

A SUMMARY OF HOUSE BILL 4202 AS INTRODUCED 2-12-03

The bill would amend the Natural Resources and Environmental Protection Act (NREPA) to specify when a school or school playground could be constructed and operated on formerly contaminated property that had met specified cleanup criteria. It would require public notice of the previous condition of the property and, in some cases, ongoing environmental monitoring of the site.

[The bill would define “school” to mean all buildings, playgrounds, athletic fields, and other real property owned or leased by a private or public elementary or secondary institution of learning, for any of grades kindergarten through 12. School would not include a family residence used as a home school.]

The bill specifies that before beginning construction of a school, the owner or operator of the school would be required to conduct an environmental assessment of the property to determine all of the following: a) whether the property was a “facility”, meaning an area where hazardous substances in excess of specified concentrations had been present; b) the nature and extent of the owner’s or operator’s due care obligations under the act, and the response activities necessary to fulfill those obligations; and c) the nature and extent of any response activities that the owner or operator was required to conduct under the act.

Under the bill, if response activities that satisfied the clean-up criteria for *limited residential use* under the act, or corrective action that satisfied the cleanup criteria for *restricted residential use* under the act had been completed at the property, then a school could be constructed and operated. However, the owner or operator of the school would be required to monitor the property—including the property’s soil, air, and indoor air—to demonstrate that no unacceptable exposure to hazardous substances existed. The bill would require that the monitoring be conducted in conformity with a written monitoring plan that contained a schedule for conducting the monitoring and was approved by the Department of Environmental Quality. The bill prohibits the department from approving a monitoring plan unless the owner or operator of the school had done both of the following: a) provided public notice of the environmental contamination at the site, the proposed monitoring plan, the results of any monitoring that had already been conducted at the site, and the right to request a hearing; and b) if requested by any person within 14 days after public notice was provided, conducted a public hearing in the vicinity of the site, and gave appropriate notice of that hearing.

Under the bill, if response activities that satisfied the clean-up criteria for *residential use*, or corrective action that satisfied the clean-up criteria for *unrestricted residential use* had been

completed at the property, a school could be constructed and operated if the owner or operator did all of the following: a) provided public notice of the prior status of the property as a facility and of testing results that demonstrated that the property satisfied the clean-up criteria for residential use, or for unrestricted residential use; b) provided the public an opportunity to comment; c) if requested by the department based upon new information that conditions at the school were reasonably likely to fail to satisfy the clean-up criteria, the owner conducted an additional environmental assessment that met the requirements of the act. That environmental assessment would have to be conducted in conformity with a written assessment plan that contained a schedule for conducting the assessment and that was approved by the department. Under the bill, the department could not approve an assessment plan unless the owner or operator had done both of the following: a) provided public notice of the environmental contamination at the site, the proposed assessment plan, the results of any environmental assessment that had already been conducted at the site, and the right to request a hearing; and b) if requested by any person within 14 days after public notice was provided, conducted a public hearing in the vicinity of the site, and gave public notice of that hearing.

The bill specifies that notice under this section, including notice of a public hearing, must be published in a newspaper of general circulation in the city, village, or township where the school was (or would be) located, and it would be required to include information considered appropriate by the department.

MCL 324.20101 et al

Analyst: J. Hunault

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