

MAINE STATE LEGISLATURE

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(EMERGENCY)
(New Draft of H.P. 703, L.D. 944)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1762

H.P. 1286 House of Representatives, June 8, 1987
Reported by Representative HOGLUND from the Committee on
Energy and Natural Resources and printed under Joint Rule 2.
EDWIN H. PERT, Clerk
Original bill sponsored by Representative BOST of Orono.
Cosponsored by Senator USHER of Cumberland, Representatives
MICHAUD of East Millinocket and HOLLOWAY of Edgecomb.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Ensure Safe Abatement of Asbestos
2 Hazards.
3

4 Emergency preamble. Whereas, Acts of the Legis-
5 lature do not become effective until 90 days after
6 adjournment unless enacted as emergencies; and

7 Whereas, the identification and correction of
8 asbestos-related problems in public and private
9 buildings are a matter of significant concern as a
10 public health hazard; and

11 Whereas, the State is undertaking a major asbes-
12 tos identification and removal program financed with
13 bonds approved in public referendum; and

1 Whereas, it is critical to the safe and effective
2 conduct of asbestos identification, encapsulation,
3 removal, handling and disposal activities that
4 trained and qualified personnel from the public and
5 private sectors be employed; and

6 Whereas, in the judgment of the Legislature,
7 these facts create an emergency within the meaning of
8 the Constitution of Maine and require the following
9 legislation as immediately necessary for the preser-
10 vation of the public peace, health and safety; now,
11 therefore,

12 Be it enacted by the People of the State of Maine as
13 follows:

14 Sec. 1. 38 MRSA c. 12-A is enacted to read:

15 CHAPTER 12-A

16 ASBESTOS

17 §1271. Findings and purpose

18 The Legislature finds that the presence of
19 friable and potentially friable asbestos in public
20 and private buildings is a public health hazard; that
21 State Government and local government agencies are
22 conducting major abatement programs; that it is crit-
23 ical to the safe conduct of asbestos identification,
24 encapsulation, removal, handling and disposal activi-
25 ties that trained and qualified personnel from the
26 public and private sectors be employed; and that work
27 practice standards for asbestos abatement activities
28 must be established and enforced to ensure protection
29 of the public health.

30 The purpose of this chapter is to provide a flex-
31 ible means by which the State, acting through the De-
32 partment of Environmental Protection, may ensure that
33 those engaged in the management and abatement of
34 asbestos-containing materials are properly trained,
35 supervised and directed to protect the public health.

36 §1272. Definitions.

1 As used in this chapter, unless the context indi-
2 cates otherwise, the following terms have the follow-
3 ing meanings.

4 1. Asbestos. "Asbestos" means a group of natu-
5 rally occurring minerals that separate into fibers of
6 high tensile strength and are resistant to heat, wear
7 and chemicals, including, but not limited to,
8 chrysotile, amosite, crocidolite, actinolite,
9 tremolite and anthophyllite and any of these minerals
10 that have been chemically treated or altered.

11 2. Asbestos abatement activity. "Asbestos
12 abatement activity" means activity involving the re-
13 moval, renovation, enclosure, repair, encapsulation,
14 handling, transportation or disposal of friable
15 asbestos-containing materials in an amount greater
16 than 10 square feet or 10 linear feet.

17 3. Asbestos abatement contractor. "Asbestos
18 abatement contractor" means a business entity that
19 engages in, or intends to engage in, asbestos abate-
20 ment activities as a business service on property
21 which it does not own and that employs or involves
22 one or more asbestos abatement project supervisors,
23 design consultants or evaluation specialists for as-
24 bestos abatement activities.

25 4. Asbestos abatement design consultant. "As-
26 bestos abatement design consultant" means a person
27 engaged in preparing and supervising the implementa-
28 tion of facility plans for the removal or abatement
29 of asbestos. These activities include, but are not
30 limited to, the performance of air quality and bulk
31 sampling; advising building owners, contractors and
32 project supervisors on health impacts of asbestos
33 abatement activities; and supervising the conduct of
34 training courses. This category of specialists in-
35 cludes, but is not limited to, engineers, architects,
36 health professionals, industrial hygienists, private
37 consultants or other individuals involved in asbestos
38 risk assessment or regulatory activities.

39 5. Asbestos abatement project supervisor. "As-
40 bestos abatement project supervisor" means a person
41 with responsibility for the supervision of asbestos
42 abatement activities. Those persons include, but are

1 not limited to, abatement project supervisors em-
2 ployed by contractors, employees of governmental or
3 public entities who coordinate or directly supervise
4 asbestos abatement activities performed by public
5 schools, governmental or other public employees in a
6 school district, governmental or other public employ-
7 ees in a school district, governmental or other pub-
8 lic buildings and project supervisors employed as
9 consultants to monitor and direct abatement contrac-
10 tors.

11 6. Asbestos abatement worker. "Asbestos abate-
12 ment worker" means an employee of an asbestos abate-
13 ment contractor engaged in asbestos abatement activi-
14 ty under the supervision of an asbestos abatement
15 project supervisor.

16 7. Asbestos - containing material. "Asbestos -
17 containing material" means any material containing
18 asbestos in quantities equal to or greater than 1% by
19 weight.

20 8. Asbestos evaluation specialist. "Asbestos
21 evaluation specialist" means a person responsible
22 for:

23 A. Applying existing rules and standards at a
24 specific location to determine the health hazards
25 associated with the presence of friable
26 asbestos-containing materials; or

27 B. Establishing or monitoring procedures during
28 asbestos abatement activities in order to protect
29 public health from the hazards associated with
30 exposure to asbestos.

31 9. Business entity. "Business entity" means a
32 partnership, firm, association, corporation, sole
33 proprietorship or other business concern.

34 10. Certificate. "Certificate" means a document
35 issued by the Department of Environmental Protection
36 affirming that an individual has successfully com-
37 pleted the training and other requirements set forth
38 in this chapter to qualify as an asbestos project
39 manager, an asbestos evaluation specialist or asbes-
40 tos abatement specialist, whether held by an individ-
41 ual, business or public entity.

1 11. Commissioner. "Commissioner," unless other-
2 wise specified, means the Commissioner of Environmen-
3 tal Protection.

4 12. Employee. "Employee" means every person who
5 may be permitted, required or directed by an employer
6 in consideration of direct or indirect gain or prof-
7 it, to engage in any employment.

8 13. Friable. "Friable" means materials which
9 may be crumbled or pulverized, when dry, by hand
10 pressure. These materials include materials located
11 behind barrier systems and materials which have been
12 rendered friable through manipulation.

13 14. In-house asbestos abatement unit. "In-house
14 asbestos abatement unit" means the unit of a business
15 or public entity that engages in, or intends to
16 engage in, asbestos abatement activities solely with-
17 in the confines of property which is owned or leased
18 by the entity and that employs one or more asbestos
19 abatement project supervisors for asbestos abatement
20 activities.

21 15. License. "License" means a document issued
22 by the Department of Environmental Protection to a
23 business entity or public entity affirming that the
24 entity has met the requirements set forth in this
25 chapter to engage in asbestos abatement activities as
26 an asbestos abatement contractor.

27 16. Person. "Person" means any individual,
28 business entity, governmental body or other public or
29 private entity.

30 17. Public entity. "Public entity" means the
31 State, any of its political subdivisions or any agen-
32 cy or instrumentality of either.

33 §1273. Prohibitions

34 Unless otherwise provided in this section:

35 1. License or certificate required. No person
36 may engage in any asbestos abatement activities in
37 the State, unless licensed or certified pursuant to
38 this chapter; and

1 2. Notification required. No person may engage
2 in any planned asbestos abatement project that in-
3 volves more than 100 linear feet of pipe covered or
4 coated with asbestos-containing material or more than
5 100 square feet of asbestos-containing material un-
6 less notification is given the commissioner in writ-
7 ing at least 10 working days before beginning any on-
8 site work that has the potential to release asbestos
9 fibers.

10 3. In-house abatement units. Abatement activi-
11 ties undertaken by an in-house abatement unit are ex-
12 empted from the provisions of this section provided
13 that:

14 A. All such activities are supervised by a per-
15 son certified under provisions of section 1274,
16 subsection 4; and

17 B. Notification is given the commissioner in
18 writing for abatement projects involving more
19 than 160 square feet and 260 linear feet.

20 4. Exemption. Asbestos abatement activities un-
21 dertaken in residential buildings of 4 dwelling units
22 or less shall be exempt from the requirements of this
23 section. Asbestos abatement activities related to
24 disposal undertaken at licensed asbestos disposal
25 sites are exempt from the requirements of this sec-
26 tion.

27 §1274. Licensing and certification

28 The commissioner shall develop a program which
29 establishes criteria and procedures for the licensing
30 or certification of the following.

31 1. Asbestos abatement contractor. To qualify
32 for a license, an applicant shall show evidence sat-
33 isfactory to the commissioner that:

34 A. Each employee or agent within its employ who
35 will come in contact with asbestos or will be re-
36 sponsible for an asbestos abatement project:

37 (1) Is familiar with all applicable state
38 and federal standards for asbestos abatement
39 projects; and

1 (2) Has successfully completed a course of
2 instruction for his particular category,
3 which has been certified pursuant to section
4 1275, and is capable of complying with all
5 applicable standards of the State, the
6 United States Environmental Protection Agen-
7 cy and the United States Occupational Safety
8 and Health Administration;

9 B. It has access to at least one asbestos dis-
10 posal site approved by the Department of Environ-
11 mental Protection that is sufficient for the de-
12 posit of all asbestos waste that it will generate
13 during the term of the license;

14 C. It possesses a work program that prevents the
15 contamination or recontamination of the environ-
16 ment and protects the public health from the haz-
17 ards of exposure to asbestos;

18 D. It possesses evidence of certification under
19 subsection 4 of each individual employee or agent
20 who will be responsible for other employees who
21 may come in contact with friable
22 asbestos-containing materials;

23 E. It possesses evidence of certification of all
24 other employees as required by subsection 5; and

25 F. It possesses a worker protection and medical
26 monitoring program consistent with requirements
27 established by the Maine Board of Occupational
28 Safety and Health Protection if the contractor is
29 a public entity and a worker protection program
30 consistent with the requirements of the United
31 States Occupational Safety and Health Administra-
32 tion if the contractor is a business entity.

33 2. Asbestos abatement design. All designs or
34 plans for asbestos abatement shall be developed by an
35 asbestos abatement design consultant.

36 A. To qualify for receipt of certification, an
37 applicant shall show evidence satisfactory to the
38 commissioner that that applicant has:

1 (1) Fulfilled the requirements for certifi-
2 cation as an asbestos abatement project su-
3 pervisor set forth in subsection 4;

4 (2) A minimum of 2 years of experience in
5 the design and implementation of asbestos
6 management and removal projects; and

7 (3) Successfully completed an examination
8 administered by the commissioner for this
9 category.

10 B. All modifications to facilities or structures
11 and to their component systems, which may occur
12 in conjunction with an asbestos abatement project
13 shall be designed in accordance with applicable
14 state and municipal building codes.

15 3. Asbestos evaluation specialist. All evalua-
16 tions of public health hazards associated with the
17 presence of friable asbestos materials to determine
18 the need for an asbestos abatement project and to en-
19 sure that a completed project meets prescribed stan-
20 dards shall be conducted by an asbestos evaluation
21 specialist certified pursuant to the requirements of
22 this section.

23 A. To qualify for certification, an applicant
24 shall show evidence satisfactory to the commis-
25 sioner that:

26 (1) The applicant has passed a course or
27 program approved by the commissioner which
28 assures competence in proper air sampling
29 techniques and a full understanding of the
30 characteristics and hazards of friable as-
31 bestos; and

32 (2) The applicant has fulfilled the re-
33 quirements for certification as an asbestos
34 abatement project supervisor set forth in
35 subsection 4.

36 4. Asbestos abatement project supervisors. All
37 persons supervising the conduct of asbestos abatement
38 activities shall be certified as asbestos project su-
39 pervisors. To qualify for receipt of certification,

1 an applicant shall show evidence satisfactory to the
2 commissioner that:

3 A. The applicant has satisfactorily completed a
4 training course certified by the commissioner as
5 appropriate for a person supervising asbestos
6 abatement workers in the conduct of an asbestos
7 abatement activity; and

8 B. The applicant has participated in or observed
9 at least one asbestos abatement project in addi-
10 tion to the training required in this subsection.

11 5. Asbestos abatement worker. All employees en-
12 gaged in asbestos abatement activities and not other-
13 wise certified under this chapter shall be certified
14 as asbestos abatement workers. To qualify for certi-
15 fication, an applicant shall show evidence satisfac-
16 tory to the commissioner that he has completed a
17 training course certified by the commissioner as ap-
18 propriate for the safe and proper removal, encapsu-
19 lation or handling of asbestos. The commissioner
20 shall provide for interim certification for a period
21 not to exceed 30 days upon completion of a worker
22 orientation program approved by the commissioner.

23 §1275. Certification of training courses

24 The commissioner, after consultation with the
25 Commissioner of Administration and the Commissioner
26 of Labor, shall develop rules establishing criteria
27 and procedures for the certification of training
28 courses and examinations which shall ensure the qual-
29 ifications of applicants for certification as re-
30 quired in this chapter. These rules shall be promul-
31 gated by the Department of Environmental Protection
32 in accordance with Title 5, chapter 375, subchapter
33 II.

34 1. Course requirements. To qualify for certifi-
35 cation, a training course shall contain a combination
36 of class instruction, practical application and pub-
37 lic health procedures of a length and content which,
38 to the satisfaction of the commissioner, shall ensure
39 adequate training for the level and type of responsi-
40 bility for each named certification category.

1 2. Instructors. All courses certified under
2 this section shall be conducted by instructors whose
3 training and experience is determined by the commis-
4 sioner to be appropriate for the subject matter being
5 taught and the level of certification category for
6 which the course is designed. All courses shall be
7 designed and conducted under the guidance of an as-
8 bestos abatement design consultant.

9 §1276. Reciprocity agreement

10 The commissioner may develop reciprocity agree-
11 ments with other states when the states have estab-
12 lished licensing and certification requirements that
13 are at least as stringent as those set forth in this
14 chapter.

15 §1277. Support services

16 The Department of Administration shall provide
17 supporting services to the Department of Environmen-
18 tal Protection for the implementation of this chap-
19 ter, including:

20 1. Training records. Maintenance of training
21 records for employees of public and private entities
22 intending to undertake asbestos abatement activities
23 in the State;

24 2. Evaluation of applications. Assistance in
25 the evaluation of applications for licensing or cer-
26 tification for compliance with this chapter and sub-
27 sequent rules, upon request of the commissioner;

28 3. Evaluation of training programs. Evaluation,
29 development and management of training programs which
30 are appropriate for applicants attempting to comply
31 with the provisions of this chapter and subsequent
32 rules; and

33 4. Maintenance of project records. Maintenance
34 of records of asbestos abatement projects conducted
35 or supervised by the Department of Administration,
36 the contractors and employees involved in the
37 projects and any citations or violations of law that
38 may have occurred in completing these projects.

1 §1278. Fees

2 1. Fees established. The following fees are es-
3 ablished for each license and certification category
4 to be paid annually. The fees shall be paid upon ap-
5 plication to the commissioner and deposited in the
6 Maine Environmental Protection Fund.

7 A. The fees are:

8 (1) Asbestos abatement contractor: \$250;

9 (2) Asbestos abatement design consultant:
10 \$50;

11 (3) Asbestos evaluation specialist: \$50;

12 (4) Asbestos project supervisor: \$50; and

13 (5) Asbestos abatement worker: \$25.

14 B. A business or public entity may pay the cer-
15 tification fee and receive certificates for one
16 or more positions in each category on an annual
17 basis. Employees filling the certified positions
18 at any time during the one-year period shall be
19 qualified under terms of this chapter and, if
20 qualified, shall receive written evidence of cer-
21 tification. The business or public entity shall
22 notify the commissioner within 5 working days of
23 any changes of the persons holding its certified
24 positions and shall provide all information re-
25 quested by the commissioner to show that new em-
26 ployees meet the requirements for certification
27 pursuant to this chapter.

28 C. A person applying for certification under
29 more than one category shall pay only the fee for
30 the highest category.

31 2. Notification fees. Notification of a planned
32 asbestos abatement project pursuant to section 1273,
33 subsections 2 and 3, shall be accompanied by a noti-
34 fication fee, unless such activity occurs in private
35 residential buildings of 4 dwelling units or less.

1 A. The fees are:

2 (1) Projects involving more than 160 square
3 feet or 260 linear feet, but less than 1,000
4 square feet or 5,000 linear feet: \$100; and

5 (2) Projects involving more than 1,000
6 square feet or 5,000 linear feet: \$200.

7 §1279. Renewal

8 Each license or certificate issued under this
9 chapter shall expire one year after the date of is-
10 sue. Licensees or certificate holders may apply to
11 the Department of Environmental Protection for the
12 renewal of a license or certificate. No renewal may
13 be granted if the application is received more than 2
14 years following expiration of the previously issued
15 license or certificate.

16 To qualify for renewal of a license or certifi-
17 cate, the applicant shall submit:

18 1. Fee. The appropriate fee as prescribed in
19 section 1278;

20 2. Training. Evidence of completion of any con-
21 tinuing education or training that may be required by
22 rules promulgated by the commissioner; and

23 3. Disclosure. A signed statement disclosing
24 any violations of asbestos abatement standards for
25 which the applicant may have been cited by a regula-
26 tory agency of the Federal Government or the State.
27 If no citations were received during the previous
28 year, that fact shall be stated. The disclosure
29 shall include evidence that all penalties and fees
30 assessed to the applicant are paid in full.

31 §1280. Standard of acceptable work practice

32 The Board of Environmental Protection shall
33 promulgate rules, subject to Title 5, chapter 375,
34 subchapter II, which establish criteria and proce-
35 dures of acceptable work practices for licensees and
36 certificate holders engaged in the following asbestos
37 hazard abatement activities.

1 1. Removal; encapsulation; enclosure. For any
2 asbestos project that involves more than 100 linear
3 feet of pipe covered or coated with
4 asbestos-containing material or 100 square feet of
5 asbestos-containing material used to cover or coat
6 any duct, boiler, tank, reactor, turbine, structure,
7 structural member or structural component, the com-
8 missioner shall consider the following:

9 A. Proper work practices for the removal of
10 asbestos-containing materials;

11 B. Proper work practices for the encapsulation
12 of asbestos-containing materials;

13 C. Proper work practices for enclosure of
14 asbestos-containing materials;

15 D. Proper work practices for the demolition of a
16 structure or position of a structure which con-
17 tains structural members or components of or cover-
18 ered by asbestos-containing material;

19 E. Proper work practices for the storage, trans-
20 port and disposal of asbestos-containing materi-
21 als; and

22 F. Administrative penalties and cessation of op-
23 erations to ensure compliance with this subsec-
24 tion.

25 2. Other activities. For any asbestos project
26 not subject to the specific considerations of subsec-
27 tion 1, reasonable precautions to prevent the release
28 of asbestos to the environment shall be made. At a
29 minimum, the following precautions shall be consid-
30 ered:

31 A. Construction of adequate barriers to contain
32 asbestos fibers released within the work area;

33 B. Wetting of all asbestos-containing material
34 prior to removal and during collection;

35 C. Use of high efficiency particulate air vacuum
36 equipment and wet-cleaning techniques to clean up
37 the work area following abatement until there is
38 no visible residue;

1 D. Containing waste in appropriately labeled
2 impermeable containers; and

3 E. Proper storage, transfer and disposal to an
4 approved landfill facility in a manner that does
5 not release fibers into the air.

6 §1281. Emergency provisions

7 In an emergency that results from a sudden, unex-
8 pected event that is not a planned asbestos abatement
9 project, the commissioner may waive the requirements
10 for a license or certificate. For the purposes of
11 this section, emergency includes operations necessi-
12 tated by nonroutine failures of equipment or by ac-
13 tions of fire and emergency medical personnel pursu-
14 ant to duties within their official capacities. Any
15 person who performs an asbestos abatement activity,
16 which activity would normally require notification
17 pursuant to section 1273, subsections 2 and 3, under
18 emergency conditions, shall notify the commissioner
19 by phone within one working day and in writing within
20 3 days after performance of that activity.

21 §1282. Standards of conduct

22 The Board of Environmental Protection shall
23 promulgate rules which establish standards of accept-
24 able professional conduct for licensees and certifi-
25 cate holders engaged in asbestos abatement activi-
26 ties, as well as specific acts and omissions that
27 constitute grounds for the reprimand of any licensee
28 or certificate holder, the suspension or revocation
29 of a license or certificate or the denial of the re-
30 newal of a license or certificate.

31 §1283. Interim procedures

32 In developing a program to implement this chap-
33 ter, the commissioner shall provide for interim li-
34 censing and certification procedures to ensure a
35 transition period of not less than 180 days before
36 the application of the requirements established in
37 this chapter.

38 §1284. Assistance from other departments

1 The Commissioner of Administration, the Commis-
2 sioner of Labor and the Commissioner of Human Ser-
3 vices shall assist the Commissioner of Environmental
4 Protection in the enforcement of the licensing and
5 certification requirements of this chapter.

6 **Sec. 2. Allocation.** The following funds are al-
7 located from the Maine Environmental Protection Fund
8 to carry out the purposes of this Act.

	<u>1988-89</u>	<u>1989-90</u>
10 <u>ENVIRONMENTAL PROTEC-</u>		
11 <u>TION, DEPARTMENT OF</u>		
12 Bureau of Air Quality		
13 Positions	(5)	(5)
14 Personal Services	\$108,518	\$117,595
15 All Other	34,032	34,032
16 Capital Expenditures	30,450	
17		
18 Total	<u>\$173,000</u>	<u>\$151,627</u>

19 **Emergency clause.** In view of the emergency cited
20 in the preamble, this Act shall take effect when ap-
21 proved.

22 STATEMENT OF FACT

23 The purpose of this new draft is to establish a
24 program of licensure and certification to ensure that
25 asbestos abatement activities are carried out to the
26 highest professional standards. Only in this manner
27 can the health of the public be assured. The program
28 will be developed and administered by the Department
29 of Environmental Protection in cooperation with the
30 Department of Administration and the Department of
31 Labor.

32 The program requires a license for asbestos re-
33 moval contractors and training certification for
34 those engaged in abatement activities. Only these
35 licensed contractors with certified employees could
36 conduct abatement activities. The department will

1 develop training programs with assistance from the
2 other departments. The department will also develop
3 standards to govern work practices which must be
4 maintained in order to keep the license or certifica-
5 tion valid.

6 The program will be self-supporting on the basis
7 of reasonable license, certification and notification
8 fees.

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