

Approved

Ivan Sand 4/12/85
Date

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by REPRESENTATIVE IVAN SAND at
Chairperson

2:15 ~~am~~/p.m. on APRIL 5, 1985 in room 521-S of the Capitol.

All members were present except: All present

Committee staff present: Emalene Correll, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Hack, Revisor of Statutes Office
Gloria Leonhard, Secretary to the Committee

Conferees appearing before the committee:

Mr. John Irwin, Department of Health and Environment -- SB 113
Mr. Joe Furjanic, Legal Counsel, Kansas Assn. of School Boards -- SB 113
Mr. Fred Allen, Kansas Assn. of Counties -- SB 113
Ms. Janet Stubbs, Kansas Homebuilders Assn -- SB 369
Mr. Lowell Miller, Topeka builder -- SB 369
Mr. Mitch Cooper, Exec. Director, Topeka Resource Center for the Handicapped
-- SB 369
Mr. Richard D. Charlton, Sr., Legislative Chairman, Kansas Rehabilitation
Assn., & founder of A.D.A.P.T. (Advocates for Disabled Access to Programs
and Training, Inc.) -- SB 369
Mr. Don Karr, President, Topeka Rehabilitation Assn. -- SB 369
Mr. Michael Byington, Lobbyist for Epilepsy - Kansas, Inc., the Kansas
Association for the Blind and Visually Impaired, Inc., & Vice Chairman
for the Topeka/Shawnee County Handicapped Advisory Committee -- SB 369

Chairman Ivan Sand called for hearings on the following Senate Bills:

SB 113, concerning the secretary of health and environment; relating to the regulation of persons and business entities engaging in the removal or encapsulation of asbestos; imposing civil and criminal penalties for violations.

Ms. Emalene Correll, Staff, gave an overview of SB 113 by reviewing each section of the bill individually. Also, Ms. Correll reviewed "Performance Audit Report -- Asbestos Inspections in Kansas," a report to the Legislative Post Audit Committee by the Legislative Division of Post Audit, State of Kansas, March, 1985. Ms. Correll noted that if SB 113 and SB 48 were passed combined, SB 48 would need to be amended in Section 2 to read "from and after January 1, 1986."

Mr. John Irwin, representing the Department of Health and Environment, testified that the Department supports the bill and believes it is a way to assure good removal.

Mr. Joe Furjanic, Legal Counsel, Kansas Association of School Boards, urged the Committee to pass SB 113.

Mr. Fred Allen, representing Kansas Association of Counties, said the Association has no problems with SB 113.

When questioned, Ms. Emalene Correll, Staff, said the fees for licensure will be deposited in the state general fee fund and that the rate would be determined by the Secretary of Health and Environment.

Senator Montgomery was present and said the Senate had no problems with the provisions of SB 113.

Rep. Arthur Douville made a motion that SB 113 be passed. Rep. George Dean seconded the motion. The motion carried with Rep. Elizabeth Baker being recorded as voting "no."

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT,
room 521-S, Statehouse, at 2:15 ~~am~~ p.m. on APRIL 5, 1985.

SB 369, concerning public buildings; relating to handicapped accessibility standards.

Ms. Emalene Correll, Staff, gave an overview of the bill. Ms. Correll said Kansas Home Builders Association testimony in a Senate Committee had indicated that the 10% requirement is too large; that there is not a market for that many apartments. When questioned, Ms. Correll affirmed that the 10% is applicable statewide.

Ms. Janet Stubbs, Kansas Home Builders Association, testified in support of SB 369. (See Attachment I.) Ms. Stubbs introduced Mr. Lowell Miller, a Topeka builder, who testified in support of SB 369. Mr. Miller testified that 10% handicapped units will not carry themselves; that supply and demand is a factor; that the three codes regarding handicapped unit requirements in effect today are (1) Uniform Building Code (UBC) which requires one handicapped unit for buildings containing 21 through 99 units and one handicapped unit, plus one for each additional 100 units or fraction thereof for buildings containing 100 and over units; (2) Building Officials and Code Administrators (BOCA) which requires the same percentages as UBC; and (3) Southern Building Code which requires five percent. Mr. Miller said that because cabinets are lower in handicapped units and bathrooms are larger, it is difficult to rent the units.

A committee member pointed out that in Wichita there is a waiting list for apartment rental.

Mr. Mitch Cooper, Exec. Director, Topeka Resource Center for the Handicapped, testified in opposition to SB 369. (See Attachment II.)

Mr. Richard D. Charlton, Sr., Legislative Chairman, Kansas Rehabilitation Assn., & founder of A.D.A.P.T (Advocates for Disabled Access to Programs and Training, Inc.) testified in opposition to SB 369. (See Attachments III and IV.) Mr. Charlton said he opposes the bill as being hastily presented and urged the Committee to withdraw or kill the bill. Mr. Charlton explained that minor construction modifications are needed that would fit both handicapped and able-bodied others.

Mr. Don Karr, President, Topeka Rehabilitation Assn, testified in opposition to SB 369.

Mr. Michael Byington, Lobbyist for Epilepsy - Kansas, Inc., the Kansas Assn. for the Blind and Visually Impaired, Inc., & Vice Chairman for the Topeka/Shawnee County Handicapped Advisory Committee, testified in opposition to SB 369. (See Attachment V.)

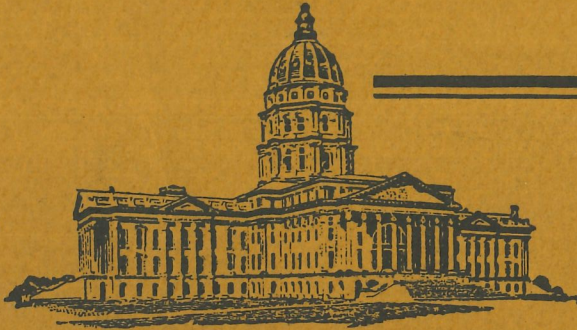
Chairman Sand requested that testimony cease on SB 369 due to the time element involved and as both proponents and opponents had presented their views.

Mr. Ray Petty, Consultant for State Employment of the Handicapped, Department of Human Resources, requested that the minutes of the meeting show that he had been denied the right to testify.

Rep. George R. Dean made a motion that SB 369 be tabled and recommended for interim study. Rep. Kenneth D. Francisco seconded the motion. The motion carried.

The minutes for the meetings of March 27, 1985, and March 29, 1985, were approved as presented.

The meeting adjourned.



ATTACHMENT - CORRELL
4/5/85

PERFORMANCE AUDIT REPORT

Asbestos Inspections in Kansas

**A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas**

March 1985

Attachment - Correll

Legislative Post Audit Committee

Legislative Division of Post Audit

THE LEGISLATIVE POST Audit Committee and its audit agency, the Legislative Division of Post Audit, are the audit arm of Kansas government. The programs and activities of State government now cost about \$3 billion a year. As legislators and administrators try increasingly to allocate tax dollars effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by Legislative Post Audit helps provide that information.

As a guide to all their work, the auditors use the audit standards set forth by the U.S. General Accounting Office and endorsed by the American Institute of Certified Public Accountants. These standards were also adopted by the Legislative Post Audit Committee.

The Legislative Post Audit Committee is a bipartisan committee comprising five senators and five representatives. Of the Senate members, three are appointed by the President of the Senate and two are appointed by the Senate Minority Leader. Of the Representatives, three are appointed by the Speaker of the House and two are appointed by the Minority Leader.

Audits are performed at the direction of the Legislative Post Audit Committee.

Legislators or committees should make their requests for performance audits through the Chairman or any other member of the Committee.

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LEGISLATIVE DIVISION OF POST AUDIT

Suite 301, Mills Building
Topeka, Kansas 66612
(913) 296-3792

PEFORMANCE AUDIT REPORT

Asbestos Inspections in Kansas

OBTAINING AUDIT INFORMATION

This audit was conducted by Ron Green, Senior Auditor, and Allan Foster and Rick Riggs, Auditors, of the Division's staff. If you need any additional information about the audit's findings, please contact Mr. Green at the Division's offices.

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ASBESTOS INSPECTIONS IN KANSAS

Summary of Legislative Post Audit's Findings

Among its other duties, the Kansas Department of Human Resources conducts asbestos inspections in Kansas. Although there are no federal or State laws requiring any State agency to take specific steps to deal with asbestos, the Department has established a voluntary program to identify the material in public buildings and schools. This effort is carried out by the Department's Industrial Safety and Health Program as part of its overall safety inspection duties.

For fiscal year 1986, the Governor has proposed an enhanced Asbestos Control Program in the Department of Health and Environment. This audit was conducted to answer several questions about the current program in the Department of Human Resources and about the proposed program at the Department of Health and Environment.

What authority, duties, and responsibilities are assigned to the Department of Human Resources' Industrial Safety and Health Program? Under State law, the Secretary of Human Resources is given broad authority to enforce worker protection laws and to inspect workplaces for any hazardous conditions. The Department's Industrial Safety and Health Program has 20 permanent employees, 15 of whom conduct various types of inspections and consultations. Three of these inspector positions are assigned to check schools and other public buildings for electrical, chemical, or physical dangers. Upon request, these three inspectors also check for the presence of materials containing asbestos.

To what extent are asbestos inspections carried out under the Department's Industrial Safety and Health Program? In fiscal year 1984, the three State-funded inspectors conducted 2,139 safety and health inspections of schools and public buildings. Of these, 100 inspections were conducted primarily to detect asbestos. An additional 28 asbestos exposure assessments were conducted, which involved thorough searching for asbestos and taking samples for laboratory analysis.

To what extent would a new asbestos program at the Department of Health and Environment duplicate the existing program at the Department of Human Resources? Under the Governor's proposal, the Department of Health and Environment would become the lead agency for asbestos inspections and control in the State. The enhanced program would add three new positions and related equipment, at a total cost of \$126,000 in fiscal year 1986. An agreement signed by the two agencies would apparently minimize any duplication of asbestos inspection efforts. If asbestos functions are to be consolidated in one agency, the Department of Health and Environment appears to be the logical choice.

ASBESTOS INSPECTIONS IN KANSAS

Among its other duties, the Kansas Department of Human Resources is responsible for asbestos inspections in the State. Asbestos is a fibrous mineral that was used for many years in building materials as fireproofing and insulation. It is present in some form in most public buildings and schools. As asbestos-containing materials age or are disturbed, they can release dust and microscopic particles into the air. If breathed, these particles can cause a variety of lung diseases, including cancer. The problems are greatest among children and people who smoke. The dangers associated with asbestos have spawned a number of federal laws and programs designed to minimize the risks of exposure.

Most current asbestos-control activities in Kansas are carried out by the Department's Industrial Safety and Health Program, which inspects public and private buildings for a variety of hazards. For fiscal year 1986, the Governor has proposed moving some of the activities concerning asbestos control to a new program within the Department of Health and Environment. This proposal has prompted concern among some legislators that the proposed program would duplicate or overlap the functions of the one now in place within the Department of Human Resources.

On February 25, 1985, the Legislative Post Audit Committee directed the Legislative Division of Post Audit to conduct a performance audit of the Department of Human Resources' asbestos inspection function, and to answer the following questions:

1. What authority, duties, and responsibilities are assigned to the Department of Human Resources' Industrial Safety and Health Program?
2. To what extent are asbestos inspections carried out under the Department's Industrial Safety and Health Program?
3. To what extent would a new asbestos program at the Department of Health and Environment duplicate the existing program at the Department of Human Resources?

To answer these questions, the auditors interviewed officials at both agencies and reviewed statutes, budget documents, and inspection records. They also contacted inspection officials in other states, as well as officials of the Environmental Protection Agency and the Occupational Safety and Health Administration.

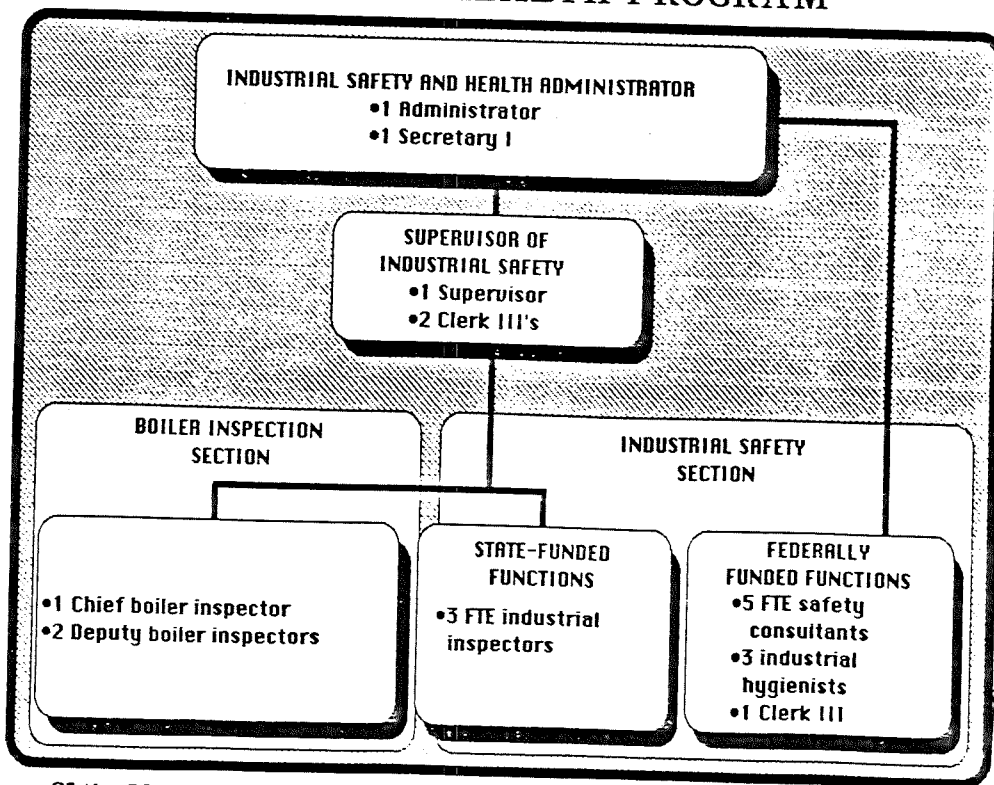
What Authority, Duties, and Responsibilities Are Assigned to the Department of Human Resources' Industrial Safety and Health Program?

The Secretary of Human Resources is given broad authority to perform workplace inspection activities by K.S.A. 44-634 and K.S.A. 44-636 et seq.

These statutes authorize the Secretary to enter into any business, factory, State agency, or other place where labor is performed to gather facts and statistics or to inspect for hazardous conditions, including the presence of asbestos or other threats to workers' health. The Secretary is generally empowered to enforce any laws enacted for protection of the worker.

Departmental activities in these areas are carried out under the Industrial Safety and Health Program, whose employees perform a number of inspection functions concerned with the welfare of workers. The following chart illustrates how the program is organized.

ORGANIZATION OF THE INDUSTRIAL SAFETY AND HEALTH PROGRAM



Of the 20 permanent employees in the Industrial Safety and Health Program of the Department of Human Resources, only three full-time industrial inspector positions (which are funded from the State General Fund) are now performing asbestos inspections. The safety consultant and industrial hygienist positions are funded 90 percent by the federal Occupational Safety and Health Administration, and normally perform only federally mandated work.

Most of the Industrial Safety and Health Program's Responsibilities Relate to Inspections of Public and Private Workplaces to Ensure Worker Safety

The Industrial Safety and Health Program is divided into two sections: Boiler Inspection and Industrial Safety. The Boiler Inspection Section is responsible for inspecting the estimated 25,000 boilers in operation in Kansas.

As allowed by law, many of these inspections are actually carried out by insurance company inspectors. The inspectors issue certificates for boilers that are considered safe to operate. According to Department budget documents, the program's three boiler inspectors checked 4,315 boilers in fiscal year 1984.

The Industrial Safety Section inspects and consults with both public sector and private sector employers to enforce worker safety requirements. For public workplaces, it has three full-time equivalent industrial inspector positions that visit State and local government buildings, schools, and other public buildings, generally at the request of building officials. The inspectors generally check for electrical, chemical, or physical dangers such as inadequate ventilation and poor fire prevention practices. If building officials request it, the industrial inspectors will include as part of their inspection activities checks for materials containing asbestos. Within the Department, these are the only three positions that have direct responsibility for any asbestos inspections. (Two of these positions are full-time inspectors assigned to the Kansas City and Belleville areas. The third full-time equivalent position is actually one-fourth of four inspectors' time. These inspectors are stationed in Topeka, El Dorado, and Meriden. They spend the rest of their time performing federally funded work.) According to Department officials, in fiscal year 1984 the three State-funded industrial inspector positions inspected 134 State government facilities, 951 school buildings, and 1,054 other local government buildings, at an annual salary cost of \$78,551.

The Industrial Safety Section has eight other full-time equivalent professional positions, which are funded primarily with federal funds. Employees in these positions normally perform only federally mandated work relating to worker safety in the private sector. The five full-time equivalent safety consultant positions and three industrial hygienist positions are funded through a contract with the federal Department of Labor's Occupational Safety and Health Administration. The safety consultants assist the employers in understanding Department of Labor laws and regulations, recognizing safety and health hazards in private sector buildings, instituting control procedures to eliminate hazards, and meeting State and federal recordkeeping requirements. According to Department officials, 655 consultations were conducted in fiscal year 1984 at a cost of about \$250,000 in federal dollars, matched by about \$25,000 (10 percent) in State General Fund dollars.

Other major activities of the Industrial Safety Section include providing services for dealing with hazardous substances in the workplace and providing education and training programs. The Department provides three specific services connected with hazardous substances: sampling for known chemical, biological, or physical hazards in private industry; identifying and controlling or removing old, toxic, or explosive chemicals found in such places as schools or hospital laboratories; and identifying and providing technical assistance regarding asbestos in schools and other public buildings. According to Department officials, 58 educational and training programs were conducted in fiscal year 1984. Of these, 27 were for State agencies, 28 for local units of government, and three for private industry. Depending on whether the recipients of these services are in the public or private sectors, they are funded by either State or federal dollars.

To What Extent Are Asbestos Inspections Carried Out Under the Department of Human Resources' Industrial Safety and Health Program?

The health risks of asbestos first became generally known about 10 years ago. At that time, the Environmental Protection Agency asked the states for assistance in controlling the substance. This request eventually led Kansas to establish the inspection procedures that exist today. The following section reviews the background of the State's asbestos program and its current operations.

The Asbestos Inspection Program In Kansas Developed After Requests from the Environmental Protection Agency

In March 1979, the Governor's Office received a letter from the Environmental Protection Agency saying that the agency was initiating a control program to reduce the hazard of sprayed-on asbestos materials in schools. The letter sought the Governor's "much-needed involvement in a voluntary State and local effort to remedy the problem." The thrust of the Agency's original program was to provide technical assistance and advice to State and local officials in inspecting buildings for asbestos, and taking and analyzing samples. The Agency asked that a liaison person be appointed to aid in future communication.

Controlling Asbestos Exposure

Asbestos is a mineral that has been mined for many years for its heat-resistance and insulation properties. Because of its fibrous nature, it is also used as a strengthener in mortar, spackling compound, floor tile, and many other products. In fact, two-thirds of the more than 3,000 products containing asbestos are used in the construction industry. As they age, some of these products may deteriorate to the point that they can be easily crumbled or reduced to an airborne dust. Also, sawing or crushing some asbestos materials can produce these tiny, airborne fibers that represent the most serious health risk. Forms of the material that can be easily changed in to this dusty, breathable state are referred to as "friable" asbestos. In August 1984, the Environmental Protection Agency estimated that 700,000 buildings and 100,000 to 200,000 private homes may contain some form of friable asbestos.

Between 1940 and 1973, asbestos was sprayed on ceilings and other areas in schools and buildings. Asbestos ceiling tiles have also been widely used in many buildings because of the material's sound-deadening properties, and boilers and pipes have almost always--until a few years ago--been insulated with asbestos batting. While the material is still used for many applications, it has generally been removed from those products most likely to cause excessive exposure.

The fact that asbestos is present in so many places, and in such large amounts, is not in itself a risk. The condition of the material, and the amount of fibers in the air, determine a person's degree of exposure. In fact, many health officials warn that the biggest risk is improper removal. It is far better to leave the asbestos in place than to rip the material from pipes and ceilings, filling the air with asbestos particles. The Environmental Protection Agency sets the minimum safe exposure to airborne asbestos as 0.2 fibers per cubic centimeter; the clouds of dust raised during demolition or improper asbestos removal can cause much higher concentrations.

There are four basic ways to minimize the asbestos threat in a building: **Removal** is initially more expensive and complex, and potentially dangerous, but it eliminates the chance of future exposure. **Enclosure** of areas containing asbestos involves constructing a barrier that isolates the contaminated areas from the rest of the building. This is considered to be only a temporary solution, since future renovation or repair may cause the barrier to be disturbed. **Encapsulation** means the spraying of the asbestos-containing material with paint or other material that prevents the fibers from escaping into the air. **Special operations and maintenance** is an option when the asbestos is in good condition. It is a program of cleanup, maintenance, and periodic reinspections.

The Governor originally appointed a Department of Health and Environment official to the task. However, it soon became apparent that the Department of Human Resources, which already had a program in place in State schools and public buildings to inspect for health and safety risks for the worker, was better equipped to coordinate the Environmental Protection Agency program. The Governor subsequently made an official of the Industrial Safety and Health Program the asbestos liaison.

Because of the ongoing school inspection activity, the Program's administrators agreed to include a check for asbestos as a routine addition to the inspection activities. The added time was negligible, and adding the asbestos check enabled the inspectors to call school officials' attention to the problem. The Environmental Protection Agency provided the inspectors with training and advice in detecting asbestos, and provided manuals and other written materials to the schools.

Asbestos control is taking more time than originally expected. In recent years, the inspections and assistance provided on a voluntary basis by the State through the Industrial Safety and Health Program have increased dramatically. There are no federal or State requirements for asbestos inspections or clean up efforts in any school or public building. But the Environmental Protection Agency issued regulations in 1982 requiring all schools in the country to sample for asbestos, and then notify all employees and parents of the results. It was hoped that such notification requirements would put pressure on school administrators, parents, or elected officials to deal with any asbestos-related problems in the schools.

Most inspections of schools and other public buildings are conducted by local officials, insurance company inspectors, and the like. But after the notification rules went into effect, the Industrial Safety Section staff began receiving a large volume of calls from school and other local officials asking for inspections, information, and assistance. Program officials report that at one point in the summer of 1984 they were receiving about 60 calls a day related to asbestos. (Since then, the number of calls has tapered off to the current rate of about three to four per day.) The Industrial Safety Section has scheduled inspectors to visit the localities requesting help in regard to asbestos in public buildings.

Another federal requirement affecting schools is the School Hazard Abatement Act. The program mandated by this federal law makes grants and loans available to school districts for the "abatement" (removal or covering) of asbestos. This Environmental Protection Agency program is operated in Kansas through the State Department of Education, and requires school districts applying for the federal funds to inspect their schools and report the results in their applications. The schools are responsible for making their own inspections, although many call on the Industrial Safety and Health Program for assistance. The federal agency ranks all the applications and makes the grant awards.

The State's Current Asbestos Inspection Program Includes Three Types of Inspections

Most asbestos-control activities in Kansas are carried out under the Department of Human Resources' Industrial Safety and Health Program. As

Asbestos Activities in Surrounding States

To determine how asbestos is handled in other states, the auditors contacted officials in Nebraska, Iowa, Oklahoma, and Missouri. In each of those states, the agency with major responsibility for asbestos in public buildings is the State Department of Health. Iowa and Nebraska have no funding for asbestos positions; in these states, the assigned staff persons do asbestos work only when it can be fit in around other duties. Missouri and Oklahoma have staff assigned to asbestos-control duties as part of their job descriptions.

The Oklahoma program is similar to the proposed Asbestos Control Program in the Kansas Department of Health and Environment. Three staff members of the Special Hazards Division of the Oklahoma Department of Health are responsible for asbestos in public buildings. Most of their work with asbestos takes the form of technical assistance and laboratory analysis. They do little field work.

Of the surrounding states, Oklahoma has the most asbestos-related activity. In December 1984, the Governor ordered all buildings used or owned by the state to be inspected and sampled for asbestos, and ordered all schools to be reinspected. After the initial inspection, any building with a positive asbestos sample must have a hazard assessment completed by an assessment team. The final report, due in March 1985, will contain a prioritized listing of all buildings with asbestos hazards. Since December 1984, the Oklahoma Department of Health has processed 11,000 asbestos samples and over 400 people have participated in the inspections.

None of these states currently fund any asbestos abatement activities, although legislation is pending in Missouri that would establish an abatement fund for schools. Both Iowa and Nebraska allow school districts to pass mill levies to fund the control or removal of asbestos.

explained earlier, three full-time equivalent industrial inspector positions are assigned the responsibility of making routine inspections of public buildings in the State. Among other things, these inspectors check for the presence of asbestos. Depending on the nature of the inspection request by building officials and on the amount of asbestos present, an industrial inspector may give more or less emphasis to asbestos in relation to the other potential hazards which may exist in a building. The three types of inspections conducted by State-funded inspectors are detailed below.

The safety and health inspection. In this procedure, the inspector checks all or most of the likely hazard areas for electrical, chemical, or physical dangers such as deteriorated wiring, inadequate ventilation, poor fire prevention practices, and unsafe storage of chemicals. Since the addition of the asbestos check, the inspector also identifies and notes any occurrences of asbestos. The final inspection report will note, for example, that an asbestos-like material was wrapped on overhead pipes in the school cafeteria.

According to program officials, these inspections are scheduled on a weekly basis, according to the number of official requests or employee complaints received. The inspections are also scheduled so that each facility is inspected approximately every two years. If a particular area of the State needs more attention in one week than one inspector can provide, another inspector will be sent in to assist.

The completed inspection reports are filed in Topeka. The records of suspected asbestos are not immediately used for anything; rather, they are kept on file in the event that a school administrator, other public official, or parent inquires about the asbestos hazard in the facility.

In fiscal year 1984, according to Department officials, the three inspectors performed 134 inspections of State buildings, 951 school buildings, and 1,054 facilities of local governmental units, for a total of 2,139 inspections during the period. This works out to 713 inspections per position, or about three inspections per day each. These figures include both the regular safety and health inspections and the more specialized asbestos inspections.

The asbestos inspection. The second type of check conducted by the industrial inspectors is called an asbestos inspection. In this case, the

inspection is usually scheduled as the result of either a request from a local official or a complaint from an employee or the public. Similar in form to the safety inspection, the asbestos inspection focuses mostly on finding asbestos exposed in the building. It does not usually involve air monitoring, sampling, or other in-depth testing; it is primarily a means of acquainting building officials with the amount of asbestos present and the degree of possible risk. In fiscal year 1984, there were 100 inspections conducted primarily to detect asbestos.

The asbestos exposure assessment. Making a more definitive evaluation of building occupants' risk of exposure takes a greater amount of time and expertise. Of the staff of the Industrial Safety and Health Program, only the industrial safety supervisor is skilled at making these assessments of exposure. All of the 28 exposure assessments conducted in fiscal year 1984 were done by the supervisor. In this procedure, the supervisor visits the facility and conducts a thorough search for asbestos material while wearing protective clothing and breathing equipment. The inspection procedure includes taking samples of the suspected asbestos materials.

These samples are prepared for analysis and sent to the laboratory at the Department of Health and Environment for a determination of the material's asbestos content. While the Industrial Safety and Health Program does have some laboratory facilities, the available equipment is only suitable for preparation of samples.

The Department of Health and Environment Also Conducts Some Asbestos Inspections

While the Department of Human Resources conducts routine inspections of public buildings, the Department of Health and Environment also conducts some checks in public facilities. According to Department officials, these checks are usually conducted on an emergency basis. Most such visits involve taking air samples or making other checks that require laboratory support. According to a list supplied by a Department official, the Department of Health and Environment conducted 18 asbestos-related field investigations and three seminars on asbestos-related subjects in calendar year 1984.

To What Extent Would A New Asbestos Program At the Department of Health and Environment Duplicate the Existing Program at the Department of Human Resources?

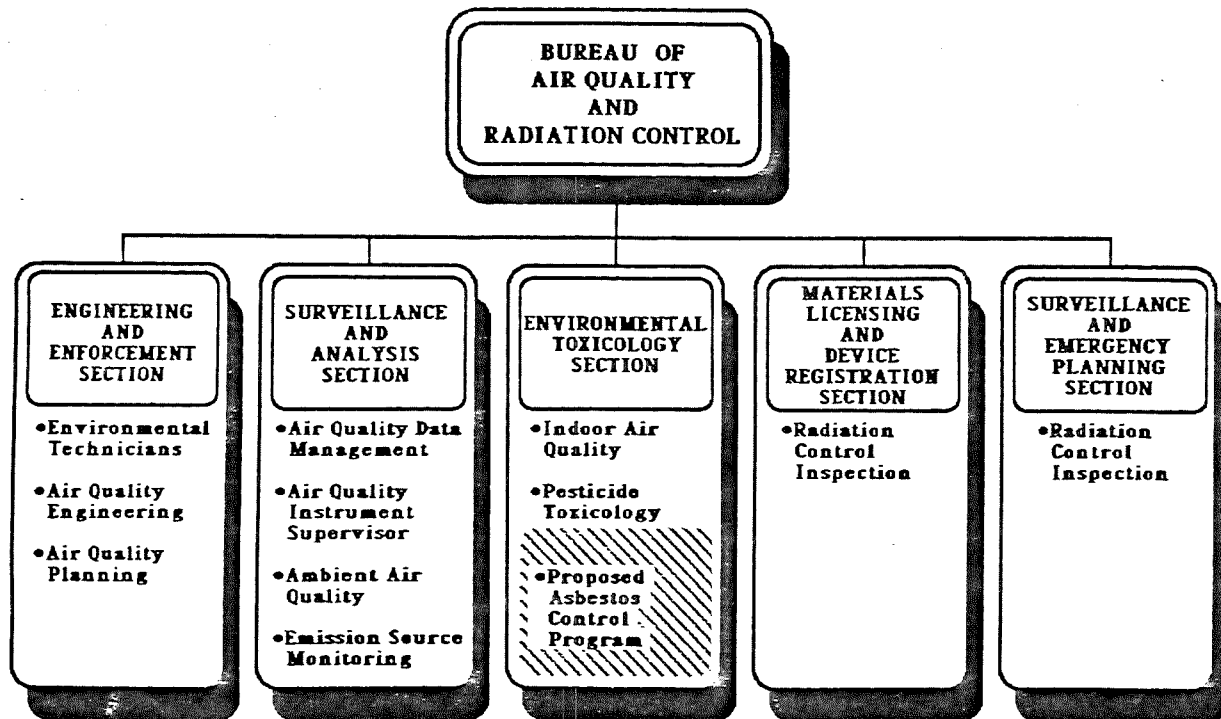
In his fiscal year 1986 budget, the Governor recommended the development of an Asbestos Control Program in the Department of Health and Environment. To determine if this program would result in duplication of effort within State government, the auditors interviewed officials of both Departments and examined budget documents and other pertinent records. They found that the Governor's proposal would make the Department of Health and Environment the lead agency in asbestos control in public buildings, and that the two agencies have worked out an agreement minimizing any potential duplication of effort. These findings are explained in the following sections.

Under the Governor's Proposal the Department of Health and Environment Would Become the Lead Agency for Asbestos Inspections and Control in the State

In his budget message to the 1985 Legislature, the Governor stated that neither the Department of Human Resources nor the Department of Health and Environment currently has the staff to adequately meet the needs of the State regarding asbestos in public buildings. The message said that creation of the Asbestos Control Program in the Department of Health and Environment would enable the State to respond in a more timely manner to the many asbestos-related requests for assistance.

The proposed Asbestos Control Program would become a part of the Environmental Toxicology Section in the Bureau of Air Quality and Radiation Control. The Environmental Toxicology Section is responsible for responding to problems regarding human exposure to potentially hazardous chemical and physical agents in the workplace and in other community environments. The accompanying figure outlines the general responsibilities of the Bureau of Air Quality and Radiation Control.

ORGANIZATION OF THE BUREAU OF AIR QUALITY AND RADIATION CONTROL



The Bureau of Air Quality and Radiation Control comprises five sections concerned with environmental matters. The new asbestos control program proposed by the Governor would be located in the Environmental Toxicology Section.

The Asbestos Control Program proposed by the Governor would be staffed by two environmental engineers in the Environmental Toxicology Section and one chemist in Laboratory Services and Research. The proposed fiscal year 1986 budget for the program is \$126,000, mostly for salaries and equipment. The staff members in the Department of Human Resources who currently conduct asbestos inspections would remain in that agency and resume their previous duties.

The proposed program is an enhanced version of the asbestos program in the Department of Human Resources, but emphasizes training and technical assistance over inspections. Officials at the Department of Health and Environment told the auditors that the proposed new staff members would take over the duties currently assumed by the Department of Human Resources, but would also fill other needs not currently being adequately met. The needs mentioned by the officials were technical assistance, training, and the development of a State plan.

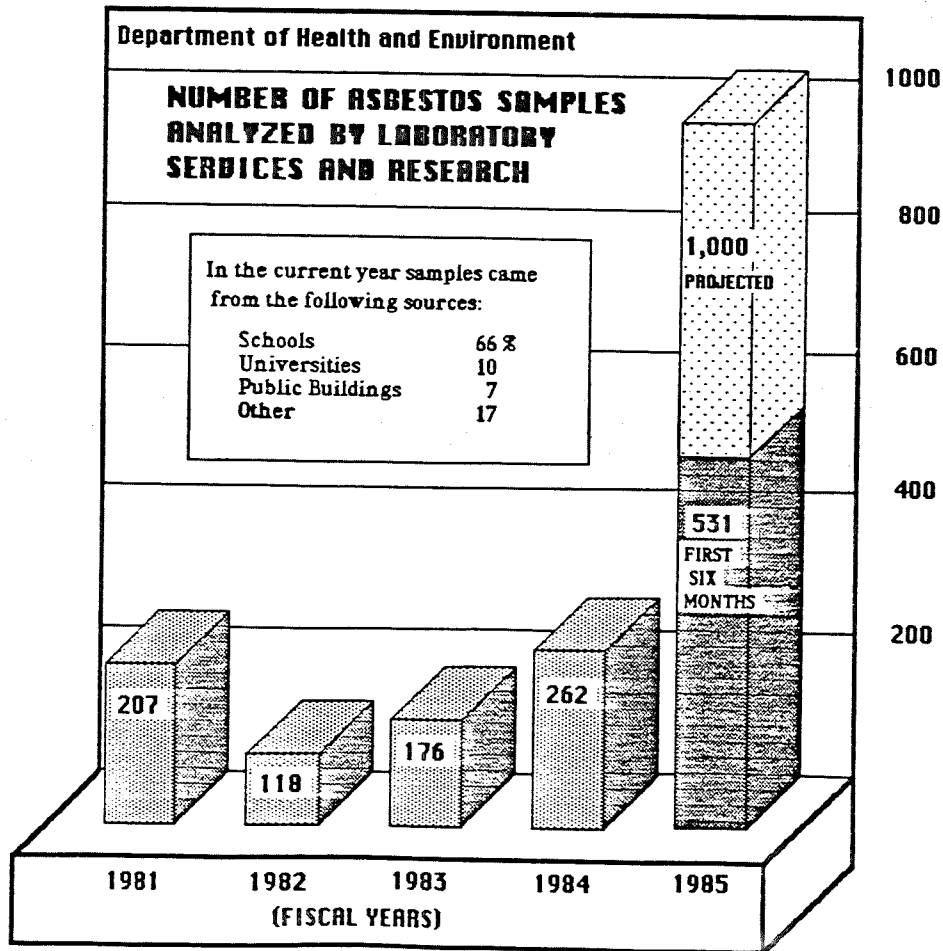
Department of Health and Environment officials say that one of the three proposed staff members would provide technical assistance. With the possible exception of a scheduled State building inspection program, this person would not conduct scheduled inspections. That responsibility would remain at the local level. For the most part, school officials have already identified the asbestos present in their schools. The current need is for technical assistance in assessing the actual health risk and determining what to do about it. The new staff member would provide this assistance. In addition, the staff person would be available to help write bid specifications and monitor the actual removal or covering of the asbestos so that school officials could be assured that contractors properly handled the hazardous material. Although regular inspections would not be emphasized, the staff person would be available upon request to conduct inspections and do sampling such as that currently done by the Department of Human Resources.

The second staff member's job would be to develop and implement a State plan on asbestos in public buildings and to develop a training program for people in State buildings on how to deal with asbestos. Department officials say that a State plan is needed to establish a system for identifying asbestos in State buildings, to establish a State policy on how to address the problem, and to coordinate State activities. At present, no State or federal program requires the identification of asbestos in any public buildings except for schools.

To meet the training needs of employees in public buildings, the new staff member would develop the necessary training program and conduct the training. Some training may be arranged with the Asbestos Center at the University of Kansas. Formed in September 1984, the Asbestos Center is one of three asbestos training centers funded by grants from the Environmental Protection Agency. Although its emphasis is on training for the private sector, such as contractors and architects, the Center will conduct seminars for school employees and the general public. Its training consists of intensive one-to-two week training sessions on identification and safe handling of asbestos. The Center was established with a grant for \$225,000 and is staffed by four part-time continuing education professionals. The actual training is conducted by experts brought in by the Center.

The third proposed new staff member would work in Laboratory Services and Research and analyze asbestos samples. The lab has been conducting asbestos analysis since 1978, but Department officials say they can no longer absorb the asbestos load with their current personnel.

Because of increased public awareness, the number of samples received for analysis has grown rapidly in the last year. The following figure illustrates this growth. In fiscal year 1984, 262 samples were analyzed. About one-third of these samples came from the Department of Human Resources. In the first six months of fiscal year 1985, more than 500 samples have been analyzed. Department officials project that over 1,000 will be analyzed during fiscal year 1985.



As the chart shows, the number of samples has increased greatly in fiscal year 1985. Agency officials estimate that 1,000 samples will be analyzed by the end of the year.

In the fiscal year 1986 budget, the Governor also recommended increased funding of \$45,000 for fiscal year 1985 for two temporary positions to enable the program to begin operating this year. The temporary employees would start helping schools comply with the Environmental Protection Agency asbestos reporting requirements.

An Agreement Signed By the Two Agencies Would Apparently Minimize Any Duplication of Asbestos Inspection Efforts

If the Asbestos Control Program were funded for the Department of Health and Environment and the Department of Human Resources continued to conduct asbestos inspections, there would be duplication in the activities of the two agencies. In his budget message, the Governor stated that he had directed the agencies to arrange a cooperative agreement on asbestos inspections. This agreement has been made. A memorandum of understanding was signed by both agencies and became effective March 6, 1985. This agreement can be found in Appendix A. It provides for all school and public building asbestos-related responsibilities to be transferred to the Department of Health and Environment, contingent upon the funding of the Asbestos Control Program. These activities include the asbestos inspections and the asbestos risk assessments discussed earlier in the report. All staff now conducting asbestos inspections for the Department of Human Resources would remain with that agency. If the proposed Asbestos Control Program is not funded, the agreement will become void.

The Department of Human Resources would continue to conduct safety inspections of private and public buildings. In the course of these inspections, the inspectors would note the presence of asbestos when it was observed. However, the Department's industrial inspectors would no longer look for asbestos as part of their regular safety inspections.

If the Asbestos Functions Are To Be Consolidated in One Agency, The Department of Health and Environment Appears To Be the Logical Choice

As stated earlier in the report, the Department of Human Resources is responsible for protecting workers in public buildings in Kansas. The Department of Health and Environment is responsible for supervising the health of the people of Kansas and investigating causes of disease and mortality. The asbestos problem is one of a danger to the health of school children and the general public, as opposed to a problem only for workers in the State. Therefore, the function of an asbestos-

The High Cost of Controlling Asbestos: The Case of the Missouri State Office Building

Kansas is not the only state concerned with controlling asbestos. In 1981, Missouri's Division of Design and Construction asked for funding to remove asbestos from the state's largest office building, located in Kansas City. Because of Missouri's budgetary problems at the time, no funds were appropriated.

In the spring of 1984, legislators from the Kansas City area again supported a move to fund the removal of asbestos from the building. During summer hearings in Kansas City, a legislative committee heard many state workers complain that not enough was being done to protect their health. The Director of the Missouri Division of Health testified that there was "risk--serious health risk--and death in that office building."

Faced with mounting concern by the General Assembly and state workers, the Missouri governor issued an executive order to agencies in the building to move to other quarters. The order instructed administrators to make the move within existing appropriations. This order received mixed reviews among legislators, some of whom advised the governor that he should not count on any emergency appropriations to assist with the move. The reason for the legislators' reluctance was understandable: the office building cost about \$6.8 million to build 18 years ago, and estimates of the cost of removing the asbestos range from \$6 million to \$11 million. Because of the high cost of making the building safe, it could be cheaper in the long run to simply sell it and build a new facility.

In the meantime, finding quarters for the building's current tenants is proving difficult and costly. One agency is even considering renovating a warehouse, at a cost of about \$1 million, to house the agency for the year the asbestos removal is expected to take.

With the Missouri General Assembly now in session, the fate of the Kansas City State Office Building is still in doubt. But no one doubts that the eventual solution will be expensive.

tos control program would appear to fit more logically into the Department of Health and Environment.

That agency also has a broader base of technological expertise. Staff of the Bureau of Air Quality and Radiation Control conduct inspections of all air contaminant emission sources, conduct long-term atmospheric air sampling, investigate local air pollution problems, inspect and control all radiation sources, and examine levels and sources of hazardous chemicals and agents affecting indoor air quality.

Conclusion

There are no federal or State laws requiring any State agency to take specific steps to deal with asbestos. Because of the dangers associated with asbestos, the Department of Human Resources established a voluntary program for helping to identify the material in public buildings and schools. The Department's Industrial Safety and Health Program includes three inspectors who look for and report asbestos as part of their overall safety inspection duties.

For fiscal year 1986, the Governor has proposed an enhanced Asbestos Control Program in the Department of Health and Environment. Under a memorandum of understanding, the Department of Health and Environment would assume all of the asbestos inspections and asbestos exposure assessments now being provided by the Department of Human Resources. This agreement appears to minimize any duplication of effort between the two agencies. The Department of Human Resources would continue to inspect public buildings for a broad range of hazards (except asbestos) at the same level of staffing. The proposed Asbestos Control Program would appear to fit better with the mission and expertise of the Department of Health and Environment. If funded by the Legislature, this program would put Kansas ahead of most surrounding states in beginning to deal with the serious problems posed by asbestos in public buildings.

APPENDIX A
Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING

Between

Kansas Department of Health and Environment

and the

Kansas Department of Human Resources

on

KANSAS ASBESTOS CONTROL PROGRAM RESPONSIBILITIES

I. Purpose:

This agreement between the Kansas Department of Health and Environment (KDHE) and the Kansas Department of Human Resources (KDHR) is intended to define the respective responsibilities of each agency in regard to the control of asbestos hazards in the state and to provide for the orderly transfer of activities that are presently carried out by KDHR, as the designated state liaison agency with the U.S. Environmental Protection Agency (EPA) in relation to that agency's Asbestos-in Schools 1979 Technical Assistance Program (TAP), to the KDHE. This transfer is to be completed by July 1, 1985. Final transfer of responsibility for these latter activities, which consist of providing consultation to Kansas school systems in relation to the identification and control of asbestos exposure problems, from KDHR to KDHE will be contingent upon the 1985 legislature's appropriation of funds to KDHE for this purpose.

II. Responsibilities:

The agencies hereby agree that:

A. The KDHR will:

1. Continue to remain responsible for responding to requests received from Kansas school systems and state institutions concerning control measures that may be taken to reduce potential exposures to friable asbestos containing materials that have been identified in the schools and institutions until the Governor has officially designated the KDHE as the TAP liaison agency, in writing, to the EPA.
2. Continue to provide consultation and assistance to school systems and state institutions in relation to the development of work specifications for the removal, encapsulation or enclosure of friable asbestos materials that is to be conducted by public employees or private contractors, until KDHE has been officially designated as the TAP liaison by the governor. KDHR will also

continue to maintain a listing of contractors that are experienced in the removal of asbestos from such buildings and provide this information to the responsible administrators during this time period.

3. Continue to respond to direct requests from school system administrators for information concerning actions necessary to comply with the EPA school asbestos identification and notification regulations (40 CFR Part 763, Subpart F) until the KDHE has initiated the special inspection and consultation program that is prescribed by section II.B.4 of this agreement.

4. Continue to provide Occupational Safety and Health consultation and monitoring services, as the agency deems appropriate, for the protection of private employees who are engaged in asbestos removal and handling activities.

5. Provide special training and consultation to designated staff of the KDHE in regard to the selection of appropriate measures for correcting potential problems associated with friable asbestos containing materials that have been found in individual school buildings and institutions. This consultation and training is intended to be provided during the normal inspectional activities that will continue to be carried out by KDHR until the TAP liaison responsibilities are officially transferred to the KDHE.

B. The KDHE will:

1. Continue to refer requests for assistance in regard to the recommendation of procedures that should be used for the control of friable asbestos problems in schools and state institutions to the KDHR, until TAP liaison responsibilities are officially transferred to the KDHE.

2. Continue to provide laboratory services for the analysis of asbestos in bulk samples of friable materials that are collected from schools and institutions as a result of the KDHR consultation program activities.

3. Continue to provide consultation and field investigations in regard to evaluating any potential health problems to the general public that may be associated with exposure to asbestos containing materials within publically or privately-owned buildings.

4. Initiate a special school inspection and consultation program to assist school administrators in establishing and maintaining records required by the EPA school asbestos identification and notification regulations (40 CFR Part 763, Subpart F) as soon as additional staff can be provided for this purpose, utilizing special funding allocations that are anticipated to be made available to KDHE during the remainder of the 1985 fiscal year.

5. Assume responsibility for the KDHR inspection and consultation activities in regard to recommending measures and work procedures for the control of asbestos exposures in schools and state institutions as soon as staff are employed for this purpose using 1986 fiscal year funds anticipated to be appropriated to KDHE by the 1985 legislature. At this time the KDHE will also initiate a request

to the governor that it be designated as the official liaison agency with the EPA for the TAP activities.

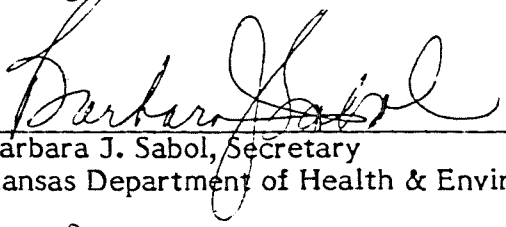
III. Amendment:

A. The transfer of responsibility for school asbestos related inspection and consultation services, that are now being provided by the KDHR under the EPA TAP agreement, to the KDHE will be contingent upon the state legislature's allocation of additional funds to the KDHE for this purpose. If these allocations are not made, this agreement will become void and a new agreement will be developed to prescribe the respective responsibilities assigned to the two agencies.

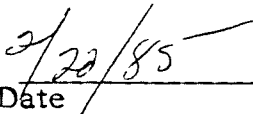
B. Individual items included in the agreement may be amended at any time by mutual agreement of the KDHE and KDHR. The amendments may be developed by either agency and a copy of them shall be signed by a designated representative of both agency's and filed with this agreement before the amendment becomes effective.

IV. Effective Date:

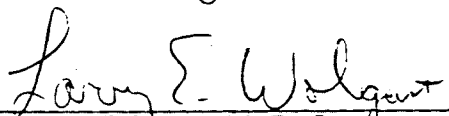
This agreement shall become effective upon the latest date of signature of either party.



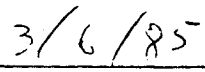
Barbara J. Sabol, Secretary
Kansas Department of Health & Environment



Date



Larry E. Wolgast, Ed. D. Secretary
Kansas Department of Human Resources



Date

APPENDIX B
Agency Responses



State of Kansas . . . John Carlin, Governor

DEPARTMENT OF HEALTH AND ENVIRONMENT

Barbara J. Sabol, Secretary

Forbes Field
Topeka, Kansas 66620
913-862-9360



March 18, 1985

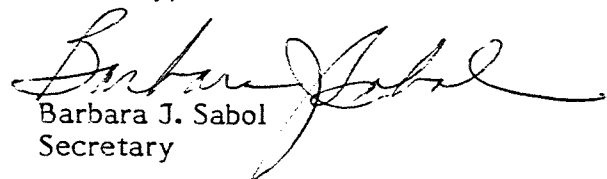
Meredith Williams
Legislative Post Auditor
Legislative Division of Post Audit
109 West 9th, Suite 301
Mills Building
Topeka, KS 66612

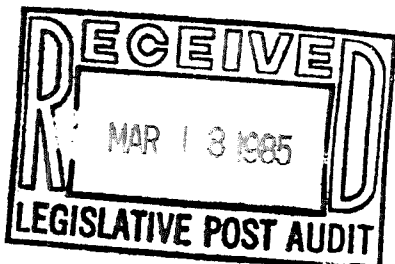
Dear Mr. Williams:

I have completed my review of your agency's audit report entitled "Asbestos Inspections in Kansas" and would like to extend my appreciation to your auditing staff for their thorough and well-presented summary of the asbestos issue in Kansas. As you are aware, the Kansas Department of Health and Environment has always been and continues to be the agency in Kansas responsible for evaluating and responding to those asbestos problems in our state which impact negatively upon the public health and environment. While difficult to quantitate, these responsibilities also involve an inherent multiplication of our agency's influence and activities through contacts and inquiries from the many local health departments and citizen groups throughout Kansas which have also been heavily involved in this important public health concern. KDHE has also been extensively involved in monitoring and approving the disposal of asbestos wastes in Kansas and, since 1982, has received and processed over 300 requests for disposal authorizations through our Solid Waste Section.

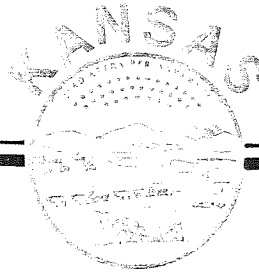
I appreciate the opportunity to comment on your report and, once again, extend our compliments to your staff for a job well done.

Sincerely,


Barbara J. Sabol
Secretary



DEPARTMENT OF HUMAN RESOURCES



OFFICE OF THE SECRETARY
401 Topeka Ave.
Topeka, Kansas 66603
(913) 296-7474

March 15, 1985

Mr. Meredith Williams
Legislative Post Auditor
Legislative Division of Post Audit
109 West 9th, Suite 301
Mills Building
Topeka, KS 66612



Dear Mr. Williams:

I wish to thank you for the opportunity to review your performance audit report on Asbestos Inspections in Kansas. My staff has advised me that the audit was conducted in a very professional manner and commendation should be given to Mr. Rick Riggs for the manner in which he carried out his duties.

I understand that my staff has been in telephone communication with Mr. Riggs concerning the audit report. Therefore, we have no written comments to make at this time.

If you need any further information please do not hesitate to contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Larry E. Wolgast".

Larry E. Wolgast, Ed.D.
Secretary of Human Resources

LEW:WAK:csg

cc: Jerry Abbott
Secretary Barbara Sabol

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON SENATE BILL 113

(ATTACHMENT ___ KDHE)

4/5/85

PRESENTED TO House Local Government Committee, April 5, 1985.

This is the official position taken by the Kansas Department of Health and Environment on Senate Bill 113.

BACKGROUND INFORMATION:

The general public has become increasingly concerned that the presence of any asbestos containing materials within any building represents an immediate and life-threatening situation in relation to its occupants. This concept, which has been strongly supported by mass media, has resulted in increasing demands being placed on governmental officials to promptly remove such materials from public buildings -particularly public educational facilities.

While professionals involved in assessing the health risks associated with asbestos exposures have differences of opinion concerning the hazards that may be associated with the mere presence, per se, of asbestos within a building, they are in generally uniform agreement that attempts to remove such asbestos can cause equal, if not greater, public health risks than those that are incurred if the material is left undisturbed. This concern results from the scientific considerations involved and the realization that the wholesale demands for removal are causing many unknowledgeable, and unqualified, people to become involved in asbestos removal work. Not only are the current demands exceeding the resources that can be provided by qualified, reputable contractors, but they are also anticipated to encourage many, less scrupulous, individuals to get into this potentially highly financed field of work. Unfortunately, this situation endangers not only the employees who do the actual work, but the building occupants as well -the very people that the removal operations are undertaken to protect.

The introduction of Senate Bill 113 during this legislative session is therefore considered to represent a natural, and very necessary, response to this emerging area of significant public health concern. It is an action that is being strongly encouraged at federal level and one that is being taken by many of the more progressive states.

STRENGTHS:

1. The bill clearly establishes a suitable mechanism for assuring that contractors and public agencies involved in asbestos removal and encapsulation projects are qualified to do such work properly by providing for, both, firm licensing and individual worker certification.
2. The bill provides a suitable mechanism for providing the funding support that will be needed to maintain the program on a continuing basis by authorizing the establishment and collection of fees for the services provided and providing for the deposit of these fees into the general fund.
3. The bill provides suitable means for enforcement including the emergency suspension of licenses and the imposition of civil penalties.

DEPARTMENT'S POSITION:

The department strongly supports and encourages the enactment of Senate Bill 113. Insuring the availability of qualified, responsible contractors to perform asbestos abatement work in Kansas will establish our state as a leader in addressing this important public health concern.

TESTIMONY BEFORE
HOUSE LOCAL GOVERNMENT

APRIL 5, 1985

BY

JANET STUBBS

HOME BUILDERS ASSOCIATION OF KANSAS

(ATTACHMENT I)

4/5/85

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

MY NAME IS JANET STUBBS, EXECUTIVE DIRECTOR OF THE HOME BUILDERS ASSOCIATION OF KANSAS.

THANK YOU FOR THE OPPORTUNITY TO APPEAR TODAY IN SUPPORT OF SB 369 WHICH WAS INTRODUCED TO ALLEVIATE A CONCERN BUILDERS OF MULTI-FAMILY DWELLINGS HAVE REGARDING LANGUAGE CONTAINED IN K.S.A. 58-1310.

THE CONCERN WE HAVE INVOLVES THE REQUIREMENT THAT 10% OF THE UNITS CONTAINED IN RENTAL APARTMENT COMPLEXES, CONTAINING 20 UNITS OR MORE, BE "HANDICAPPED ACCESSIBLE".

IN SECTION 1 ON LINES 21 THROUGH 24 OF THE BILL, APARTMENT COMPLEX IS DEFINED TO MEAN A "MULTI-FAMILY DWELLING CONTAINED IN ONE OR MORE CONTIGUOUS BUILDINGS".

THE FEDERAL ACT OF 1973 WAS FOR THE PURPOSE OF MAKING PUBLIC AND GOVERNMENTAL BUILDINGS ACCESSIBLE TO THE HANDICAPPED SO THERE WOULD BE NO DISCRIMINATION WITH REGARD TO EMPLOYMENT AND EDUCATION AND TO PERMIT A HANDICAPPED INDIVIDUAL TO HAVE ACCESS TO THESE BUILDINGS WITHOUT LOSS OF FUNCTION. I REFER YOU TO K.S.A. 58-1303.

THE KANSAS LAW WAS ENACTED IN 1978 AFTER INTRODUCTION OF INDIVIDUAL BILLS ON THIS SUBJECT IN 1976 AND 1977 AND AN INTERIM STUDY IN 1978. THE STUDY PRODUCED 3 BILLS INCLUDING SB 514 OF THE 1978 SESSION. A 1974 SOUTH CAROLINA LAW WAS USED AS A PATTERN FOR THE KANSAS BILLS.

I HAVE ATTEMPTED TO DETERMINE WHY THE 10% REQUIREMENT FOR HANDICAP ACCESS WAS USED. THE SOUTH CAROLINA LAW CONTAINED ONLY A 5% REQUIREMENT.

EXTENSIVE RESEARCH THROUGH COMMITTEE MINUTES AND REPORTS, AS WELL AS REVISOR'S WORK SHEETS, FAIL TO REVEAL DATA PROVIDED TO ESTABLISH THIS FIGURE. IN ADDITION, I HAVE REVIEWED THE RULES AND REGULATIONS BY HEW FOR IMPLEMENTATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973 PUBLISHED IN THE FEDERAL REGISTER, MAY 4, 1977, AND FIND THAT NO APPLICABLE SECTION EXISTS THERE.

I HAVE OBTAINED DATA FROM THE REPORT OF THE PRESIDENT'S COMMISSION ON EMPLOYMENT OF THE HANDICAPPED, THE SURVEY BY THE NATIONAL CENTER FOR HEALTH STATISTICS AND N.A.R.I.C. AT CATHOLIC UNIVERSITY IN WASHINGTON, DC.

CATHOLIC UNIVERSITY WAS ABLE TO SUPPLY KANSAS DATA FROM THE 1980 U.S. CENSUS ON DISABLED ADULTS AGES 16 - 64 YEARS OF AGE.

THESE STATISTICS INCLUDE ALL DISABILITIES IN THIS AGE GROUP - MENTAL AND EMOTIONAL, VISUAL, AND HEARING, AS WELL AS OTHER PHYSICAL IMPAIRMENTS, INCLUDING MOBILITY.

KANSAS RANKS 36TH NATIONALLY WITH 112,640 HANDICAPPED RESIDENTS OR 7.6% OF THE TOTAL POPULATION. 47.2% ARE EMPLOYED.

IN VIEW OF THESE STATISTICS, WE BELIEVE THE UNIFORM BUILDING CODE REQUIREMENTS ARE MORE IN LINE WITH THE NEEDS FOR MULTI-FAMILY DWELLINGS THAN IS THE 10% FIGURE CONTAINED IN THE KANSAS STATUTE. (A COPY OF THE UBC SECTIONS ARE ATTACHED TO MY PREPARED TESTIMONY.) THE UBC IS RANKED #1 OF THE 3 NATIONAL CODES IN EXISTENCE AND THE ONE USED IN KANSAS.

A CHECK WITH HUD REVEALED THEY HAVE NO REQUIREMENTS FOR HANDICAPPED ACCESS, ONLY FOR ELDERLY HOUSING WHICH CONTAINS A LACK OF NEED WAIVER PROVISION.

I ASK THE MEMBERS OF THE COMMITTEE TO UNDERSTAND THIS IS NOT AN ATTEMPT TO AVOID PROVIDING NEEDED LIVING ACCOMODATIONS FOR THE HANDICAPPED, BUT RATHER TO PREVENT REQUIRING A BUILDER TO CONSTRUCT UNITS FOR WHICH THERE IS NO MARKET. THIS CREATES A PROBLEM FOR FINANCING OF THE COMPLEX AS WELL AS OTHER PROBLEMS WHICH LOWELL MILLER, A TOPEKA BUILDER WILL ADDRESS.

IN CONCLUSION, WE VIEW THE CURRENT 10% REQUIREMENT AS ARBITRARY. CONTACT WITH STATE AGENCIES HAVE PRODUCED NO STATISTICS ON MOBILITY IMPAIRED INDIVIDUALS AND THE CURRENT FIGURES AVAILABLE DO NOT SUPPORT THE 10% FIGURE.

EXCEPTION: A separation shall not be required for such rooms with equipment serving only one dwelling unit.

Access to Buildings and Facilities

Sec. 1213. Buildings containing more than 20 dwelling units or 20 guest rooms shall be accessible to the physically handicapped by a level entry, ramp or elevator. The number of dwelling units or guest rooms accessible to the physically handicapped shall be not less than the following:

21 through 99	one unit
100 and over	one, plus one for each additional 100 units or fraction thereof

To determine the total number of accessible units, more than one structure on a building site shall be considered as one building.

Toilet facilities in accessible units shall comply with Section 1711.

Modifications

Sec. 1214. A one-story carport entirely open on two or more sides need not have a fire separation between the carport and the dwelling.

Windows between the carport and the dwelling shall not be openable. Doors may be of any type, provided that any sash used in a door be fixed; doors between a dwelling and a carport shall be self-closing.

Existing Buildings

Sec. 1215. For existing buildings housing Division 1 Occupancies, see Appendix, Section 1215.

Chapters 13-16 NO REQUIREMENTS

58-1303. Legislative intent. It is intended to make all buildings and facilities covered by this act accessible to, and functional for, the physically handicapped to, through, and within their doors, without loss of function, space or facilities where the general public is concerned.

History: L. 1968, ch. 216, § 3; July 1.

required for the wall upon which they are erected. The height of the parapet shall be not less than 30 inches above the point where the roof surface and the wall intersect. Where the roof slopes toward a parapet at slopes greater than 2:12 the parapet shall extend to the same height as any portion of the roof that is within the distance where protection of wall openings would be required, but in no case shall the height be less than 30 inches.

Projections

Sec. 1710. Cornices, architectural appendages, eave overhangs, exterior private balconies and similar projections extending beyond the floor area as defined in Section 407 shall conform to the requirements of this section.

Projections from walls of Type I or II construction shall be of non-combustible materials.

Projections from walls of Type III, IV or V construction may be of non-combustible or combustible materials.

Combustible projections located where protection of openings is required shall be one-hour fire-resistive or heavy timber conforming to Section 2106.

Projections shall not extend more than 12 inches into the areas where openings are prohibited.

For projections extending over public property, see Chapter 45.

For combustible ornamentation, see Section 1705 (d).

Water Closet Compartments and Showers

Sec. 1711. (a) Floors and Walls. In other than dwelling units, toilet room floors shall have a smooth, hard, nonabsorbent surface such as portland cement, concrete, ceramic tile or other approved material which extends upward onto the walls at least 5 inches. Walls within water closet compartments and walls within 2 feet of the front and sides of urinals shall be similarly finished to a height of 4 feet and, except for structural elements, the materials used in such walls shall be of a type which is not adversely affected by moisture.

(b) Toilet Facilities. Each water closet stool shall be located in a clear space not less than 30 inches in width and have a clear space in front of the water closet stool of not less than 24 inches.

Where toilet facilities are provided on any floor where access by the physically handicapped is required by Table No. 33-A, at least one such facility for each sex shall comply with the requirement of this section. Except in dwelling units and guest rooms, such facilities must be available to all occupants. All doorways leading to such toilet rooms shall have a clear and unobstructed width of not less than 30 inches. Each such toilet room shall have the following:

1. A clear space of not less than 44 inches on each side of doors providing access to toilet rooms. This distance shall be measured at right angles to the face of the door when in the closed position. Not

more than one door may encroach into the 44-inch space.

2. Except in dwelling units and guest rooms, a clear space within the toilet room of sufficient size to inscribe a circle with a diameter not less than 60 inches. Doors in any position may encroach into this space by not more than 12 inches.
3. A clear space not less than 42 inches wide and 48 inches long in front of at least one water closet stool for the use of the handicapped. When such water closet stool is within a compartment, entry to the compartment shall have a clear width of 30 inches when located at the end and a clear width of 34 inches when located at the side. A door, if provided, shall not encroach into the required space in front of the water closet. Except for door swing, a clear unobstructed access not less than 44 inches in width shall be provided to toilet compartments designed for use by the handicapped.
4. Grab bars near each side or one side and the back of the toilet stool securely attached 32 inches to 34 inches above and parallel to the floor. Grab bars at the side shall be 42 inches long with the front end positioned 24 inches in front of the water closet stool. Grab bars at the back shall be not less than 30 inches long. Grab bars shall have an outside diameter of not less than 1 1/4 inches nor more than 1 1/2 inches and shall provide a clearance of 1 1/2 inches between the grab bar and adjacent surface. Grab bars need not be provided in Group R, Division 1 apartment houses.
5. When it can be established that the facilities are usable by a person in a wheelchair, dimensions other than those above shall be acceptable.

(c) Toilet Room Facilities. In other than Group R, Division 3, Group M, Group R, Division 1 apartment houses and Group B, Divisions 2 and 4 storage occupancies, toilet room facilities shall be as follows:

1. Except for the projection of bowls and waste piping, a clear unobstructed space 26 inches in width, 27 inches in height and 12 inches in depth shall be provided under at least one lavatory.
2. Where mirrors are provided, at least one shall be installed so that the bottom of the mirror is within 40 inches of the floor.
3. Where towel and disposal fixtures are provided, they shall be accessible to the physically handicapped and at least one shall be within 40 inches of the floor.

(d) Shower Areas. Showers in all occupancies shall be finished as specified in Subsection (a) to a height of not less than 70 inches above the drain inlet. Materials other than structural elements used in such walls shall be of a type which is not adversely affected by moisture.

(e) Doors and Panels. Doors and panels of shower and bathtub enclosures shall be substantially constructed from approved shatter-resistant materials. Hinged shower doors shall open outward.

(f) Glazing for Shower and Bathtub Enclosures. Glazing used in doors



TOPEKA RESOURCE CENTER
FOR THE HANDICAPPED
MITCH COOPER, L.M.S.W.
Executive Director

TOPEKA RESOURCE CENTER FOR THE HANDICAPPED

(ATTACHMENT II)

4/5/85

West Tenth Professional Building
1119 West Tenth, Suite 2
Topeka, Kansas 66604-1105

Telephone
913-233-6323

April 5, 1985

I am Mitch Cooper, Executive Director, Topeka Resource Center for the Handicapped. I am here in opposition of Senate Bill 369.

I am saddened that this bill was so quickly and quietly introduced. Taking a giant step backwards in reference to making our communities in Kansas accessible to the disabled is not an appropriate way to solve any of our problems. I am originally from out of state. I come from New York. I have found that those of us who live here in Kansas know it is a good quality of life, a good lifestyle. In relation to our economic growth and security, however, I sometimes do not feel we project this image well enough to the rest of the country. Passing a law which clearly discourages disabled people from living in our communities is not the way to project a positive image.

We need to plan for a future where many of our institutions will no longer be large residential facilities, but rather, resource centers assisting the severely disabled to remain in the community. We need to plan for a future where many of our nursing homes will not need to exist because people will remain in our communities. Most of all, we need to keep in mind that it has been proven time and time again to be more cost effective for disabled and elderly people to remain in the community with the support services they need rather than be shipped off to nursing facilities.

In the past, I have worked as a social service planner for a city/county government. I can state with authority that it is bad planning to suggest that we do not need an accessible community because there currently are not enough disabled people to make use of it. In the next few years, deinstitutionalization and an aging population are going to take care of the numbers. Kansas can be ready, or Kansas can be left behind. The choice lies in the type of decisions which are made regarding legislation such as SB 369.

Attachment 2



KANSAS REHABILITATION ASSOCIATION

(ATTACHMENT III)

4/5/85

APRIL 5, 1985

TO: HOUSE LOCAL GOVERNMENT COMMITTEE

FROM: RICHARD D. CHARLTON, SR.

SUBJECT: SB 369

I am legislative chairman for the Kansas Rehabilitation Assn. Our membership includes professionals from both the public and private sector that work primarily with the disabled consumer, and disabled consumers.

We oppose this legislation as being hastily presented at the end of this session without a chance for consumer input. We found out about this legislation during the middle of this week, which was too late to secure extensive testimony from the professional community much less from the disabled consumer. This legislation has been on the books since 1978, we wonder why there is this complaint from the home builders association after the law was in effect for about seven years. The Kansas Homebuilders Association had ample time to give input when the original bill was presented. In fact KSA 58-1310 was presented over a three year period with extensive hearings both in regular and interim legislative committees. Therefore, we believe this bill should be withdrawn from consideration or killed in committee.

Attachment 3

Attachment 3

A.D.A.P.T. is a non-profit organization incorporated in Kansas on May 14, 1982. We are an organization of non-salaried volunteer staff with the exception of secretarial personnel.

All of A.D.A.P.T.'s activities are premised on the belief that the physically handicapped person has a human dignity which motivates that person to be self-supporting to the extent permitted by their individual physical limitations. Those may be either the limitations of the individual person or the limitations, sometimes called barriers, of their environment. A.D.A.P.T. is waging a constant attack on both forms of physical limitations.

INDEPENDENT LIVING



Judy Heumen, former Deputy Director of CIL Berkeley and a current spokesperson of the movement defines independent living broadly says, "To us independence does not mean doing things physically alone. It means being able to make independent decisions...It is a mind process not contingent upon a normal body. It is the ability to take on the

major responsibility for determining one's own life style."

A.D.A.P.T. has been deeply involved with the independent living centers in Kansas and Western Missouri. A.D.A.P.T. has also been involved with the "MainStream, Independent Living Program" headquartered at the Colmery-O'Neil Veterans Administration Medical Center in Topeka, Kansas.

LEGISLATION



A.D.A.P.T. has been deeply involved in supporting a broad range of National and State Legislation for passage. We work with other organ-

izations on specific bills. This legislation provides substantial direct benefits in the quality of life for the mobility impaired person.



 OUR FOUNDERS



Loretta and Richard Charlton
from Wamego, Kansas.



Connie and Delbert Clark from
Wichita, Kansas.

Trained A.D.A.P.T. volunteers have successfully represented severely disabled persons at hearings before the Administrative Law Judge. A large number of these persons have had their benefits inappropriately ceased. This has resulted in many severely disabled persons losing all their personal possessions. We will continue to represent claimants with their appeals at the hearings level.

The May 9, 1982 New York Times included the following excerpts:

"Social Security statistics show that the Government ended disability benefits in more than 106,000 cases from last October to April.

"Federal officials acknowledge

that several people have committed suicide after being told that they were losing disability benefits.

"John A. Svahn, the Commissioner of Social Security acknowledged that 'some people who are entitled to benefits are losing their benefits,' but he said he could not estimate the government's error rate.

"Administrative Law Judges employed by the Social Security Administration ruled in favor of claimants, against the government, in 55 percent of all appeals last year, according to Louis B. Hays, Associate Commissioner of the Social Security Administration."



A.D.A.P.T. trains volunteers as self-advocates with a primary focus on the removal of architectural and attitudinal barriers in their own home communities. Our goal is completion of a state-wide survey on accessibility of all facilities open to the public. This would include both publicly and privately owned and/or funded buildings.

We endorse the following National Policy for a Barrier Free Environment.

"In the United States today it is estimated that one out of ten persons has limited mobility due to a temporary or a permanent physical handicap.

Improved medical techniques

and an expanding population of older persons is increasing this number every year. Yet the physical environment of our nation's communities continues to be designed to accommodate the able-bodied, thereby increasing the isolation and dependence of disabled persons. To break this pattern requires an act of national commitment.

"Therefore, it shall be national policy to recognize the inherent right of all citizens to the full development of their economic, social and personal potential, regardless of their physical disability, through the free use of the man-made environment.

"The adoption and implementa-

tion of this policy requires the mobilization of the resources of the private and public sectors to integrate handicapped people into their communities."

TRANSPORTATION



A.D.A.P.T. volunteers have been working with local transit authorities in the promotion of accessible transportation for the mobility impaired. Our goal is full accessibility of all on-line buses, commonly known as "Mainstreaming".

The following is a sample of some of the accomplishments of A.D.A.P.T. volunteers.

- * Members of SRS Independent Living Consumer Advisory Committee.
- * Member SRS Client Assistance Consumer Advisory Committee.
- * Member Board of Directors and Executive Committee of the Health Systems Agency of Northeast Kansas.
- * Member Board of Trustees and Patient Representative for the Multiple Sclerosis Society of SouthCentral and Western Kansas.
- * Consultant to various hospitals for the physically and mentally handicapped.

- * Consultant to Vocational Rehabilitation Agencies.
- * Member Wichita Commission on the Status of the Handicapped.
- * Conduct training seminars in the community and on college campuses concerning handicapped awareness.
- * Involvement with Kansas and Missouri Aging Agencies.
- * Involved with consumer and professional rehabilitation organizations.

FOR MORE INFORMATION WRITE TO:

A.D.A.P.T., INC.
Route 1, Box 348
Wamego, Kansas 66547
(913) 456-9203
or
1056 Parklane
Wichita, Kansas 67218
(316) 684-1801

Attachment 4

A.D.A.P.T. INC.

ADVOCATES FOR DISABLED ACCESS
TO PROGRAMS AND TRAINING, INC.



4/5/85
(ATTACHMENT IV)

April 5, 1985

(ATTACHMENT V)

4/5/85

I am Michael Byington. I do some lobbying for a number of disability related groups including Epilepsy - Kansas Inc., the Kansas Association for the Blind and Visually Impaired Inc. (particularly as this group's work relates to the multiply handicapped blind), a number of groups working with the developmentally disabled, and a number of disability rights related organizations. I am employed by the Topeka Resource Center for the Handicapped, and I am Vice Chairperson for the Topeka/Shawnee County Handicapped Advisory Committee, although I do not here represent myself as appearing as that group's representative; it after all exists to advise city and county government, not the Kansas Legislature. I rise to oppose Senate Bill 369. Because I have with all of the above referenced organizations, I am in a position to offer a historical perspective as to how this legislation came to exist, and I shall explain why it should not pass.

The reason the home builders want to change this law is because some people have finally pointed out that they, along with many of our Kansas cities, have been willfully and blatantly disregarding Kansas legislative intent for a number of years. They were perfectly content to have this law on the books as long as they did not have to change the way they do business in the least because no one was enforcing the law. The Topeka/Shawnee County Handicapped Advisory Committee, however, took notice a few months ago that the state law was indeed being disregarded, and that the laws of the City of Topeka are not consistent with state statutes in reference to building requirements. The Committee thus proposed to the City of Topeka that city statutes be changed to be consistent with those of the state. As city statutes are, of course, enforced, and this therefore got the attention of the home builders. Also, the Kansas Attorney General, ruled, during the time that all of this was going on, that buildings do not have to have connecting roof lines to be covered under this law. He stated that such things as common parking lots, walkways, building style, and common public recreational facilities made units covered under the 10% accessibility state requirement. This ruling appropriately made it impossible for home builders to get around the legal requirement of making 10% of units of over 20 apartments accessible by making a break in the roof line after every 19th apartment. Now the position of the disabled people involved with this legislation was not a non-negotiable one. We tried to talk with the home builders about how requirements for accessibility might be reduced somewhat in consideration of cost factors, but they did not negotiate in good faith. They made it clear that they had been building apartments in the way they wanted to for many many years, and they were not just about to consider needs for possible change. They then quietly slipped this late bill in through Ways and Means at a time when it would be acted upon before it ever even appeared in the bill locator.

The Kansas Legislature passed the current law in its present form a number of years ago in its extreme wisdom. It had clearly, at that time, had done some long range planning. It certainly should not negate that wisdom now. Now I will grant that, at the moment, if 10% of all new apartment complexes of 20 units or more were accessible, there might not be handicapped people in line to move into all of these units. Within the next few years, however, this is clearly going

to change.

One reason handicapped people are not in line to move into new apartments is because, when a unit is brand new, it usually rents at a pretty high market value. Quite frankly, we have done such a poor job in this state with employment of the handicapped, and with civil rights legislation to assure same that many handicapped people who would like to move into new units can not afford to do so. Ten years down the road, however, when in comparison to other newer units, that unit does not seem to high, demand will increase.

Over the past 20 to 25 years, the population of our state institutions has decreased by about two thirds. The State's Ten Year Plan for our state's large ICFMRs suggests that the population will decrease even more, especially in reference to non-ambulatory individuals. The housing is going to have to exist to put these people somewhere when they come out of our institutions, and do not think for a minute that it is unrealistic for an individual to move directly from a state institution into an apartment. The state's Title XIX Waivered Home And Community Based Services Program, implemented a little over a year ago, is already proving beyond a shadow of a doubt that it is less expensive to the tax payer to provide the care and assistance for even an extremely severely disabled individual to live in his/her own home than it is to keep that individual in an institution.

Also, keep in mind that the mean age of our country's population is going up. Right now, 13% of our population is over the age of 65. By the turn of the century, that figure is expected to be 25%. Now it is a fact that as we get older, we run a much greater risk of becoming handicapped. It is also a fact, that with the aged, just as it is with the younger handicapped, it is being proven consistently more cost effective to keep people in their homes rather than ship them off to nursing homes at the tax payer's expense. Our human service systems are in the process of shifting gears to accommodate this new and correct way of thinking. It saves the tax dollar, and it also protects the individual dignity of those involved. The aged population, which runs a high risk of disability, and which is now going to be continuing to live in the community, is a prime population to occupy the type of apartments we are talking about in reference to this legislation.

The home builders are probably going to come back and tell you that it is fine that we are going to need all of these accessible units in the future, but that they can not afford to let a unit sit vacant for ten years while we are waiting. That is bull feathers. It will not happen. If making a unit accessible to the handicapped makes it undesirable to the non-handicapped as a living unit, then some bad architecture has occurred. Personally, I would like to have some kitchen cabinets at a level where I could sit down to wrap my ham marco polo. I have never found it impossible to relieve myself because the bathroom was too big. A properly designed accessible apartment is just as rentable to the non-handicapped as it is to the handicapped. The units we are talking about will be needed by the handicapped in the future, and at the present, if they are not needed, they certainly do not need to sit vacant.

Do not make Legislatures of the future ashamed of the Kansas Legislature by doing the short-sighted, easy thing. Keep the law as it is for the future of cost-effective, dignified housing and care for the disabled and elderly. Kill Senate Bill 369