bill taking effect, providing hardware associated with water filters, and testing drinking water samples annually. The cost associated with implementation will vary year-to-year and school-to-school.

The bills also will establish the School and Child Care Center Clean Drinking Water Fund, although it does not identify a source of revenue for the Fund. As EGLE will be the administrator of the Fund, money will likely come from the existing drinking water and

environmental health appropriation which totals \$36.8 million gross (\$15.4 million General Fund/General Purpose).

Fiscal Analyst: Ellyn Ackerman
Jonah Houtz
Elizabeth Raczowski
Cory Savino, PhD

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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.