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BILL ANALYSIS



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Senate Bill 1132 (Substitute S-1)
Senate Bill 1133 (Substitute S-1)
Senate Bill 1135 (Substitute S-1)
Sponsor: Senator Laura Toy (Senate Bill 1132)
 Senator Patricia L. Birkholz (Senate Bill 1133)
 Senator Valde Garcia (Senate Bill 1135)
Committee: Natural Resources and Environmental Affairs

Date Completed: 5-25-04

CONTENT

The bills would create the "V. Harry Adrounie Laboratory Data Quality Assurance Act" as Part 205 of the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- Require the Department of Environmental Quality (DEQ) to implement a Laboratory Data Quality Recognition Program to identify State commercial laboratories qualified to generate data for submission to the DEQ.**
- Provide that participation in the Program would be voluntary.**
- Allow the DEQ to charge a fee for participation in the Program.**
- Create the Laboratory Data Quality Assurance Advisory Council to monitor and evaluate the Program.**
- Require the Auditor General to conduct performance audits of the DEQ's environmental laboratory.**

The bills are tie-barred to each other. A more detailed explanation of each bill follows.

Senate Bill 1133 (S-1)

Quality Recognition Program

The DEQ would have to implement a Laboratory Data Quality Recognition Program in order to identify commercial laboratories in the State that the Department considered to be qualified to generate analytical data for submission to the DEQ. A commercial lab's participation in the Program would be voluntary; a lab could not be prohibited from generating analytical data for submission to the DEQ under NREPA based on nonparticipation or unsuccessful participation in the Program.

(Senate Bill 1132 (S-1) would define "laboratory" as a body that engages in calibration or testing, or both, at a specified location. "Commercial laboratory" would mean a privately owned laboratory that generates analytical data required by NREPA pertaining to the operations of a third person regulated under the Act. "Analytical data" would mean the qualitative or quantitative measurements generated by chemical, physical, biological, microbiological, radiological, or other scientific determination.)

The Program would have to determine whether the quality of analytical data was maintained through quality systems in which staff responsibilities and operational procedures were defined, documented, and subjected to an internal assessment by the commercial laboratory itself on a regular basis, with timely corrective action taken by the commercial lab as needed. The quality systems would have to include quality assurance policies and quality control procedures, and be documented in a written plan. In making this determination, the Program would have to evaluate whether the commercial lab met any additional or more stringent requirements specified by analytical methods, or by specific regulatory programs for which the lab generated data.

Conditions for Participation

The Department could make a commercial laboratory's participation in the Program dependent upon the lab's doing one or both of the following: 1) granting the DEQ access to the lab and lab records for inspection during normal business hours not more than two business days after the Department requested such access, and 2) participating in proficiency testing conducted by the DEQ, the United States Environmental Protection Agency, or any other nationally recognized proficiency testing program. (Under Senate Bill 1132 (S-1), "proficiency testing" would be defined as a method of evaluating a laboratory's performance under controlled conditions relative to a given set of criteria through analysis of unknown samples provided by an external source.)

Fees

The DEQ could charge a commercial laboratory a maximum fee of \$500 for participation in the Quality Recognition Program, to defray the costs of evaluating the lab. If a commercial lab only participated in the Program with respect to certain types of analytical data, the fee would have to be adjusted accordingly, based on a fee scale established by the Department.

Posting

The Department would have to maintain and post on its website a list of commercial labs that had successfully participated in the Quality Recognition Program.

Senate Bill 1132 (S-1)

The Auditor General would have to conduct performance audits covering the quality of the analytical data generated by the DEQ's environmental laboratory, as well as the costs of operating the DEQ's environmental lab relative to the costs of operating comparable private laboratories.

The Auditor General would have to conduct and submit to the Legislature a report on a performance audit within one year after the bill's effective date, and every two years thereafter.

Senate Bill 1135 (S-1)

Advisory Council Membership

The bill would create the Laboratory Data Quality Assurance Advisory Council consisting of four members appointed by the Senate Majority Leader and three members appointed by the Speaker of the House.

The Senate Majority Leader would have to appoint one representative from each of the following: a private laboratory that generated analytical data submitted to the DEQ under

NREPA; a municipal laboratory that generated analytical data submitted to the DEQ under the Act; a Statewide business association; and a nationally recognized environmental laboratory accreditation authority.

The Speaker of the House would have to appoint one representative from each of the following: the DEQ; a laboratory owned by a business required to submit analytical data to the DEQ under NREPA; and the Michigan Municipal League (or a successor organization).

The Council member representing the DEQ would have to serve without additional compensation, and other members would serve without compensation. Members could be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as Council members.

Duties

The Council would have to do all of the following:

- Monitor and evaluate the Quality Recognition Program, including the structure of quality systems described in Senate Bill 1133 (S-1), and the appropriate scope of review of those systems.
- Determine whether the Quality Recognition Program should be retained, revised, or replaced with a laboratory inspection program or a nationally recognized accreditation program.
- Evaluate the Auditor General's report required by Senate Bill 1132 (S-1).
- Determine whether a commercial laboratory code of ethics was needed and, if so, what its content should be.
- Review the DEQ's laboratory data acceptance requirements.
- Determine whether the DEQ should provide additional technical and training assistance to commercial laboratories and laboratories owned by public agencies (regardless of whether those publicly owned laboratories were commercial laboratories).

The Council also would have to submit reports on its findings to the Senate Majority Leader, the Speaker of the House, and the Senate and House standing committees with primary responsibility for environmental protection issues. An interim report would be due within 18 months after the bill's effective date, and a final report would be due by June 30, 2007.

Procedure

The representative from the DEQ would have to call the first Council meeting, at which the Council would have to elect from its members a chairperson and other members it considered necessary or appropriate. After the first meeting, the Council would have to meet at least quarterly, or more frequently at the call of the chair, or if requested by two or more members.

The Council would be subject to the Open Meetings Act and the Freedom of Information Act.

Proposed MCL 324.20501 et al. (S.B. 1132)

Proposed MCL 324.20505-324.20511 (S.B. 1133)

Proposed MCL 324.20515 (S.B. 1135)

Legislative Analyst: Claire Layman

FISCAL IMPACT

Senate Bill 1132 (S-1)

The bill would result in additional costs to the Legislative Auditor General depending on the number of hours required to perform the audit. The cost of performance audits ranges from \$50,000 to \$75,000.

Senate Bill 1133 (S-1)

The Department of Environmental Quality estimates that 1.0 FTE position, at a cost of \$85,000, would be necessary based on the responsibilities for the Department under the bill. Revenue from the commercial laboratory fee would depend on the number of participants in the Program. Approximately \$30,000 would be generated if 100% of the laboratories participated and paid the maximum fee.

Senate Bill 1135 (S-1)

The bill would result in minimal expenses related to reimbursement of actual and necessary expenses incurred by members of the Council.

Fiscal Analyst: Bill Bowerman