



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 1135 (as enrolled)  
House Bills 5742 and 5743 (as enrolled)  
Sponsor: Senator Valde Garcia (S.B. 1135)  
Representative Sandra Caul (H.B. 5742)  
Representative Lorence Wenke (H.B. 5743)  
Senate Committee: Natural Resources and Environmental Affairs  
House Committee: Commerce

**PUBLIC ACT 228 of 2004**  
**PUBLIC ACTS 229 & 230 of 2004**

Date Completed: 1-31-05

**RATIONALE**

In the mid 1990s, the Auditor General issued a report detailing concerns that the State was receiving inaccurate data regarding environmental contamination sites from some laboratories with which the State contracted. The Auditor General found that there were no uniform quality standards for labs that provided the data. The State attempted to rectify the situation by limiting the number of labs from which the Department of Environmental Quality (DEQ) would accept data. Some people believed, however, that this action served only to discourage competition. It was suggested that a statewide program be implemented to assist the DEQ in identifying commercial labs that are qualified to submit data to the Department.

- **Allow the DEQ to charge a fee for participation in the Program.**
- **Create the Laboratory Data Quality Assurance Advisory Council to monitor and evaluate the Program.**
- **Require the DEQ to use only a commercial laboratory that successfully participates in the Program in contracting for State-funded laboratory work.**
- **Require the Auditor General to conduct performance post audits of the DEQ's environmental laboratory.**

The bills were tie-barred to each other and took effect July 21, 2004. A more detailed explanation of each bill follows.

**House Bill 5742**

Quality Recognition Program

The bill requires the DEQ to implement a Laboratory Data Quality Recognition Program to identify commercial laboratories that the Department considers qualified to generate analytical data for submission to the DEQ for compliance purposes.

(The bill defines "laboratory" as a body that engages in calibration or testing, or both, at a specified location. "Commercial laboratory" means a privately owned laboratory that generates analytical data required by NREPA pertaining to the operations of a third person regulated under the Act. "Analytical data" means the

**CONTENT**

**The bills created the "V. Harry Adrounie Laboratory Data Quality Assurance Act" as Part 205 of the Natural Resources and Environmental Protection Act (NREPA) to do the following:**

- **Require the Department of Environmental Quality to implement a Laboratory Data Quality Recognition Program to identify commercial laboratories qualified to generate analytical data for submission to the DEQ for compliance purposes under NREPA.**
- **Provide that participation in the Program is voluntary.**

qualitative or quantitative measurements generated by chemical, physical, biological, microbiological, radiological, or other scientific determination.)

Participation in the Program by a commercial laboratory is voluntary. A commercial laboratory may not be restricted or prohibited from generating analytical data for submission to the DEQ for compliance purposes under NREPA based on nonparticipation or unsuccessful participation.

Each time the DEQ lets a contract or contracts for State-funded laboratory work authorized under NREPA, it may use only those commercial laboratories that are successful participants in the Program. Exceptions may be made if desired analytical support services are not available from a commercial laboratory that is a successful participant.

The Program must determine whether the quality of analytical data is maintained through quality systems in which staff responsibilities and operational procedures are defined, documented, and subjected to an internal assessment by the commercial laboratory itself on a regular basis, with timely corrective action taken by the commercial laboratory as needed. The quality systems must include quality assurance policies and quality control procedures and must be documented in a written plan.

#### Conditions for Participation

To participate in the Program, a commercial laboratory must do all of the following:

- Submit an application to the DEQ.
- Pay the DEQ a fee based on the Department's actual costs of administering the Program, but not more than \$750 for an initial application or \$500 for a renewal application.
- Grant the DEQ access to the laboratory and laboratory records for inspections during normal business hours without prior notice.
- Participate in proficiency testing conducted by the DEQ, the U.S. Environmental Protection Agency, or any other nationally recognized proficiency testing program, if required by the Department.

#### Fund

The bill creates the Laboratory Data Quality Recognition Program Fund within the State Treasury. Program application fees must be deposited in the Fund. The State Treasurer also may receive money or other assets from any other source for deposit into the Fund. The State Treasurer must direct the investment of the Fund, and credit to it interest and earnings from investments. Money in the Fund at the close of the fiscal year will remain in the Fund and not lapse to the General Fund. Upon appropriation, the DEQ may spend Fund money only to administer the Program.

#### Posting

The DEQ must maintain and post on its website a list of laboratories that have successfully participated in the Program together with a statement that substantially sets forth that Program participation is voluntary; that a commercial laboratory may not be restricted or prohibited from generating analytical data for submission for compliance purposes based on nonparticipation or unsuccessful participation; and that the DEQ may use only successful participants each time it lets a contract or contracts for State-funded laboratory work.

The DEQ also must maintain and post on its website the types of analytical data with respect to which a laboratory successfully participated in the Program, if the laboratory successfully participated only with respect to certain types of analytical data.

#### Laboratory Recognition & Participation Renewal

The DEQ must recognize for a two-year period the successful participation of a commercial laboratory in the Program. The DEQ may terminate recognition of a commercial laboratory as a successful participant upon determining that the laboratory no longer meets the standards for successful participation.

#### Enforcement & Rules Promulgation

The DEQ must enforce Part 205 and may promulgate rules under the Administrative Procedures Act as it considers necessary to carry out its duties under Part 205. The

Department, however, may not promulgate any additional rules under Part 205 after December 31, 2006.

### **House Bill 5743**

The bill requires the Auditor General to conduct performance post audits covering all of the following:

- The quality of the analytical data generated by the DEQ's environmental laboratory.
- The costs of operating the DEQ's environmental lab relative to the costs of operating comparable private laboratories that meet the requirements for successful participation in the Quality Recognition Program, to the extent that sufficient data are available.
- The adequacy of the fees provided for in House Bill 5742.

The Auditor General must conduct and submit to the Legislature a report on a performance post audit within one year after the bill's effective date, and every two years thereafter.

### **Senate Bill 1135**

#### Advisory Council Membership

The bill creates the Laboratory Data Quality Assurance Advisory Council in an advisory capacity within the DEQ. The Advisory Council must consist of the DEQ Director or his or her designee, and one representative from each of the following interests: a statewide business organization, commercial laboratories that do not also function as in-house laboratories, in-house laboratories, public laboratories, the general public, and the Michigan Municipal League or its successor organization.

Advisory Council members, with the exception of the DEQ Director or his or her designee, must be appointed by the Governor. The members first appointed to the Council had to be appointed within 90 days after the bill's effective date. Council members must serve until a successor is appointed. If a vacancy occurs, the unexpired term must be filled in the same manner as the original appointment was made.

The Council member representing the DEQ is to serve without any additional compensation, and other members will serve without compensation. Council members, however, may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as Council members.

#### Duties

The Council must do all of the following:

- Monitor and evaluate the Quality Recognition Program established under House Bill 5742, including whether commercial laboratories participating in the Program should or should not be required to participate in proficiency testing, and the structure and the appropriate scope of review of quality systems described in House Bill 5742.
- Develop recommendations whether the Program should be retained, terminated, or replaced with another laboratory data quality assurance method.
- Evaluate the costs of the Program to private businesses and the costs to private business of implementing these recommendations.
- Evaluate the first report of the Auditor General under House Bill 5743.
- Develop recommendations whether the DEQ should provide additional technical and training assistance to commercial, in-house, and public laboratories.

The Council also must submit reports on its findings to the Governor, the Senate Majority Leader, the Speaker of the House, and the Senate and House standing committees with primary responsibility for environmental protection issues. An interim report is due 18 months after the bill's effective date, and a final report is due by June 30, 2007. The Council will be disbanded 180 days after it submits the final report.

#### Procedure

The bill requires the DEQ Director or his or her designee to call the Council's first meeting. At the first meeting, the Council must elect from among its members a chairperson and other officers as it considers necessary or appropriate. After the first meeting, the Council must meet at least quarterly, or more frequently at the call of

the chairperson or if requested by at least two members.

A majority of the members will constitute a quorum for the transaction of business at a Council meeting. A majority of the members present and serving are required for official Council action.

MCL 324.20517 & 324.20519 (S.B. 1135)  
324.20501 et al. (H.B. 5742)  
324.20513 (H.B. 5743)

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

It is critical that the analytical data submitted to the State with regard to environmental contamination sites are accurate and reliable so that a proper plan of action can be developed and implemented. The use of inaccurate data can result in unnecessary costs to taxpayers and endanger the public health. The bills allow only labs recognized as qualified to contract with the DEQ, thus ensuring that the Department can rely upon the data it receives to respond appropriately to environmental contamination. Additionally, because Program participation is voluntary, the bills are not burdensome to laboratories. Nonparticipating labs still may generate data for submission to the DEQ to demonstrate compliance with permit requirements.

### **Supporting Argument**

Before the bills' enactment, only a handful of labs were authorized to submit data to the State. The bills offer an opportunity for all labs to compete for contracts and an incentive to become more efficient and cost-effective, which will benefit taxpayers. Furthermore, the bills might attract out-of-State labs to do business in Michigan, providing an economic boost for the State.

Legislative Analyst: Julie Koval

## **FISCAL IMPACT**

### **House Bill 5742**

The bill will necessitate 1.0 FTE position, at a cost of \$85,000 (according to DEQ estimates), based on the new

responsibilities for the Department. Revenue from the commercial laboratory fee will depend on the number of participants in the Program. There are about 60 commercial laboratories and up to \$45,000 would be generated if 100% of the laboratories participated and paid an initial application fee of \$750. On a continuing basis, revenue of up to \$30,000 could be generated from a \$500 renewal application fee. Since the quality recognition designation will be valid for two years, annual revenue could be \$15,000. An appropriation of \$15,000 in commercial laboratory fees was enacted for FY 2004-05.

The requirement of successful participation in the program for laboratories performing testing associated with State-funded programs will affect the eight laboratories that the State currently has contracts with for services. The State will receive revenue of \$6,000 from the application fee and \$4,000 from the renewal fee from these laboratories if they want to continue the contracts.

### **House Bill 5743**

The bill will result in additional costs for the Legislative Auditor General, depending on the number of hours required to perform the audit. The cost of performance audits ranges from \$50,000 to \$75,000.

### **Senate Bill 1135**

The bill would result in minimal expenses related to reimbursement of actual and necessary expenses incurred by members of the Council.

Fiscal Analyst: Bill Bowerman  
Jessica Runnels

A0304s1135ea

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.