

Legislative Analysis



ASEBESTOS ABATEMENT REQUIREMENTS

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

House Bill 4185 (H-2) as reported from committee
Sponsor: Rep. Denise Mentzer

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

House Bill 4186 as reported
Sponsor: Rep. Donovan McKinney

House Bills 4187 and 4188 (H-1) as reported
Sponsor: Rep. Abraham Aiyash

House Bills 4189 and 4190 as reported
Sponsor: Rep. Curt S. VanderWall

Committee: Natural Resources
Complete to 9-1-23

SUMMARY:

House Bills 4185 to 4190 would create new acts and amend several existing acts relating to the regulation of asbestos handling and removal activities and how public entities may enter into contracts and agreements with contractors engaging in those activities. Broadly speaking, the bills would add requirements regarding which entities may enter into agreements with public entities for certain asbestos abatement activities and conditions under which an entity would either be eligible or ineligible to enter into a contract.

House Bill 4185 would amend the Michigan Occupational Safety and Health Act (MIOSHA) to add provisions relating to fines that may be assessed against an employer for violating certain provisions of the act. Specifically, with regard to asbestos-related violations, the bill would add criteria under which an employer can be determined to have repeatedly violated the act and allow a civil fine issued to an employer to be reduced if certain conditions are met.

MIOSHA currently allows the Board of Health and Safety Compliance and Appeals to assess an employer who *repeatedly violates* the act or rules, orders, or standards promulgated under the act a civil penalty of up to \$70,000 for each violation, but at least \$5,000 for each willful violation. The bill would newly provide that, for an ***asbestos-related violation, repeatedly violates*** means that the employer commits an asbestos-related violation within five years or less after the ***case closing date*** of an asbestos-related violation.

Asbestos-related violation would mean a violation of MIOSHA, an order issued under 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% ***asbestos*** by weight and that can, by hand pressure, be crumbled, pulverized, or reduced to powder when dry.

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

Case closing date would mean the first date that all of the following conditions 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 the penalties are not timely paid, the Department of Labor and Economic Opportunity (LEO) transmits to the Department of Treasury information on the amount of the penalty and the name and address of the employer owing the penalty.¹

MIOSHA now allows the board to assess civil penalties, taking into consideration the size of the business, the seriousness of the violation, the good-faith efforts of the employer, and the history of previous citations.

The bill would additionally allow the board to reduce a civil penalty if the reduction is consistent with a dismissal or reclassification of an asbestos-related violation included in a hearing officer's report submitted to the board following an administrative hearing. For an asbestos-related violation that has been reclassified by a hearing officer, the board could not reduce the civil penalty that corresponds to the reclassified violation by more than 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 bill would take effect 90 days after it is enacted.

MCL 408.1004, 408.1035, and 408.1036

House Bills 4186, 4189, and 4190 would each create a new act to regulate how certain public entities enter into agreements with contractors for asbestos removal activities. For all three bills, *asbestos* would be defined as in HB 4185 and the following definitions would also apply:

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 premises other than its own.

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

House Bill 4186 would create a new act to require that, if a ***local government*** or a land bank authority created under the Land Bank Fast Track Act enters into a contract with an asbestos abatement contractor or a demolition contractor that involves an asbestos abatement project, the contract must include a provision that allows the local government or land bank authority to withhold any payment to that contractor if the contractor or any subcontractor on the project has entered into, or is in negotiations to enter into, an administrative consent order or consent judgment with the Department of Environment, Great Lakes, and Energy (EGLE) or another

¹ Under the act, LEO must send a letter demanding payment if the penalties are not paid within 15 working days after the penalty becomes a final order of the board. If payment is not made within 20 days after the date of that letter, LEO transmits the information to the Department of Treasury as described above.

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 receives verification from the contractor, from EGLE, or from another environmental regulatory agency that the applicable violations have been corrected.

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

A contractor, demolition contractor, or any subcontractor of those contractors that is involved in an asbestos abatement project with a local government or land bank authority would have to disclose to the local government or land bank authority if they are subject to an active administrative consent order or consent judgment with EGLE or another environmental regulatory agency for any violations of environmental regulations or if they have entered into or are in negotiations to enter into such an administrative consent order or consent judgment.

House Bill 4189 would create the Public Entity Asbestos Removal Verification Act to prohibit a ***public entity*** from entering into an asbestos abatement project with an asbestos abatement contractor, or a general contractor that contracts with an asbestos abatement contractor, for the abatement of asbestos *unless* the public entity conducts a background investigation of the contractor seeking to bid on the project.²

Public entity would mean the state, an agency or authority of the state, a school district, a community college district, an intermediate school district, a city, a village, a township, a county, a land bank, a public authority, or a public airport authority.

At a minimum, the public entity would have to consult both of the following in conducting a background investigation:

- The webpage of EGLE 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 (OSHA) in the U.S. Department of Labor to determine if the contractor has received notices of violation of asbestos regulations.

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

- Investigates each violation notice, or the administrative consent order or judgment, and determines that the contractor is able to adhere to the proposed contract based on observable improvements in performance, observable improvements in operations to ensure compliance with environmental regulations, or other demonstrated ability to comply with environmental regulations. The determination would have to be in writing and be made publicly available.
- Conducts a public hearing for public input with at least 30 days' notice.

² For purposes of HB 4189 only, *asbestos abatement contractor* would additionally include an individual or person with an ownership interest in a business entity licensed under the Asbestos Abatement Contractors Licensing Act that carries on the business of asbestos abatement on premises other than its own.

If a contractor enters into a contract with a public entity for a project, the contractor could not enter into a contract with another contractor unless that contractor conducts a background check investigation in the manner described above for public entities.

House Bill 4190 would create the Public Entity Asbestos Removal Disclosure Act to prohibit a *public entity* (defined as in HB 4189) from entering into an asbestos abatement project with an asbestos abatement 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 all of the following:

- Any criminal convictions relating to compliance with environmental laws or regulations.
- Any violation notices of environmental law or regulations.
- Whether it has been subject to an administrative order or consent judgment within the immediately preceding five years.

A public entity could not enter into a contract for an asbestos abatement project with a contractor that discloses a criminal conviction relating to compliance with environmental regulations.

If a contractor enters 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 files an affidavit as described above.

House Bills 4187 and 4188, taken together, would amend the Natural Resources and Environmental Protection Act (NREPA) to require EGLE to establish a program to carry out the requirements of the National Emissions Standard for Asbestos in 40 CFR 61, subpart M,³ and to submit an asbestos report from that program annually to the legislature. Each bill would take effect 90 days after being enacted.

House Bill 4188 would require EGLE to establish a program to implement the National Emissions Standard for Asbestos. In implementing this program, EGLE would have to inspect, for compliance with 40 CFR 61, subpart M, at least the following applicable percentage of asbestos renovations and demolitions for which original notice of intention was received under 40 CFR 61.145:

- 15% for 2023 and 2024.
- 20% for 2025 and 2026.
- 25% for 2027 and thereafter.

An owner or operator that submits a notice of intention of asbestos removal or demolition would have to pay a notification fee of \$100, as well as an additional \$10 fee for each time a submitted notice is modified. A public entity could pass through the cost of the notice and modification fees to the abatement contractor, unless doing so would violate the terms of a contract signed before the effective date of the bill. The fees would be paid electronically in a manner provided for by EGLE.

³ <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-61/subpart-M>

The bill would also create the Asbestos Inspection Fund in the state treasury. EGLE would have to transmit the fee revenue it assesses and collects as described above to the state treasurer for deposit into the 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 under the program established under the bill.

Proposed MCL 324.5519 and 324.5519a

House Bill 4187 would require EGLE to prepare and submit to the legislature, by March 1 of each year, a report that includes the following related to the asbestos program created under House Bill 4188:

- For the previous calendar year, all of the following:
 - The number of inspectors employed by EGLE.
 - The number of inspections conducted.
 - The percentage of original notices of intention 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 National Emissions Standard for Asbestos in 40 CFR 61, subpart M. The assessment would have to be based on metrics established by EGLE for the percentage of original notices of intention for renovations or demolitions received in a year for which inspections were conducted during that year. EGLE would have to set a minimum percentage for a determination of sufficiency of at least 15%.

The report would also have to be posted on EGLE's website and published in the Michigan Register. The bill would allow the report to be combined with the Emissions Control Fund report required under section 5522 of NREPA.

Proposed MCL 324.5519b

BACKGROUND AND DISCUSSION:

Asbestos was commonly used in building construction, including homes, for much of the twentieth century. Its use in new construction was formally banned in 1989, but was declining before that time after its role in causing health issues, including mesothelioma, was discovered.

Because asbestos poses a great health risk when it crumbles, releasing fibers into the air that can be inhaled without safety equipment, its removal is regulated, and contractors must adhere to additional demolition protocols when it is found in a building that is being renovated or demolished.

Because of the danger posed by improper asbestos removal, proponents of this legislation say that additional regulation is needed to ensure that bad actors who have previously been found guilty of violating existing laws are not able to enter into new agreements with public entities

and that the state is conducting adequate numbers of site inspections to ensure compliance with existing laws for asbestos abatement.

FISCAL IMPACT:

House Bills 4185 and 4186 are unlikely to have a discernible impact on expenditures or revenues for any unit of state or local government.

House Bill 4187 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 is 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 4188 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 2023 to 25% in 2027 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 4189 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 4190 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.

POSITIONS:

Representatives of the Department of Environment, Great Lakes, and Energy testified in support of House Bills 4187 and 4188. (4-13-23)

The following entities indicated support for the bills (4-13-23):

- Clean Water Action
- Michigan Environmental Council
- Michigan Laborers District Council
- Michigan League of Conservation Voters
- Michigan Nurses Association
- Michigan Township Association
- Sierra Club Michigan

Legislative Analyst: Josh Roesner
Fiscal Analyst: Austin Scott

■ 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.