

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 250

(Delegate Stewart, *et al.*)

Environment and Transportation

Education, Health, and Environmental Affairs

Private Well Safety Act of 2022

This bill establishes the Private Well Safety Program and the Private Well Safety Fund, administered by the Maryland Department of the Environment (MDE), to address and manage the contamination of private wells in the State. The purpose of the special fund is to award grants to “eligible counties” and “covered households” in “ineligible counties” for costs associated with water quality testing and remediation. MDE may adopt regulations to implement the program. The bill also establishes related reporting and outreach requirements as well as requirements for contracts for the sale of real property. MDE must also establish a private well water quality database utilizing an existing online portal to receive water quality tests, as specified. **The bill takes effect October 1, 2024.**

Fiscal Summary

State Effect: General fund *administrative* expenditures increase by \$236,000 in FY 2025; future years reflect annualization, inflation, and ongoing costs. General fund expenditures increase *significantly* further beginning in FY 2025 to capitalize the new special fund; special fund revenues and expenditures increase correspondingly. Reimbursable fund revenues and expenditures increase for any services provided by the Department of Information Technology (DoIT). Costs may be significantly higher, as discussed below.

Local Effect: Local grant revenues and expenditures increase in eligible counties beginning in FY 2025. For counties receiving grant awards, administrative costs may increase.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “Private well” is defined to mean a private or domestic water supply well that is a source of potable water. The bill makes conforming changes to existing § 9-4A-01 of the Environment Article, which is renumbered as § 9-4A-16 by the bill.

Private Well Safety Program and the Private Well Safety Fund

Private Well Safety Fund: The special fund established by the bill consists of (1) money appropriated in the State budget to the fund and (2) any other money from any other source accepted for the benefit of the fund. The fund may only be used for awarding grants to (1) eligible counties for distribution to covered households to assist with the costs associated with water quality and remediation and (2) covered households located in an ineligible county to assist with the costs associated with water quality testing and remediation. A “covered household” means one or more individuals that reside at a property that is served by a private water supply well. An “eligible county” is a county that is awarded a grant under the fund and agrees to engage in specified outreach activities. An “ineligible county” is one that has not been awarded a grant under the fund.

Grant Application Process and Awards: MDE must establish a grant application process to award grants from the fund and may establish a grant application fee (which may be waived by MDE on a case-by-case basis), as specified. The application fee for an award for water quality testing may not exceed \$10, and the application fee for an award for remediation may not exceed \$250.

The bill establishes items that MDE may consider when awarding a grant to an eligible county. MDE or an eligible county must base the dollar amount of a grant award for *water quality testing* on sampling parameters and costs and an income guideline scale established by MDE. MDE or an eligible county must base the dollar amount of a grant award for *remediation* on an income guideline scale established by MDE. Grants may be awarded for up to 100% of costs associated with water quality testing and remediation to a covered household that can demonstrate household income below 50% of the State’s median income level.

The bill also establishes restrictions on how MDE or an eligible county may award grant funding and prohibits a covered household from receiving more than two grant awards in a year, as specified.

In order to be eligible for grant funding under the bill, a county must agree to engage in specified outreach activities that include, among other things, educating county residents about the program and the fund and the importance of annual well water testing. If a county receives a grant, the county must submit an annual report to MDE by September 1

each year that includes, among other items, (1) the locations of covered households that received a grant award and (2) the dollar amount of grant funding awarded to each household, as specified.

Water Quality Testing Standards: MDE must adopt regulations to identify a list of additional standards that it deems necessary for each county or any specific area within a county. The standards must require, as appropriate, testing for (1) manganese; (2) arsenic; (3) radon; (4) mercury; and (5) all volatile organic compounds for which there is a maximum contaminant level.

Required Data Portal: MDE must use an online portal to (1) receive water quality testing results, as specified; (2) upload certificates of potability (which are required under related State regulations), results of water quality testing, and other relevant information submitted to MDE related to private wells (on at least a quarterly basis); and (3) provide public access to the information in a manner that is easy to use and categorized by county. On an ongoing basis, a county may submit to MDE records of required certificates of potability and any results of water quality testing received voluntarily from residents. On a quarterly basis, a State-certified laboratory that conducts water quality testing of private wells must submit testing results to MDE in a manner determined by MDE.

Outreach and Annual Reports: MDE must engage in specified outreach activities to provide information on the program, the grant application process, and information on water quality testing. In addition, by January 1 of each year, MDE must report to the General Assembly on the data and information gathered under the program. Among other things, the annual report must include the location of areas of known contamination and information on the number of water quality tests conducted under the program that detected a substance that exceeds the maximum contaminant level for that substance, as specified.

Water Testing as a Condition of Sale of Real Property and State-certified Laboratory Responsibilities

The bill requires that as a condition of sale, a contract for the sale of real property on which a private or domestic water supply well is located must include a provision requiring that the purchaser ensure that the well undergo water quality testing. Settlement on the contract may not occur until the vendor and purchaser have both received and reviewed the results of the water quality testing. At settlement, the vendor and purchaser must each certify in writing that they have received and reviewed the results. Testing results are valid for three years. However, a purchaser may waive the water quality testing requirements in writing.

The bill establishes several reporting requirements for a State-certified laboratory that conducts water quality tests pursuant to the bill. Among other things, a State-certified laboratory must submit the results of the water quality testing to MDE within five business

days of completing the testing, along with (1) a statement that the water quality testing is for the purpose of complying with the bill and (2) the location of the real property, as specified. The bill specifies who is entitled to receive water quality testing results.

Current Law:

Private and Public Water Systems Water Quality Standards

MDE is responsible for primary enforcement of the federal Safe Drinking Water Act, which, among other things, ensures that public water systems meet strict safe drinking water standards. These standards generally do not apply to private drinking water wells. Rather, private well owners are responsible for the safety of their own wells after initial construction and certification is completed. However, Chapter 622 of 2021 requires the owner of residential rental property that is served by a private water supply well to provide for water quality testing every three years and to disclose the results to current and prospective tenants. When a water quality test reveals that a private water supply well is contaminated, the owner must notify the MDE and the local health department (LHD) and resolve the issue. As of the writing of this fiscal and policy note, MDE has not promulgated regulations to implement Chapter 622.

Water Well Construction in the State, Generally

MDE's water well construction program regulates the permitting and installation of water wells in the State, including for potable and nonpotable supply wells. Wells must be installed by a Maryland-licensed well driller, and the licensed well driller must obtain a well construction permit prior to drilling. MDE delegates authority to enforce the State's water well construction regulations to LHDs and other local permitting agencies, which are referred to as approving authorities. Licensed well drillers apply to the local approving authority to obtain a well construction permit prior to drilling. After obtaining a permit to drill, the well driller must also submit a completion report to the approving authority. If the well is to be used as a potable water supply, a Certificate of Potability is required before the well is put into service.

Mandatory Notices and Disclosures for a Contract of Sale of Real Property

Statutory provisions set forth numerous requirements regarding statements, disclosures, and notices in contracts for the sale of property, including provisions relating to:

- notice of estimated deferred water and sewer charges;
- notice of costs of recordation or transfer taxes;
- notice that the subject property may be located in a "critical area" of the Chesapeake Bay and Atlantic Coastal Bays;

- notice of specified development impact fees;
- notice of protection by the Real Estate Guaranty Fund;
- notices related to deposits, specified contractual provisions, and warranties; and
- notice that the subject property may be located in a zone of dewatering influence.

Many requirements regarding such statements, disclosures, and notices vary depending on the type of property at issue and/or the jurisdiction where the property is located. Generally, unless otherwise specifically established, a contract of sale is not rendered invalid by the omission of any statement, disclosure, or notice.

State Fiscal Effect: General fund *administrative* expenditures increase by \$236,036 in fiscal 2025 for MDE to hire staff to generally develop and implement the Private Well Safety Program. Future year expenditures are annualized, adjusted for inflation, and reflect ongoing costs. This estimate does not include general fund expenditures necessary to capitalize the new special fund, which cannot be estimated at this time but are likely significant. In addition, other costs are incurred that cannot be estimated at this time. For example, there will be costs associated with developing the required private well water quality database. Additionally, the Laboratories Administration within the Maryland Department of Health (MDH) may be affected to the extent the bill results in a significant increase in water quality testing in the State.

The impact on MDE's administrative costs and the additional potential impacts resulting from the bill are discussed in more detail below.

Maryland Department of the Environment

General fund *administrative* expenditures for MDE increase by \$236,036 in fiscal 2025, which accounts for the bill's October 1, 2024 effective date. This estimate reflects the cost of hiring four regular employees (one administrative specialist, one geologist, one environmental health specialist, and one accountant) to (1) develop regulations to implement the bill and administer the new program; (2) develop grant procedures and issue and track grants; (3) develop and provide required outreach and notice; (4) publish information about the program and the fund on its website; (5) develop and adopt the required standards (through regulation) for water quality testing deemed necessary for each county (or specified areas within a county); (6) identify and make any necessary programmatic changes to use a portal to collect and share required data; and (7) write and submit required annual reports to the General Assembly. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- an estimated 13% of Maryland’s population is served by private water wells, and developing a program to provide grant funding for outreach, testing, and remediation of private wells in the State is a significant undertaking;
- robust implementation of the Private Well Safety Program; and
- existing staff are not able to fully implement the bill.

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| Positions | 4.0 |
| Salaries and Fringe Benefits | \$206,664 |
| Operating Expenses | <u>29,372</u> |
| Total FY 2025 MDE Admin. Expenditures | \$236,036 |

Future year administrative expenditures, which range from \$270,999 in fiscal 2026 to \$298,904 in fiscal 2029, reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

General fund expenditures increase *significantly further* beginning in fiscal 2025 to capitalize the new special fund. Special fund revenues and expenditures increase correspondingly as MDE receives the capitalization funds and disburses those funds in the form of grant awards. The actual amount of capitalization funding needed for a minimum viable program is unknown but likely significant.

The Department of Legislative Services (DLS) notes that ultimately, necessary staffing levels for MDE depend in large part on the amount of available grant funding and how robust participation in the program is. Accordingly, MDE’s administrative costs may vary.

DLS also notes that this analysis assumes that MDE does not establish grant application fees, as authorized by the bill. To the extent that MDE chooses to do so, fee revenues increase accordingly.

Private Well Water Quality Database

MDE notes that it is not aware of any existing public facing online portal that will allow MDE to receive water quality testing results and other related documentation. However, MDH’s Laboratory Administration advises that there is a Lab Web Portal that the Laboratories Administration currently uses. A yearly subscription to this service is \$50,000. DLS does not have enough information regarding the Lab Web Portal to determine whether this online portal may be able to satisfy the bill’s requirements and, if it can, if the fee for MDE would be similar to the fee paid by the Laboratories Administration. Thus, a specific estimate of any increase in costs associated with the online portal is not included in this analysis. It is anticipated that DoIT may be involved in helping MDE identify, develop, and/or utilize an online portal. DoIT operates largely as a fee-for-service agency, meaning that it charges State agencies for the services it provides

to them. As such, reimbursable fund revenues and expenditures for DoIT increase corresponding to MDE's contractual costs associated with this effort.

Maryland Department of Health

MDH's Laboratories Administration provides analytical support services for State agencies and program offices throughout the State and is the primary laboratory in the State that conducts water testing for MDE and LHDs. Although the bill sets up a framework for the Private Well Safety Program and lays the groundwork for a robust testing and remediation program in the State, there are no minimum testing requirements. Thus, the actual amount of increased testing under the bill is unknown. However, given the large number of private wells in the State, and the fact that the State laboratories are fully subscribed, to the extent that the Laboratories Administration must conduct additional testing as a result of the bill, MDH likely needs to hire additional staff, and general fund expenditures increase accordingly. For context, the Laboratories Administration estimates that if its Division of Environmental Sciences processes an additional 3,000 water samples annually under the bill, the division must hire five public health laboratory scientists, and costs for staff, supplies, and service contracts increase by approximately \$832,400 in the first year and by at least \$707,000 in future years.

The bill's requirements for private or domestic water supply wells to be tested as a condition of the sale alone are not expected to necessitate hiring of additional staff at the Laboratories Administration.

Local Fiscal Effect: Participation in the Private Well Safety Program is optional for counties. To the extent that a county chooses to participate, local grant expenditures and revenues increase correspondingly. Any participating counties may incur administrative costs to conduct the required education and outreach activities and to submit the required annual reports.

Small Business Effect: Any small business in the State that performs well remediation or repair services or well water testing could benefit, potentially significantly (depending on the actual grant funding available), from an increase in the demand for its services.

Because the requirements can be waived, the water quality testing results are valid for three years, and the costs associated with water quality testing will ultimately fall on purchasers, the bill's water quality testing requirements are not anticipated to materially affect real property transactions. However, residential property owners (which could include small businesses operating out of residential properties as well as owners of residential rental properties) benefit from a clearer understanding of the state of private water supply wells at the time of purchase and may benefit from grant funding to conduct water testing and well remediation.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Department of Information Technology; Baltimore City; Caroline, Montgomery, and Prince George's counties; Maryland Association of Counties; Judiciary (Administrative Office of the Courts); Maryland Department of the Environment; Maryland Department of Health; Maryland Association of County Health Officers; Department of Legislative Services

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