

HOUSE BILL REPORT

HB 1857

As Reported by House Committee On:
Environment & Energy

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

Brief Description: Concerning asbestos-containing building materials.

Sponsors: Representatives Ley, Doglio, Dye and Parshley.

Brief History:

Committee Activity:

Environment & Energy: 2/11/25, 2/18/25 [DPS].

Brief Summary of Substitute Bill

- Exempts certain commercial aggregates that contain asbestos from restrictions pertaining to labeling requirements and the use of asbestos-containing building materials.
- Exempts certain facility owners from asbestos inspection, management, and reporting requirements for commercial aggregates that contain asbestos.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 21 members: Representatives Doglio, Chair; Hunt, Vice Chair; Dye, Ranking Minority Member; Klicker, Assistant Ranking Member; Abbarno, Abell, Barnard, Berry, Duerr, Fey, Fitzgibbon, Kloba, Ley, Mena, Mendoza, Ramel, Stearns, Street, Stuebe, Wylie and Ybarra.

Staff: Srinandan Ramachandran (786-7291) and Matt Sterling (786-7289).

Background:

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

Asbestos.

Asbestos is a naturally occurring mineral fiber found in rock and soil. The federal 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 in building materials, and is also found as a naturally occurring contaminant in deposits of other mineral types used for commercial purposes.

Federal 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 (OSHA) 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 introduced a phased 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 there 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.

Washington Asbestos Regulations.

In Washington, the Department of Labor and Industries (L&I) regulates workplace

standards related to asbestos use in construction and manufacturing, while the Department of Ecology (Ecology) and local clean air agencies may regulate asbestos removal from structures.

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

- in residential construction;
- that are already ordered by a contractor or in the possession of the contractor; or
- if compliance would result in the breach of a contract.

Manufacturing, wholesaling, or distributing for sale asbestos-containing building materials in Washington without labeling them as such is prohibited. Asbestos-containing building materials means any building material to which asbestos is deliberately added in any concentration or that contains 0.1 percent asbestos by weight or area. Manufacturers, wholesalers, and distributors may submit a written request for an exemption from labeling. Ecology may grant such an exemption if it determines that the labeling requirements are technically infeasible or create an undue economic hardship. Each exemption may be in effect for no more than three years and is subject to the terms and conditions prescribed by Ecology. Violations of the labeling requirement are subject to civil penalties under the state Clean Air Act of up to \$10,000 per violation.

Owners of certain manufacturing facilities must perform facility inspections to determine whether asbestos-containing building materials are present. If asbestos-containing building materials are identified during an 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 TSCA.

Additionally, manufacturing facilities must develop, maintain, and update an asbestos management plan. A copy of this plan must be kept at the facility and include specified criteria. Upon request, the required plan must be made available to Ecology and L&I, 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.

Summary of Substitute Bill:

Commercial aggregates are exempted from the prohibition on:

- manufacturing, wholesaling, or distributing for sale asbestos-containing building materials without labeling them if their asbestos content is 0.25 percent or lower; and
- the use of asbestos-containing building materials in new construction or renovations.

Owners of certain manufacturing facilities are not required to inspect their facility to determine whether commercial aggregates are present. These facilities are also exempt from the requirement to create an asbestos management plan for commercial aggregates, as well as the regulations regarding a management plan.

Commercial aggregates means mixtures of mineral fragments, sand, gravel, rocks, cobbles, and stones that are used in construction or the production of asphalt concrete, Portland cement concrete, or other similarly cemented materials.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the bill:

- expands the definition of commercial aggregates to include mixtures of certain substances used in construction; and
- exempts commercial aggregates from restrictions on labeling asbestos-containing building materials if their asbestos content is 0.25 percent or lower.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute 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) This bill is a necessary correction in response to unintended consequences of prior asbestos regulations, which failed to account for naturally occurring asbestos in rocks and soils. The current standard increases construction costs amid a housing affordability crisis. This bill will align state asbestos regulations with other states.

(Opposed) This bill needs additional guardrails, as commercial aggregates or asphalt and concrete materials with high amounts of asbestos could theoretically be allowed, which threatens public health.

Persons Testifying: (In support) Representative John Ley, prime sponsor; Michael Transue, WA Aggregate and Concrete Association; and Ray Dumas, OPCMIA - Cement Masons and Plasterers Local Union 528.

(Opposed) Heather Trim, Zero Waste Washington.

Persons Signed In To Testify But Not Testifying: None.