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Senate Bill 225 (Substitute S-1 as passed by the Senate)
Senate Bill 226 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Stephanie Chang (S.B. 225)
Senator Erika Geiss (S.B. 226)
Committee: Energy and Environment

Date Completed: 3-12-24

CONTENT

Senate Bill 225 (S-1) would enact the "Public Entity Asbestos Removal Verification Act" to require a public entity to perform a background investigation on a potential asbestos abatement contractor before entering a contract with the contractor. Generally, the Act would prohibit a public entity from entering a contract with a contractor that had five or more environmental regulation violations unless the entity found that the contractor could adhere to the proposed contract.

Senate Bill 226 (S-2) would add Section 5519b to Part 55 (Air Pollution Control) of the Natural Resources and Environmental Protection Act to require the Department of the Environment, Great Lakes, and Energy (EGLE) to prepare and submit to the Legislature an annual report related to the EGLE's asbestos program.

Senate Bill 225 is tie-barred to House Bill 4190, which enacts the Public Entity Asbestos Removal Disclosure Act. Senate Bill 226 is tie-barred to House Bill 4188, which would require EGLE to establish a program to inspect a certain percentage of asbestos renovations and demolitions annually. Senate Bill 226 would take effect on January 31, 2025.

Senate Bill 225 (S-1)

The "Public Entity Asbestos Removal Verification Act" would require a public entity to conduct a background investigation of the asbestos abatement contractor seeking to bid on the asbestos abatement project, as determined by the public entity, before it entered an asbestos abatement project with an asbestos abatement contractor or a general contractor that contracted with an asbestos abatement contractor for the abatement of asbestos.

("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 and not on the asbestos abatement contractor's premises. An asbestos abatement contractor would include an individual or person with an ownership interest in an asbestos abatement contracting entity. "Asbestos abatement project" would mean any activity involving persons working directly with the demolition, renovation, or encapsulation of friable asbestos materials. "Public entity" would mean the State or an agency or authority of the State, 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 have to consist of the public entity consulting EGLE's webpage to determine if the asbestos abatement contractor or general

contractor that contracted with the asbestos abatement contractor had received notices of violation of environmental regulations or had been subject to an administrative consent order or a consent judgment involving environmental regulations. The background investigation would also have to include the public entity consulting the United States Department of Labor (USDOL), Occupational Safety and Health Administration's webpage to determine if the asbestos abatement contractor or a general contractor that contracted with the asbestos abatement contractor had received notices of violation of asbestos regulations.

If the asbestos abatement contractor had been issued five or more notices of violation of environmental regulations, or if it had been subject to an administrative consent order or a consent judgment involving environmental regulations within the immediately preceding five years, the public entity could not enter into a contract with that asbestos abatement contractor unless the public entity investigated each of the violation notices, the administrative consent order, or the consent judgment, and determined that the asbestos abatement contractor was able to adhere to the proposed contract based on the public entity's observations of improvements in performance, improvements in operations to ensure compliance with environmental regulations, or other demonstrated ability to comply with environmental regulations. The public entity would have to make the determination in writing and would have to make that determination publicly available.

If an asbestos abatement contractor entered a contract with a public entity for an asbestos abatement project, the asbestos abatement contractor could not enter a contract with another asbestos abatement contractor unless the public entity had conducted a background investigation of that asbestos abatement contractor in the same manner as utilized by the public entity.

Before entering into a contract for an asbestos abatement project with an asbestos abatement contractor, or a general contractor that contracted with an asbestos abatement contractor, that had been issued five or more notices of violation of environmental regulations, or had been subject to an administrative consent order or a consent judgment involving environmental regulations within the immediately preceding five years, as determined by the background investigation, the public entity would have to conduct a hearing for public input with at least 30 days' notice.

Senate Bill 226 (S-2)

For the previous year, the report would have to include all the following:

- The number of inspectors employed by EGLE.
- The number of inspections conducted.
- The percentage of original notices of intention received for which inspections were conducted.
- The number of enforcement actions taken.

Additionally, the report would have to include an evaluation and recommendation based on the evaluation of whether EGLE had enough inspectors to carry out the requirements found in the National Emissions Standard for Asbestos.¹ The evaluation would have to be based on metrics established by EGLE for the percentage of original notices of intention under the national standard for renovations or demolitions received during a calendar year for which inspections were conducted during that calendar year. The minimum percentage set by EGLE for a determination of sufficiency would have to be at least 15%.

¹ The National Standard for Asbestos can be found at 40 CFR Part 61 Subpart M.

The bill would require EGLE to submit the report by March 1, each year, and to publish it on EGLE's website and in the Michigan Register. The report could be combined with the report EGLE is required to create detailing the air quality fees assessed for the previous year.

Proposed MCL 324.5519b (S.B. 226)

BRIEF RATIONALE

According to testimony, improper asbestos removal by removal and abatement contractors has a negative impact on the environment and public health; landfills are not properly monitored, and demolitions are not properly inspected for asbestos pollution. Given that exposure to asbestos can cause cancer and mesothelioma, some believe that bolstered inspection requirements and increased penalties for repeated violations of asbestos removal regulations are needed to mitigate residents' exposure.

BACKGROUND

In 1971, the U.S. Environmental Protection Agency (EPA) identified asbestos as a hazardous pollutant. The inhalation of asbestos fibers may cause cancer, including lung, larynx, and ovarian cancer, as well as mesothelioma, cancer of the linings of certain internal organs. It may also lead to asbestosis, an inflammatory condition of the lungs that can cause permanent lung damage.² In 1973, the EPA promulgated the Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP), 49 CFR Part 61 Subchapter M.

The Asbestos NESHAP regulations require a thorough inspection of a facility where a demolition or renovation operation is planned to occur for asbestos-containing material. If such material is found, the owner or operator of the operation must notify a delegated entity, in Michigan, EGLE's Air Quality Division. Generally, to remove asbestos-related materials, the owner or operator of the operation must remove, adequately wet, and seal the materials in leak-tight containers, before disposing of them in a landfill qualified to receive asbestos waste. To ensure compliance with these regulations, the Asbestos NESHAP requires at least one onsite representative trained in these provisions to oversee the removal of asbestos-containing materials.

Legislative Analyst: Nathan Leaman

FISCAL IMPACT

The bills could increase costs for local governments; however, the amount of increased costs is not possible to determine and would depend heavily on the characteristics of each situation. All local governments would have to conduct a background investigation that, at a minimum, included reviewing EGLE's and the United States Department of Labor's websites. The costs for such a check would be minimal; however, costs would increase if an entity chose to conduct a more thorough investigation.

If a potential contractor had been issued five or more notices of violation of environmental regulations or had been subject to an administrative consent order or a consent judgment involving environmental regulations within the immediately preceding five years, the public entity would not be allowed to enter into a contract without incurring additional costs to investigate the violations and provide public notice of the findings. In this case, the public entity would incur additional costs either because of the additional requirements, or because

² "Asbestos Exposure and Cancer Risk", The National Cancer Institute. Retrieved on 01-30-2024.

the cost of an alternative qualified contractor was greater. Either way, the amount of additional cost would depend on the course of action chosen by the public entity.

The bills would have positive and negative fiscal impacts on EGLE and a minor negative impact on affected local governments. The costs associated with the bill would increase over the next few years as the percentage of inspections required of EGLE increase from 15% to 25% in 2027. Administrative costs for EGLE would be offset by notification fees of \$100 collected from owners and operators performing asbestos renovations or demolitions. An additional \$10 fee would be collected in the event of a change to the original notification. The Department has estimated that the fees in the bill could generate \$1.6 million in revenue. Local governments could see a minor increase in costs if they wish to renovate or demolish a facility affected by the asbestos regulations in the bill.

The bills would have no fiscal impact on the Department of Treasury. Based on the level of estimated revenue likely to be appropriated to the Fund, ongoing costs associated with the investment and management required would be less than \$100. Current appropriations would be sufficient to carry out these activities.

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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.