



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

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TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 325: Indoor Environmental Quality in Schools

Senate Bill 325 contains provisions related to indoor environmental quality in public elementary and secondary schools in the state and creates an Indoor Environmental Quality in Schools Task Force attached to the Department of Commerce. SB 325 was introduced on September 9, 2005, and referred to the Senate Committee on Housing and Financial Institutions. On October 13, 2005, the Committee recommended passage by a vote of 6 to 1. On October 27, 2005, SB 325 was referred to the Joint Committee on Finance.

CURRENT LAW

The Department of Commerce administers statutes and the commercial building code related to the safety of public buildings and places of employment. Commerce reviews plans for the construction of, alteration to, or addition to, a public building for compliance with the commercial building code before construction begins. A public building is a building that is used by the public. A place of employment is a place where a person is employed by another person (except private domestic service or farming). Commerce has delegated part of the building plan review for public buildings and places of employment to 149 local governments, and commercial building inspection but not plan review to an additional 17 municipalities. The cities of Milwaukee and Madison are the only municipalities that are fully delegated the review of building plans and review all school building plans within their jurisdictions. Other municipalities with delegated authority, review the following building plans: (a) new buildings containing less than 50,000 cubic feet total volume; (b) additions to existing buildings where the total volume after construction of the addition is less than 50,000 cubic feet; (c) additions to existing buildings containing no more than 2,500 square feet, no more than one floor level, an 18-foot maximum roof span and 12-foot maximum exterior wall height; and (d) alterations to existing buildings where the area of altered

space is less than 100,000 cubic feet total volume. Commerce reviews many of the school building plans in these delegated municipalities, and all of the school building plans in non-delegated municipalities.

Commerce also administers statutes related to: (a) indoor smoking prohibitions in certain buildings, including specification of characteristics of signs used to designate smoking areas; and (b) the requirement that employers provide information to employees about toxic substances and infectious agents in the workplace.

A school board is required to: (a) provide safe and healthful facilities, in compliance with statutes and rules under the Department of Health and Family Services related to toxic substances such as lead paint and asbestos; (b) keep school property in good repair and establish an annual building maintenance schedule; and (c) contract with or employ architects and engineers to prepare plans and specifications for school buildings, structures and other improvements to school district property. If it is determined that a school is not in compliance with building and safety regulations, upon the order of the State Superintendent, school boards must repair, remodel, improve, or close a school building by a stated date.

The Department of Health and Family Services is required to administer certain provisions related to indoor air quality, including: (a) investigate illness or disease outbreaks suspected of being caused by poor indoor air quality, and promote or require control measures if indoor air quality is established as the cause of illness or disease outbreaks; (b) assist local health departments in the adoption of regulations that establish standards for indoor air quality in public buildings from adverse health effects due to exposure to chemical or biological contaminants; (c) provide training and technical support to local health departments for conducting indoor air quality testing and investigations; and (d) assist Commerce with the enforcement of indoor smoking requirements.

SUMMARY OF BILL

SB 325 would create several provisions related to indoor environmental quality in public elementary and secondary schools in the state.

Indoor Environmental Quality in Schools Task Force

SB 325 would direct the Secretary of Commerce to establish an “Indoor Environmental Quality in Schools Task Force” that would be required to do all of the following: (a) advise Commerce in the development of an indoor environmental quality in schools management plan (described in a subsequent section); (b) recommend indoor environmental quality training requirements for school district employees who are responsible for the operation and maintenance of school buildings and for other school district employees, and a schedule for implementation of those training requirements; (c) recommend educational materials relating to indoor environmental quality in schools and develop guidelines for making that information available to students, parents, guardians, legal custodians, teachers, and other school district employees; (d) identify interim

changes that can be readily implemented by school boards to improve indoor environmental quality in schools pending full compliance with the indoor environmental quality in schools management plan; (e) identify the need for additional resources and authority for school boards so as to promote good indoor environmental quality for students, teachers, and other school employees; (f) recommend for promulgation by the Department, rules to implement the bill; and (g) upon completion of its duties, report its findings and recommendations to the Governor and the Legislature, for distribution to the appropriate standing committees. The bill does not include a deadline for the Task Force to submit its report to the Governor and Legislature.

The Task Force would cease to exist on the date on which Commerce promulgates rules to implement the bill, unless the Secretary of Commerce determines that the operations of the Department require the Task Force to continue in existence after that date.

The Task Force would consist of 13 members, including: (a) the Secretary of Commerce or designee; (b) the Secretary of the Department of Health and Family Services or designee; (c) the Secretary of the Department of Agriculture, Trade and Consumer Protection or designee; (d) the State Superintendent of Public Instruction or designee; (e) a member of the Assembly appointed by the Speaker; (f) a member of the Senate appointed by the Majority Leader; (g) a representative of the Wisconsin Association of School Boards; (h) a representative of the largest statewide labor organization representing teachers; (i) a representative of a nonprofit concerned with public health; (j) a registered architect or professional engineer who is actively engaged in the practice of school design and construction; (k) a contractor actively engaged in school construction; and (L) two members who have expertise in indoor environmental quality. The Secretary of Commerce would appoint the seven members in (g) through (L). The Secretary would also appoint or determine the method of appointment of the officers of the Task Force and call the first meeting of the Task Force.

Commerce would be required to provide administrative support services to the Task Force. The Task Force could call upon the Department of Health and Family Services, the Department of Agriculture, Trade and Consumer Protection, or any other state agency or officer to assist the Task Force. The requested agencies or officers would be required to cooperate with the Task Force to the fullest extent possible. Commerce would be authorized to contract with professionals who are knowledgeable and experienced in indoor environmental quality management to assist the Task Force in performing its duties. Finally, Commerce would be required to provide a copy of the Task Force's report of findings and recommendations to each school district administrator and to the principal of each public school in the state, and to post the report on the Internet.

The Department of Administration (DOA) would be required to reimburse members of the Task Force for their actual and necessary expenses incurred in carrying out their functions. DOA would be authorized to spend up to \$2,000 per fiscal year for these expenses under s. 16.40 (14), or more, if submitted to and approved by the Joint Committee on Finance. A technical amendment would be required to change the DOA appropriation used to pay the expenses from a general purpose revenue (GPR) appropriation that was repealed in 2005 Wisconsin Act 25 (s. 20.505

(4)(ba)) to the program revenue (PR) appropriation (s. 20.505 (1)(ka)) that, under Act 25, is utilized to pay the expenses of committees created by law or executive order. Revenues to the PR appropriation are received from DOA assessments to state agencies, and are used to pay expenses of committees created by law or executive order. DOA could choose to specifically assess Commerce for the expenses of the Task Force, but would not be required to, and could choose to incorporate the assessment into the broader assessments made by DOA to state agencies under the appropriation.

Management Plan, Training and Information

SB 325 would require Commerce to establish a management plan to improve indoor environmental quality in schools. The Department would be required to establish the plan by the first day of the 12th month beginning after the month in which the Task Force submits its report to the Legislature and Governor. However, as mentioned in the previous section on the Task Force duties, there is no deadline for the Task Force to submit its report. Thus, it is unknown when the Commerce management plan would need to be established.

Commerce would be required to establish indoor environmental quality training requirements for school maintenance employees and a schedule for the implementation of those training requirements by the first day of the 12th month beginning after the month in which the Task Force submits its report to the Legislature and Governor. The Department would also be required, beginning on the first day of the 12th month beginning after the month in which the Department establishes the management plan, to make available in printed format and by the Internet, educational materials regarding indoor environmental quality in schools and a summary of the management plan to all students enrolled in each school district, to the parents, guardians, and legal custodians of those students, and to all teachers and other employees of each school district.

The school board of each school district would be required to ensure that each school building under the control of the school board is in compliance with the management plan by the first day of the 12th month beginning after the month in which the Department establishes the management plan. This would be up to two years after the Task Force submits its report.

A school board that becomes aware of any information concerning the indoor environmental quality of a specific school building, including test results, would be required to make that information available to all students assigned to the school building, the parents, guardians, and legal custodians of those students, and all teachers and other employees assigned to the school building. The effective date for this provision would be the general effective date of the bill, which is the first day of the second month beginning after publication of the act.

The Department of Health and Family Services would be required to assist Commerce with the enforcement of the indoor environmental quality provisions created in the bill.

The new indoor environmental quality in schools section of Commerce statutes is created as s. 101.29 under the bill, but it is referred to as s. 101.129 in several places. The Senate Chief Clerk has reported that the Legislative Reference Bureau made a correction to address these references.

School Building Construction, Additions, and Alterations

The bill would require a school board to include a provision related to indoor environmental quality in a contract for the preparation of plans and specifications for: (a) the construction of a new school building; (b) a structural addition to an existing school building; or (c) an alteration to an existing school building that will cause a material change to the mechanical systems and equipment of that building. The provision would be required to ensure that the design of the new building, addition, or alteration facilitates: (a) good indoor environmental quality for all occupants of the spaces affected by the design in accordance with the management plan established by Commerce; and (b) operation and maintenance of the spaces, systems, and equipment affected by the design in a manner that promotes good indoor environmental quality in accordance with the management plan.

A school board, before approving a contract for the construction of, addition to or alteration to a school building, would be required to determine that the plan and schedule for the construction, addition, or alteration consider and address: (a) concerns about indoor environmental quality during the construction process; (b) the transfer from the designers and builders to school maintenance employees of information necessary for the proper operation and maintenance of the new building, addition, or alteration and its systems and equipment so as to promote good indoor environmental quality in accordance with the management plan established by Commerce; and (c) the implementation of proper commissioning procedures, including testing of any new systems or equipment, before occupancy of the spaces affected by the project. The provisions related to school board inclusion of design components in building plans and contracts for construction of, addition to, or alteration to a school building would take effect on the first day of the second month beginning after publication, which means the school district would have to develop contracts and approve plans in accordance with the management plan at least a year before the management plan would go into effect.

Before Commerce, or any local government that is authorized by the Department to examine plans for public buildings, could approve the plans for the construction of, addition to, or alteration to a school building, Commerce or the authorized local government would have to determine that the design of the new building, addition, or alteration facilitates good indoor environmental quality for the occupants of the spaces affected by the design in accordance with the management plan before the Department or political subdivision may approve those plans. The provision would first apply to essential drawings, calculations, and specifications submitted to Commerce or the authorized local government on the general effective date of the bill, which would be the first day of the second month beginning after publication. However, this means that the submitted plans would have to be done in accordance with the management plan at least a year before the management plan would go into effect.

Commerce would be required to notify the school board if the school board is not in compliance with the bill and to make that information available, in printed format and by the Internet, to the students assigned to a school building, the parents, guardians, and legal custodians of those students, all teachers and other employees assigned to a school building, and the general public if the department determines that the noncompliance poses a risk to the health and safety of the occupants of any school building. The notice of noncompliance section would be effective on the general effective date of the bill, which is the first day of the second month beginning after publication. This means that Commerce would be required to begin notifying school boards of noncompliance with the management plan at least a year before the Department establishes the management plan.

The bill would clarify the requirement that school boards provide safe and healthful facilities, in compliance with DHFS statutes and rules related to toxic substances such as lead paint and asbestos, by also include a cross reference requirement under the school board statutes that the facilities comply with general building code provisions for public buildings, electrical codes, plumbing codes, fire protection system requirements and swimming pool requirements (subchapters I and IV of Chapter 101 and Chapter 145 of the statutes). The cross-referenced building code and safety statutes currently require that all public buildings meet the code requirements, and include school buildings in those requirements.

Commerce would be required to promulgate administrative rules to implement the bill. The Secretary of Commerce would be authorized to request the Department of Health and Family Services, the Department of Agriculture, Trade and Consumer Protection, or any other state agency or officer to provide expertise, technical assistance, or other resources to assist Commerce in administering the provisions. Other state agencies and officers would be required to cooperate with Commerce to the fullest extent possible. If any provision of the bill or any rule promulgated to implement the bill would conflict with any other law, rule, or ordinance relating to the health and safety of school buildings, the more stringent provision would prevail.

FISCAL EFFECT

SB 325 does not appropriate funds to any state agency for implementation of the bill. The bill would specify that a DOA appropriation would be used to reimburse Task Force members for their actual and necessary expenses incurred in carrying out their functions. As mentioned earlier, a technical amendment would be required to reference the program revenue appropriation, rather than the GPR appropriation that was repealed in 2005 Act 25. DOA could assess state agencies for the costs of providing the reimbursements to Task Force members. While DOA could choose to specifically assess Commerce for the expenses of the Task Force, it would not be required to, and could choose to incorporate the assessment into the broader assessments made by DOA to state agencies under the appropriation.

Department of Commerce

Commerce submitted a fiscal estimate that indicates that a portion of workload impacts could be absorbed within current resources. These workload and cost changes include: (a) Commerce would have to develop and make materials available to school boards, school employees, parents and students, regarding indoor environmental quality, the management plan, and non-compliance with the provisions of the bill; (b) Commerce would have to promulgate rules to administer the bill and provide staff assistance to the Indoor Environmental Quality in Schools Task Force; (c) the Department would have to expand its current review of approximately 80 plans annually for public elementary and secondary school projects to determine compliance with requirements of building code and heating, ventilating, and air conditioning (HVAC) codes. Commerce estimates that review of school building plans for indoor environmental quality and for conformance with the management plan would require approximately 100 hours annually, could be absorbed within current resources, and would generate annual plan review revenue of approximately \$9,600. The revenue would be deposited in the Safety and Buildings Division program revenue operations appropriation.

Commerce also estimates that a portion of workload from the bill could not be absorbed within current resources. The Department estimated that the requirement to investigate and determine non-compliance of school districts with the management plan, training requirements and plan submittal requirements could increase workload by 1,700 hours. Commerce estimated that this would result from receiving an average of one complaint at each of 425 school districts, and four hours of inspection and consultation time for every complaint. The Department estimated that this would require one additional full-time equivalent position, with funding of \$77,400 for salary and associated costs. SB 325 does not provide a revenue source or expenditure authority for this estimated workload. Therefore, Commerce would have to reallocate resources from existing activities funded from building permit revenue. In 2005-06, Commerce is authorized \$15,980,200 PR with 155.2 PR positions in the Safety and Buildings Division to administer building permit and safety requirements. Program revenues deposited in the safety and buildings appropriation are provided from several plan review and inspection activities related to construction such as commercial buildings, multi-family and manufactured dwellings, plumbing, private sewage systems, electrical and heating systems, and elevators.

It is probable that the workload related to staffing the Task Force would begin at the time of the effective date of the bill (first day of the second month beginning after publication of the act), and continue through at least 2006-07 while the Task Force develops its report. Commerce officials indicate that development of the management plan and administrative rules, and workload related to training requirements, approving school building plans and specifications, and investigating and determining non-compliance of school districts, would begin after 2006-07 (after the Task Force completes its report).

Department of Public Instruction

The Department of Public Instruction fiscal estimate states that the expenses of the State Superintendent of Public Instruction, or his or her designee, would need to be reimbursed for the actual and necessary expenses related to serving on the Indoor Environmental Quality in Schools Task Force. DOA would assess state agencies for revenues to the appropriation that would be used to reimburse Task Force members.

DPI's fiscal estimate also states that DPI would bill Commerce for any services Commerce would request DPI to provide to Commerce under the bill, if DPI could not absorb the cost of providing the services in DPI's budget. The bill would not require or prohibit DPI from billing Commerce, nor would it require or prohibit Commerce from paying DPI for its assistance in implementing the bill. The bill does not provide Commerce, DPI, or any other state agency with funds for this purpose.

School Districts

The DPI and Commerce fiscal estimates indicates that there would be local indeterminate costs associated with implementing the bill. The DPI fiscal estimate listed the following costs that might be incurred by school districts under the bill: (a) training school district employees about indoor environmental quality if school districts have to pay for or train their own employees; (b) providing information about the indoor environmental quality of a specific school building, in printed form or by the Internet, to students, parents, guardians and legal custodians of students, and teachers and employees assigned to the school building; (c) including provisions in contracts for plans and specifications for construction of, addition to, or alteration to a school building to provide indoor environmental quality that complies with the management plan established by Commerce (this might include higher architectural, engineering, and/or construction costs); (d) correcting non-compliance issues identified by Commerce; (e) complying with building code, electrical and plumbing requirements of Chapters 101 and 145 of the statutes (however, school districts are currently required to comply with Chapters 101 and 145 and the bill would insert a cross-reference to those chapters in the school district statute in Chapter 121); and (f) complying with any other requirements of the management plan that is established by Commerce. In addition, school districts might incur costs associated with bringing existing school buildings into compliance with the management plan.

Effective Date and Technical Amendment Issues

Earlier sections of the bill summary describe the need for technical amendments and the existence of provisions that would require certain conformance with the management plan before the management plan goes into effect. The Committee could consider amending the bill to address these issues.

An amendment could include changing the DOA appropriation used to pay the expenses of the Indoor Environmental Quality in Schools Task Force members from the GPR appropriation that was repealed in 2005 Act 25 (s. 20.505 (4)(ba)) to the remaining PR appropriation (s. 20.505 (1)(ka)) that pays the expenses of committees created by law or executive order.

The bill includes three provisions which, because the general effective date applies (first day of the second month beginning after publication), would require certain actions to be done in conformance with the management plan to improve indoor environmental quality in schools many months before Commerce establishes the management plan. The three provisions include: (a) school boards would have to determine that plans for the construction, addition, or alteration of school buildings address the transfer from designers and builders to school maintenance employees of information necessary to promote good indoor environmental quality in accordance with the management plan; (b) before Commerce, or any local government authorized by Commerce, approves building plans for the construction of, addition to, or alteration to a school building, Commerce would have to determine that the design facilitates good indoor environmental quality in accordance with the management plan; and (c) Commerce would be required to notify a school board if it is not in compliance with the provisions of the bill.

Commerce officials recently indicated that when the Department promulgates administrative rules to implement the bill, it would do so after the Task Force completes its report. (The report would include recommendations to Commerce for administrative rule provisions.) Commerce indicates that the administrative rules would likely require over a year to promulgate, and would include or reference the management plan required under the bill. Commerce officials indicate that the rules would need to be promulgated before Commerce or its designee could begin approving school building plans with the new indoor environmental quality provisions.

It may be appropriate to amend the bill to specify that the three provisions would have a delayed effective date after the management plan goes into effect, or after the Commerce administrative rules to implement the program are promulgated. For example, the bill could be amended to specify an effective date of 12 months after the management plan is developed. This would also provide Commerce time to promulgate administrative rules during the period of time the Task Force report is developed, the 12 months during which the management plan is developed, and the 12 subsequent months.

As mentioned in an earlier section, there is no deadline for the Task Force to submit its report to the Governor and Legislature. Other actions under the bill, such as implementation of the management plan, training requirements, and administrative rules, would not occur until after the Task Force submits its report. It may be appropriate to amend the bill to specify a deadline for the Task Force to submit the report. For example, the bill could be amended to establish a deadline of December 31, 2007, for the Task Force to submit the report, which would provide at least 18 months (assuming a spring, 2006, effective date of the bill) for the Task Force to complete the report. The Committee could also consider amending the bill to specify that if the Task Force does not complete its report by the specified deadline, Commerce would be required to develop the

management plan no later than 12 months after that deadline. For example, if the Task Force would be required to submit the report by December 31, 2007, but does not meet that deadline, Commerce could be required to complete the management plan by December 31, 2008. A current example of this type of requirement can be found in the groundwater management provisions enacted in 2003 Act 310, under which the Groundwater Advisory Committee is required to submit a report to the Legislature by December 31, 2006, which includes recommendations for legislation related to groundwater management. If the Groundwater Advisory Committee does not submit the report by January 1, 2007, the Department of Natural Resources will be required to promulgate rules to address certain groundwater management issues.

The following table shows the effective dates and deadlines under the bill and with an amendment with the changes in effective dates and deadlines described above.

SB 325 Effective Dates and Deadlines

<u>Task</u>	<u>SB 325 Effective Date or Deadline</u>	<u>Potential Amendment Effective Date or Deadline</u>
Indoor Environmental Quality in Schools Task Force must submit a report to the Legislature and Governor.	No deadline.	December 31, 2007.
Task Force ceases to exist.	Date on which Commerce promulgates rules to implement the bill, unless the Secretary of Commerce determines operations of Department require the Task Force to continue to exist.	Same as bill.
Commerce must establish a management plan to improve indoor environmental quality in schools.	Due by first day of the 12 th month beginning after the Task Force submits its report to Legislature and Governor.	Same as bill but no later than December 31, 2008.
Commerce must establish indoor environmental quality training requirements for school maintenance employees, and a schedule for implementation of the training requirements.	Establish requirements and schedule by first day of the 12 th month beginning after Commerce establishes the management plan.	Same as bill.

<u>Task</u>	<u>SB 325 Effective Date or Deadline</u>	<u>Potential Amendment Effective Date or Deadline</u>
School boards must ensure each school building is in compliance with the management plan.	Due by first day of the 12 th month beginning after Commerce establishes the management plan.	Same as bill.
School boards must make information available that they become aware of related to indoor environmental quality of a specific school building.	Effective first day of the second month beginning after publication of the act.	Same as bill.
School board contracts for plans and specifications for school building construction, addition or alteration and contracts for school building construction, addition or alteration must include design in conformance with the management plan.	Effective first day of the second month beginning after publication of the act.	Effective first day of the 12 th month beginning after Commerce establishes the management plan, for contracts entered into on or after the effective date of the provision. .
Commerce, or any authorized local government, must determine the school building design is in conformance with the management plan before approving building plans, for drawings, calculations and specifications submitted on or after the effective date.	Effective first day of the second month beginning after publication of the act.	Effective first day of the 12 th month beginning after Commerce establishes the management plan.
Commerce must notify a school board if the board is in noncompliance with the bill.	Effective first day of the second month beginning after publication of the act.	Effective first day of the 12 th month beginning after Commerce establishes the management plan.
Commerce must promulgate administrative rules to implement the bill.	Commerce must begin on the first day of the second month beginning after publication of the act.	Same as bill.

Prepared by: Kendra Bonderud