

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Senator Roy M. Ehrlich at
Chairperson

10:00 a.m./~~p.m.~~ on February 6, 1985 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Conferees appearing before the committee:

Emalene Correll, Legislative Research
Barbara Sabol, Secretary, Department of Health and Environment
James D. Barnett, Greater K C Builders Trust Fund
Fred Tipton, Kansas Construction Labors' Training Trust Fund
Richard Funk, Assistant Executive Director, Kansas Association of School Boards

SB-113 - Regulation of persons and business entities engaging in removal or encapsulation of asbestos

Emalene Correll, Legislative Research, briefed the committee on SB-113.

Barbara Sabol, Secretary, Department of Health and Environment introduced Special Assistant to the Secretary, Charles Hamm and John Irwin who is on the Department staff as resource persons. Secretary Sabol testified and presented written testimony referring to strengths and weaknesses of SB-113. Recommendation for amendments was presented. Attachment I

James D. Barnett, Greater K C Builders Association Trust Fund and Fred Tipton, Kansas Construction Laborers' Training Trust Fund testified and submitted written testimony stating that The Kansas Construction Labors Training Trust Fund is currently engaged in training construction laborers in the handling of hazardous asbestos material. The training unit is mobile and can be located where needed. Both organizations support SB-113 but expressed concern that it would be possible for business or schools to engage in asbestos removal of their own buildings with their own employees. Mention was also made about part time help as OCEA includes everyone. Attachment II

Richard Funk, Assistant Executive Director, Kansas Association of School Boards testified and presented written testimony supporting SB-113 and addressed two concerns: 1) Who can we get to help us? 2) Why can't we use our own people? Attachment III

It was announced that there will be no voting Thursday, Friday or Monday, February 11, 1985.

Meeting adjourned.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 2-6-85

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

(PLEASE PRINT) NAME AND ADDRESS	ORGANIZATION
<i>[Signature]</i>	Senate
<i>[Signature]</i>	HAS
Larry D. Nelson	ATL. CIO
<i>[Signature]</i>	KCCI
Charles K. Hamm	KDHE
Jim Irwin	KDHE
<i>[Signature]</i>	SENATE
Mike Germany	Ks Railroad Association
<i>[Signature]</i>	Dept Human Resources
Richard Fink	RASB
Tom Jensen	Kansas Close-up
Jana Lesman	Kansas Close Up
Lisa Plummer	Kansas Close Up
B. J. SABL	KDHE
Tom Bell	Ks. Hosp. Assn.
Richard Harmon	Kansas Close Up
Matthew Holman	Kansas Close Up
Paul Schmuck	Kansas Close Up
Patrick Stewart	Kan. Close Up Kansas
Jeff Smith	Close Up Kansas
Bret Engelken	Close-Up Kansas
PAT SHAFER	DIVISION OF BUDGET
DICK HUMMEL	Ks HEALTH CARE ASSN

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 2-6-85

(PLEASE PRINT)
NAME AND ADDRESS

Mari Jones
Wayne Leffler
Michael Wolf
Kirsten Johnson
Laura Keefer
Allen Col Allen Cox
James D Bennett
John Grace
Marilyn Bradt
KEITH R LANDIS
FRED G. TIPTON
DAN MORGAN

ORGANIZATION

Close-up program
Co. Comm. Lynn
Intern - Sen. Morris
Close-Up Kansas
Close-Up Kansas
Intern - Sen. Karr
Greater K.C. Bldg. and Training Fund
KS Ass Homes for Aging
KS Improvement of Nursing Homes
CHRISTIAN SCIENCE COMMITTEE
ON PUBLICATION FOR KANSAS
KS CONST. & APPOINTERS' TRAINING
Assoc. Civil Contractors of KS

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON SENATE BILL 113

PRESENTED TO Senate Public Health and Welfare Committee, February 6, 1985.

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

BACKGROUND INFORMATION:

The majority of the more responsive element of the general public are now of the opinion 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. The sponsors of the bill are therefore to be congratulated for their action. The department's only major concern at this time is whether the bill, if enacted, will provide the mechanisms necessary to handle the wide variety of problems that can be associated with these types of activities and will be accompanied by adequate financial support to allow for its effective implementation

STENGTHS:

1. The bill clearly establishes a suitable mechanism for assuring that contractors 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.

2/6/85
Attachment I

3. The bill provides suitable means for enforcement including the emergency suspension of licenses and the imposition of, either, criminal or civil penalties.

WEAKNESSES:

1. The language of the bill tends to afford the most protection to employees of private businesses, a group that is already afforded considerable protection by federal law. As previously noted, protection of building occupants also needs to be a major consideration in any asbestos control bill. Additional provisions are also needed to protect public employees, which must also be anticipated to likely be involved in asbestos projects.
2. Some provisions of the bill could be considered to mandate administrative and inspectional activities that would be extremely resource demanding and non-, or contra-, productive in terms of providing the desired levels of health protection.

DEPARTMENT'S POSITION:

The department strongly supports and encourages the enactment of Senate Bill 113 subject to consideration of the following recommended amendments and the legislative allocation of the supplemental FY86 funds that are needed to implement the required regulatory program. The needed funds are reflected in the fiscal impact analysis that has been prepared in relation to it.

RECOMMENDED AMENDMENTS: (See attachment A for suggested language).

1. The definition of "asbestos project" in Section 1 (lines 0025-0026) should be amended, and additional definitions should be added, in order to clearly eliminate the implied requirement to regulate the removal of common types of hard-surfaced asbestos containing building materials (e.g. shingles, ceiling and floor tiles, and pipe) that are not normally considered to present a potential public health risk and, therefore, not controlled by most other regulatory bodies. These amendments should also exclude the need to certify plumbers and other building maintenance people who frequently are only required to periodically remove very small quantities of asbestos containing insulation in order to make emergency repairs.
2. Subsection 3(b) (lines 0057-0059) should be amended to only require that the secretary conduct at least one field inspection of an actual asbestos removal and encapsulation being carried out by a licensed business entity. The present language can be construed to require that the department inspect each and every project that is carried out in the state. This requirement would place unrealistic demands on the program resources and serve little useful purpose in terms of the bill's overall objective.
3. The regulatory program must be adequate to protect both workers and the building occupants. Section 3. (lines 0050-0062) should be amended to provide the secretary specific authority to adopt necessary public health related work performance standards and Subsection 4(b) (lines 0068-0072) should be amended to indicate that compliance with these performance standards is required, along with those that have been adopted by the designated federal agencies.
4. The bill should clearly provide for regulatory control over asbestos projects that are carried out by governmental units using their own employees. These types of operations cause equal health risks to the workers and building occupants and

therefore need to be controlled. While Section 5 can be construed as requiring that public employees be certified, there is no provision to require that their employer assure that the work will be carried out properly. It is recommended that Section 12 (lines 0230-0233) be amended to require that public agencies must substantially comply with the same requirements as those imposed on business entities by Section 4 (lines 0063-0077).

5. Section 7 (lines 0118-0135) should be amended to provide that the secretary be pre-notified when any asbestos project to be initiated, so that it can be inspected if such an inspection is considered to be necessary.

6. The waiver clause in Subsection 11(c) (lines 0225-0229) could cause considerable controversy in determining which firms should pay fees and meet the full regulatory requirements. Many firms carrying out major asbestos projects are still likely to be able to demonstrate that this is not their primary type of activity. Review and inspection of these activities would still be required and should be subject to fee requirements if the program is to be self supporting. It is therefore recommended that this subsection be deleted.

7. Subsection 11(b) (line 0219-0224) should be amended to indicate concerns about building occupant protection as well as worker protection.

8. Subsection 10(e) (lines 0204-0209) provides a good mechanism for stopping an unacceptable work practice. It should be amended to provide for suspension of worker certifications as well as business licenses, however, in order to also handle control projects that are being carried out by public agencies or contract labor.

9. It may also be desirable to amend the certification requirements to allow some individual workers to conduct asbestos projects under the direct and continuous supervision of a certified individual, rather than requiring every individual to meet the extensive certification requirements. This would eliminate the demands on the program to certify a large number of employees who may only be part time help or who are only involved in such activities as a result of a rare and unusual assignment. The general objectives of the bill could still be met with such a provision. A change of this nature would require amendment of subsection 4(a) (lines 0053-0056) and 8(a) (lines 0136-0139).

10. It may also be desirable to add provisions to the bill which would require that the licensed business entities be bonded. Such bonding may be required to assure that necessary fiscal resources would be available to clean up building premises that become grossly contaminated as a result of improper work practices, or to complete work when a contracting firm has demonstrated that it is unable to complete a project in a proper manner.

Kansas Department of Health and Environment

Testimony on Senate Bill 113

Attachment A

Recommendation #1 Subsection 1(a) (lines 0025-0026)

(a) "Asbestos project" means an activity involving the removal or encapsulation of asbestos undertaken to remove or encapsulate friable asbestos containing materials located within a building for the purpose of reducing potential hazards associated with the presence of this material or as a result of other construction activities. Removal of quantities of less than 10 square feet of such materials per month for the purpose of maintenance or repair work shall be exempted from this definition.

Recommendation #1 New subsections 1(f) and 1(g) (or renumber for alphabetical listing)

(f) "Friable asbestos containing material" means any material that contains more than 1 percent asbestos, by weight, which is applied to ceilings, walls, structural members, piping, ductwork or any other part of a building and which, when dry, may be crumbled, pulverized or reduced to powder by hand pressure.

(g) "Asbestos" means the asbestiform varieties of: chrysotile, crocidolite, amosite, anthophyllite, tremolite and actinolite.

Recommendation #2 Subsection 3(b) (lines 0057-0059).

(b) at least once during an actual asbestos project, eConduct an at least one on-site inspection of procedures being utilized by a licensee for removing and encapsulating asbestos; during an actual asbestos project;

Recommendation #3 New subsection 9(e) (or renumber to make it (a))

(e) establish such requirements, procedures, and standards relating to asbestos projects as are necessary to protect the public health and safety.

Recommendation #3 Subsection 4(b) (lines 0068-0072).

(b) demonstrate to the satisfaction of the secretary that the business entity is capable of complying with all applicable requirements, procedures and standards of the United States environmental protection agency, and the United States occupational safety and health administration; and the secretary;

Recommendation #4 Section 12 (line 0230-0233).

Sec. 12. (a) No state agency or political or taxing subdivision of the state shall accept a bid in connection with any asbestos project from a business entity which does not hold a license at the time the bid is submitted.

Recommendation #4 New subsection 12(b)

(b) No state agency or political or taxing subdivision of the state shall carry out any asbestos project using its own employees except in compliance with the requirements of Section 4 that also apply to business entities.

Recommendation #5 Section 7 (lines 0118-0135)

Sec. 7 (a) Every licensee shall keep a record of each asbestos project it performs include:

- ~~(a)~~ (1) The name....project;
- ~~(b)~~ (2) the location....removed;
- ~~(c)~~ (3) the starting....encapsulation;
- ~~(d)~~ (4) a summary....standards;
- ~~(e)~~ (5) the name....deposited; and
- ~~(f)~~ (6) any other information....secretary.

Recommendation #5 New subsection 7(b).

(b) Every licensee, state agency or political or taxing subdivision of the state that engages in an asbestos project shall notify the secretary, in the manner prescribed by the secretary, of the proposed date on which the project is to be initiated.

Recommendation #6 Subsection 11(c) (lines 0225 - 0229)

~~(c) If a business entity is not primarily engaged in the removal or encapsulation of asbestos, the secretary may waive the requirements for a license if worker protection requirements are met or an alternative procedure is approved under subsection (b).~~

Recommendation #7 Subsection 11(b) (lines 0219-0224).

(b) The secretary may approve, on a case-by-case basis, an alternative to a required worker public health protection procedure for an asbestos project if the business entity or state or political or taxing subdivision of the state submits a written description of the alternative procedure to the secretary and demonstrates to the satisfaction of the secretary that the proposed alternative procedure provides equivalent ~~worker~~ protection.

Recommendation #8 Subsection 10(e) (lines 0204-0215).

(e) (1) If the secretary finds that the public health or safety is endangered by the continuation of an asbestos project, the secretary may temporarily suspend, without notice or hearing in accordance with the emergency adjudication procedures of the provisions of the Kansas administrative procedures act, the license of the business of the entity or the certificate of any person engaging in such asbestos project.

(2) In no case shall a temporary suspension of a license or certificate under this section be in effect for a period of time in excess of 90 days. At the end of such period of time, the licensee or certificate shall be reinstated ~~to full licensure~~ unless the secretary has suspended or revoked the license or certificate, after notice and hearing, or the license or certificate has expired as otherwise provided under this act.

Suggested
Alternate #9

Subsection 4(a) (lines 0065-0067).

(a) Ensure that each employee or agent of the business entity who will come into contact with friable asbestos containing materials or who will engage in an asbestos project is certified or will be continually and directly supervised by an individual who is certified;

Suggested
Alternate #9

Subsection 8(a) (lines 0136-0139)

Sec. 8 (a) Except as otherwise provided in this act, no individual person shall engage in an asbestos project unless the person holds a valid certificate or is continually and directly supervised by an individual who holds a valid certificate issued by the secretary for that purpose.

Suggested
Alternate #10

No specific language is recommended to provide for bonding of licensees at this time because this is a complex legal issue that can be best developed by the committee, if considered necessary.

Jim Barnett
2-6-85

TESTIMONY PRESENTED TO SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE
FEBRUARY 6, 1985
SENATE BILL 113

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. THE KANSAS CONSTRUCTION LABORERS' TRAINING TRUST FUND IS CURRENTLY ENGAGED IN TRAINING CONSTRUCTION LABORERS IN THE HANDLING OF HAZARDOUS ASBESTOS MATERIAL WITH CERTIFIED INSTRUCTORS, USING TRAINING PROGRAM MATERIAL DEVELOPED BY THE NATIONAL ASSOCIATION OF GENERAL CONTRACTORS TRAINING PROGRAM, WASHINGTON, D.C. THIS TRAINING FUND REPRESENTS ALL OF THE STATE OF KANSAS WITH THE EXCEPTION OF JOHNSON AND WYANDOTTE COUNTIES. THE TRAINING UNIT IS MOBILE AND CAN BE LOCATED WHERE NEEDED.

THE GREATER KANSAS CITY BUILDERS ASSOCIATION TRAINING TRUST FUND, LOCATED AT 8944 KAW DRIVE, KANSAS CITY, KANSAS, IS CURRENTLY DEVELOPING A TRAINING PROGRAM IN THE HANDLING OF THE HAZARDOUS ASBESTOS MATERIAL AND IS IN THE PROCESS OF CERTIFYING INSTRUCTORS. BOTH THE KANSAS CONSTRUCTION LABORERS' TRAINING TRUST FUND AND THE GREATER KANSAS CITY BUILDERS ASSOCIATION TRUST FUND SUPPORT SENATE BILL 113 BECAUSE WE FEEL THIS BILL WOULD PROTECT THE KANSAS PUBLIC AND THE WORKERS ENGAGED IN THE HANDLING OF THIS HAZARDOUS MATERIAL.

OUR ONLY QUESTION CONCERNS SECTION 2, PARAGRAPH (B) ON PAGE 1. IF WE UNDERSTAND THIS SECTION CORRECTLY, WE BELIEVE IT WOULD BE POSSIBLE FOR A BUSINESS OR SCHOOL TO ENGAGE IN ASBESTOS REMOVAL OF THEIR OWN BUILDINGS, WITH THEIR OWN EMPLOYEES, WITHOUT ANY PROVISION FOR NOTIFICATION OF THE SECRETARY. IF OUR INTERPRETATION IS CORRECT, WE BELIEVE SOME PROVISION FOR NOTIFICATION SHOULD BE INCLUDED IN THE BILL.

RESPECTFULLY SUBMITTED,

JAMES D. BARNETT
GREATER KANSAS CITY BUILDERS ASSOCIATION
TRUST FUND

FRED TIPTON
KS. CONSTRUCTION LABORERS' TRAINING TRUST FUND

2/6/85
Attachment II

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS



5401 S. W. 7th Avenue Topeka, Kansas 66606
913-273-3600

Testimony on S.B. 113

by

Richard Funk, Assistant Executive Director
Kansas Association of School Boards

Mr. Chairman and members of the committee:

I am Richard Funk, Assistant Executive Director of the Kansas Association of School Boards representing 300 of the 304 school districts in the State of Kansas. Thank you for the opportunity to appear before you today and testify as a proponent for S.B. 113.

Senate Bill #113 addresses two concerns voiced by our members over the past ten months: Who can we get to help us? and Why can't we use our own people? My association supports the provisions as outlined in this bill. Kansas school boards are on record supporting active involvement by the Kansas Department of Health and Environment in the asbestos problem as well as supporting activities which will remove any health hazard which may affect Kansas public school students and employees.

We feel that this bill blends perfectly with other proposals considered by the legislature. We urge favorable passage by this committee for Senate Bill #113.

2/6/85
Attachment III