



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #601

Air Asbestos Inspection Fees and Staff (DNR -- Air, Waste, and Contaminated Land)

[LFB 2009-11 Budget Summary: Page 490, #11]

CURRENT LAW

The Department of Natural Resources (DNR) administers regulations for asbestos abatement performed as part of nonresidential demolition and renovation activities at locations such as school, industrial and commercial facilities. Persons must notify DNR before they perform asbestos abatement and must pay fees for a combined asbestos inspection and construction permit exemption permit review fee. The fees are established in administrative rule, and cannot exceed specified statutory maximums.

In 2008-09, DNR is authorized \$464,100 PR and 2.0 PR positions from asbestos abatement fees. In 2007-08, DNR received \$370,100 in asbestos abatement fees and spent \$319,600 PR on the program. DNR also allocates 2.0 positions funded from federal U.S. Environmental Protection Agency air program grants to asbestos abatement activities.

GOVERNOR

Convert \$120,400 and 2.0 positions, beginning in 2010-11, from federal funding to air management asbestos inspection program revenue fees.

Increase asbestos fees for asbestos abatement performed as part of nonresidential demolition and renovation projects. The administration estimates the fee increases would generate revenue of \$257,000 annually, beginning in 2010-11. The fee increases would include: (a) increase the statutory maximum fee for a combined asbestos inspection fee and construction permit exemption review fee from \$400 to \$700 if the combined square and linear footage of friable (readily crumbled or brittle) asbestos-containing material involved in the project is less

than 5,000; (b) increase the statutory maximum combined fee from \$750 to \$1,325 if the combined square and linear footage is equal to or greater than 5,000 (the actual fee amounts for (a) and (b) would be established in administrative rule and could not exceed the statutory maximum); (c) create a \$100 fee for DNR inspection of a property proposed to be used for a community fire safety training project for which the Department requires inspection; (d) create a \$100 fee for DNR review of a revised notice of an asbestos renovation or demolition activity; and (e) create a requirement for payment of a fee equal to the fee under (a) or (b) (in addition to requiring the fee under (a) or (b)) for DNR inspection of a property for which an advance notice of asbestos renovation or demolition was not made as required.

DISCUSSION POINTS

1. The federal Environmental Protection Agency (EPA) regulates asbestos as a hazardous air pollutant, and classifies it as a known carcinogen that can cause lung disease and cancer. EPA delegates responsibility for administering asbestos abatement regulations in Wisconsin to DNR.

2. Persons who remove asbestos-containing material as part of demolition or certain renovations must follow asbestos abatement regulations to minimize the release of asbestos fibers into the air. Persons must notify DNR before they perform the asbestos abatement activities, must submit an asbestos inspection fee, and for projects over a certain size, must also submit a construction permit exemption fee. In order to be exempt from the requirement that new, modified, reconstructed or replaced air pollutant sources obtain an air construction permit before construction, projects where asbestos abatement is at least 160 square feet or 260 linear feet must pay a construction permit exemption fee. While the actual inspection and permit exemption fees are established in administrative rule, they cannot exceed statutory maximums for the combined fee, based on size of the project (square feet or linear feet of asbestos-containing material).

3. DNR air management program staff inspect asbestos abatement activities, oversee contracts with municipalities that conduct inspections of asbestos abatement activities, provide training in proper asbestos abatement, manage compliance and enforcement efforts, respond to complaints, and assist the Department of Administration in maintaining compliance with federal asbestos abatement regulations at demolition or renovation activities conducted at state-owned facilities. DNR is converting the asbestos notification system to an Internet-based automated system with electronic payment, with partial funding from EPA. DNR is authorized to issue citations for certain asbestos abatement violations, and to refer more serious violations to the Department of Justice (DOJ) for enforcement action.

4. Asbestos inspection fees fund 2.0 positions, including a central office coordinator and a Southeast Region air management specialist. Two, half-time limited term employees (LTEs) also perform inspections in the western half and eastern half of the state. In addition to the 2.0 positions and LTEs funded from PR fees, DNR has also allocated 2.0 to 4.0 federally-funded staff for asbestos abatement activities since at least 2000-01. DNR currently allocates 2.0 staff paid from federal EPA air program grants to asbestos abatement activities, for total work effort of

approximately 5.0 FTE (full-time equivalent) staff.

5. Table 1 shows anticipated revenues and expenditures in the asbestos abatement appropriation under the bill. It is expected the appropriation account balance will be approximately \$186,900 on June 30, 2011. Table 1 shows that expenditures have been less than authorized in order to remain within available revenue. While the Governor's recommendation would increase expenditure authority by \$120,400 in 2010-11 to convert 2.0 FED positions to PR from asbestos fees, anticipated expenditure increases would be approximately \$256,000 (\$120,400 under the bill, and \$135,600 in base authority not currently utilized), which is close to the \$257,000 in proposed fee increases in 2010-11. The expenditure increases other than for the 2.0 positions, would total \$135,600, and would be for contracts with local governments for asbestos inspections (\$34,400), a contract with DOJ for enforcement (\$10,000), supplies costs for the new positions (\$8,000), and the program's allocated share of Departmental rent, computer, and phone charges (\$10,000). The remaining \$73,200 in increased expenditures has not been budgeted.

TABLE 1

Asbestos Abatement Program Revenues and Expenditures

	2007-08 <u>Actual</u>	2008-09 <u>Base</u>	2009-10 <u>AB 75</u>	2010-11 <u>AB 75</u>
Opening Balance	\$121,729	\$172,200	\$186,100	\$176,500
Revenue	<u>370,092</u>	<u>330,000</u>	<u>330,000</u>	<u>587,000</u>
Total available	\$491,821	\$502,200	\$516,100	\$763,500
Expenditures				
Permanent salary and fringe	\$132,933	\$163,700	\$168,300	\$288,700
LTE salary and fringe	45,081	56,600	56,600	56,600
Supplies for permanent and LTE staff	14,807	13,000	13,000	21,000
Contracts with local governments	39,150	10,600	15,600	50,000
Contracts with DOJ for enforcement	57,172	68,000	78,000	88,000
Badger Army plant inspections	11,318	9,000	9,000	9,000
Other supplies	19,160	10,000	10,000	20,000
Other authorized but unallocated expenditures	<u>140,679</u>	<u>133,200</u>	<u>135,500</u>	<u>73,200</u>
Authorized Expenditures	\$460,300*	\$464,100	\$486,100	\$606,500
Planned expenditure reductions	<u>-140,679</u>	<u>-148,000</u>	<u>-151,000</u>	<u>-34,500</u>
Total Expenditures	\$319,621	\$316,100	\$335,100	\$572,000
Transfer to the general fund	0	0	-4,600	-4,600
Closing Balance	\$172,200	\$186,100	\$176,500	\$186,900

* 2007-08 expenditures are actual amounts.

6. DNR receives approximately 2,650 notifications for asbestos abatement and

demolition projects annually. DNR staff, and counties and municipalities under contract with DNR, inspect approximately 400 asbestos abatement projects annually. DNR reviews asbestos notifications and informs local government contract agencies that serve the geographic area where the asbestos abatement project is located. The local contract agencies perform any needed asbestos abatement inspections. Any potential enforcement issues discovered during inspections by the contract agencies are investigated and resolved by DNR.

7. Table 2 shows the current and anticipated allocations for local inspection contracts. Contract amounts totaled at least \$120,000 annually in 2002 through 2006, and have declined to \$39,150 in 2007-08, to anticipated expenditures of \$10,600 in 2008-09. DNR LTEs perform some inspections, and DNR is also contracting for Badger Army Ammunition Plant inspections and with DOJ for enforcement activities. DNR anticipates the fee increases under the bill would provide sufficient revenue to increase the amount spent on contracts with municipalities for asbestos inspections to approximately \$50,000 in 2010-11.

TABLE 2

DNR Asbestos Inspection Contracts with Municipalities

	<u>2007-08</u>	<u>2008-09</u>	AB 75 Estimated <u>2009-10</u>	AB 75 Estimated <u>2010-11</u>
City of Milwaukee	\$11,650	\$2,563	\$2,600	\$5,000
City of Menasha (also includes Winnebago County in 2007-08, plus Outagamie and Calumet counties beginning in 2008-09)	10,000	5,000	5,000	10,000
Taylor County	2,500	0	0	0
Sauk County (also includes Dane, Adams, and Juneau counties)	10,000	5,000	5,000	10,000
Waushara County (also includes Dodge, Green Lake, and Marquette counties)	5,000	0	3,000	10,000
City of Watertown	6,000	0	0	0
Other Interested Municipalities	<u>0</u>	<u>0</u>	<u>0</u>	<u>15,000</u>
Total Contract Amounts	\$45,150	\$12,563	\$15,600	\$50,000
Actual / Estimated Expenditures	\$39,150	\$10,600	\$15,600	\$50,000

8. DNR officials indicate federal air program grants are expected to be insufficient to continue funding asbestos abatement activities and the 2.0 federal positions after 2009-10. The Department indicates it will need to reallocate the federal funds to core program activities such as ozone monitoring, and regulation of particulate matter and air toxics.

9. The statutory maximum asbestos abatement fees were increased in 2003 Act 33, and administrative rules were implemented with the current fee levels effective July 1, 2005. Asbestos revenues increased from \$265,000 in 2004-05 (before fees were increased), to \$370,000 in 2007-08, an increase of \$105,000.

10. The current asbestos abatement fee revenues would be insufficient to fund the two federal positions. DNR officials indicate the increased fee amounts and the new fees are intended to: (a) maintain the current level of staffing by using fee revenues to pay asbestos staff costs currently paid by the federal grant; (b) increase the amount of asbestos inspection contracts with local governments; and (c) create fees for activities for which there is current DNR workload but no fee is charged.

11. The statutory maximum fees were increased to the current level in the 2003-05 biennial budget. At that time, it was anticipated the fee increases would generate \$165,000 of additional revenue annually. Rule changes increased the combined fees effective July 1, 2005, and have generated revenues of approximately \$60,000 to \$100,000 per year.

12. Table 3 shows the current and proposed fees under the bill, and estimated revenues under the increased fee levels of approximately \$257,000 in 2010-11. DNR officials indicate the Department would promulgate administrative rule changes to be effective by approximately July 1, 2010, with the fee amounts shown in Table 3. The fees would be equal to the proposed statutory maximums for large and extra large projects, with lesser amounts for small and medium projects.

TABLE 3

Asbestos Combined Inspection and Permit Exemption Fees

<u>Size of Asbestos Project</u>	<u>Combined Fee Before July, 2005</u>	<u>Current Fee (set in rule)</u>	<u>Current Statutory Maximum Fee</u>	<u>DNR's Anticipated Fee (set in rule)</u>	<u>Proposed Statutory Maximum Fee</u>	<u>% Change Anticipated to Fee in Rule</u>	<u>Estimated Total Revenue 2010-11</u>
Small (< 160 square feet, 260 linear feet)	\$50	\$75	\$400	\$135	\$700	80%	\$134,000
Medium (= or > 160 square feet, 260 linear feet and < 1,000 combined feet)	150	225	400	400	700	78%	148,400
Large (= or > 1,000 and < 5,000 combined feet)	335	400	400	700	700	75%	114,100
Extra large (= or > 5,000 combined feet)	335	750	750	1,325	1,325	77%	119,300
Notification revision	0	0	0	100*	NA	new	56,000
Community fire safety training burn	0	0	0	100*	NA	new	<u>15,200</u>
Total Revenue Under Bill							\$587,000
Less Revenue Under Current Law							-\$330,000
Estimated Revenue Increase							\$257,000

*This new fee under AB 75 would be set in statutes.

13. DNR indicates the new \$100 fee for notification revisions is intended to recover some of the costs associated with the administrative workload of reviewing the revised notifications and potentially inspecting the revised project. DNR estimates approximately one-third of notifications are later revised, and would pay the new fee. Currently, revised projects pay a higher fee only if the revision moves project into a larger fee category (such as from medium to large).

The \$100 fee could be viewed as a way of paying for three to five hours of DNR staff time to ensure the revised project meets asbestos abatement requirements. Alternatively, some might view the fee as high, or unnecessary, when a project is already subject to initial project fees. It is also uncertain whether the revision fee would provide a disincentive for people to notify DNR of changes to a project. However, the bill and new fee would not change the requirement that people submit notifications of revisions.

14. DNR officials indicate the new \$100 fee for community fire safety training burns if the Department requires an inspection is also intended to recover some of the costs associated with DNR review and inspection of these projects. Residential asbestos abatement is not regulated by DNR. However, when a building, typically a house, is burned by a fire department as a training exercise, it is regulated by DNR, and all the asbestos must be removed before the building is burned. If DNR requires an inspection, the \$100 fee could be viewed as paying for three to five hours of DNR staff time for the inspection. The fee could be viewed as a burden for local fire departments. However, currently, fees paid for other asbestos abatement projects subsidize the DNR's costs of performing inspections at community fire safety training burns.

15. The revenue provided in the bill would be anticipated to pay for converting the two federal positions to funding from asbestos fees and to increase inspection and enforcement. Table 3 shows the increases of existing fees would equal 75 to 80%. Some might view this as too large a fee increase in difficult financial times. The fees could be increased by a lesser amount to provide enough to convert the positions from FED to PR or pay for some contracts for inspection, or a combination, but not all of the \$256,000 in expenditure increases anticipated under the bill. For example, the statutory maximum fees could be increased by 45%, to \$580 (instead of \$400 currently and \$700 under the bill) for projects where the combined square and linear footage of the asbestos-containing material is less than 5,000, or \$1,090 for larger projects (instead of \$750 currently and \$1,325 under the bill). In addition, the new fees for notification revisions and fire safety training burns could be set at lower amounts than in the bill, for example \$50 instead of \$100. This option for fee increases would generate revenue of approximately \$130,000 instead of \$257,000 under the bill (Alternative 2). Total revenue to the appropriation would be approximately \$460,000 in 2010-11. The two positions could be converted from FED to PR, but the \$120,400 provided under the bill may not be needed. Without the \$120,400, the remaining \$486,100 in expenditure authority would be sufficient to fund all four positions (but not additional inspection contracts and enforcement work).

16. Another example of a lower fee increase than under the bill would be to increase the fees by an amount anticipated to be sufficient to fund the positions and some additional inspection contracts and enforcement work. The statutory maximum fees could be increased by 60%, to \$640 (instead of \$400 currently and \$700 under the bill) for projects where the combined square and linear footage of the asbestos-containing material is less than 5,000, or \$1,200 for larger projects (instead of \$750 currently and \$1,325 under the bill). In addition, the new fees for notification revisions and fire safety training burns could be set at \$75 instead of \$100. This option for fee increases would generate revenue of approximately \$190,000 instead of \$257,000 under the bill (Alternative 3). Total revenue to the appropriation would be approximately \$520,000 in 2010-11. The two positions could be converted from FED to PR, and \$47,200 added in expenditure authority,

a reduction of \$73,200 to the \$120,400 provided under the bill. Alternative 3 would provide \$533,300 in expenditure authority in 2010-11 and would be expected to be sufficient to fund the two positions and the planned additional inspection and enforcement work. This would equal the 2010-11 budgeted amounts in Table 1 (less the \$73,200 shown as unallocated).

17. If the Governor's recommended fee increase is not approved, and if DNR does not obtain increases in federal grants to fund asbestos abatement activities, the level of DNR effort on asbestos abatement activities would decrease from 5.0 to 3.0 (two permanent positions from PR and two half-time LTEs). In addition, DNR would have to limit expenditures for local inspection contracts, DOJ costs of enforcement, and LTEs to available revenues. There would not be sufficient program revenues to fund the two federal positions, so the conversion of the positions could be deleted (Alternative 4). In addition, it is anticipated there would not be sufficient federal revenue to continue funding the positions, so the positions could be deleted instead of being restored as federal positions (Alternative 5).

ALTERNATIVES

1. Approve the Governor's recommendation to: (a) convert \$120,400 and 2.0 positions from FED to air asbestos PR fees, beginning in 2010-11; (b) increase the statutory maximum fee for a combined asbestos inspection fee and construction permit exemption review fee from \$400 to \$700 if the combined square and linear footage of friable asbestos-containing material involved in the project is less than 5,000; (c) increase the statutory maximum combined fee from \$750 to \$1,325 if the combined square and linear footage is equal to or greater than 5,000; (d) create a \$100 fee for DNR inspection of a property proposed to be used for a community fire safety training project for which the Department requires inspection; (e) create a \$100 fee for DNR review of a revised notice of an asbestos renovation or demolition activity; and (f) create a requirement for double the payment of the fee under (b) or (c) for DNR inspection of a property for which an advance notice of asbestos renovation or demolition was not made as required. The fee increases would generate revenue of approximately \$257,000 beginning in 2010-11.

2. Approve the following: (a) delete \$120,400 FED and 2.0 FED positions and provide 2.0 PR positions (but no PR expenditure authority increase), beginning in 2010-11; (b) increase the statutory maximum fee for a combined asbestos inspection fee and construction permit exemption review fee from \$400 to \$580 (instead of \$700 under the bill) if the combined square and linear footage of friable asbestos-containing material involved in the project is less than 5,000; (c) increase the statutory maximum combined fee from \$750 to \$1,090 (instead of \$1,325 under the bill) if the combined square and linear footage is equal to or greater than 5,000; (d) create a \$50 fee (instead of \$100 under the bill) for DNR inspection of a property proposed to be used for a community fire safety training project for which the Department requires inspection; (e) create a \$50 fee (instead of \$100 under the bill) for DNR review of a revised notice of an asbestos renovation or demolition activity; and (f) create a requirement for double the payment of the fee under (b) or (c) for DNR inspection of a property for which an advance notice of asbestos renovation or demolition was not made as required. The fee increases would generate revenue of approximately \$130,000 beginning in 2010-11.

ALT 2	Change to Bill	
	Revenue	Funding
PR	- \$127,000	- \$120,400

3. Approve the following: (a) delete \$120,400 FED and 2.0 FED positions and provide \$47,200 PR and 2.0 PR positions, beginning in 2010-11; (b) increase the statutory maximum fee for a combined asbestos inspection fee and construction permit exemption review fee from \$400 to \$640 (instead of \$700 under the bill) if the combined square and linear footage of friable asbestos-containing material involved in the project is less than 5,000; (c) increase the statutory maximum combined fee from \$750 to \$1,200 (instead of \$1,325 under the bill) if the combined square and linear footage is equal to or greater than 5,000; (d) create a \$75 fee (instead of \$100 under the bill) for DNR inspection of a property proposed to be used for a community fire safety training project for which the Department requires inspection; (e) create a \$75 fee (instead of \$100 under the bill) for DNR review of a revised notice of an asbestos renovation or demolition activity; and (f) create a requirement for double the payment of the fee under (b) or (c) for DNR inspection of a property for which an advance notice of asbestos renovation or demolition was not made as required. The fee increases would generate revenue of approximately \$190,000 beginning in 2010-11.

ALT 3	Change to Bill	
	Revenue	Funding
PR	- \$67,000	- \$73,200

4. Delete provision. (The federal positions would be restored, but it is anticipated there would be insufficient revenue to fund them.)

ALT 4	Change to Bill		
	Revenue	Funding	Positions
FED	\$0	\$120,400	2.00
PR	<u>- 257,000</u>	<u>- 120,400</u>	<u>- 2.00</u>
Total	- \$257,000	\$0	0.00

5. Delete the conversion of the positions from FED to PR and the fee increases. In addition, delete the federal positions.

ALT 5	Change to Bill		
	Revenue	Funding	Positions
PR	- \$257,000	- \$120,400	- 2.00

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