



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #577

Air Management -- Asbestos Inspections (Natural Resources -- Air, Waste, and Contaminated Land)

[LFB 2003-05 Budget Summary: Page 336, #10]

CURRENT LAW

DNR collects asbestos inspection and construction permit exemption review program revenue fees from persons who perform nonresidential asbestos abatement as part of demolition and certain renovation activities. Persons must notify DNR before they perform asbestos abatement and pay the following fees established in administrative rule: (a) an asbestos inspection fee ranging from \$50 to \$210, with a statutory maximum of \$210 (the maximum inspection fee was \$200 prior to enactment of 2001 Act 16); and, in addition, some pay (b) a construction permit exemption review fee currently set at \$50 or \$125, but with no statutory maximum. The current combined fee amount is \$50 to \$335 and depends on the size of the project. In 2001-02, DNR received \$228,200 in asbestos abatement program revenue fees, and in 2002-03, will receive approximately \$230,000. In 2002-03, DNR is authorized \$344,400 PR and 2.0 PR positions annually from asbestos abatement fees. Of the appropriated amount, \$134,300 is for six contracts with local governments to conduct asbestos abatement inspections in their geographic areas.

GOVERNOR

Provide \$85,000 PR in 2004-05 from air asbestos fees for the inspection of asbestos removal in schools, and industrial and commercial facilities. The provision would include: (a) \$55,000 for limited-term employees to assist in asbestos inspections; and (b) \$30,000 for contracts with local governments to conduct inspections for DNR. In addition, provide an increase in certain air asbestos inspection fees collected from persons who perform nonresidential asbestos abatement as part of demolition and certain renovation activities. Under the bill, the statutory maximum fee for inspection would increase from \$210 to \$450 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, or to \$750 if the combined square and linear footage is equal to or greater than 5,000. The bill specifies that the combined square and linear footage be determined by adding the number of square feet of friable asbestos-containing material on areas other than pipes to the number of linear feet of friable asbestos-containing material on pipes. The fee would generate increased revenue of approximately \$165,000 annually, beginning in 2004-05, beyond the current fee revenues of approximately \$230,000 annually.

In addition, authorize (but do not require) DNR to charge for the costs it incurs for laboratory testing for a nonresidential asbestos demolition and renovation project. This fee is expected to generate increased revenue of approximately \$22,000 annually, beginning in 2004-05.

DISCUSSION POINTS

A. Expenditure Authority

1. DNR administers asbestos abatement regulations in conformance with EPA requirements and collects inspection and construction permit exemption review fees to support program activities. Persons who perform demolition or certain renovations involving the removal of asbestos-containing materials must notify DNR, and submit an asbestos inspection fee, and for projects over a certain size, also a construction permit exemption fee. In order to be exempt from the requirement that new, modified, reconstructed or replaced air pollutant sources obtain a construction permit before beginning construction, projects where asbestos abatement is at least 160 square feet or 260 linear feet must pay a construction permit exemption fee.

2. DNR receives approximately 2,000 notifications annually. DNR staff and municipalities under contract with DNR inspect approximately 500 of the projects annually, primarily in southeastern Wisconsin.

3. DNR's authorized expenditure authority is allocated as shown in Table 1 for staff, contracts with municipalities to perform asbestos inspections, laboratory testing of asbestos by the State Laboratory of Hygiene, and other supplies such as equipment or computer system upgrades. In the last few years, DNR has held expenditures for "supplies for other purposes" to less than authorized because annual revenues were less than authorized expenditures and the account balance was gradually declining. On June 30, 2002, the appropriation account balance was \$274,500, and on June 30, 2003, it will be approximately \$144,400. Under the revenue and expenditure authority increases included in the bill, the June 30, 2005, balance would be approximately \$7,200.

TABLE 1

Allocation of Asbestos Abatement PR Expenditure Authority

	2001-02	2002-03	2003-04	2004-05
	<u>Actual</u>	<u>Estimated</u>	<u>SB 44</u>	<u>SB 44</u>
Permanent Salary and Fringe	\$105,185	\$109,300	\$105,700	\$105,700
Supplies for 2.0 permanent staff	9,113	8,000	8,000	8,000
LTE salary and fringe	298	0	0	55,000
Supplies for LTEs	0	0	0	8,000
Contracts with local governments	128,225	134,300	134,300	164,300
Laboratory testing - Lab of Hygiene	24,829	25,000	25,000	25,000
Supplies for other purposes	<u>30,000</u>	<u>67,800</u>	<u>67,800</u>	<u>59,800</u>
Total	\$297,650	\$344,400	\$340,800	\$425,800

4. The Department is currently authorized 2.0 staff from asbestos abatement fees, including one asbestos coordinator to maintain notification and inspection databases, manage consistency and compliance efforts and respond to complaints, and one air management specialist to perform inspection and compliance activities and assist DOA in maintaining compliance with federal asbestos abatement regulations at demolition or renovation activities conducted at state-owned facilities.

5. While 2.0 staff are funded by asbestos inspection fees, DNR currently devotes additional time to asbestos abatement activities, primarily from regional compliance inspectors. Prior to 2002-03, staff time above the 2.0 FTE funded from asbestos fees was primarily paid from the air emission tonnage fee appropriation, and paid for almost 2.0 FTE in 2000-01 and 2.5 FTE in 2001-02. When DNR reallocated staff from air emission fees to asbestos abatement activities, it resulted in completion of less operating permit, air monitoring and compliance enforcement activities. Beginning in 2002-03, staff who work on asbestos and are not funded from asbestos fees are paid from federal Environmental Protection Agency air program grants, including 2.3 FTE in 2002-03, for current staff time allocation of 4.3 FTE. DNR plans to allocate a total of 4.2 FTE to asbestos abatement activities in 2003-04.

6. The \$55,000 in LTE funding in the bill would be sufficient for approximately 1.55 FTE of air management specialists for 2004-05. This would increase the total level of asbestos abatement effort from 4.3 in 2002-03 to approximately 5.75 FTE in 2004-05. DNR indicates that it would hire two LTEs for 30-40 hours per week for six-month appointments (an LTE is limited to 1,040 hours annually), or four part-time LTEs for a full year. The LTEs would work in the Southeast Region and South Central Region offices. The LTEs would inspect facilities prior to, during and after asbestos abatement projects, respond to citizen complaints, and pursue enforcement situations discovered during inspections by DNR staff or municipalities that have contracts with DNR to do asbestos abatement. DNR officials estimate that if they are able to hire experienced LTEs approximately 75 additional inspections (beyond the 500 currently performed annually) could

be accomplished.

7. DNR officials estimate that the workload need for asbestos abatement activities could continue to exceed the 4.2 FTE planned for 2003-04 (2.2 FED and 2.0 PR) for several years. An alternative to the bill would be to provide permanent staff instead of LTEs. One permanent position could be provided for \$41,400 annually. DNR anticipates that under budget reduction measures in the bill, more air management program positions will be eliminated than there are vacancies. Provision of a permanent asbestos abatement position instead of LTE funding might allow DNR to reallocate an incumbent employee to asbestos abatement activities instead of potentially laying off an experienced employee. Further, by hiring a permanent employee turnover of staff and repeated training and certification of LTEs could be reduced.

8. If the recommended LTE funding is not approved, DNR asbestos abatement activities would be expected to increase from 3.5 FTE to 4.2 FTE in each year of the biennium because of projected federal funding levels. In addition, DNR could choose to reallocate a portion of existing expenditure authority from supplies to LTE funding.

9. As shown in Table 1, \$134,300 annually is currently allocated for contracts with local governments to conduct asbestos inspections on behalf of DNR, and \$164,300 would be allocated in 2004-05 under the bill. Table 2 shows the funds allocated to the contract agencies. All applications for asbestos inspection and permit exemption are received by DNR. DNR then notifies local government contract agencies of applications for inspection in the geographic area served by the contract. Any potential enforcement issues discovered during inspections by the contract agencies are investigated and resolved by DNR rather than by the contract agency.

TABLE 2

DNR Asbestos Inspection Contracts with Municipalities

	<u>2002-03</u>	<u>Governor 2003-04</u>	<u>Governor 2004-05</u>
City of Milwaukee	\$79,300	\$79,300	\$79,300
Sauk County (also includes Juneau and Adams)	20,000	20,000	20,000
Waushara County (also includes nearby counties)	10,000	10,000	15,000
City of Watertown	10,000	10,000	15,000
City of Menasha (may include nearby municipalities)	10,000	10,000	20,000
Lincoln County (also includes Taylor)	<u>5,000</u>	<u>5,000</u>	<u>15,000</u>
Total	\$134,300	\$134,300	\$164,300

10. If no expenditure authority increase is provided for local government contracts, DNR could choose to reallocate funds from supplies to fund any contract cost increases. Alternatively, DNR could continue to fund contracts at the current levels.

B. Inspection and Exemption Fees

11. It could be argued that program fees should be established at a level sufficient to fund the costs of asbestos abatement activities rather than reallocating staff from other funding sources. However, since, beginning in 2002-03, the Department is able to receive federal air grant funds for asbestos abatement activities, DNR has stopped reallocating air emission fees from operating permit activities to asbestos abatement activities. Thus, the reallocation of non-asbestos state fees may not be as much of an issue as it was in past years.

12. DOA officials indicate that the estimate of \$165,000 in additional asbestos inspection fee revenue is based on an assumption that DNR would promulgate a rule with a combined fee that includes both the inspection fee and construction permit exemption review fee within the statutory maximum of \$450 or \$750. However, the bill creates a statutory maximum inspection fee only, of either \$450 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, or \$750 if the combined square and linear footage is equal to or greater than 5,000.

13. While the administration indicated that it was not intended that the bill create a higher maximum fee than was requested by DNR, DNR’s 2003-05 budget request had been to authorize a combined inspection fee and construction permit exemption review fee, with a combined maximum of up to \$100 to \$750, depending on the size of the project. Table 3 shows current fee levels, the fees requested by DNR and modified by DOA. (While DNR proposed combined fees of \$100 and \$200 for the two smaller categories, the revenue estimates in the bill assume \$75 and \$200. Actual fee levels would be established in administrative rule.) An amendment would be required to accomplish the administration’s intent to provide a statutory maximum combined inspection and permit exemption fee of \$400 or \$750.

TABLE 3

Asbestos Inspection and Permit Exemption Fees

<u>Size of Asbestos Project</u>	<u>Current Inspection Fee</u>	<u>Current Permit Exemption Fee</u>	<u>Current Combined Asbestos Fee</u>	<u>DNR/DOA Proposed Combined Fee</u>	<u>% Change Proposed to Current Combined Fee</u>
< 160 square feet, 260 linear feet	\$50	\$0	\$50	\$75	50%
> 160 square feet, 260 linear feet and < 1,000 combined feet	100	50	150	200	33
> 1,000 and < 5,000 combined feet	210*	125	335	400	19
> 4,999 combined feet	210*	125	335	750	124

*Statutory maximum inspection fee. Lower inspection fees are established in administrative rule for smaller size projects.

14. An alternative to the fee levels in the bill would be to provide a smaller increase. For example, if the statutory maximum combined inspection and permit exemption fee would be set at \$370 (10% increase) and \$500 (50% increase for the largest projects), fee revenue would be approximately \$135,500 instead of \$165,000 under the bill (\$29,500 less than under the bill).

C. Laboratory Cost Recovery Fees

15. Currently, DNR pays the State Laboratory of Hygiene \$20,000 to \$25,000 annually for laboratory testing costs, and uses permit fees to cover those costs. The Laboratory bills DNR a set amount per test, based on the processing time desired by DNR. Approximately 60% of the tests are completed as "priority" with a 24- to 48-hour turnaround, at a cost of \$36 per test, because a demolition or renovation project may be put on hold until test results are available. In many inspections, the laboratory costs are incurred after "split samples" are collected during inspections. Half of the sample is sent to the State Lab at DNR cost, and the other half of the sample is sent by the owner to a private laboratory.

16. Under the bill, DNR could charge for the testing costs it incurs. The administration's revenue estimates are based on an assumption that DNR would recover almost all of its State Laboratory costs from persons undertaking asbestos abatement projects.

17. It could be argued that it is appropriate for DNR to recover as much of its laboratory costs as possible through separate billing that is specific to the project for which testing is done. Alternatively, it could be argued that the program should continue to pay for laboratory tests through fees assessed to all who are undertaking asbestos abatement work.

18. If the inspection fee increase and authorization for laboratory cost recovery are not approved, DNR would receive insufficient revenue to make the \$85,000 in increased expenditure authority under the bill. DNR would have to reduce expenditures from authorized levels by an additional \$95,000 during the 2003-05 biennium to retain a positive account balance. This could be done by reducing supplies costs, contract funding amounts, or both.

ALTERNATIVES

A. Expenditure Authority

1. Approve the Governor's recommendation to: (a) provide \$85,000 PR in 2004-05 from air asbestos fees for the inspection of nonresidential asbestos removal (\$55,000 for LTEs and \$30,000 for contracts with local governments).

2. Approve the Governor's recommendation to provide \$30,000 PR in 2004-05 for contracts for local governments. In addition, provide \$41,400 PR and 1.0 PR position in 2004-05 (instead of funding for LTEs).

<u>Alternative A2</u>	<u>PR</u>
2003-05 FUNDING (Change to Bill)	- \$13,600
2004-05 POSITIONS (Change to Bill)	1.00

3. Approve the Governor's recommendation to provide \$30,000 PR in 2004-05 for contracts for local governments. (No funding would be provided for LTEs.)

<u>Alternative A3</u>	<u>PR</u>
2003-05 FUNDING (Change to Bill)	- \$55,000

4. Delete provision.

<u>Alternative A4</u>	<u>PR</u>
2003-05 FUNDING (Change to Bill)	- \$85,000

B. Inspection and Exemption Fees

5. Approve the Governor's recommendation to increase the statutory maximum fee for inspection from \$210 to \$450 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, or from \$210 to \$750 if the combined square and linear footage is equal to or greater than 5,000.

6. Consistent with the DNR request, approve a statutory maximum combined inspection fee and construction permit exemption fee of \$400 if the combined square and linear footage of friable asbestos-containing material involved in the project is less than 5,000, or \$750 if the combined square and linear footage is equal to or greater than 5,000.

7. Approve a statutory maximum combined inspection fee and construction permit exemption fee of \$370 if the combined square and linear footage of friable asbestos-containing material involved in the project is less than 5,000, or \$500 if the combined square and linear footage is equal to or greater than 5,000.

<u>Alternative B3</u>	<u>PR</u>
2003-05 REVENUE (Change to Bill)	- \$29,500

8. Delete provision.

<u>Alternative B4</u>	<u>PR</u>
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2003-05 REVENUE (Change to Bill)	- \$165,000
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C. Laboratory Cost Recovery Fees

1. Approve the Governor's recommendation to authorize DNR to charge for the costs it incurs for laboratory testing for a nonresidential asbestos demolition and renovation project.
2. Delete provision.

<u>Alternative C2</u>	<u>PR</u>
2003-05 REVENUE (Change to Bill)	- \$22,000

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