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BILL ANALYSIS



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Senate Bills 386, 387, and 393 (as introduced 6-10-25)

Sponsor: Senator Sue Shink (S.B. 386)

Senator Mallory McMorrow (S.B. 387)

Senator Sean McCann (S.B. 393)

Committee: Energy and Environment

Date Completed: 6-10-25

CONTENT

Senate Bill 386 would amend Part 201 (Environmental Remediation) of the National Resource and Environmental Protection Act (NREPA) to do the following:

- Provide that an individual who did not have a present injury or disease would have a cause of action to seek medical monitoring due to exposure to a hazardous substance under certain circumstances.
- Require a court that awarded medical monitoring to order a defendant to pay the cost of the monitoring to a court-supervised medical monitoring program administered by one or more appropriate health professionals.
- Allow an action under the bill to be brought as part of a class action.

Senate Bill 387 would amend the Revised Judicature Act to specify that a claim for damages or injury related to a hazardous substance would accrue at the time the plaintiff discovered or should have discovered the existence of the claim.

Senate Bill 393 would amend Part 201 of NREPA to limit the period for an action seeking natural resources damages or recovery of response activity costs related to a hazardous substance to six years after the initiation of physical on-site construction remedial activities.

Senate Bills 386 and 393 are described in greater detail below.

Senate Bill 386

Generally, Section 20126 of NREPA specifies that hazardous substance facilities, their owners and operators, and those that contract with them to dispose or transport a hazardous substance are liable under Part 201 for damages or injury related to hazardous substances. Under the bill, an individual who did not have a present injury or disease *would* have a cause of action to seek medical monitoring against a person liable under Section 20126 due to exposure to a hazardous substance if the individual demonstrated by a preponderance of evidence the following:

- The individual or the individual's biological parent had been exposed to a hazardous substance at a rate significantly greater than the general population.¹
- As a result of the exposure, the individual suffered an increased risk of contracting a serious disease.

¹ If an individual were to seek a cause of action based on a parent's exposure, that exposure would have to have occurred before the individual was born.

- The increased risk of contracting a serious disease necessitated periodic medical monitoring procedures that differed from those prescribed for the general population.
- The medical monitoring procedures existed and were reasonable in cost and safety.
- The person responsible for the release of the hazardous substance employed five or more full-time employees at the time of the release.

If the court found a defendant liable and awarded the cost of medical monitoring, the court would have to order the defendant to pay the award to a court-supervised medical monitoring program administered by one or more appropriate health professionals, including professionals with expertise in exposure to hazardous substances or expertise with treating or monitoring the relevant latent disease or diseases. The court also would have to award to the plaintiff reasonable attorney fees and other litigation costs reasonably incurred.

The bill provides that it would not prevent the pursuit of any other civil or injunctive remedy or defense available under statute or common law. The remedies and defenses provided for would be in addition to those provided by other statutory or common law. The bill would not increase the rights and remedies available under the Worker's Disability Compensation Act to an employee who suffered a personal injury in the course of employment. An action under the bill could be brought as a class action.

Additionally, the remedies and defenses provided for by the bill could be awarded in an action under Section 20135. (Generally, Section 20135 allows a person or local unit of government to commence a civil action if the person or citizens is or may be adversely affected by the unauthorized release of a pollutant from a facility or threat of release from a facility).

Lastly, the bill would exempt these remedies from other provisions of NREPA that specify the conditions under which a person may be found liable and limit the period for filing actions.²

Senate Bill 393

Among other things, NREPA sets the limitation periods during which an action may be filed. The bill would set the limit for an action seeking natural resources damages or recovery of response activity costs related to a hazardous substance that was not regulated by the State or the Federal government as a hazardous substance on or before July 1, 1994, to six years after initiation of physical on-site construction activities for a remedial action selected or approved by the Department of Environment, Great Lakes, and Energy (EGLE) to address the previously unregulated hazardous substance.

MCL 324.20126 et al. (S.B. 386)
Proposed MCL 600.5830 (S.B. 387)
324.20140 (S.B. 393)

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

Senate Bills 386 and 387 are reintroductions of Senate Bill 610 and 611 of the 2023-2024 Legislative Session. Senate Bill 393 is a reintroduction of Senate Bill 676 of the 2021-2022 Legislative Session and Senate Bill 1122 of the 2019-2020 Legislative Session.

Legislative Analyst: Nathan Leaman

² MCL 324.20126 & 324.20140

FISCAL IMPACT

Because the bills would broaden the potential pool of potential claimants in actions for damages or injury related to a hazardous substance, circuit courts could see an increase in such complaints as a result. Any additional administrative costs for hearings or trials as a result of the bills likely would be absorbed by those courts.

The bills would have no fiscal impact on EGLE.

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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.