

Legislative Analysis



ASBESTOS ABATEMENT

Phone: (517) 373-8080
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House Bill 5594 (H-1) as reported from committee
Sponsor: Rep. Scott VanSingel

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5595 (H-1) as reported from committee
Sponsor: Rep. David C. Maturen

House Bill 5596 (H-1) as reported
Sponsor: Rep. Gary Howell

House Bill 5607 (H-1) as reported
Sponsor: Rep. Stephanie Chang

House Bill 5597 (H-2) as reported
Sponsor: Rep. William J. Sowerby

House Bill 5608 (H-1) as reported
Sponsor: Rep. LaTanya Garrett

Committee: Natural Resources
Complete to 12-13-18

SUMMARY:

The bills would amend various acts and create new acts to further regulate asbestos abatement in Michigan, as described in further detail below.

House Bills 5608 and 5594 would amend Part 55 (Air Pollution Control) of the Natural Resources and Environmental Protection Act (NREPA) to require the Department of Environmental Quality (DEQ) to establish an asbestos program to implement the National Emission Standards for Hazardous Air Pollutants program for asbestos as provided in Title 40, Part 61, Subpart M (National Emission Standard for Asbestos), and to submit an asbestos report from that program annually to the legislature.

In implementing the program under **HB 5608**, the DEQ would have to inspect asbestos removals and demolitions for compliance with 40 CFR 61. Following receipt of a notification of an asbestos removal or demolition, the DEQ could conduct an inspection to ensure compliance. The DEQ would have to complete an inspection for a minimum of 25% of the initial notifications received under 40 CFR 61.145 each state fiscal year. The owner or operator that submitted the notification of asbestos removal or demolition would be responsible for a \$100 notification fee, as well as \$10 for each time the submitted notification is modified. The DEQ would assess the notification fee and would deposit all of the fees and payments received into the Asbestos Inspection Fund.

HB 5608 would also create the Asbestos Inspection Fund. The state treasurer could receive money or other assets from any source for deposit into the fund and would direct the investment of the fund and 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 not lapse to the general fund. The DEQ would be the administrator of the fund for auditing purposes and would expend money from the fund, upon appropriation, only to conduct inspections and related activities.

Proposed MCL 324.5534 and 324.5534a

HB 5594 would mandate that, by March 1 of every year, the DEQ must prepare and submit to the legislature a report that includes the following, as related to the DEQ's asbestos program:

- For the previous calendar year, all of the following:
 - The number of inspectors employed by the DEQ *and* inspections conducted.
 - The percentage of inspections conducted per notifications received.
 - The number of enforcement actions taken.
- An assessment and recommendation of whether the DEQ has a sufficient number of inspectors to carry out the asbestos program in the National Emissions Standards for Hazardous Air Pollutants under the Clean Air Act (42 USC 7412). The evaluation of sufficiency would be based on metrics established by the DEQ for the percentage of inspections conducted each year per initial invoices of intent to renovate or demolish that are received that year. The minimum percentage set by the DEQ for a determination of sufficiency would be at least 15%.

Finally, the report would be posted on the DEQ's website and published in the Michigan Register. Additionally, it would be combined with the Emissions Control Fund report required under Section 5522 of NREPA.

Proposed MCL 324.5519

House Bills 5595, 5596, and 5607 would create separate acts to regulate asbestos removal.

The following definitions would apply to all three bills:

Asbestos would mean a group of naturally occurring minerals that separate into fibers, including chrysotile, amosite, crocidolite, anthophyllite, tremolite, and actinolite.

Asbestos abatement contractor would mean a business entity that is licensed under the Asbestos Abatement Contractors Licensing Act and that carries on the business of asbestos abatement on the premises of another business entity. For purposes of this definition, it would not include asbestos abatement on the asbestos abatement contractor's premises.

Asbestos abatement project would mean any activity involving persons working directly with the demolition, renovation, or encapsulation of friable asbestos material.

HB 5595 would create the Public Entity Asbestos Removal Disclosure Act. The proposed new act would prohibit a **public entity** from entering into an asbestos abatement project ("project") with an asbestos abatement contractor ("contractor") or a general contractor that contracts with an asbestos abatement contractor for the abatement of asbestos, unless, before entering into a contract with the public entity, the contractor seeking to bid on the project files an affidavit describing the following violations within the preceding 5 years:

- Any criminal convictions relating to compliance with environmental laws or regulations.
- Any violation notices of environmental law or regulations.
- Whether it is subject to an administrative order or consent judgement.

If a contractor enters into a contract with a public entity for a project, then the contractor could not enter into a contract with another contractor *unless* that contractor also files an affidavit described above.

HB 5607 would create the Public Entity Asbestos Removal Verification Act, which would prohibit a **public entity** from entering into a project with a contractor unless the public entity conducted a background investigation, as determined by the public entity, of the contractor seeking to bid on the project. If the contractor had a criminal conviction related to compliance with environmental regulations, then the public entity could not enter into a contract for a project with that contractor. However, if the contractor did not have any convictions, but did have 5 or more violation notices of environmental regulations or was subject to an administrative consent order or a consent judgement involving environmental regulations within the preceding 5 years, the public entity could enter into a contract with that contractor only after the following:

- The public entity investigated each of the violation notices or consent orders or judgments and determined whether the contractor is able to adhere to the proposed contract. This determination would be in writing, publicly available, and based on the public entity's observations of improvements in performance, operations to ensure compliance, or other demonstrated ability to comply with regulations.
- The public entity conducted a public hearing with not less than 30 days' notice for public input.

These background check parameters also would apply to contractors entering into contracts with another contractor for the project. However, a public hearing would not be required.

For both HBs 5595 and 5607, **public entity** would mean the state or an agency or authority of the state or a school district, community college district, intermediate school district, city, village, township, county, land bank, public authority, or public airport authority. Additionally, **asbestos abatement contractor** also would include an individual or person with an ownership interest in a business entity.

HB 5596 would create a new act to require a **local government** or land bank authority created under the Land Bank Fast Track Act to include a provision in a contract with a contractor or demolition contractor that involves a project that allows the local government or land bank authority to withhold any payment to that contractor if the contractor or any other subcontractor has entered into, or is in negotiations to enter into, an administrative consent order or consent judgement with the DEQ or another environmental regulatory agency within the immediately preceding 12 months that involves violations of environmental regulations. Payment could be withheld until the local government or land bank authority received verification from the contractor, DEQ, or another environmental regulatory agency that the violations had been corrected.

If an asbestos abatement project involves a local government or land bank authority, then a contractor, demolition contractor, or any subcontractor of those contractors, would have to disclose any active administrative consent orders or consent judgments against them, or if they have entered into, or are in negotiations to enter into, an administrative consent order or consent judgment, with the DEQ or other environmental regulatory agency for any violations of environmental regulations.

Local government would mean a county, city, village, or township.

House Bill 5597 would amend the Michigan Occupational Safety and Health Act (MiOSHA) to clarify that the Board of Health and Safety Compliance and Appeals (“board”) would make civil penalty assessments for violations under the act.

Currently, an employer who receives certain citations for violations under MiOSHA, fails to correct those violations, or willfully or *repeatedly violates* MiOSHA is assessed a civil penalty. The bill would clarify that the board would assess the employer a civil penalty.

Repeatedly violates would mean committing an asbestos-related violation within five years after the *case closing date* of an asbestos-related violation.

Case closing date would mean the first date that all of the following are met:

- The citation for the violation is a final order
- Satisfactory abatement documentation for the violation is received by the board
- All civil penalties related to the violation are timely paid, or, if untimely, the Department of Licensing and Regulatory Affairs (LARA) reports to the Department of Treasury as specified in Section 36(5), MCL 408.1036(5).

Additionally, the board currently assesses civil penalties while considering various factors and can establish a schedule of civil penalties. The bill would add that the board could not, however, reduce a civil penalty that was assessed as the result of an *asbestos-related violation* by an amount or percentage that is greater than what is prescribed by the federal Occupational Safety and Health Administration (OSHA).

Asbestos-related violation would mean a violation of MiOSHA, an order issued pursuant to MiOSHA, or a rule or standard promulgated under MiOSHA that involves the demolition, renovation, encapsulation, removal, or handling of *friable asbestos material* or otherwise involves the exposure of an individual to friable asbestos material.

Friable asbestos material would mean any material that contains more than 1% of *asbestos* by weight and that can be crumbled, pulverized, or reduced to powder when dry, by hand pressure.

Asbestos would have the same definition as HBs 5595, 5596, and 5607.

The bill would also update references to LARA.

MCL 408.1035 and 408.1036

FISCAL IMPACT:

House Bill 5594 will increase costs for the DEQ. The bill requires the DEQ to submit an annual report to the legislature about the department’s asbestos program. The exact extent of these reporting costs are unclear, but these costs are likely to be relatively modest as the DEQ already has processes in place to produce legislative reports. The bill is unlikely to affect departmental revenues or local government costs or revenues.

House Bill 5595 would not have an impact on revenues or expenditures for any unit of state or local government. The bill would add an additional step for public entities seeking to complete asbestos abatement projects by requiring the asbestos abatement contractor to file the affidavit required by the bill; this would not result in increased costs for the public entity.

House Bill 5596 would not have a discernible impact on expenditures or revenues for any unit of state or local government.

House Bill 5597 would not have an impact on expenditures or revenues for any unit of state or local government.

House Bill 5607 would likely have a net neutral fiscal impact on units of state and local government. The bill would require public entities (including school districts, community colleges, cities, villages, and townships) to conduct background checks of asbestos abatement contractors and general contractors working on asbestos abatement projects for the public entity. The cost of conducting the background checks would likely be recovered through the assessment of fees on contractors undergoing the background check.

House Bill 5608 would increase costs and revenues for the DEQ. The bill would require the DEQ to annually inspect a minimum percentage of asbestos removals and demolitions to ensure compliance with federal air quality standards. The number of inspections and sizes of facilities subject to inspection are likely to vary on an annual basis, making the extent of this ongoing cost increase unclear. Owners or operators of these facilities would be required to submit a \$100 notification fee as well as an additional \$10 if their respective notifications of asbestos removal or demolition are modified after being submitted to the DEQ. The annual revenue collected by the DEQ under the bill is also likely to vary based on the number of inspections completed in a given fiscal year. The DEQ estimates that FY 2016-17 inspection fees and notification modification fees would have generated approximately \$1.6 million in revenue under the bill.

The bill will increase costs for any local unit of government that owns or operates a facility subject to the specified asbestos regulation. These governments would be responsible for the \$100 fee should the DEQ complete an inspection. The bill is unlikely to affect local government revenues.

POSITIONS:

The Michigan Environmental Council indicated support for the bills. (11-28-18)

The Sierra Club indicated support for the bills. (10-3-18)

The Great Lakes Environmental Law Center testified in support of HBs 5594, 5595, 5596, and 5607. (10-3-18)

The Department of Environmental Quality indicated support for HBs 5594 and 5608. (11-28-18)

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