



Senate Fiscal Agency  
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BILL ANALYSIS

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Senate Bills 1309 and 1310 (as reported without amendment)  
Sponsor: Senator Randy Richardville  
Committee: Economic Development and Regulatory Reform

Date Completed: 6-16-08

### **RATIONALE**

Amalgam is the compound most commonly used to fill cavities in teeth. It is an alloy that contains mercury bound together with other metals. Although amalgam is safe in the human mouth, mercury released into the environment can contaminate the food chain, mainly fish, ultimately harming the health of humans who eat mercury-contaminated fish. When a dentist fills a cavity or removes an old filling, mercury used in the amalgam can be mixed in with waste water, contributing to mercury contamination in surface and ground water. Both the American Dental Association (ADA) and the Michigan Department of Environmental Quality (DEQ) have recommended the use of amalgam separators in dentists' offices to keep the mercury in amalgam from being introduced into water sources. Some people believe that Michigan should require dental practices to install amalgam separators, and offer dentists a tax credit as an incentive to purchase and install separators in a timely manner.

### **CONTENT**

**Senate Bill 1309 would amend the Michigan Business Tax (MBT) Act to allow dentists to claim a credit against the tax for the cost purchasing and installing a dental amalgam separator or \$3,000, whichever was less, for each separator purchased and installed during a tax year.**

**Senate Bill 1310 would amend the Public Health Code to do the following:**

- **Require dentists to install dental amalgam separators on wastewater drains.**
- **Require the Michigan Board of Dentistry to promulgate rules regarding dental amalgam collection, disposal, and recycling, and the retention and inspection of related dental records.**
- **Prohibit a local unit of government from enacting, adopting, or enforcing a conflicting, additional, or different ordinance or regulation.**

The bills are tie-barred to each other.

### **Senate Bill 1309**

The bill would allow a taxpayer who was a dentist to claim a credit against the Michigan business tax equal to 100% of the costs incurred during a tax year for the purchase and installation of each dental amalgam separator or \$3,000 for each dental amalgam separator purchased and installed during a tax year, whichever was less, if the taxpayer, within one year before or after the effective date of Senate Bill 1310, purchased a dental amalgam separator and installed it on a wastewater drain in the dental office that was used to discharge dental amalgam, as required by Section 16631 of the Public Health Code (which Senate Bill 1310 would add).

If the amount of the credit allowed for the tax year exceeded the dentist's tax liability for that tax year, the excess could not be refunded, but could be carried forward as an offset to the tax liability in subsequent tax years.

## **Senate Bill 1310**

The bill would apply to dentists who use and dentists who remove dental amalgam. It would not apply to any of the following:

- Oral and maxillofacial surgeons.
- Oral and maxillofacial radiologists.
- Oral pathologists.
- Orthodontists.
- Periodontists.
- Dentists providing services in a dental school or a hospital.

By December 31, 2013, a dentist subject to the bill would have to install or have installed and use a separator on each wastewater drain in the dentist's office that was used to discharge dental amalgam. The separator would have to have an efficiency of at least 95% as determined through testing in accordance with standards published by the International Organization for Standardization in ISO 11143:1999 "Dental Equipment – Amalgam Separators".

Within 90 days after the bill's effective date, the Michigan Board of Dentistry would have to promulgate rules regarding best management practice for dental amalgam collection, disposal, and recycling, and the retention and inspection of dental office records regarding the following:

- The type of dental amalgam separator installed and in use in the office.
- The method used to dispose of or recycle the dental amalgam waste collected.
- The shipping or other delivery records documenting the transfer of the dental amalgam waste collected to licensed recyclers or disposers.
- The maintenance of the dental amalgam separator.
- Compliance with best management practices.

A violation of the bill or a rule promulgated under it would be a violation of Section 16221(h) of the Public Health Code. (Under Section 16221(h), a violation of Article 15, which governs health occupations, or aiding or abetting in a violation of Article 15 or of a rule promulgated under it, is grounds for the imposition of administrative sanctions by a health profession disciplinary subcommittee. The sanctions include reprimand, probation, denial, suspension, revocation, limitation, restitution, community service, or fine.)

Beginning on its effective date, the bill would preempt and supersede any local ordinance, regulation, or resolution that imposed on dentists standards or requirements that were conflicting, additional, or different than those contained in the bill or rules promulgated under it by the Board of Dentistry. A local unit of government could not enact, adopt, maintain, or enforce such an ordinance, regulation, or resolution, including a requirement to obtain a permit that limited the discharge of mercury into wastewater with a limitation greater than that capable of being achieved by full compliance with the bill.

Proposed MCL 208.1461 (S.B. 1309)  
Proposed MCL 333.16631 (S.B. 1310)

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Dentistry reportedly contributes less than 1% of all mercury released into the environment from human activity, but in small towns and rural areas mercury from dental amalgam apparently can be a significant source of the element in the local environment. According to the ADA's "Best Management Practices for Amalgam Waste" (October 2007), "Although mercury in the form of dental amalgam is stable, amalgam...should **not** be rinsed down the drain" (emphasis in original). The ADA document "strongly recommends recycling as a best management practice for dental offices" and states that amalgam waste should be kept separate from other waste so that it can safely be recycled. By requiring a dentist who used and removed dental amalgam to install and use amalgam separators, and requiring the Michigan Board of Dentistry to promulgate rules regarding best management practices for dental amalgam collection, disposal, and recycling, Senate Bill 1310 would follow the ADA recommendations, which, in turn, would reduce the amount of mercury being released into the environment and contaminating the food chain.

In addition to the ADA recommendations, a DEQ staff report on mercury issues recommends requiring all dental practices in Michigan that place or remove mercury amalgam fillings to install dental amalgam separators or equivalent technology

("Michigan Department of Environmental Quality Mercury Strategy Staff Report", January 3, 2008). This is part of the Department's "comprehensive framework to guide the...efforts toward eliminating the use and release of anthropogenic mercury". Senate Bill 1310 essentially would implement that DEQ recommendation.

### **Supporting Argument**

Under Senate Bill 1310, a dentist would have until the end of 2013 to install amalgam separators. By allowing a dentist to claim a credit against his or her MBT liability for the installation of amalgam separators within one year of the effective date of Senate Bill 1310, however, Senate Bill 1309 would provide an incentive for dentists to comply with the requirement in a timely manner.

**Response:** Some dentists already have taken the initiative to implement the environmentally responsible practice of separating amalgam from the waste stream, but they would not benefit from the proposed tax break unless they installed the separators within the year before Senate Bill 1310 took effect. Offering a tax credit only to those dentists who installed separators within one year before or after the bill's effective date would reward dentists who lagged behind the curve in installing this technology and, in effect, would punish those who set an early example by taking responsibility for keeping mercury out of their waste water.

### **Opposing Argument**

Dental amalgam separators range in price from several hundred to several thousand dollars. Offering a 100% tax credit for the cost of amalgam separators, up to \$3,000 per device, essentially means that the State would be purchasing the amalgam separators for private dental practices that claimed the credit. While requiring dentists to install and use separators in order to protect the environment from mercury contamination may be a worthy measure, having the State buy amalgam separators for all dentists who should be using them anyway does not seem like a practical use of taxpayer funds or a good public policy precedent.

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

### **Senate Bill 1309**

The bill would generate a one-time loss in Michigan business tax revenue equal to an

estimated \$5 million to \$7 million. This loss in revenue would most likely reduce revenue in both FY 2008-09 and FY 2009-10; however, how this loss in revenue would be distributed between these two fiscal years is difficult to estimate. Under Senate Bill 1309, the credit would be based on expenditures for amalgam separators incurred by dentists during the period beginning one year before the effective date of Senate Bill 1310 through one year after that effective date. Assuming these bills were to become law immediately and that most of the expenditures for amalgam separators would be incurred by dentists after these bills would go into effect, then it is estimated that about one-third of the cost of this credit would affect FY 2008-09 and about two-thirds of the cost of this credit would affect FY 2009-10. On the other hand, if these bills were to become effective late in 2008, then the loss in revenue due to this credit primarily would affect FY 2009-10.

The Michigan Business Tax Act already provides an investment tax credit equal to 2.9% of the cost of tangible assets incurred during the tax year. A dentist who purchased an amalgam separator therefore would receive an investment tax credit equal to 2.9% of the cost of the amalgam separator. If the tax credit proposed in this bill were to cover 100% of the cost of the amalgam separator, then the dentist would receive total credits equal to 102.9% of the cost of the amalgam separator.

The loss in revenue under this bill would reduce the General Fund/General Purpose budget. The bill would have no direct impact on local governments.

### **Senate Bill 1310**

The bill would have a small, indeterminate fiscal impact on the State budget in the form of additional administrative and oversight costs. The Michigan Board of Dentistry would be charged with additional responsibilities, likely leading to a mild increase in expenditures.

Fiscal Analyst: Matthew Grabowski  
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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.