

Legislative Analysis



DEQ LAB RECOGNITION PROGRAM

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

House Bill 5742 (Substitute H-2)
Sponsor: Rep. Sandra Caul

House Bill 5743 (Substitute H-2)
Sponsor: Rep. Lorence Wenke
Committee: Commerce

Senate Bill 1135 (Substitute H-1)
Sponsor: Sen. Valde Garcia
Senate Committee: Natural Resources and Environmental Affairs
House Committee: Commerce

Complete to 6-16-04

A SUMMARY OF HOUSE BILLS 5742 AND 5743 AND SENATE BILL 1135 AS REPORTED FROM THE HOUSE COMMITTEE ON COMMERCE ON 6-15-04

The bills would, taken together, create a Laboratory Data Quality Recognition Program within the Department of Environmental Quality.

House Bill 5742 would require the DEQ to implement such a program in order to identify commercial (i.e., privately owned) laboratories the department considered qualified to generate analytical data for submission to the department for compliance purposes under the Natural Resources and Environmental Protection Act (NREPA). The bill would also create a special fund to hold the fees paid by commercial laboratories to participate in the program. Revenues in the fund would be used only to administer the program.

House Bill 5743 would require performance post audits by the state auditor general of the DEQ's laboratory focusing on the quality of analytical data generated by the laboratory; the costs of operating the department lab versus comparable private labs; and the adequacy of fees to support the lab recognition program. The auditor general would have to make a report to the legislature within one year after the bill's effective date and every two years thereafter.

Senate Bill 1135 would create the Laboratory Data Quality Assurance Advisory Council with the DEQ to monitor and evaluate the program. The council would consist of six members appointed by the governor, as well as the DEQ director (or a designee), with one gubernatorial appointee each to represent a statewide business organization; commercial laboratories that do not also function as in-house laboratories; in-house laboratories; public laboratories; the Michigan Municipal League; and the general public. The council members would have to be appointed within 90 days after the effective date of the bill, and the council would be disbanded by the end of 2007.

Under the program, the term “analytical data” would refer to the qualitative or quantitative measurements generated by chemical, physical, biological, microbiological, radiological, or other scientific determination.

The bills are tie-barred to one another, meaning all must take effect for any to take effect. Additional information on the bills follows.

House Bill 5742

The bill would create a new Part 205 of the Natural Resources and Environmental Protection Act (NREPA), with the part to be known as “The V. Harry Adrounie Laboratory Data Quality Assurance Act”. Under this act, the DEQ would be required to implement a data quality recognition program order to identify commercial laboratories the department considered qualified to generate analytical data for submission to the department for compliance purposes under NREPA. Participation in the program by a commercial laboratory would be voluntary.

A commercial lab could not be restricted or prohibited from generating analytical data for submission to the department for compliance purposes based on nonparticipation or unsuccessful participation in the program. However, successful participation in the program would be mandatory for a commercial lab that sought to perform testing associated with a state-funded project or program under NREPA. When the DEQ let contracts for state-funded laboratory work, it could only use those commercial labs that were successful program participants. (Exceptions could be made if desired analytical support services were not available from such labs.)

Recognition of Participating Labs. The DEQ would have to recognize the successful participation of a commercial lab for a two-year period; a lab could apply to renew its participation. The department could terminate recognition of a lab as a successful participant if it determined that the lab no longer met the required standards.

Data Quality. The program would have to determine whether the quality of analytical data was maintained through quality systems in which staff responsibilities and operational procedures were defined, documented, and subjected to an internal assessment by the commercial lab itself on a regular basis, with timely corrective action taken by the commercial lab as needed. Quality systems would have to include quality assurance policies and quality control procedures and would have to be documented in a written plan.

Participation by Labs; Fees. To participate in the program, a commercial lab would have to submit an application to the department, along with a fee based on the DEQ’s actual costs of administering the program, but not exceeding \$750 for an initial application or \$500 for a renewal; grant the DEQ access to the lab and lab records for inspections during normal business hours without prior notice; and participate in any required proficiency testing conducted by the DEQ, the United States Environmental Protection Agency, or any other nationally recognized testing program.

Laboratory Data Quality Recognition Program Fund. The fund would be created within the state treasury, and fees collected from program participants would be deposited in the fund to be used only, upon appropriation, to administer the quality recognition program.

DEQ Web Site. The DEQ would be required to maintain and post on its web site 1) a list of labs that had successfully participated in the quality recognition program, together with a statement eligibility for participating in testing for state-funded projects or programs; and 2) the types of analytical data involved in a lab's successful participation if the lab only participated successfully with respect to certain types of analytical data.

Senate Bill 1135

The Laboratory Data Quality Assurance Advisory Council, as described earlier, would be required to do the following:

- Monitor and evaluate the program, including whether the participating labs should or should not be required to participate in proficiency testing and the structure and scope of review of quality systems by the DEQ.
- Develop recommendations whether the program should be retained, terminated, or replaced with a different quality assurance method.
- Evaluate costs to private business of the program and the costs to private business of implementing any recommendations.
- Evaluate the first report of the auditor general.
- Develop recommendations whether a code of ethics is needed for commercial labs and, if so, the content of such a code.
- Review the DEQ's laboratory data acceptance requirements.
- Develop recommendations whether the department should provide additional technical and training assistance to commercial laboratories, in-house laboratories, and public laboratories.
- Submit reports on its findings to the Governor, Senate Majority Leader, Speaker of the House of Representatives and the standing committees of the House and Senate with responsibility for environmental protection issues. An interim report would be due within 18 month's of the bill's effective date with the final report due June 30, 2007.

FISCAL IMPACT:

The House and Senate substitute bills for DEQ each require the department to send their lab work to accredited laboratories. Fee revenue provided in this package would support program accreditation costs, but annual collections may not fully fund the program. The DEQ has expressed concern that the fees contained in the package do not cover the costs of the program, testifying that the program could cost \$120,000, based on the participation of 20-40 labs. These bills would allow the department to increase the volume of samples run and increase the amount of work provided for the private sector. Lab/sampling costs are generally factored into the cost estimates of environmental cleanup projects and health related water quality sampling (groundwater and beach monitoring).

POSITIONS:

The Michigan Environmental Lab Association (MELA) had indicated support for the bills. (6-16-04)

The Michigan Chamber of Commerce has indicated support for the bills. (6-15-04)

The Department of Environmental Quality testified that is neutral on the bills in their current form. (6-15-04)

Legislative Analyst: Chris Couch
Fiscal Analyst: Kirk Lindquist

■ 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.