

Legislative Analysis



ASBESTOS ABATEMENT

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<http://www.house.mi.gov/hfa>

House Bills 4766 and 4770 as reported from committee
Sponsor: Rep. Gary Howell

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

House Bill 4767 as reported from committee
Sponsor: Rep. Abraham Aiyash

House Bill 4768 as reported
Sponsor: Rep. Scott VanSingel

House Bills 4769 and 4771 (H-1) as reported
Sponsor: Rep. William J. Sowerby

Committee: Natural Resources and Outdoor Recreation
Complete to 10-26-21

BRIEF SUMMARY: The bills would amend different acts and create new acts to revise the laws that govern asbestos abatement in Michigan, as described in further detail below.

FISCAL IMPACT: The bills could affect costs or revenues for the Department of Environment, Great Lakes, and Energy (EGLE) and local units of government. (See **Fiscal Information**, below, for a detailed discussion of each bill's fiscal impact.)

THE APPARENT PROBLEM:

Asbestos is a naturally occurring mineral fiber that is heat resistant, which has made it a desired material for fire retardation applications. Asbestos has been used in many products, especially building materials and friction products, including roofing shingles, ceiling and floor tiling, insulations, brake pads, and transmission parts. However, asbestos fibers are dangerous when airborne: when breathed in, the lungs cannot break down the fibers and they can eventually cause lung cancer, asbestosis, or mesothelioma. It is common for these diseases to develop slowly, with side effects, symptoms, and diagnoses occurring 15 to 30 years after exposure.

Because asbestos is dangerous, many Michigan laws regulate the handling and disposal of materials that contain asbestos to protect laborers removing or using the materials, as well as the general public who might become exposed to the asbestos fibers during and after the removal of the materials. Legislation has been proposed to expand and clarify current laws regulating asbestos and asbestos abatement and removal activities.

THE CONTENT OF THE BILLS:

House Bills 4767 and 4768 would amend Part 55 (Air Pollution Control) of the Natural Resources and Environmental Protection Act to require EGLE to establish an asbestos program to implement the federal National Emission Standards for Hazardous Air Pollutants program for asbestos as provided in 40 CFR 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 4767, EGLE would have to inspect, for compliance with 40 CFR 61, Subpart M, the following percentage of asbestos renovations and demolitions for which notification was received under 40 CFR 145:

- 15% for 2022 and 2023.
- 20% for 2024 and 2025.
- 25% for 2026 and thereafter.

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 modification of the submitted notification. A public entity could pass the cost for the notification fee and any modification fee through to the asbestos abatement contractor, unless the pass-through would violate the terms of a contract entered into before the effective date of the bill. EGLE would assess the notification fee and deposit all of the fees and payments received into the Asbestos Inspection Fund.

HB 4767 also would 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. EGLE would be the administrator of the fund for auditing purposes and would expend money from the fund, upon appropriation, only to conduct inspections and perform related activities.

Proposed MCL 324.5519 and 324.5519a

HB 4768 would require that, by March 1 of every year, EGLE must prepare and submit to the legislature a report that includes the following, as related to EGLE's asbestos program:

- For the previous calendar year, all of the following:
 - The number of inspectors employed by EGLE *and* inspections conducted.
 - The percentage of original notifications of intent received for which inspections were conducted.
 - The number of enforcement actions taken.
- An assessment and recommendation of whether EGLE has a sufficient number of inspectors to carry out the asbestos program in the National Emissions Standards for Asbestos in the Code of Federal Regulations. The evaluation of sufficiency would be based on metrics established by EGLE 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 EGLE for a determination of sufficiency would be at least 15%.

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

Proposed MCL 324.5519b

House Bills 4766, 4769, and 4770 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, this 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 4769 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 filed an affidavit describing the following violations:

- Any criminal convictions relating to compliance with environmental laws or regulations. [A public entity could not enter into a contract for an asbestos abatement project with a contractor that disclosed a criminal conviction relating to compliance with environmental regulations.]
- Any violation notices of environmental law or regulations.
- Whether it had been subject to an administrative order or consent judgment within the preceding five years.

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

HB 4770 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.

At a minimum, the background investigation would involve the public entity's consulting both of the following:

- EGLE's webpage to determine if the contractor has received notices of violation of environmental regulations or has been subject to an administrative consent order or judgment involving environmental regulations.
- The webpage of the Occupational Safety and Health Administration in the U.S. Department of Labor to determine if the contractor has received notices of violations of asbestos regulations.

If the contractor had five or more violation notices of environmental regulations or was subject to an administrative consent order or a consent judgment involving environmental regulations within the preceding five years, the public entity could not enter into a contract with that contractor *unless* the entity did both of the following:

- Investigated each of the violation notices or consent orders or judgments and determined whether the contractor could 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.
- Conducted a public hearing with not less than 30 days' notice for public input.

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

For both HBs 4769 and 4770, **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** would also include an individual or person with an ownership interest in a business entity.

HB 4766 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 involving a project that would allow the local government or land bank authority to withhold any payment to that contractor if the contractor or any other subcontractor had entered into, or was in negotiations to enter into, an administrative consent order or consent judgment with EGLE or another environmental regulatory agency within the immediately preceding 12 months that involved violations of environmental regulations. Payment could be withheld until the local government or land bank authority received verification from the contractor, EGLE, or another environmental regulatory agency that the violations had been corrected.

If an asbestos abatement project involved 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 had entered into, or were in negotiations to enter into, an administrative consent order or consent judgment with EGLE or another environmental regulatory agency for any violations of environmental regulations.

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

House Bill 4771 would amend the Michigan Occupational Safety and Health Act 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 the act, fails to correct those violations, or willfully or **repeatedly violates** the act 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, with respect to an ***asbestos-related violation***, 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 the Department of Labor and Economic Opportunity (LEO) has transmitted information on the amount of the penalty and the name and address of the employer owing the penalty to the Department of Treasury.

Asbestos-related violation would mean a violation of the act, an order issued pursuant to the act, or a rule or standard promulgated under the act 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 4769, 4766, and 4770.

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 more than a total of 95% or by more than the corresponding percentage for each of the following:

- In considering the size of the business, 70%.
- In considering the good-faith efforts of the employer, 25%.
- In considering the history of previous citations, 10%.

The board also could issue an order for a reduction of a civil penalty, as long as it is consistent with the dismissal or reclassification of the asbestos-related violation contained in a hearing officer's report submitted to the board following an administrative hearing held under the act and the penalty was reduced as prescribed above.

The bill also would change references to the Department of Licensing and Regulatory Affairs to instead refer to LEO, as LEO now houses the Michigan Occupational Safety and Health Administration (MIOSHA).

MCL 408.1004, 408.1035, and 408.1036

BACKGROUND INFORMATION:

House Bills 4766 to 4771 are reintroductions of House Bills 5046 to 5051 of the 2019-20 legislative session.¹ Those bills were passed by the House of Representatives.

¹ More information on these bills can be found here, <http://legislature.mi.gov/doc.aspx?2019-HB-5046>.

FISCAL INFORMATION:

House Bill 4766 would not have a discernible impact on expenditures or revenues for any unit of state or local government.

House Bill 4767 would increase costs and revenues for EGLE. The bill would require EGLE 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 specific extent of this ongoing cost increase unclear. The department would be required to conduct an increasing percentage of inspections, rising from 15% of asbestos renovations and demolitions for which notification was received in 2022 to 25% in 2026 and beyond, likely leading to proportionally increasing costs over that term.

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 EGLE. The annual revenue collected by EGLE under the bill is also likely to vary based on the number of inspections completed in a given fiscal year. The department previously estimated that inspection fees and notification modification fees would have generated approximately \$1.6 million in revenue under the bill.

The bill may 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 aforementioned fees should EGLE complete an inspection. However, the bill would allow local governments to pass these fee costs on to their respective contractors unless doing so would violate the terms of the contract between the local government and the contractor. The bill is unlikely to affect local government revenues.

House Bill 4768 will increase costs for EGLE. The bill requires EGLE 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 EGLE 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 4769 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 4770 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 4771 would not have a significant fiscal impact on any unit of state or local government

ARGUMENTS:

For:

Supporters of the bills argue that tightening and clarifying current Michigan laws regulating asbestos, and aligning them with federal Occupational Safety and Health Act standards, is needed to prevent asbestos abatement contractors and general contractors from improperly handling and disposing of asbestos. Failure to remove and handle asbestos materials not only puts the laborers on the site, but also the general public, at risk of asbestos exposure and health complications. Abatement of asbestos materials occurs in a variety of buildings, including schools and private homes. Supporters of the bills argue that it is imperative that bad actors in the profession of asbestos abatement be prohibited from being able to move from one site to another without correcting their dangerous behavior.

Against:

Critics of the bills argue that the penalties in the bills could go further by instituting a penalty structure, such as a demerit-based licensure that requires additional training and educational hours for each violation.

POSITIONS:

Representatives of the Department of Environment, Great Lakes, and Energy testified in support of HBs 4767 and 4768 and with a neutral position on HBs 4766, 4769, 4770, and 4771. (5-20-21)

Representatives of the following entities testified in support of the bills (5-20-21):

- Great Lakes Environmental Law Center
- Michigan Laborers District Council

The following entities indicated support for the bills (5-20-21):

- Operating Engineers Local #324
- Michigan League of Conservation Voters

The Department of Technology, Management, and Budget indicated support for HBs 4770 and 4771. (5-20-21)

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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.