

Legislative Analysis



INCREASE NUMBER OF TOILETS AT CONSTRUCTION SITES

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House Bill 5064 as introduced
Sponsor: Rep. Mark Meadows
Committee: Regulatory Reform

First Analysis (5-8-08)

BRIEF SUMMARY: The bill would require, with some exceptions, that at least one toilet for each 10 employees or fraction thereof be provided at a construction site.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on state and local units of government. A more detailed discussion follows later in the analysis.

THE APPARENT PROBLEM:

According to owners of newly-built homes and those in the construction trades, current state and federal rules concerning when portable or fixed toilets, and how many, must be provided at a construction are inadequate. According to testimony offered before the House Regulatory Reform Committee, when portable toilets at construction sites are absent, workers have little recourse, at a certain point, than to use bushes or other areas on the grounds of the site. In urban settings, when using the local flora and fauna is not an option, workers often use corners of the unfinished basement, uninstalled tubs and toilets, unfinished drains, and so forth. Besides odor and sanitation problems, this practice also jeopardizes the health and well-being of construction workers in other specialties, i.e., plumbers, who must literally "clean up" after workers in the other trades when trying to install plumbing, finish basements, and landscape the site.

Currently, departmental rules require that at a construction site there be one toilet for 1-20 employees, two for 21-40, and for 41 or more employees, one additional toilet for each additional 40 or fewer employees (federal rules are even less generous). In addition, both the state and federal occupational safety and health rules exempt construction contractors from having to supply portable units for mobile crews that have transportation readily available for transport to nearby toilet facilities (i.e., a gas station or restaurant).

Industry members, however, say that even with available transportation, the nearest public facility could be too far away if the need was urgent. Also, depending on the nature of the task, workers sometimes cannot leave the site because the task must be monitored and the next stage of work started at an exact time that cannot be predicted. Further, depending on the location of the construction site, it may not be safe or prudent to leave equipment unattended for the time it would take to travel to a public facility. Even when contractors supply portable units, the units may not be serviced frequently enough to allow workers to continue using them. In addition, in a large construction site, the toilets may be spaced too far from some workers to use them.

According to suppliers of portable toilets, the industry recommendation is for one toilet (to be serviced weekly) for each 10 workers. Some believe that adopting this standard for the construction trades would alleviate the problem.

THE CONTENT OF THE BILL:

House Bill 5064 would add a new section to the Michigan Occupational Safety and Health Act (MCL 408.1014o) to instead require, unless exempted, each general contractor to provide at least one toilet facility at a construction site for each 10 employees or fraction thereof who work at the site.

If a permit was required for construction, renovation, or demolition of any improvement to real property, the appropriate enforcing agency could not issue the permit unless, before starting the project, the general contractor or other person requesting the permit demonstrated compliance by providing either (1) a written agreement signed by both the party requesting the permit and a toilet facility provider establishing that the proper number of toilets were being rented or (2) a written agreement or affidavit demonstrating a valid exemption under the bill.

Each toilet facility provided under the bill would have to be operational; kept in a clean and sanitary condition; and provided with water, hand soap or disinfecting agent, and adequate amounts of toilet paper.

A general contractor who violated these provisions would be issued a citation and would be responsible for a civil penalty under provisions of the act (Sections 33-45).

Exemptions. The following exemptions would apply:

- A private residential property owner or tenant performing a project on his or her own residential property would be exempt from the above requirements if before starting the project, he or she signed a written statement or affidavit agreeing to make toilet facilities available to the construction employees and toilet facilities meeting the bill's requirements were available on the property for the duration of the project.
- A general contractor would be exempt from the above requirements if before starting on the project, the residential or commercial property owner signed a written statement or affidavit agreeing to make toilet facilities available for use by the contractor's employees and toilet facilities meeting the bill's requirements were available on the property for the duration of the project.
- A general contractor for a county road commission or the Michigan Department of Transportation would be exempt from the bill's requirements for a construction crew working on a public road.

"Construction site" would mean a location at which any improvement to real property was in progress or where actual construction, renovation, or demolition of an improvement to real property was in progress.

"Employee" would include a subcontractor, supplier, laborer, or other individual under a contract or an agreement with a general contractor or subcontractor who provided an improvement to real property or facilitated the renovation or demolition of an improvement through his or her own labor.

"General contractor" would mean a person who contracted with an owner, lessee, or other party to provide, directly or indirectly, substantially all of the materials or services for the project.

"Toilet facility" would mean a fixed or portable facility designed to collect and contain the products of both defecation and urination and that met applicable health standards. The term would include biological, chemical, flush, and combustion toilets and sanitary privies.

FISCAL INFORMATION:

The bill would have an indeterminate fiscal impact on the state and local units of government. Current Michigan Occupational Safety and Health (MIOSHA) standards relative to the availability of toilets at construction sites are contained in Rule 129 of the Construction Safety Standards (R 408.40129). Generally the rule requires one toilet for 1 to 20 employees, two toilets for 21 to 40 employees, and one toilet for every 40 (or less) additional employees. The rule also requires the toilets to be serviced and maintained regularly, and be supplied with toilet paper. The rule does not apply to mobile crews that have transportation readily available to nearby toilet facilities. According to the Department of Labor and Economic Growth, between October 1, 2002 and September 30, 2007, there were 37 citations concerning violations of Rule 129, as follows:

- Inadequate number of facilities: 18 violations
- No toilet provided: 3 violations
- No transportation available for mobile crews: 1 violation
- Toilet not serviced or maintained regularly: 11 violations
- Toilet paper not provided: 4 violations

Under the MIOSHA Act (MCL 408.1036), revenue from civil penalties assessed for violations of standards is credited to the General Fund. To the extent the bill results in additional civil penalty revenue, the bill would increase general fund revenue by an indeterminate, though likely minimal, amount. Additionally, the bill could potentially increase the costs of publicly financed construction projects, to the extent any increased costs imposed on employers to increase the availability of toilet facilities at construction sites are passed on to the state or local units of government. The bill would, however, exempt work done for county road commissions and the Department of Transportation.

According to one provider of construction site toilets, the typical monthly rental cost for standard portable units runs between \$85-\$95. The bill, however, requires the toilet facility to be equipped with water, hand soap or a similar disinfecting agent. In comparison, Rule 130 (R 408.40130) only requires washing facilities be available to

employees engaged in the application of paint, coatings, herbicides, or insecticides or in other operations where contaminants may be harmful to employees. The same provider of construction site toilets states the typical monthly rental of sink stations is about \$185 per month. The typical monthly rental rates of restroom trailers, which provide multiple toilets and a sink station, range in price from \$1,250 for a 16-foot unit to \$2,500 for a 24-foot unit.

ARGUMENTS:

For:

The bill would resolve the problem faced by construction workers when needing to use bathroom facilities. Current state and federal law is inadequate - the number of toilets per workers is too small and too many contractors are exempted from supplying toilets if the crews have transportation available to drive to a public facility.

Those in the building trades say that when units are supplied, they are not cleaned frequently enough to allow continued use. In addition, the number required under MIOSHA rules is not sufficient to meet the needs of workers. Further, mobile crews are exempted from the requirement that a contractor supply portable toilets. However, crews are not always able to leave a job site to travel to a public restroom depending on the nature of the job and the safety of leaving a job site and/or equipment unattended. The resulting situation is that some workers feel they have no recourse except to relieve themselves on the grounds.

This practice creates health and safety issue for those tradespeople who follow later in the construction process. Many say it is not uncommon for them to find urine and/or feces in tubs, toilets, drains, and sinks when they come to hook those up to sewer lines or septic systems. Others have found feces in corners of unfinished basements when they come to finish walls or lay the floor. The bill would resolve this problem by requiring more toilets per number of workers and by eliminating the exemption for mobile crews. Homeowners who have contracted for remodeling projects would be exempt from providing portable toilets if they agree in writing to allow the workers to use the toilets in the home.

Further, according to information available on the Internet by providers of portable toilets, contractors lose money if workers have to stop work to travel to a public restroom. By some estimates, a worker may use 2.5 hours per week to find a place a restroom at a monthly cost to the employer of over \$200. Another source estimated that, by eliminating wasted toilet time, a contractor could earn \$4 for each \$1 spent to provide toilets for workers.

Against:

Opponents to the legislation believe it to be very problematic and cite the following concerns:

- The bill would require more portable toilets to be erected for outside workers than fixed toilets for indoor workers in permanent buildings.
- The bill would increase the costs to do business in the state.
- The bill would make it more difficult to get building permits or delay the permit process.
- The bill is too far reaching - it could be interpreted to apply even to a worker installing a satellite dish or a fence. If the homeowner did not want the worker to enter the home to use the toilet, he or she would have to provide a portable toilet even though the job would be of short duration.
- The issue would be better resolved by the building codes commission.

POSITIONS:

A representative of the Michigan Septic Tank Association testified in support of the bill. (4-29-08)

A representative of the International Brotherhood of Electrical Workers testified in support of the bill. (4-29-08)

The following companies submitted written testimony in support of the bills: Eastwood Custom Homes, Inc.; Scott's Wood Products, Excavating & Construction; J & R Trucking & Septic Systems, Inc.; Heckman's Contracting, Inc.; Advanced Concrete Construction, Inc.

The Department of Labor and Economic Growth is neutral on the bill. (4-29-08)

A representative of the Associated Builders and Contractors of Michigan testified in opposition to the bill. (4-29-08)

A representative of the Michigan Association of Home Builders testified in opposition to the bill. (4-29-08)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.