



**House
Legislative
Analysis
Section**

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CREATE ASBESTOS WORK ACCREDITATION ACT

House Bill 5722 as enrolled
House Committee: State Affairs
Senate Committee: Health Policy

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House Bill 5723 as enrolled
House Committee: Labor
Senate Committee: Health Policy

Mich. State Law Library

Sponsor: Rep. Bob Emerson
Second Analysis (12-13-88)

THE APPARENT PROBLEM:

Removing or containing friable asbestos found in older buildings is an important task which, when done improperly, can be dangerous for those performing the work as well as for those who use the "decontaminated" buildings. Because asbestos has been found to be hazardous to human health, especially when inhaled in the form of microscopic airborne fibers, laws governing asbestos abatement must ensure that asbestos abatement workers are properly trained to remove or encapsulate hazardous asbestos. Proper training for asbestos abatement is particularly important for those who work on public buildings used by a large number of people, such as schools. The problem of potential health hazards posed by asbestos to students, teachers and maintenance crews has received a great deal of attention over the last few years. The Asbestos Hazard Emergency Response Act (AHERA) was signed into law in 1986, providing guidelines for the accreditation and licensing of those who work on asbestos abatement in public and private elementary and secondary schools throughout the nation. The federal act requires local school districts to complete an inspection of all facilities and to develop an asbestos management plan, describing what the school plans to do about possibly threatening asbestos, by October 12, 1988 (the deadline has been extended, in certain cases, until May, 1989). In addition, the Environmental Protection Agency (EPA) issued a similar model plan in 1987 requiring accreditation for school asbestos abatement workers; states must have qualification requirements for school asbestos abatement workers which at least match the minimum accreditation requirements in the EPA plan. Some feel the EPA's accreditation requirements, in fact, are not stringent enough, and feel the state should provide a tougher accreditation plan to more adequately safeguard both those working in asbestos abatement in public buildings, and those who frequent the buildings. Also, because the federal plan will cost the state's public health department up to half a million dollars to monitor in fiscal year 1988-89, a proposal was made to charge licensing and accreditation fees to school asbestos abatement workers to help defray state costs.

THE CONTENT OF THE BILL:

House Bill 5722 would create the Asbestos Workers Accreditation Act which would provide for the accreditation, licensure, and regulation of persons who perform asbestos-related work on elementary and secondary public or private school buildings. The bill would designate the director of the Department of Public Health, or his or her designee, as the state official in charge of regulating those covered under the bill. The bill would

provide fees for those applying for licensure under the bill, and would prescribe fines and penalties for those found in violation of the requirements in the bill.

Accreditation requirements. Under the bill, a person could not perform certain asbestos-related work in school buildings unless that person received a certificate of accreditation and maintained annual reaccreditation through training, examination, and continuing education. The work that could not be performed without certification would include inspecting for asbestos-containing materials in school buildings, preparing asbestos management plans for school buildings, and designing or conducting response actions beyond the scope of small scale or short duration operations, maintenance and repair activities as these are defined in a portion of the Asbestos Hazard Emergency Response Act (AHERA).

A person who sought accreditation to perform asbestos-related work in school buildings would be required to receive initial training in asbestos-containing materials inspection, management plan development, and response action technology. The length of initial training courses required for accreditation would vary according to the discipline as follows:

- asbestos inspectors would have to complete a three-day training course and successfully pass an examination;
- asbestos management planners would have to complete the inspector training course plus an additional two days of training devoted to management planning and successfully pass an examination on each course of training;
- asbestos abatement project designers would have to have at least three days of training and successfully pass an examination, or fulfill the requirements prescribed for asbestos abatement contractors and supervisors;
- asbestos abatement contractors and supervisors would have to complete a four-day training course and successfully pass an examination; and
- asbestos abatement workers would have to complete a three-day training course and successfully pass an examination.

A person who met the requirements of the bill and who completed the initial training and passed the required examination would receive a certificate of accreditation, which would authorize the person to perform asbestos-related work in school buildings for a period of one year. To receive reaccreditation, a person would have to complete a 1-day annual refresher course (1/2 day for asbestos inspectors).

H.B. 5722 & 5723 (12-13-88)

The initial training courses, examinations, and refresher training courses would be conducted by the department or a person approved by the department in accordance with the initial training, the examinations, and the refresher training course components of the federal Environmental Protection Agency (EPA) model contractor accreditation plan for states.

All persons who sought accreditation as asbestos inspectors, management planners, or project designers would be required to have the following:

- for asbestos inspectors, either one year of experience in asbestos-related work, or five years of supervisory experience operating or maintaining school buildings;
- for asbestos management planners and asbestos abatement project designers, either two years' experience in asbestos-related work, or five years of supervisory experience operating or maintaining school buildings.

Departmental Powers, Responsibilities. The Department of Public Health would receive or initiate complaints of alleged violations of the bill and take appropriate action. At its own discretion, or upon the written complaint of an aggrieved party or of a state agency or political subdivision, the department could investigate the acts of a person accredited under the bill. The department could deny, suspend, or revoke a certificate of accreditation or reaccreditation under this bill as specified in the Administrative Procedures Act, if a person violated the requirements of the bill or any state or federal laws.

Further, the department could deny, suspend, or revoke a certificate of accreditation or reaccreditation for any of the following reasons:

- willful or negligent actions in violation of the bill or other state or federal laws pertaining to the public health and safety aspects of asbestos-related work in school buildings;
- falsification of records;
- failure to obtain or renew a certificate of accreditation;
- deliberate misrepresentation in applying for accreditation or reaccreditation; or
- permitting any person who had not received the proper accreditation under the bill to be responsible for asbestos-related work in school buildings.

The department would have to try to obtain written reciprocal agreements with other states which had accreditation and reaccreditation requirements at least equal to the bill's requirements. After a written reciprocal agreement with another state had been executed, the department could not require a person who had been properly accredited by that state to become accredited in Michigan in order to perform asbestos-related work in school buildings in this state. Such a person, however, would still be required to submit a certificate of successful completion of training from the other state and the required fee. Reaccreditation could only be obtained by submitting a copy of the certificate of successful completion of a refresher training course from another state and the fee required under the bill.

Training Course Sponsorships. A person who desired to sponsor training courses for those disciplines required to be accredited under the bill could apply for departmental approval. For a training course to receive approval from the department, it would have to meet the requirements for training courses, examinations, and refresher training courses. An applicant who wished to sponsor a training

course would have to submit a fee of \$400 and would have to supply all the following information to the department:

- the course sponsor's name, address, and telephone number;
- a list of any states that had currently approved the training course, including information as to whether the training course had been approved by the EPA;
- the course curriculum;
- a letter from the training course sponsor that clearly indicated how the course had met the requirements found in the bill for a) the length of training days, b) the amount and type of "hands-on" training, c) the length, format, and passing score of the examination, and d) the topics covered in the course;
- a copy of all course materials, including student manuals, instructor notebooks, handouts, and any other materials requested by the department;
- a detailed statement concerning the development of the examination used in the course;
- the names and qualifications of course instructors, who would have to have academic credentials or field experience, or both, in asbestos abatement; and
- a description and example of the certificate of successful completion issued to students who attended the course and passed the examination.

A person who wished to sponsor refresher training courses would have to submit information on a) the length of training, b) the topics covered in the course, c) a copy of all course materials, d) the names and qualifications of course instructors, and e) a description and an example of the certificate of successful completion of the training course that would be issued to students who had completed the refresher training course.

Within 60 days following receipt of the appropriate fee and a complete application from a prospective training course sponsor, the department would have to either approve or deny the application, and the applicant would have to be notified of the department's determination in writing. The department could revoke or suspend approval of a training course if field site inspections indicated a training course was not providing training that met training course requirements. Training course sponsors would have to allow department representatives to attend, evaluate, and monitor any training course without charge to the department and without advance notification.

Departmental Certification Records. The director would have to issue a numbered certificate of accreditation to a student who met the requirements in the bill and who successfully completed the training and passed the training course's required examination. The certificate would have to include an expiration date for accreditation (one year after completion of the course).

A training course administrator who offered refresher training courses would have to provide students with certificates of successful completion of the refresher training course. Upon receipt of a copy of the certificate of successful completion of the refresher course and the required fee from a student, the director would have to issue a numbered certificate of annual reaccreditation to the student.

The administrator of an approved training course would have to supply the department with a list of those persons who had successfully completed each training course, passed the respective examination, and been issued certificates of successful completion of the training course and examination. The list would have to be maintained by

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the department and would have to include each person's name, social security number, and address, the discipline for which the certificate had been issued and the date of the certificate.

Fees, Penalties. A person who desired accreditation or reaccreditation from the director would have to submit the appropriate annual fee as part of his or her application to the department for accreditation or reaccreditation. The fees would be as follows:

- for asbestos inspector, management planner, or abatement project designer accreditation, \$150 (reaccreditation for all of these would be \$75);
- for asbestos abatement contractors, supervisors, or workers, \$25 for both accreditation and reaccreditation.

All fees that were collected by the department would have to be deposited in the asbestos abatement fund created under the Asbestos Abatement Contractors Licensing Act. (Note: The fund would have been created under House Bill 5779, which did not pass the legislature.)

A person who violated provisions in the bill would be subject to civil penalties for each violation or each day that a violation continued in accordance with the following schedule:

- for a first violation, \$2,000;
- for a second violation, \$5,000; and
- for a third or subsequent violation, \$10,000.

The legislature would have to annually appropriate to the department an amount sufficient to administer and enforce provisions in the bill.

Other Provisions. A person who was accredited to perform asbestos-related work in school buildings would have to have his or her initial and current certificate of accreditation or reaccreditation at the work location. Failure to display a certificate of accreditation or reaccreditation at the job site could result in the suspension or revocation of a certificate of accreditation.

The department could approve a person for accreditation on an interim basis if the person had attended a previous department, or EPA-approved asbestos training course, passed an examination, and submitted the required fee. However, only those persons who had taken training courses since January 1, 1985 could be considered for interim accreditation, and interim accreditation would only be valid until July 1, 1989.

House Bill 5723 would amend the Michigan Occupational Safety and Health Act (MCL 408.1058 et al.) to exempt from the act asbestos abatement contractors, or other employers whose employees are responsible for, or actually involved in, asbestos abatement projects in schools or school buildings (as defined in the proposed Asbestos Workers Accreditation Act). Further, the bill would delete requirements for specific asbestos abatement training for employees and agents of other abatement contractors who are responsible for, or actually involved in, an asbestos abatement project, and instead require that these persons receive all training and accreditation required by the Asbestos Workers Accreditation Act, along with any other training required under other state or federal law pertaining to the health and safety aspects of asbestos demolition, renovation, and encapsulation. The bill would repeal several sections relating to asbestos abatement training.

House Bill 5723 is tie-barred to House Bill 5722.

FISCAL IMPLICATIONS:

According to the Department of Public Health, enrolled House Bill 5722 would generate approximately \$100,000 the first year and \$79,000 annually thereafter. The revenue would be used to offset the department's expenses for a full-time staff of 12 people to maintain the program required under federal law, estimated at approximately \$550,168 for fiscal year 1988-89. (Students receiving federal assistance currently are employed part-time to review schools' managements plans; the department said it plans to use these students only during the first year. This will decrease the annual revenue requirements for the program about \$20,000 thereafter.) (12-13-88) The House Fiscal Agency also reported that neither bill has fiscal implications to local units of government, since provisions mandating asbestos management programs for schools were instituted October 12, 1988 under the federal act, AHERA. (9-29-88)

ARGUMENTS:

For:

Federal asbestos abatement laws require public and private schools throughout the country to inspect school facilities for possibly hazardous asbestos, and develop management plans detailing what the schools intend to do about any existing asbestos problems. Under AHERA a school must submit these plans to its state's public health department before October 12, 1988 (unless an extension has been granted, in which case a plan could be submitted no later than May, 1989). The state health department must review and comment on the plans within 90 days. States must adopt an accreditation program for asbestos professionals sometime before July, 1989 to help ensure that workers and the general public are adequately protected from asbestos contamination. House Bill 5722 would create a special accreditation program for those working in asbestos abatement projects in state schools. The bill would add more stringent minimum requirements for certification (i.e. at least one year's supervision experience in asbestos abatement programs) than what federal law requires. Tougher standards should be enacted since the federal government, when AHERA was enacted in 1986, substantially reduced the allowable levels of asbestos exposure that workers could be safely subjected to. By enacting standards which would go beyond the minimum safe requirements of AHERA, Michigan could see that these workers were better protected, and could help assure those who frequent school buildings that asbestos workers were properly trained to handle the task of asbestos abatement in a safe and responsible manner.

For:

Michigan's Department of Public Health, as the agency responsible for monitoring all state schools' progress in implementing AHERA, will incur substantial costs in the hiring of necessary staff to oversee the program. House Bill 5722 would establish fees for those who wish to be accredited at various levels in school asbestos abatement projects to help defray departmental costs in overseeing the program in the state. The bill would ensure that funds appropriated under the bill would be directed into a special Asbestos Abatement Fund, to be used solely to help the department pay for various costs related to asbestos abatement management. Other states have used similar fee-based systems to help them defray these costs and Michigan should follow suit.

Response: On the contrary, the bill does not nearly meet

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the department's funding needs to carry out its mandated duties under AHERA. As enrolled, the bill would only raise \$100,000 the first year and \$79,000 thereafter to help defray department costs to oversee asbestos abatement (estimated at \$550,168 annually) in state schools. Further, another bill (House Bill 5779) which would have raised significantly more revenue for funding the state's asbestos abatement program than this bill — again, through licensing fees — did not pass the legislature. That bill's passage was crucial since it would have created the Asbestos Abatement Fund, into which revenue generated under this bill would have to be directed. With no existing fund specifically intended for asbestos abatement programs the money generated under this bill, according to a DPH spokesperson, will probably be directed into the general fund, which could further jeopardize its use for funding the program.

doesn't it behoove the state to make sure that asbestos abatement contractors and workers are operating according to the safest guidelines for themselves as well as the public?

For:

House Bill 5723 would eliminate emergency rules adopted under MIOSHA concerning the licensing and accreditation of asbestos abatement workers; these would be covered under the proposed Asbestos Workers Accreditation Act (House Bill 5722). Also, those licensed as asbestos abatement contractors and their employees who were involved in abatement projects in schools, would be exempt from the asbestos abatement provisions found in MIOSHA.

Against:

Some estimate the costs to public and private schools for complying with AHERA's requirements for asbestos inspection and management could exceed \$30 million dollars. With most public, and many private, schools already facing financial crises just to provide adequate education, some are afraid that AHERA (and these bills) will only make matters worse. Money already earmarked by schools for books, school equipment, and teacher salaries (not to mention already limited dollars for extra-curriculars) will have to be diverted to asbestos abatement activities. Although many studies show a close relationship between asbestos exposure and various illnesses (including cancer), some are not convinced that enough proof exists to warrant such expensive removal requirements. Do school buildings present any more danger to asbestos exposure than other buildings? Various studies have shown that, due to increased use of asbestos in many areas, asbestos is found in various amounts just about everywhere (including drinking water). Indeed every car in America probably contributes a small amount to the environment, due to asbestos-lined brakes. If government is requiring schools to take preventive action in this arena, it should also be willing to pay for a good percentage of the cost.

Response: Because it is feared that lengthened exposure to asbestos puts humans at the greatest risk, and because humans in developmental stages of life (children) may be at an even greater risk of developing asbestos contamination in years to come, the federal government decided that an emphasis must be placed on reducing the amount of asbestos exposure to this segment of the population. Whether or not extra prevention is needed in schools is not a question this bill attempts to address; AHERA already requires that schools (and states) follow its plan for dealing with asbestos in schools. Since there are mandated costs under the federal act to schools anyway,