



**House
Legislative
Analysis
Section**

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ASBESTOS ABATEMENT SUNSET

**House Bill 4604 as enrolled
Second Analysis (5-17-94)**

**Sponsor: Rep. Dale Shugars
Committee: Public Health**

THE APPARENT PROBLEM:

Since 1986, the state has attempted to protect those who come into contact with products containing asbestos: Public Act 135 of 1986 created the Asbestos Abatement Contractors Licensing Act (AACA), under which asbestos abatement contractors were to be licensed by the Department of Public Health (DPH); Public Act 147 of 1986 amended the Michigan Occupational Safety and Health Act (MIOSHA) to establish a certification process for these workers; Public Act 440 of 1988 created the Asbestos Workers Accreditation Act to provide for the accreditation, licensure, and regulation of workers in school asbestos abatement projects; and Public Act 2 of 1990 specified that funds appropriated under the Asbestos Workers Accreditation Act be directed into a special Asbestos Abatement Fund, to be used solely to help DPH pay for various costs related to asbestos abatement management.

Today, after years of research, more is known about the effects of asbestos than was known in 1986, and federal regulations have been amended to include new requirements for asbestos work. For example, the federal government has conducted studies which indicate that the permissible exposure limit of asbestos at a project site should not exceed 0.01 fibers per cubic centimeter of air, where the fibers are more than 5 micrometers in length (the current permissible level of asbestos is 0.05 fibers per cubic centimeter of air). At present, provisions for air monitoring checks are required under MIOSHA when abatement projects are completed at certain project sites, but are not required under the AACA. To assure compliance with the new permissible exposure limit, legislation has been proposed that would provide for post-abatement air monitoring checks under the AACA until June 1, 1998. Most importantly, a June 1, 1993, expiration date was established for the provisions of the AACA, at which time the fee schedule was to be reviewed. Since the established fees apparently generate sufficient income for the DPH's asbestos-related

costs, it is proposed that the expiration date be extended for five years.

THE CONTENT OF THE BILL:

The Asbestos Abatement Contractors Licensing Act was amended in 1990 to exempt from its provisions licensed electricians, mechanical contractors, plumbers, and residential builders who remove small amounts of asbestos in the course of their primary work, if they meet certain requirements. The 1990 amendments also created an Asbestos Abatement Fund to be used for the asbestos-related duties of the Department of Public Health (DPH). The provisions of the act were set to expire June 1, 1993. House Bill 4604 would amend the act to extend the expiration date to June 1, 1998, and to require that, after completion of an asbestos abatement project, the level of asbestos could not exceed 0.05 fibers per cubic centimeter of air, where the fibers are more than 5 micrometers in length, when sampled and analyzed according to "Method 7400 entitled 'Fibers'" issued by the National Institute of Occupational Safety and Health.

Post Abatement Checks. The bill would require that the owner of a building have a post-abatement air monitoring check performed by a qualified neutral party who is completely independent of the asbestos abatement contractor who performed the abatement activity. (The bill would define "neutral party" to mean "a business entity that is not part of the asbestos abatement contractor's primary or secondary family and is not legally associated to any business operated by" the contractor.) However, the check could be performed by the building owner's in-house personnel or by the asbestos abatement contractor if the building owner or lessee agreed. The bill would require that the post-abatement check be done at each abatement site involving 10 or more linear feet or 15 or more square feet of friable asbestos materials. The post-abatement check would have to involve a "negative pressure enclosure" as specified by federal regulations.

Whenever feasible, the check would have to make use of aggressive air sampling methods described by federal law, unless waived by the building owner or lessee.

Workers' Compensation Requirements. House Bill 4604 would also clarify a current provision of the act that requires license applicants to submit proof of worker's compensation insurance. The bill would specify that Michigan workers' disability compensation insurance would be required.

Training/Accreditation Requirements. The bill also would clarify that all employees and agents of an asbestos abatement contractor who were involved in an asbestos abatement project would have to receive training and become accredited as asbestos abatement workers, or contractors and supervisors.

License Revocation/Contested Cases. The bill would specify that if a business entity's license was denied, suspended, or revoked under the act, then that action would apply to all persons exercising control of the business. In addition, the bill would specify that the circuit court could issue a subpoena to require a person to appear before a hearings examiner (or before the DPH in an investigation), and to produce relevant documents on a matter that was within the scope of a contested case or investigation.

Definition. Currently, the act provides an erroneous definition of the term "encapsulate." The bill would define "encapsulate" to mean the sealing of friable asbestos materials by means of the spraying of liquid sealant or any other suitable sealing method.

MCL 338.3103 et al.

BACKGROUND INFORMATION:

Proper training for asbestos abatement is particularly important for those who work on public buildings, such as schools, used by a large number of people. In response to potential health hazards posed by asbestos to students, teachers, and maintenance crews, the federal Asbestos Hazard Emergency Response Act (AHERA) was signed into law in 1986, to provide accreditation and licensing guidelines for those who work on asbestos abatement in the nation's public and private elementary and secondary schools. Congress also authorized \$50 million in grants to states for asbestos removal projects. In order to make these

grants available in Michigan, the state established a certification process for asbestos abatement workers under Public Act 147 of 1986, which amended the Michigan Occupational Safety and Health Act (MIOSHA) to require Department of Public Health (DPH) approval and oversight of worker training programs in the health and safety aspects of handling asbestos. At the same time, Public Act 135 of 1986 created the Asbestos Abatement Contractors Licensing Act (AACA), under which asbestos abatement contractors were to be licensed by the DPH. In 1988, in response to an Environmental Protection Agency requirement that states adopt an accreditation program for school asbestos workers, Public Act 440 created the Asbestos Workers Accreditation Act to assure that those who wished to work in school asbestos abatement projects would be accredited. Finally, Public Act 2 of 1990 specified that funds appropriated under the Asbestos Workers Accreditation Act be directed into a special Asbestos Abatement Fund, to be used solely to help DPH pay for various costs related to asbestos abatement management.

FISCAL IMPLICATIONS:

The Department of Public Health's cost of administering the asbestos abatement program is \$500,000. The department estimates that revenues from asbestos abatement licensing and notification fees cover these costs. In addition, approximately \$150,000 per year is deposited into the general fund from penalties enforced under the asbestos program. (5-17-94)

ARGUMENTS:

For:

Apparently, many contractors believe that the provisions of the Asbestos Abatement Contractors Licensing Act (AACA) will soon expire. By extending the act's June 1, 1993, expiration dates for five years, House Bill 4604 would assure those who wish to be accredited to perform asbestos abatement work that Michigan's strict licensing and training requirements must still be complied with. Reportedly, in the period prior to the enactment of the AACA, contractors and maintenance personnel in schools -- rushing to complete projects before state and federal laws were enacted -- removed asbestos haphazardly without the expertise and experience necessary to engage in this work safely. If the licensing and training requirements of the act

are allowed to expire, this situation could reoccur, posing serious health hazards for workers and for the general public.

Asbestos abatement projects are hazardous by their very nature because they involve releasing often large amounts of asbestos into the air. If asbestos abatement workers are not properly trained and adequately protected, they are exposed to unnecessary health hazards. When abatement work is done incorrectly, members of the general public exposed to the area are also at greater risk of exposure. Asbestos, particularly in the form of microscopic airborne fibers, is a potent cancer-causing agent and one of the causes of asbestosis, a non-cancerous lung disease which can be fatal. However, the symptoms of asbestosis do not become apparent for many years after exposure: cases are on record of asbestos-caused disease occurring 20 years after a single day's exposure. It is, therefore, important that all persons involved in asbestos removal projects meet certain licensing and training requirements.

For:

The bill contains provisions that would greatly assist the Department of Public Health (DPH) in operating its asbestos abatement program. For example, at present, the department does not have subpoena power to obtain the documents, witnesses, or records that may provide it with necessary information in court cases in actions to suspend or revoke an asbestos abatement contractor's license. Under the bill, however, a circuit court could issue a subpoena to require a person to produce relevant documents when appearing before the DPH or before a hearings examiner. The bill would also clarify that DPH revocation actions against partnerships, corporations, or other business entities applied to each person exercising control of the business.

Against:

Contractors who have been involved in asbestos abatement projects for several years are generally in agreement with the provisions of the bill, since they are aware of the health and safety risks involved in such projects. However, many complain of needlessly confusing paperwork, saying that in some areas the wording of state and federal regulations differs. These contractors propose that state regulations be amended in the near future to comply with the language of federal regulations. In addition, the AACA was amended in 1990 to

exempt from its provisions licensed electricians, mechanical contractors, plumbers, and residential builders who remove small amounts of asbestos in the course of their primary work. Some contractors note that the post-abatement monitoring check provisions of the bill are required at sites involving 10 or more linear feet or 15 or more square feet of friable asbestos materials. However, under Michigan Occupational Safety and Health Act (MIOSHA) provisions, post-abatement monitoring checks are only required on projects involving 25 linear feet or 50 square feet of friable asbestos materials or more. The bill could therefore result in fewer contractors being exempted from the act, as well as conflicting provisions between the AACA and MIOASHA.