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BILL ANALYSIS



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Senate Bill 225 (as introduced 3-22-23)
Sponsor: Senator Stephanie Chang
Committee: Energy and Environment

Date Completed: 1-31-24

CONTENT

The bill 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.

The 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 the Department of Environment, Great Lakes, and Energy's (EGLE) 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.

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

The bill is similar to House Bills 4186 and 4190 of the current Legislative Session, both of which have passed the House. The bill is also similar to Senate Bill 339 and House Bill 4766 of the 2021-2022 Legislative Session. House Bill 4766 passed the House but received no further action.

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.¹ 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

¹ "Asbestos Exposure and Cancer Risk", The National Cancer Institute. Retrieved on 01-30-2024.

FISCAL IMPACT

The bill 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 USDoL'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 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.

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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.