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House Bill 5742 (Substitute H-2 as passed by the House)  
House Bill 5743 (Substitute H-2 as passed by the House)  
Sponsor: Representative Sandra Caul (H.B. 5742)  
Representative Lorence Wenke (H.B. 5743)  
House Committee: Commerce  
Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 6-21-04

### **CONTENT**

**House Bill 5742 (H-2) would create the "V. Harry Androunie Laboratory Data Quality Assurance Act" as Part 205 of the Natural Resources and Environmental Protection Act (NREPA) to require the Department of Environmental Quality (DEQ) to implement a Laboratory Data Quality Recognition Program to identify commercial laboratories qualified to generate data for submission to the DEQ.**

**House Bill 5743 (H-2) would require the Auditor General to conduct performance audits of the DEQ's environmental laboratory, its costs compared with the costs of private laboratories, and the adequacy of Quality Recognition Program application fees.**

The bills are tie-barred to each other and to Senate Bill 1135. (As passed by the House, Senate Bill 1135 (H-1) would create the Laboratory Data Quality Assurance Advisory Council to monitor and evaluate the Data Quality Recognition Program.) A more detailed explanation of the House bills follows.

### **House Bill 5742 (H-2)**

#### **Quality Recognition Program**

The DEQ would have to implement a Laboratory Data Quality Recognition Program in order to identify commercial laboratories that the Department considered to be qualified to generate analytical data for submission to the DEQ for compliance purposes under the Act. 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 lab as needed. The quality systems would have to include quality assurance policies and quality control procedures, and would have to be documented in a written plan.

(The bill would define "laboratory" as a body that engages in calibration or testing, or both, at a specified location. "Commercial laboratory" would mean a privately owned laboratory that generates analytical data required by NREPA pertaining to the operations of a third person regulated under the Act. "Analytical data" would mean the qualitative or

quantitative measurements generated by chemical, physical, biological, microbiological, radiological, or other scientific determination.)

### Laboratory Participation

A commercial lab's participation in the Program would be voluntary; a lab could not be restricted or prohibited from generating analytical data for submission to the DEQ under NREPA based on nonparticipation or unsuccessful participation in the Program.

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 authorized under NREPA. When the DEQ let contracts for State-funded laboratory work, it would have to use only those commercial labs that were successful participants in the Program. Exceptions could be made if desired analytical support services were not available from a commercial laboratory that was a successful participant in the Program.

To participate in the Program, a commercial lab would have to do all of the following:

- Submit an application to the DEQ.
- Pay the DEQ a fee based on the Department's actual costs of administering the Program, but not more than \$750 for an initial application or \$500 for a renewal application.
- Grant the DEQ access to the lab and lab records for inspections during normal business hours without prior notice.
- If required by the DEQ, participate in proficiency testing conducted by the Department, the United States Environmental Protection Agency, or any other nationally recognized proficiency testing program.

("Proficiency testing" would be defined as a method of evaluating a laboratory's performance under controlled conditions relative to a given set of criteria through analysis of unknown samples provided by an external source.)

### Posting; Recognition

The DEQ would have to maintain and post on its website all the following information: 1) a list of laboratories that had successfully participated in the Program, together with a statement that described the bill's requirements on Program participation; and 2) the types of analytical data with respect to which a laboratory successfully participated in the Program, if the lab successfully participated only with respect to certain types of analytical data.

The DEQ would have to recognize a commercial lab's successful participation in the Program by posting this information on the Department's website for two years. A lab could apply to renew its participation in the Program.

The DEQ could terminate recognition of a commercial lab as a successful participant in the Program upon determining that the lab no longer met the standards for successful participation.

### Fund

The bill would create the "Laboratory Data Quality Recognition Program Fund" in the State Treasury. Program application fees would have to be deposited in the Fund. The Treasurer also could receive money or other assets from any other source for deposit into the Fund. The Treasurer would have to credit to the Fund interest and earnings from Fund investments. Money in the Fund at the close of the fiscal year would have to remain in the Fund and not lapse to the General Fund. The DEQ could have to spend money from the Fund, upon appropriation, only to administer the Quality Recognition Program.

## Rules

The DEQ would have to enforce Part 205 and promulgate rules as it considered necessary to carry out its duties under Part 205. The Department could not promulgate additional rules under Part 205 after December 31, 2006.

### **House Bill 5743 (H-2)**

The bill would require the Auditor General to conduct performance post audits covering all of the following:

- The quality of the analytical data generated by the DEQ's environmental laboratory.
- The costs of operating the DEQ's environmental laboratory relative to the costs of operating comparable private laboratories that met the requirements for successful participation in the Quality Recognition Program, to the extent sufficient data were available.
- The adequacy of the application fees commercial labs would have to pay to participate in the Program.

The Auditor General would have to conduct and submit to the Legislature a report on the audit within one year after the bill's effective date, and every two years thereafter.

Proposed MCL 324.20501-324.20511 (H.B. 5742)  
Proposed MCL 324.20513 (H.B. 5743)

Legislative Analyst: Claire Layman

## **FISCAL IMPACT**

### **House Bill 5742 (H-2)**

The bill would necessitate 1.0 FTE position, at a cost of \$85,000 (according to DEQ estimates), based on the proposed responsibilities for the Department. Revenue from the commercial laboratory fee would depend on the number of participants in the Program. There are about 60 commercial laboratories and up to \$45,000 would be generated if 100% of the laboratories participated and paid an initial application fee of \$750. On a continuing basis, revenue of up to \$30,000 could be generated from a \$500 renewal application fee. Since the quality recognition designation would be valid for two years, annual revenue could be \$15,000.

The requirement of successful participation in the program for laboratories performing testing associated with State-funded programs would affect the eight laboratories that the State currently has contracts with for services. The State would receive revenue of \$6,000 from the application fee and \$4,000 from the renewal fee from these laboratories if they wanted to continue the contracts.

### **House Bill 5743 (H-2)**

The bill would result in additional costs for the Legislative Auditor General, depending on the number of hours required to perform the audit. The cost of performance audits ranges from \$50,000 to \$75,000.

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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.