

SUBJECT: Licensing of asbestos removal from public buildings

COMMITTEE: Public Health: committee substitute recommended

VOTE: 6 ayes--Wright, Madla, J. Harris, McDonald, Rodriguez, Schoolcraft

0 nays

3 absent--Clemons, Givens, Heflin

WITNESSES: For--John Stonebarger, asbestos abatement contractor; Elmer Ashcraft, The Brand Companies; Jesse Ashley, Asbestos Specialties

Against--None

DIGEST: CSHB 36 would require businesses to be licensed by the Texas Department of Health (TDH) before they could remove or encapsulate asbestos from a building open to the public, such as government buildings and public schools.

To receive a license, business operators and their employees who come in contact with or are responsible for the removal of asbestos would have to complete a federally approved course on asbestos removal. A business also would have to comply with federal standards set by the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and standards set by any state agency authorized to regulate asbestos removal and disposal. The business also would have to have access to at least one asbestos disposal site for the term of the license.

The TDH would establish a license-application form and charge fees not to exceed \$500 to cover administrative costs. The application would have to include information such as a description of protective clothing, respirators, site-decontamination procedures, air-monitoring procedures and final cleanup procedures the applicant plans to use. The application also would have to contain the name and address of each disposal site to be used and any other information the TDH would require. Licenses would be subject to annual renewal. Licensees would be required to keep records of each asbestos-removal project for at least six years.

Each employee of a licensee would have to register with the TDH before removing or encapsulating asbestos from a public building. To be registered, an employee would have to complete a federally approved course on asbestos removal. Registration fees could not exceed \$50.

Violators would face civil penalties of up to \$5,000 per infraction. Once receiving a civil fine, violators who failed to obtain a license or to keep the required records would be subject to criminal penalties of up to \$20,000 for the first offense and up to a \$25,000 fine and a two-year jail term for subsequent offenses.

The TDH could reprimand licensees or revoke or suspend their licenses for fraudulently obtaining a license or failing to meet federal or state standards or department rules. A licensee would be entitled to an administrative hearing before any disciplinary action could be taken. If the department found a violation during an on-site inspection, it would have to seek a court injunction to stop the project.

The TDH could waive license requirements for emergencies. Otherwise, licenses and employee registration would be required starting Jan. 1, 1988. Projects in progress on that date would be exempted from the bill's requirements.

SUPPORTERS
SAY:

CSHB 36 would protect the public from contractors who, either from negligence or ignorance, expose the public to asbestos fibers. These deadly fibers can lead to cancer and other fatal diseases. Even though the federal EPA has outlawed using asbestos to insulate buildings, 40 percent of the nation's buildings remain contaminated.

At least 25 states have passed bills like this one. These include nearby states like Arkansas, Oklahoma and Louisiana. Since Texas requires no asbestos-removal training, many "fly by night" asbestos contractors from surrounding states come here. They endanger their employees, those who work in the buildings and the general public. This bill would guarantee that every asbestos contractor's employees have been thoroughly instructed and are licensed or registered.

Federal law requires that all schools deal with asbestos contamination in their buildings by June 1989 or else face stiff penalties. Other public buildings

probably will soon be subject to the same requirements. CSHB 36 would ensure that Texas has the proper mechanism for carrying out these laws.

Some contractors have had trouble obtaining liability insurance. This bill would assure insurance companies that these contractors are highly trained to do a safe job, thereby reducing the chances of an accident.

Requiring the Department of Health to obtain a court injunction before stopping an asbestos-removal project would guarantee that each contractor's due process rights are protected. Otherwise, contractors could be subject to arbitrary decisions by individual TDH inspectors.

Contractors who work only on buildings with no public access need not come under this bill. Workers in those buildings are already shielded by federal worker-protection laws.

CSHB 36 would grant TDH full authority to adopt rules that may become necessary, such as defining "asbestos," requiring others involved in asbestos removal to be licensed and regulating storage and treatment of asbestos waste. Providing the department with this flexibility would ensure that unforeseeable situations can be addressed without further legislation.

CSHB 36 has been endorsed by groups representing every interested party, including labor unions, contractors, medical groups, environmental groups and teachers' organizations. A similar bill died in the House Calendars Committee last session. The state cannot afford to wait any longer to regulate the life-threatening hazards of asbestos contamination.

OPPONENTS
SAY:

CSHB 36 would not go far enough to ensure that the public is adequately protected from faulty removal of asbestos. Others who directly affect the removal of asbestos, such as surveyors, consultants and trainers, should also be required to take proper training and be licensed. These people locate and assess the dangerous condition, prepare plans and specifications, train others in asbestos regulations and analyze samples of asbestos-contaminated materials. They play an integral part in the safe treatment of asbestos and should be regulated too.

The TDH should be given authority to immediately shut down an asbestos-removal project when it discovers

proper procedures are not being followed. CSHB 36 would require that the department first go through the courts before stopping a job, which could take too long. The project could already be completed and the harm already done.

Contractors who remove asbestos from private buildings should also be licensed. There may be times when the general public would have access to buildings that are normally restricted, such as a chemical plant or an oil refinery. The state should not depend on federal regulations to protect the employees who work in these private buildings. Furthermore, penalties also should be imposed on building owners who knowingly hire unlicensed contractors.

Minimum standards should be established for the storage, transportation, processing, treatment and disposal of asbestos waste. The bill makes no mention of standards for this procedure, which is just as potentially dangerous to the public as asbestos removal.

"Asbestos" should be defined by law. The EPA and OSHA use different definitions, resulting in some confusion. Defining the term would ensure that no contractor could escape disciplinary action through a mere technicality.

NOTES:

The committee substitute added several provisions to the original version of HB 36. It would apply regulations only to contractors who remove asbestos from public buildings and adds requirements that asbestos-removal courses be approved by the EPA and that employees of contractors to be registered with the TDH. It would cap license fees at \$500 and registration fees at \$50. It would require the TDH to obtain a court injunction to stop a job in progress. In addition, it would exempt jobs in progress on Jan. 1, 1988 from being subject to license and registration regulations.

The companion bill, SB 931 by Uribe, is pending in the Senate Health and Human Services Committee; it is identical to CSHB 36.

Similar bills died in 1985. HB 926 by Criss died in the House Calendars Committee. SB 661 by Uribe failed to receive a two-thirds vote on a motion to suspend the regular order of Senate business by 19 ayes to 12 nays.