



House
Legislative
Analysis
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ASBESTOS CONTRACTORS LICENSING

House Bill 4222 as enrolled

First House Committee: Labor

Second House Committee: State Affairs

Senate Committee: Human Resources and Senior
Citizens

House Bills 4223-4226 as enrolled

House Committee: Labor

Senate Committee: Human Resources and Senior
Citizens

Sponsor: Rep. Thomas Hickner

Second Analysis (8-2-90)

THE APPARENT PROBLEM:

In response to concerns that workers engaged in asbestos abatement projects were neither adequately protected nor properly trained, and that members of the general public were being exposed to asbestos-related health risks, Public Act 135 of 1986 created the Asbestos Abatement Contractors Licensing Act (AACA), under which asbestos abatement contracts were to be licensed by the Department of Public Health (DPH). At the same time, Public Act 147 amended the Michigan Occupational Safety and Health Act (MIOSHA) to require DPH approval and oversight of worker training programs in the health and safety aspects of handling asbestos. In 1988, in response to an Environmental Protection Agency requirement that states adopt an accreditation program for school asbestos workers, Public Act 440 created the Asbestos Workers Accreditation Act to provide for the accreditation, licensure, and regulation of those who wished to be accredited in school asbestos abatement projects, and specified that funds appropriated under the act be directed into a special Asbestos Abatement Fund, to be used solely to help the department pay for various costs related to asbestos abatement management. The fund would have been created under House Bill 5779, which would have raised significant revenues by requiring project fees from asbestos abatement contractors, but which was not enacted. With no existing fund specifically intended for asbestos abatement programs, and without the revenues that would have been used to offset the department's expenses for a full-time staff of 12 people to maintain the asbestos program required under federal law, both the department and abatement contractors agree that the department has not been able to effectively regulate asbestos abatement work in the state. Department officials say that revenues collected under the acts should be deposited in an asbestos abatement fund that would be restricted for use by the department for resources and expenditures to implement its responsibilities, and that revenues collected under the acts should directly benefit the department's asbestos program, as was originally intended. In response, it has been proposed that legislation be enacted to establish a fund and to require that asbestos abatement contractors be charged fees equal to a percentage of the price of an asbestos abatement project.

One result of the AACA has been that dual licensing regulations — including strict asbestos training requirements — have been imposed on electricians,

plumbers, mechanical contractors and builders who must also be licensed in their own fields. Many feel that this imposes unnecessary costs in situations where the work involving asbestos removal is incidental to the licensee's primary licensed trade, and it is felt that a licensed electrician, mechanical contractor, plumber or building contractor should be exempt from asbestos abatement licensing requirements when engaged in an incidental project involving a residential structure of not more than 160 square feet or 260 linear feet of friable asbestos materials. Asbestos abatement contractors, however, feel that these incidental contractors should still be required to follow certain standards, and that these exemption provisions should be tied to legislation that would authorize the boards that regulate each occupation to review licensees for compliance with the AACA or the asbestos abatement provisions of MIOSHA.

THE CONTENT OF THE BILLS:

House Bill 4222 would make the following amendments to the Abatement Contractors Licensing Act (MCL 338.3207 et al.):

- Create an Asbestos Abatement Fund in the state treasury which could be used only for the asbestos-related responsibilities of the Department of Public Health (DPH). The fund could be used for the inspection of asbestos abatement projects and the education of asbestos abatement contractors, but not for asbestos abatement projects on state-owned property. All fees collected under the bill would be deposited in the fund. The investment of the fund would be directed by the state treasurer, and all interest and earnings would be retained by the fund. Money in the fund at the close of the fiscal year would remain in the fund, and would not revert to the general fund.
- Exempt a licensed electrician, mechanical contractor, plumber or building contractor from asbestos abatement licensing requirements when engaged in an incidental project involving a residential structure of not more than 160 square feet or 260 linear feet of friable asbestos materials.
- Repeal that section of the Michigan Occupational Safety and Health Act (MIOSHA) that requires licensed abatement contractors to notify the Department of Labor before beginning an asbestos abatement project.
- Require asbestos abatement contractors to notify the Department of Public Health in writing at least ten days before beginning a project exceeding ten linear feet or

H.B.s 4222, 4223-4226 (8-2-90)

OVER

fifteen square feet, or both, of friable asbestos materials. The notification would include:

- the name and address of the owner of the building or structure;
- the location of the building where the projects would be performed;
- the schedule for the starting and completion of the project, which could not exceed one year in length;
- the amount of friable asbestos materials that would be removed or encapsulated;
- a fee equal to one percent of the price of the project contract.

If requested, the primary licensed trade contractor would also be required to provide DPH with a copy of the asbestos abatement project portion of the contract.

Under the bill, should asbestos in an amount exceeding ten linear or fifteen square feet, or both, be discovered during a project and after a written contract had been executed by a person or business entity who was exempt from licensure, and whose primary licensed trade was not that of an asbestos abatement contractor, notification would be required before asbestos removal began, and the above notification requirements and fee for the abatement portion of the contract price would be required within ten days of the discovery, with the fee being paid by the primary licensed trade contractor. Emergency asbestos abatement projects resulting from equipment failure or malfunctions would be exempt from the ten-day advance notice requirement. The person or business entity would be required to telephone the DPH immediately, but would have up to 48 hours to give written notice.

Not later than October 1 of each year after the year of the effective date of the bill, the department would be required to report to the legislature, and to the applicable committees in the House and Senate, on the amount of money generated by the fees charged under the bill, the number of asbestos abatement projects inspected, the number of citations issued for violations of the act, and other applicable laws, rules, and regulations.

The provisions of the bill would be effective until June 1, 1993.

House Bill 4222 is tie-barred to House Bills 4223-4226 and to Senate Bill 769, which would amend MIOSHA to prohibit DPH rules from containing standards that exceeded standards contained in certain federal regulations. Senate Bill 769 is pending before the Senate.

House Bills 4223-4226 would amend various acts that regulate construction-related skilled professionals to prescribe penalties for those who knowingly violated the *Asbestos Abatement Contractors Licensing Act* (AACA) or portions of the *Michigan Occupational Safety and Health Act* (MIOSHA) pertaining to asbestos abatement. The bills would amend Public Act 266 of 1929 (MCL 338.911b), the *Electrical Administrative Act* (MCL 338.888d), the *Forbes Mechanical Contractors Act* (MCL 338.981) and the *Occupational Code* (MCL 339.2411) which regulate plumbers, electricians, mechanical contractors, residential builders, and residential alteration contractors, respectively, to require the board regulating each occupation to review licensees for compliance with the AACA or the asbestos abatement provisions of MIOSHA. Upon notice by the DPH that a licensee had knowingly violated provisions in either act pertaining to asbestos abatement, the appropriate licensing board could suspend or revoke that person's license.

FISCAL IMPLICATIONS:

According to the Department of Public Health, the annual operational budget of the asbestos program is approximately \$650,000, and \$150,000 is collected each year in licensing and accreditation fees. For fiscal year 1989-90, \$641,800 was appropriated for the asbestos program. The department has estimated that the asbestos abatement project fees generated by the provisions of House Bill 4222 would generate approximately \$500,000 per year. These estimates were based upon actual asbestos removal notifications received by the department over a five-month period. The department has therefore requested a supplemental appropriation of \$500,000 for this fiscal year. House Bills 4223-4226 would have no fiscal impact on the state. (8-3-90)

ARGUMENTS:

For:

House Bill 4222 would generate revenues needed to fund the asbestos abatement program. Without these revenues, the Department of Public Health estimates that it would have to eliminate plans to implement a field inspection and compliance program to monitor the quality of work being provided by asbestos abatement contractors. Apart from the monetary issue, the bill would also address a vital public health concern. Asbestos has been found to be hazardous to human health; it is known to cause a number of cancers as well as a form of noncancerous, irreversible lung damage, and the acts involving asbestos abatement were enacted to protect the public health. Although Michigan already has strong licensing standards on the books, those standards are ineffective without strong enforcement. It is vitally important that the department have the funds to hire inspectors to make sure that guidelines are being followed and that contractors don't cut corners to get jobs done.

For:

Asbestos abatement work is a lucrative industry. By requiring project fees from contractors, House Bill 4222 places some of the cost of protecting public health in this area on those who profit from the asbestos dilemma. By requiring contractors to notify DPH ten days prior to starting a project, the department would be able to prepare for and conduct inspections. This, in turn, will help assure that proper asbestos abatement techniques and procedures are followed during asbestos abatement work in the state.

For:

It is virtually impossible for building, plumbing, electrical, and mechanical contractors to avoid disturbing and removing small amounts of asbestos as they perform their primary work. Under the current law, these tradespeople have their hands tied: either they cannot do their job, or they must be licensed as asbestos abatement contractors. House Bill 4222 would make such dual licensure unnecessary in situations involving incidental amounts of asbestos. In addition, contractors not licensed under AACA would still be subject to all the other standards regulating licensed asbestos abatement contractors. The bill also would provide a clear-cut limit on what would be considered incidental: not more than 160 square feet or 260 linear feet. In addition, under House Bills 4223-4226, these contractors would be subject to license suspension or revocation for violating asbestos abatement laws. The possibility of losing the license to practice one's trade could serve as a greater deterrent than the possibility of losing

just the license to remove asbestos. Further, by granting the licensing boards of the various construction-related professions the authority to review complaints and suspend the licenses of those who knowingly violate the acts that govern asbestos removal, House Bills 4222-4223 would provide protection for the public from employees who are not bound by the guidelines that asbestos abatement contractors are required to follow, and who might be tempted to take fewer safety precautions.

who come in contact with asbestos during their work will still be required to have asbestos removal training sufficient for incidental asbestos related work that will protect them from exposure.

For:

The proposed exception to the advance written notice requirement for emergencies contained in House Bill 4222 would codify DPH'S current practice of waiving the advance notice requirement for utilities in emergency situations, such as when a generator goes down. The exception could also be applied in other industrial settings.

Response: As written, the provisions of House Bill 4222 would not necessarily be limited to industrial settings.

Against:

House Bill 4222 should require that an asbestos abatement contractor show proof of insurance before receiving a license, to protect persons from disreputable contractors who may not correctly perform an abatement job. While other construction licenses in the state do not require a proof of insurance prior to licensing, abatement contractors are dealing with a hazardous, cancer-causing material. The customer should be informed so that he or she could decide whether to buy contractor liability insurance.

Against:

The bill is redundant in its requirement that the department report to the legislature on the status of the licensing of asbestos abatement contractors. This requirement is already contained in the act.

Against:

Asbestos is a potent cancer causing agent and the cause of asbestosis, a noncancerous lung disease which can be fatal. The Environmental Protection Agency states that, once released, asbestos fibers in the home may stay suspended in the air for many hours. After they settle, fibers can be stirred up again by a household activity, such as sweeping, and can be inhaled. By exempting projects involving less than 10 linear or 15 square feet of friable asbestos materials, the bill would still leave open the possible hazard of releasing asbestos into the air.

Response: DPH agrees that a safety hazard could exist. At present, however, the department does not have enough inspectors to investigate even the larger asbestos abatement projects being performed around the state. Since a "boundary" had to be drawn at some point, then, it was decided to set it at 10 square feet or 15 linear feet.

Against:

House Bills 4223-4226 do not go far enough in protecting workers from the hazards involved in dealing with asbestos. If asbestos abatement workers are not properly trained and adequately protected while working, they are exposed to unnecessary health hazards.

Response: The bill would only remove the dual licensure requirement. Employees in construction-related professions