

SENATE BILL REPORT

ESSB 6473

As Amended by House, 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: Labor & Commerce: 1/20/20, 1/27/20 [DPS, DNP, w/oRec].

Floor Activity:

Passed Senate: 2/14/20, 41-6.

Passed House: 3/03/20, 96-0.

Brief Summary of Engrossed First Substitute Bill

- Prohibits, with some exceptions, the use of asbestos-containing building materials in new non-residential construction and renovations.
- Changes the threshold amount of asbestos necessary for a building material to be considered an asbestos-containing building material.
- Requires owners of manufacturing facilities to perform an inspection for asbestos-containing building materials in their facilities and to develop and maintain an asbestos management plan.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 6473 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Stanford and Wellman.

Minority Report: Do not pass.

Signed by Senators King, Ranking Member; Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senator Braun.

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.

Staff: Jarrett Sacks (786-7448)

Background: Asbestos is a naturally occurring mineral fiber found in rock and soil. Because of its strength and heat resistance, asbestos has been used as insulation and as a fire retardant.

The U.S. Environmental Protection Agency (EPA) began regulating asbestos in 1973. In 1989, EPA banned most uses of asbestos. However, that rule was overturned, which resulted in allowing most of the existing manufacture, importation, processing, or distribution for many of the products containing asbestos that were banned. The manufacture, importation, and distribution of the following products are still banned by the EPA under the Toxic Substances Control Act: corrugated paper, rollboard, commercial paper, specialty paper, flooring felt, and new commercial uses. Under the Clean Air Act, certain types of asbestos pipe insulations and spray-applied surfacing materials containing asbestos are also banned.

Asbestos Hazard Emergency Response Act. The Asbestos Hazard Emergency Response Act (AHERA) and its regulations require public and non-profit private schools to inspect school buildings for asbestos-containing building material, prepare asbestos management plans, and perform asbestos response actions to prevent or reduce asbestos hazards.

Labeling of Asbestos-Containing Building Materials. Since January 1, 2014, manufacturing, wholesaling, or distributing for sale asbestos-containing building materials without labeling them as such is prohibited. 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.

A violation of the labeling requirement is subject to the penalties under the Washington Clean Air Act up to \$10,000 per day per violation.

Summary of Engrossed First Substitute Bill: Asbestos-Containing Building Materials. The use of asbestos-containing building materials in new construction or renovations is prohibited. The prohibition on the use of asbestos-containing building materials does not apply to:

- residential construction;
- the use of asbestos-containing building materials that are already ordered or currently in the possession of a contractor; or
- the use of asbestos-containing building materials if complying with the prohibition would result in the breach of an existing contract.

The threshold amount of asbestos necessary for a building material to be considered an asbestos-containing building material is changed from 1 percent to 0.1 percent. This change takes effect January 1, 2025.

Asbestos Management Plans. Every owner of a facility engaged in manufacturing must:

- perform an inspection of the facility to determine whether asbestos-containing building materials are present and reinspect asbestos-containing building materials every three years; and
- develop, maintain, and update an asbestos management plan and keep a copy at the facility.

The asbestos management plan must be updated every three years and must include:

- the name and address of each facility and whether the facility has asbestos-containing building materials;
- the date of the original inspection;
- a plan for reinspections;
- a blueprint of the facility clearly identifying the location of asbestos-containing building materials;
- a description of any response action or prevention measures taken to reduce asbestos exposure;
- a copy of the analysis of a building or facility;
- the contact information of a designated person who ensures the duties of the owner are carried out;
- a description of steps taken to inform workers about inspections, reinspections, response actions, and periodic surveillance of asbestos-containing building materials.

The asbestos management plan must be made available to the Department of Ecology, the Department of Labor and Industries, local air authorities, and any interested party upon request. An interested party is any contractor, subcontractor, or worker that performs, or is reasonably expected to perform, work at a manufacturing facility covered under the bill, or any organization whose members perform, or are reasonably expected to perform, work at these facilities.

In addition to the penalties under the Washington Clean Air Act, failure to create or maintain an asbestos management plan is subject to penalties under the Washington Industrial Safety and Health Act.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: There are still many permissible uses of asbestos and current installations will deteriorate. Use of asbestos is a threat to workers at facilities. The bill is modeled after the requirements for public schools, which works well for inventorying materials that contain asbestos. Currently, building materials contain asbestos without people knowing because they are under the 1 percent threshold. Lowering the threshold will increase knowledge and protect workers. The bill will lower exposure to asbestos.

Persons Testifying: PRO: Senator Derek Stanford, Prime Sponsor; Neil Heartman, Washington State Board for Community and Technical Colleges; Todd Mitchell, Heat & Frost Insulators; Bob Chiovarie, International Association of Asbestos Workers.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S): The effective date of the change to the percentage threshold required for a building material to be considered asbestos-containing is changed to January 1, 2025. The effective date of the restriction on the use of asbestos-containing building materials is changed from January 1, 2025, to 90 days after adjournment of the session in which the bill is passed. Periodic reinspection of facilities are required only if asbestos-containing building materials are identified during the initial inspection. Reinspections and updates to the asbestos management plan are required every five years instead of every three years. A severability clause is added and technical and clarifying changes are made.