

SFA



BILL ANALYSIS

Senate Fiscal Agency

• Lansing, Michigan 48909

• (517) 373-5383

RECEIVED

MAR 08 1990

House Bill 4222 (Substitute S-1 as reported by the Committee of the Whole)
House Bill 4223 (as reported with amendments)
House Bill 4224 (as reported with amendments)
House Bill 4225 (as reported with amendments)
House Bill 4226 (as reported with amendments)
Sponsor: Representative Thomas Hickner
House Committee: Labor
Second House Committee: State Affairs (House Bill 4222)
Senate Committee: Human Resources and Senior Citizens

Mich. State Law Library

Date Completed: 1-30-90

RATIONALE

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, the Legislature in 1986 enacted the Asbestos Abatement Contractors Licensing Act, which requires persons performing asbestos abatement (removal or encapsulation) to be licensed by the Department of Public Health (DPH). At the same time, Public Act 147 of 1986 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, the Legislature enacted the Asbestos Workers Accreditation Act, which provides for the accreditation, licensure, and regulation of those who perform asbestos abatement in schools, and requires fee revenue to be deposited in an asbestos abatement fund. A separate measure, House Bill 5779 of 1988, would have created the fund and raised revenue by imposing project fees on asbestos abatement contractors, but was not enacted. Thus, with neither a fund intended specifically for asbestos abatement programs, nor the revenue that would be used to offset the Department's expenses to staff an asbestos program, both the DPH and abatement contractors agree that the Department has not been able to regulate asbestos work effectively.

CONTENT

House Bill 4222 (S-1) would amend the Asbestos Abatement Contractors Licensing Act to do the following, until June 1, 1993:

- Create the Asbestos Abatement Fund.
- Require persons performing asbestos abatement to notify the Department of Public Health (DPH) before beginning a project and pay the Department a fee equal to 1% of the contract price or 1% of the asbestos abatement portion of the contract price.
- Create an exception to the notice requirement for emergency abatement projects.
- Require all fee revenue to be deposited in the Asbestos Abatement Fund.
- Exempt from licensure under the Act other licensed contractors who engaged in asbestos abatement projects incidental to their primary trade.

House Bills 4223, 4224, 4225, and 4226 would amend various laws to specify that the licensing board or department applicable to the plumbing, electrical, mechanical contracting, or building trade

H.B. 4222-4226 (1-30-90)

would have to conduct a review upon notice by the DPH that a person had violated the Asbestos Abatement Contractors Licensing Act or sections of MIOSHA that regulate asbestos abatement contractors. The board or department could suspend or revoke the person's license for a knowing violation of those Acts. House Bill 4223 would amend Public Act 266 of 1929, which applies to plumbers. House Bill 4224 would amend the Electrical Administrative Act. House Bill 4225 would amend the Forbes Mechanical Contractors Act. House Bill 4226 would amend the article of the Occupational Code that applies to residential builders.

Following is a more complete description of House Bill 4222 (S-1).

Licensure Exemption

The Act prohibits asbestos abatement contractors from engaging in any activity involving the demolition, renovation, or encapsulation of friable (crumbly) asbestos materials without first receiving a license from the DPH. The bill provides that, until June 1, 1993, this licensing requirement would not apply to a person or business entity who engaged in an asbestos abatement project that was incidental to the primary licensed trade and involved not more than 160 square feet or 260 linear feet of friable asbestos materials if the person or business were licensed under the Electrical Administrative Act, the Forbes Mechanical Contractors Act, or Public Act 266 of 1929 (which applies to plumbers), or if the person or business were licensed as a residential builder or residential maintenance and alteration contractor under Article 24 of the Occupational Code.

Notice

Until June 1, 1993, the bill would require an asbestos abatement contractor to give the DPH written notice of all of the following at least 10 days before beginning an asbestos abatement project exceeding 10 linear feet or 15 square feet, or both, of friable asbestos materials:

- The name and address of the owner of the building or structure.
- The location of the building or structure

where the project would be performed.

- The schedule for starting and completing the project, which could not exceed one year in length.
- The amount of friable asbestos materials that would be removed or encapsulated.

The bill also would require, until June 1, 1993, notice to the Department of an asbestos abatement project before the asbestos removal was begun if, during the course of a project and after a written contract was executed, a person or business that was exempt from licensure under the Act discovered that the removal or encapsulation of more than 10 linear feet or 15 square feet, or both, was required. Within 10 days of the discovery, the person or business would have to give written notice to the DPH in the manner described above.

Until June 1, 1993, emergency asbestos abatement projects resulting from equipment failure or malfunctions would be exempt from the 10-day written advance notice requirement. In emergency situations, the written notice would have to be given within 48 hours after the abatement project began, but the person or business would have to telephone the DPH immediately or as soon as possible after the emergency situation was discovered.

In addition, the bill would repeal a section of MIOSHA that requires asbestos abatement contractors to give the DPH 15 days' notice before beginning asbestos abatement projects (MCL 408.1058f).

Fee

An asbestos abatement contractor giving notice to the DPH of an asbestos abatement project would have to include a fee equal to 1% of the contract price for the project. The contractor also would have to make a copy of the contract available to the Department upon request.

In the case of a person or business entity not licensed under the Act who gave notice of an asbestos abatement project that was incidental to the person's or entity's primary licensed trade, and who actually removed asbestos, the primary licensed trade contractor would have to include a fee of 1% of the asbestos abatement project portion of the contract price.

The contractor also would have to make a copy of that portion of the contract available to the DPH upon request.

The fee requirements would be in effect until June 1, 1993. All fees collected under these provisions would have to be deposited in the Asbestos Abatement Fund.

Fund

The Asbestos Abatement Fund would be created in the State Treasury and would receive revenue as provided in the Act, as well as other revenue as provided by the Legislature. The Fund would exist until June 1, 1993. The State Treasurer would have to direct the Fund's investment. All interest and earnings of the Fund would be retained by it, and money in the Fund at the end of a fiscal year would remain in the Fund and not revert to the General Fund.

Money in the Fund could be used by the DPH only for its asbestos-related responsibilities under the Act, which would include the inspection of asbestos abatement projects and the education of asbestos abatement contractors. The Department could not use the Fund for asbestos abatement projects on State-owned property.

By October 1 each year, until June 1, 1993, the Department would have to report to the Legislature and the applicable Senate and House committees on the amount of money generated by the fees charged under the bill. The report would have to include the number of asbestos abatement projects inspected and the number of citations issued for violations of the Act and other applicable laws, rules, and regulations.

Tie-Bars

The bill is tie-barred to House Bills 4223-4226 and Senate Bill 769. Senate Bill 769 would amend MIOSHA to prohibit DPH rules from containing standards that exceeded Federal airborne asbestos standards.

MCL 338.3207 et al. (Senate Bill 4222)
Proposed MCL 338.911b (Senate Bill 4223)
Proposed MCL 338.888d (Senate Bill 4224)
MCL 338.981 (Senate Bill 4225)

MCL 339.2411 (Senate Bill 4226)

SENATE COMMITTEE ACTION

House Bill 4222 (S-1)

The Senate Committee adopted a substitute to make the bill's provisions effective only until June 1, 1993; to create an exception to the advance written notice requirement for emergency abatement projects; and to limit use of the proposed Fund to the DPH's responsibilities under the Act, specifying that they would include inspection of projects and education of contractors, but not abatement projects on State property.

The Committee of the Whole adopted an amendment to tie-bar the bill to Senate Bill 769.

House Bills 4223-4226

The Senate Committee adopted amendments to each bill to limit license suspension or revocation to knowing violations of the Asbestos Abatement Contractors Licensing Act or MIOSHA asbestos abatement sections.

FISCAL IMPACT

According to the Department, the provisions of House Bill 4222 (S-1) would result in increased fee revenues of approximately \$500,000 annually. The FY 1989-90 Department of Public Health appropriation bill assumes this amount as one of the fund sources for the \$641,800 Asbestos Abatement Program. House Bills 4223-4226 would have no fiscal impact on State or local government.

ARGUMENTS

Supporting Argument

By imposing a fee on asbestos abatement contractors and others who perform asbestos abatement, House Bill 4222 (S-1) would generate revenue needed to fund the asbestos abatement program within the DPH. Without this income, the Department reports that it may have to transfer people from the program or even lay them off. Although \$641,800 was appropriated for the 1989-90 fiscal year for the asbestos abatement program, it was anticipated that \$500,000 would be generated from project

fees. If enacted, the proposed fees would enable the program to be self-sustaining in the future, as well as help balance this year's budget. Apart from the monetary issue, the bill would address a vital public health concern. Asbestos has been found to be hazardous to human health, and is known to cause a number of cancers as well as a form of noncancerous, irreversible lung damage. Although Michigan already has strong licensing standards on the books, those standards are ineffective without strong enforcement. It is crucial that the DPH have the funds to hire inspectors to ensure that guidelines are being followed and that contractors don't cut corners to get the job done.

Response: The bill also should require asbestos abatement contractors to show proof of workers' compensation coverage and inform customers of whether they have liability insurance, to protect people from so-called "rip and run" contractors.

Supporting Argument

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 (S-1) would make such dual licensure unnecessary in situations involving incidental amounts of asbestos. Nevertheless, contractors not licensed under the Asbestos Abatement Contractors Licensing Act would still be subject to all of the other laws and 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 one's license to practice his or her trade could serve as a greater deterrent than the possibility of losing just the license to remove asbestos.

Supporting Argument

The proposed exception to the advance written notice requirement for emergencies would codify a current practice of the Department of Public Health, under which the Department

waives the existing notice requirement for utilities in emergency situations, such as when a generator goes down. The exception could be applied in other industrial settings, too.

Response: As the amendment is written, it would not necessarily be limited to industrial settings.

Opposing Argument

House Bill 4222 (S-1) would endanger the public, as well as the workers themselves, by exempting licensed plumbers, electricians, builders, and mechanical contractors from licensure as asbestos abatement contractors if they performed only "incidental" asbestos abatement. Many of these contractors simply do not have the knowledge, training, or experience to handle any asbestos safely, and 260 linear feet is actually a considerable quantity. According to testimony of the Asbestos Council of the Midwest, even one foot of asbestos pulled from a pipe can contaminate a classroom, and if a school has 10-foot pipe risers in each classroom, 260 feet could contaminate an entire school. Furthermore, the proposed exemption could make liability insurance unavailable or prohibitively expensive, once the insurance industry caught on that people not licensed as asbestos abatement contractors were doing abatement work, since there would be no way for a carrier to know whether a contractor was performing asbestos abatement and what the risk was.

Response: The bill simply would remove the dual licensure requirement. Contractors still would have to be trained, train their workers, and follow the health and safety rules applicable to abatement contractors. They still would be subject to the law's penalty provisions, and, under House Bills 4223-4226, they would be subject to license suspension or revocation for knowing violations. Moreover, according to Committee testimony, the limit of 160 square feet or 260 linear feet is consistent with Federal regulations.

Legislative Analyst: S. Margules
Fiscal Analyst: P. Graham

H8990S4222A

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.