

Legislative Analysis



ASEBESTOS ABATEMENT REQUIREMENTS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4185 (proposed substitute H-2)
Sponsor: Rep. Denise Mentzer

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4186 as introduced
Sponsor: Rep. Donavan McKinney

House Bills 4187 as introduced
House Bill 4188 (proposed substitute H-1)
Sponsor: Rep. Abraham Aiyash

House Bills 4189 and 4190 as introduced
Sponsor: Rep. Curt S. VanderWall

Committee: Natural Resources
Complete to 5-17-23

SUMMARY:

House Bills 4185 to 4190 would amend several acts, and create new acts, relating to the regulation of asbestos handling and removal activities and how public entities may enter into contracts and agreements with contractors engaging in those activities.

House Bill 4185 would amend the Michigan Occupational Safety and Health Act (MIOSHA, 1974 PA 154) to add definitions and provisions relating to fines that may be assessed against an employer for violating certain provisions of the act. Specifically, the bill would add language that fines for serious violations are assessed by Board of Health and Safety Compliance and Appeals in the Department of Labor and Economic Opportunity (LEO) and would modify how a fine issued to an employer for certain violations could be reduced. Criteria for determining the reduction in the assessed fine, including for asbestos-related violations, would also be added.

The bill would add the following definitions to the act:

Asbestos would mean a group of naturally occurring minerals that separate into fibers, including chrysotile, amosite, crocidolite, anthophyllite, tremolite, and actinolite.

Asbestos-related violation would mean a violation of MIOSHA, an order issued under the act, or a rule of standard promulgated under the act that involves the demolition, renovation, encapsulation, removal, or handling of friable asbestos material or otherwise involves the exposure of an individual to friable asbestos material.

Friable asbestos material would mean any material that contains more than 1% asbestos by weight and that can, by hand pressure, be crumbled, pulverized, or reduced to powder when dry.

Case-closing date, as it relates to asbestos-related violations, would mean the first date that the following conditions are met:

- The citation for the violation is a final order.

- Satisfactory abatement documentation for the violation is received by the board.
- All civil penalties related to the violation are timely paid, or LEO transmits information on the amount of the penalty and the name and address of the employer owing the penalty to the Department of Treasury, if the penalties are not paid within 15 working days following the date the penalty becomes a final order.

Repeatedly violates, as it relates to asbestos-related violations, would mean that an employer commits an asbestos related violation not later than five years after the case-closing date of an asbestos-related violation.

The bill would also add language that would allow for the board to reduce the amount of a fine issued to an employer for an asbestos-related violation based on the following considerations and corresponding percentage reduction:

- The size of the business, 70%.
- The good-faith efforts of the employer, 25%.
- The history of previous citations, 10%.

The board would be able to issue a reduction of a civil penalty if the order is consistent with a dismissal or reclassification of an asbestos-related violation included in a hearing officer's report submitted to the board following an administrative hearing. For asbestos-related violations that have been reclassified by a hearing officer, the board could not reduce the civil penalty that corresponds to the reclassified violation by more than a total of 95%.

The bill would take effect 90 days after it is enacted into law.

MCL 408.1004, 408.1035, and 408.1036

House Bills 4186, 4189, and 4190 would, together, regulate how certain public entities enter into agreements with contractors for asbestos removal activities. The following definitions would apply to all three bills:

Asbestos would mean a group of naturally occurring minerals that separate into fibers, including chrysotile, amosite, crocidolite, anthophyllite, tremolite, and actinolite.

Asbestos abatement contractor would mean a business entity that is licensed under the Asbestos Abatement Contractors Licensing Act and that carries on the business of asbestos abatement on the premises of another business entity. (For purposes of this definition, this would not include asbestos abatement on the asbestos abatement contractor's premises.)

Asbestos abatement project would mean any activity involving persons working directly with the demolition, renovation, or encapsulation of friable asbestos material.

House Bill 4186 would create a new act to require a ***local government*** or land bank authority created under the Land Bank Fast Track Act (2003 PA 258) to include a provision in a contract with a contractor or demolition contractor involving a project that would allow the local

government or land bank authority to withhold any payment to that contractor if the contractor or any other subcontractor had entered into, or was in negotiations to enter into, an administrative consent order or consent judgment with EGLE or another environmental regulatory agency within the immediately preceding 12 months that involved violations of environmental regulations. Payment could be withheld until the local government or land bank authority received verification from the contractor, EGLE, or another environmental regulatory agency that the violations had been corrected.

Local government would mean a county, city, village, or township.

If an asbestos abatement project involved a local government or land bank authority, then a contractor, demolition contractor, or any subcontractor of those contractors would have to disclose any active administrative consent orders or consent judgments in effect against them, or if they had entered into, or were in negotiations to enter into, an administrative consent order or consent judgment with EGLE or another environmental regulatory agency for any violations of environmental regulations.

House Bill 4189 would create the Public Entity Asbestos Removal Verification Act, which would prohibit a ***public entity*** from entering into a project with a contractor *unless* the public entity conducted a background investigation, as determined by the public entity, of the contractor seeking to bid on the project.

Public entity would mean the state or an agency or authority of the state or a school district, community college district, intermediate school district, city, village, township, county, land bank, public authority, or public airport authority.

At a minimum, the background investigation would involve the public entity's consulting both of the following:

- EGLE's webpage to determine if the contractor has received notices of violation of environmental regulations or has been subject to an administrative consent order or judgment involving environmental regulations.
- The webpage of the Occupational Safety and Health Administration in the U.S. Department of Labor to determine if the contractor has received notices of violations of asbestos regulations.

If the contractor had five or more violation notices of environmental regulations or was subject to an administrative consent order or a consent judgment involving environmental regulations within the preceding five years, the public entity could not enter into a contract with that contractor *unless* the entity did both of the following:

- Investigated each of the violation notices or consent orders or judgments and determined whether the contractor could adhere to the proposed contract. This determination would be in writing, publicly available, and based on the public entity's observations of improvements in performance, operations to ensure compliance, or other demonstrated ability to comply with regulations.
- Conducted a public hearing with not less than 30 days' notice for public input.

These background check parameters would also apply to contractors entering into contracts with another contractor for the project. However, a public hearing would not be required.

Additionally, *asbestos abatement contractor* would also include an individual or person with an ownership interest in a business entity.

House Bill 4190 would create the Public Entity Asbestos Removal Disclosure Act. The proposed new act would prohibit a *public entity* from entering into an asbestos abatement project (“project”) with an asbestos abatement contractor (“contractor”) or a general contractor that contracts with an asbestos abatement contractor for the abatement of asbestos, *unless*, before entering into a contract with the public entity, the contractor seeking to bid on the project filed an affidavit describing the following violations:

- Any criminal convictions relating to compliance with environmental laws or regulations. [A public entity could not enter into a contract for an asbestos abatement project with a contractor that disclosed a criminal conviction relating to compliance with environmental regulations.]
- Any violation notices of environmental law or regulations.
- Whether it had been subject to an administrative order or consent judgment within the preceding five years.

If a contractor entered into a contract with a public entity for a project, the contractor could not enter into a contract with another contractor *unless* that contractor also filed an affidavit described above.

House Bills 4187 and 4188 would each add new sections to Part 55 of the Natural Resources and Environmental Protection Act (NREPA, 1994 PA 451) to require EGLE to establish a program to carry out the requirements found in the National Emissions Standard for Asbestos found in 40 CFR part 61, subpart M,¹ and to submit an asbestos report from that program annually to the legislature.

House Bill 4187 would require that, by March 1 of each year, EGLE prepare and submit to the legislature a report that includes the following, as related to the asbestos program:

- For the previous calendar year, all of the following:
 - The number of inspectors employed by EGLE and the number of inspections conducted.
 - The percentage of original notices of intention received for which inspections were conducted.
 - The number of enforcement actions taken.
- An assessment and recommendation of whether EGLE has a sufficient number of inspectors to carry out the asbestos program evaluation of sufficiency would be based on metrics established by EGLE for the percentage of inspections conducted each year based on original notices of intent to renovate or demolish that are received that year. The minimum percentage set by EGLE for a determination of sufficiency would be at least 15%.

The report would also be posted on EGLE’s website and published in the Michigan Register. The bill would allow this report to be combined with the Emissions Control Fund report required under section 5522 of NREPA.

Proposed MCL 324.5519b

¹ <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-61/subpart-M>

House Bill 4188 would require EGLE to establish a program to implement the National Emissions Standard for Asbestos and would create the Asbestos Inspection Fund. In implementing this program, EGLE would be required to inspect, for compliance with 40 CFR 61, Subpart M, at least the following percentage of asbestos renovations and demolitions for which notice of intention was received under 40 CFR 61.145:

- 15% for 2023 and 2024.
- 20% for 2025 and 2026.
- 25% for 2027 and thereafter.

An owner or operator that submits a notice of intention of asbestos removal or demolitions would be required to pay a notification fee of \$100, as well as an additional \$10 fee for each time a submitted notice is modified. A public entity could pass through the cost of the notice and modification fees to the abatement contractor, unless doing so would violation the terms of their contract if that contract was signed prior to the effective date of the bill. These fees would be required to be paid electronically, in a manner provided for by the department.

The state treasurer could receive money or other assets from any source for deposit into the fund and would direct the investment of the fund and credit to the fund interest and earnings from fund investments. Money in the fund at the close of the fiscal year would remain in the fund and not lapse to the general fund. EGLE would be the administrator of the fund for auditing purposes and would expend money from the fund, upon appropriation, only to conduct inspections and perform related activities.

Proposed MCLs 324.5519 and 324.5519a

FISCAL IMPACT:

House Bills 4185 and 4186 are unlikely to have a discernible impact on expenditures or revenues for any unit of state or local government.

House Bill 4187 will increase costs for EGLE. The bill requires EGLE to submit an annual report to the legislature about the department's asbestos program. The exact extent of these reporting costs is unclear, but these costs are likely to be relatively modest, as EGLE already has processes in place to produce legislative reports. The bill is unlikely to affect departmental revenues or local government costs or revenues.

House Bill 4188 would increase costs and revenues for EGLE. The bill would require EGLE to annually inspect a minimum percentage of asbestos removals and demolitions to ensure compliance with federal air quality standards. The number of inspections and sizes of facilities subject to inspection are likely to vary on an annual basis, making the specific extent of this ongoing cost increase unclear. The department would be required to conduct an increasing percentage of inspections, rising from 15% of asbestos renovations and demolitions for which notification was received in 2023 to 25% in 2027 and beyond, likely leading to proportionally increasing costs over that term. Owners or operators of these facilities would be required to submit a \$100 notification fee as well as an additional \$10 if their respective notifications of asbestos removal or demolition are modified after being submitted to EGLE. The annual revenue collected by EGLE under the bill is also likely to vary based on the number of inspections completed in a given fiscal year. The department previously estimated that

inspection fees and notification modification fees would have generated approximately \$1.6 million in revenue under the bill. The bill may increase costs for any local unit of government that owns or operates a facility subject to the specified asbestos regulation. These governments would be responsible for the aforementioned fees should EGLE complete an inspection. However, the bill would allow local governments to pass these fee costs on to their respective contractors unless doing so would violate the terms of the contract between the local government and the contractor. The bill is unlikely to affect local government revenues.

House Bill 4189 would likely have a net neutral fiscal impact on units of state and local government. The bill would require public entities (including school districts, community colleges, cities, villages, and townships) to conduct background checks of asbestos abatement contractors and general contractors working on asbestos abatement projects for the public entity. The cost of conducting the background checks would likely be recovered through the assessment of fees on contractors undergoing the background check.

House Bill 4190 would not have an impact on revenues or expenditures for any unit of state or local government. The bill would add an additional step for public entities seeking to complete asbestos abatement projects by requiring the asbestos abatement contractor to file the affidavit required by the bill; this would not result in increased costs for the public entity.

Legislative Analyst: Josh Roesner
Fiscal Analyst: Austin Scott

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