

SUBJECT: Making asbestos surveys valid for five years

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — Capelo, Laubenberg, Coleman, Dawson, McReynolds, Naishtat, Taylor, Truitt, Zedler

0 nays

WITNESSES: None

BACKGROUND: Texas Administrative Code, Title 25, part 1, ch. 295, subch. C, sec. 295.34, requires the owner of a public building, prior to any renovation or demolition, to survey and perform asbestos abatement for all asbestos-containing material that could be disturbed in the area to be renovated or demolished. Asbestos abatement is the process of removing or enclosing asbestos-containing materials with the effect of reducing or eliminating airborne concentrations of asbestos.

Occupations Code, ch. 1954 governs asbestos health protection and authorizes the Texas Department of Health (TDH) to perform asbestos surveys or to contract with others to perform these surveys.

In 2001, the 77th Legislature enacted SB 509 by Moncrief, prohibiting a municipality from issuing a demolition or renovation permit for a public or commercial building without the applicant's providing acceptable proof that an asbestos survey had been conducted on the affected portions of the building or that an appropriately trained person had certified the lack of asbestos in the affected parts of the building.

DIGEST: HB 1723 would add sec. 1954.20 to the Occupations Code, requiring that an asbestos survey done on a public building be valid for five years. Any activity, such as renovation or construction, done on the surveyed property during the five years would not require an additional survey.

The bill would take effect September 1, 2003, and would apply to asbestos surveys performed after that date.

**SUPPORTERS
SAY:**

HB 1723 would make it clear that a single asbestos survey would cover any renovation activity that might occur in a public building for five years, whether multiple renovations took place in one location within the building or in separate locations within the building. It is very costly and burdensome to a building owner to obtain a separate asbestos survey each time a tenant wishes to make renovations within a single office space, a situation that this bill would remedy.

The bill also would clear up confusion about the conditions under which an owner of a public building must have an asbestos survey performed. Some Texas municipalities incorrectly interpret the law to mean that a building owner must produce a separate asbestos survey, and obtain a separate permit, for each section of a building to be renovated. In fact, the law allows a single asbestos survey to cover any number of renovation projects that occur in different parts of the inspected building.

The intent of the law requiring an asbestos survey is to notify the owner of the presence of asbestos in the building. It is not to require resurveying every time a change is made, nor is it a catchall for all issues that might follow abatement. There are many standards and regulations that have to be met for abatement, including that a building being abated is subject to inspection by TDH. The bill would not affect these safeguards, which ensure the protection of public health.

**OPPONENTS
SAY:**

This bill would be too restrictive in some cases and not restrictive enough in others and could have a detrimental affect on public health. On the one hand, this bill would be too restrictive by requiring some building owners to obtain an asbestos survey when none was necessary. Take the example of a building that had last been renovated 10 years ago, at which time the owner obtained an asbestos survey confirming that any asbestos had been identified and abated. Under this bill, the building owner would have to obtain a new survey because the previous survey had been conducted more than five years ago, even though nothing in the building had changed that could have altered the asbestos risk. These unnecessary surveys will increase costs to owners without improving health protection for the occupants.

On the other hand, this bill would not be restrictive enough, by allowing a building owner to conduct an unlimited number of renovations in the same

location within a building without requiring a new survey to be conducted each time. A single survey would be valid for five years, regardless of whether asbestos had been disturbed during one of those renovations by a contractor who did not properly perform abatement. Under this bill, owners lawfully could remain unaware of the danger they were causing to public health for up to five years.

**OTHER
OPPONENTS
SAY:**

The five-year limitation proposed by this bill is arbitrary and inconsistent with time limitations relating to asbestos survey requirements for other types of buildings. For example, schools must update their asbestos management plans every three years.