

# HOUSE BILL REPORT

## ESSB 6473

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**As Passed House - Amended:**  
March 3, 2020

**Title:** An act relating to asbestos-containing building materials.

**Brief Description:** Concerning asbestos-containing building materials.

**Sponsors:** Senate Committee on Labor & Commerce (originally sponsored by Senators Stanford, Frockt, Conway, Keiser, Hasegawa, Lias, Van De Wege, Billig, Hunt and Saldaña).

**Brief History:**

**Committee Activity:**

Environment & Energy: 2/24/20, 2/25/20 [DPA].

**Floor Activity:**

Passed House - Amended: 3/3/20, 96-0.

**Brief Summary of Engrossed Substitute Bill  
(As Amended by House)**

- Prohibits the use of asbestos-containing building materials in nonresidential new construction or renovations.
- Requires building materials that contain 0.1 percent asbestos, rather than 1 percent asbestos, to be labeled consistent with state or federal requirements and subject to use restrictions, beginning in 2025.
- Requires certain manufacturing facilities to perform periodic facility inspections for asbestos-containing building materials and develop an asbestos management plan.

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### HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

**Majority Report:** Do pass as amended. Signed by 10 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; DeBolt, Ranking Minority Member; Dye, Assistant Ranking Minority Member; Boehnke, Doglio, Goehner, Mead, Robinson and Shewmake.

**Staff:** Jacob Lipson (786-7196).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

## **Background:**

### Asbestos.

Asbestos is a naturally occurring mineral fiber found in rock and soil. The United States Environmental Protection Agency (EPA) classifies six categories of asbestos mineral fibers: chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite. Asbestos can be used as an insulator or fire retardant in a variety of consumer goods, including building materials, and is also found as a naturally occurring contaminant in deposits of other mineral types used for commercial purposes.

### Asbestos Regulation.

Since 1973 the federal government has adopted numerous environmental and public health regulations governing the mining, manufacture, installation, and removal of asbestos. In general, the federal Occupational Safety and Health Administration provides worker-safety regulations for the use and proper handling of asbestos, while the EPA has asbestos-related regulatory authority deriving from the federal Clean Air Act and other federal environmental statutes, including the Toxic Substances Control Act (TSCA).

The TSCA includes provisions granting the EPA the regulatory authority to ban the use of individual chemicals under certain circumstances. In 1989 the EPA issued a rule under the TSCA which would have phased in a ban on the use of asbestos in most products. However, in 1991 this EPA ban was largely vacated by a federal appeals court decision, allowing for the continued use of asbestos in many consumer products. Following the decision, the products in which asbestos was allowed to be used included a variety of building materials, including cement corrugated sheets, flat sheets, shingles and piping, roof and nonroof coatings, and vinyl floor tile.

Currently, asbestos is banned by federal law from use in pipe and water heater insulation, spray-applied surfaces, artificial wall-patching compounds, and rollboard insulation, as well as in types of products that have not historically contained asbestos. Per its authority under the TSCA, the EPA requires that certain products from which asbestos is banned, including building materials such as rollboard, receive a label noting that the product contains asbestos, in order to facilitate compliance with and enforcement of the rule.

Under the federal Lautenberg Chemical Safety for the Twenty-First Century Act of 2016, asbestos is one of the first 10 chemicals for which the EPA is carrying out a risk evaluation, and building materials were one of the asbestos uses being evaluated. In April 2019 the EPA adopted a rule to remove cement building products and certain other asbestos uses from the scope of the risk evaluation, after finding that they are not ongoing uses of asbestos. In that rule, the EPA determined that those asbestos uses would constitute significant new uses of asbestos under the TSCA and are prohibited from restarting without prior notice, review, and regulation by the EPA.

The EPA has established formalized testing methods to measure for the presence and concentration of many pollutants, including asbestos, which it is charged with regulating. The EPA's asbestos-testing methods were developed in 1993.

At the state level, the Department of Labor and Industries regulates workplace standards related to asbestos use in construction and manufacturing, while the Department of Ecology (Ecology) and local clean air agencies regulate asbestos removal from structures.

In addition, asbestos-containing building materials must be labeled consistent with state or federal standards. An asbestos-containing building material is any building material to which asbestos is deliberately added in any concentration or that contains 1 percent asbestos by weight or area. Building material includes materials designed for, or used in, construction, renovation, repair, or maintenance of institutional, commercial, public, industrial, or residential buildings and structures. Building material does not include automobiles, recreational vehicles, boats, or other mobile means of transportation. Violations of the labeling requirement are subject to civil penalties under the state Clean Air Act of up to \$10,000 per violation.

#### North American Industry Classification System.

The North American Industry Classification System (NAICS) is a standard used by federal statistical agencies for classifying business establishments. The NAICS codes for manufacturing businesses (NAICS 31-33) include manufacturers of food, beverages, tobacco products, textiles and textile products, apparel, leather and applied products, wood products, paper, printing, petroleum and coal products, chemicals, plastics, rubber, nonmetallic mineral products, primary metals, fabricated metals, machinery, computer and electronic products, transportation equipment, furniture, and other miscellaneous manufacturing.

#### **Summary of Amended Bill:**

For purposes of existing labeling laws pertaining to asbestos-containing building materials and new use restrictions on asbestos-containing building materials, beginning January 1, 2025, asbestos-containing building materials are defined to include any building material to which asbestos is deliberately added in any concentration or that contains 0.1 percent asbestos by weight or area.

The use of asbestos-containing building materials in new construction or renovations is prohibited. This prohibition does not apply to the use of asbestos-containing building materials:

- in residential construction;
- that are ordered by a contractor or in the possession of the contractor as of the effective date of the act; or
- if compliance would result in the breach of a contract in existence as of the effective date of the act.

Owners of manufacturing facilities, as identified by North American Industry Classification System codes, must perform facility inspections to determine whether asbestos-containing building materials are present. If asbestos-containing building materials are identified during the initial inspection, the owner must reinspect the facility every five years thereafter. Inspections must be carried out by persons accredited consistent with requirements established under the federal Toxic Substances Control Act.

Manufacturing facilities must also develop, maintain, and update at least every five years an asbestos management plan (plan) and keep a copy at the facility. The plan must include eight specified criteria, including a blueprint of the facility that identifies asbestos-containing materials, a description of response actions or prevention measures to reduce asbestos exposure, and a description of steps taken to inform workers of inspections and response actions. Upon request, the plan must be made available to the Department of Ecology and the Department of Labor and Industries, local air authorities under the state Clean Air Act in jurisdictions where they have been formed, and subcontractors and workers at the facility.

Violations of use restrictions on asbestos-containing building materials and of manufacturing facility inspections are subject to civil penalties under the state Clean Air Act. Violations of manufacturing facility plan requirements are subject to civil penalties under the state Clean Air Act, as well as civil and criminal penalties under the state Industrial Health and Safety Code.

A severability clause is included.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) Building materials that contain even small amounts of asbestos can cause health risks and should be labeled and restricted. Asbestos that is in industrial facilities should be monitored. Many industrial facilities have asbestos-containing materials that are at the end of their intended lifespan and are beginning to degrade. This bill does not require asbestos to be removed from facilities but does require it to be inspected and monitored.

(Opposed) None.

**Persons Testifying:** Matthew Hepner, International Brotherhood of Electrical Workers and Certified Electrical Workers of Washington; and Todd Mitchell, Washington Building Trades and Heat and Frost Insulators.

**Persons Signed In To Testify But Not Testifying:** None.