

M I N U T E S

SPECIAL COMMITTEE ON FEDERAL AND STATE AFFAIRS

October 31, 1977

Room 527 - State House

Members Present

Senator John Crofoot, Chairperson
Representative Ardena Matlack, Vice-Chairperson
Senator Leroy Hayden
Senator Frank Smith
Representative Carlos Cooper
Representative Stan Gibson
Representative Anthony Hensley
Representative Tom Slattery
Representative Kathryn Sughrue

Excused: Senator Ed Reilly
Representative Joseph Mikesic

Staff Present

Russ Mills, Kansas Legislative Research Department
Ron Smith, Kansas Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office

Morning Session

Senator John Crofoot called the meeting to order at 9:30 a.m. The Committee congratulated Representative Matlack on her appointment as Chairman of the House Committee on Federal and State Affairs.

Mr. Mills distributed a memorandum entitled "Summary of Census Questionnaire Responses" (Attachment I). He reviewed the summary and stated that specific guidelines and definitions for answering the questionnaire had not been set; however, he felt the report was an accurate assessment of the feelings of many county clerks.

Dr. Edward Flentje, Division of State Planning and Research, reported that the Governor's census survey was not completed. To date, the Division has received approximately 70 responses. The results are being computed and, at this time, the report is not completed enough to share the results with the Committee. He did state, however, that he felt the report would have relevance to the Committee's decision. Dr. Flentje stated that, from the figures, it appears the state should discontinue the annual enumeration, but he stressed that this was only a preliminary statement. There are only three state aid formulas that use population as a factor. He stated that beginning in 1978 the federal estimates will be broken down as far as townships.

The next order of business was consideration of Proposal No. 27 - Physically Handicapped Standards. Mr. Mills summarized the report for Committee members (Attachment II). The three bill recommendations were to require that governmental and public buildings and facilities conform to standards for making the buildings and facilities accessible to the physically handicapped; to establish income tax credits for renovation expenditures; and to require public buildings to provide at least one parking space for the physically handicapped.

Representative Cooper moved to repeal those statutes that set curb and sidewalk construction standards (K.S.A. 12-696) since the proposed bill would cover this area. Representative Gibson seconded the motion. It passed with no opposition.

Representative Hensley moved that the Committee change the effective date of the bill concerning accessibility standards from January 1, 1980, to January 1, 1979 and also make the bill effective upon publication in the state newspaper rather than in the statute book to provide more lead time. Representative Sughrue seconded the motion. It passed with no opposition.

Mary Torrence reviewed the bill pertaining to the income tax credit for making buildings accessible. She stated that the Chairman had requested the following amendment to be included in the bill regarding businesses:

"If the amount of such tax credit exceeds the taxpayer's income tax liability for such taxable year, the amount thereof which exceeds such tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability, except that no such tax credit shall be carried over for deduction after the fourth taxable year succeeding the taxable year in which the expenditures are made."

Representative Cooper moved to amend the bill as stated above. Representative Matlack seconded the motion. The motion passed with no opposition.

Representative Sughrue moved to adopt the Committee report on Proposal No. 27. Senator Smith seconded the motion. It passed with no opposition.

Proposal No. 26 - Insulation Standards was discussed. Ms. Torrence reviewed the proposed bill. The bill would prohibit the manufacture, distribution, sale or installation of any thermal insulation in Kansas which has not been tested and certified as having a flame spread of 75 or less.

A letter from the Wisconsin Attorney General concerning shrinkage in urea formaldehyde foam was presented (Attachment III).

Representative Cooper moved and Senator Smith seconded a motion that the Committee recommend the bill concerning insulation standards to the Legislature. The bill passed with all members except Senator Hayden voting yes. Senator Hayden voted no.

Mr. Smith reviewed the Committee report on Proposal No. 26 (Attachment IV). Representative Cooper moved to adopt the Committee report. Senator Smith seconded the motion. It passed with no opposition.

Representative Gibson moved to approve the minutes of the October 3, 1977 meeting. Representative Slattery seconded the motion. It passed with no opposition.

The meeting was adjourned.

Prepared by J. Russell Mills Jr.

Approved by Committee on:

January 6, 1978
(date)

JRM/dmb

Attachment I

MEMORANDUM

October 28, 1977

TO: Special Committee on Federal and State Affairs
FROM: Russell Mills, Kansas Legislative Research Department
RE: Summary of Census Questionnaire Responses

As requested by the Committee, a questionnaire designed by Representative Matlack concerning the annual state census was mailed to each of the 105 counties. As of October 28, 1977, 72 responses had been received. Those responses are summarized below:

Question No. 1

Are rural citizens (farmers and ranchers) enumerated as a part of the annual farm assessments?

Yes: 71 counties
No: 1 county (Finney)

Question No. 2

Are they enumerated by Township Trustees?

Yes: 25 counties
No: 46 counties

Question No. 3

What percent of the County population is rural?

Responses ranged from 5 percent in Montgomery County to 73 percent in Logan County.

Question No. 4

How many full-time employees could be terminated if the annual enumeration were eliminated?

The only counties which reported that any full-time employees could be terminated were:

Cowley	1
Finney	1
Kingman	.5
Montgomery	4
Norton	1
Riley	1
Saline	2
Woodson	.5
TOTAL	<u>11</u>

Atch. 1

Question No. 5

How much would you estimate the cost of your local county government could be reduced if the enumeration were no longer mandated?

Estimated savings ranged from zero dollars to \$60,000 in Wyandotte County. Eighteen counties reported that no money could be saved. Total estimated savings for all responding counties were \$217,290. Selected examples of estimated savings are as follows:

Barber	\$ 1,600
Cloud	4,500
Elk	500
Ford	9,000
Jackson	4,000
Lincoln	400
Lyon	10,000
Morris	300
Riley	14,500
Trego	200
Wyandotte	60,000

Question No. 6

Who uses the population data you collect (besides the State Board of Agriculture)?

Most counties responded that the data were used by other governmental agencies, businesses, local organizations, the courts, and the general public. Five counties reported that no use was made of the data.

Question No. 7

Do you feel your enumeration is reasonably accurate?

Yes: 63 counties

No: 8 counties (Atchison, Dickson, Graham,
Logan, Reno, Russell, Saline,
and Wyandotte)

Numerous counties stated that the data were accurate to 95-99 percent.

Question No. 8

Is it more accurate than estimates by the U.S. Bureau of the Census?

Yes: 53 counties

No: 11 counties (Allen, Atchison, Bourbon,
Graham, Lincoln, Logan,
Lyon, Osage, Reno,
Riley, and Saline).

Question No. 9

Have your population counts ever been challenged as to their accuracy? By whom? On what basis?

Only five counties reported that their figures had ever been challenged:

1. Allen - an annual vendetta by the local newspaper that the counts are too low;
2. Logan - because of a declining population;
3. Reno - by the Hutchinson City Planner who thinks "there should be three people in each house";
4. Seward - by local businesses who feel that not everyone is counted; and
5. Wyandotte - by the state because of duplicate names.

Question No. 10

Would you take advantage of financial assistance from the State in training your staff on ways of improving the accuracy of your enumeration and minimizing costs?

Yes: 39 counties
No: 25 counties

COUNTY	1	2	3	4	5	6	7	8	9	10
Allen	YES	NO	25	0	\$5000	GOVT	YES/95%	NO	YES	YES
Anderson										
Atchison	YES	NO	30	0	-	GOVT	NO	NO	NO	NO
Barber	YES	NO	26	0	\$7600	NONE	YES	YES	NO	YES
Barton	YES	YES	50	0	10%	PUBLIC	YES/92%	YES	NO	NO
Bourbon	YES	NO	30	0	\$6,750	PUBLIC	YES	NO	NO	YES
Brown	YES	YES	38	0	0	GOVT	YES/99%	YES	NO	YES
Butler										
Chase	YES	YES	50	0	0	GOVT	YES/90%	YES	NO	NO
Chautauqua	YES	NO	38	0	\$1500	PUBLIC	YES	YES	NO	YES
Cherokee										
Cheyenne	YES	NO	43	0	0	-	YES	YES	NO	NO
Clark	YES	NO	28	0	-	PUBLIC	YES/99%	YES	NO	-
Clay	YES			0	0	GOVT	YES	YES	NO	NO
Cloud	YES	NO	22	0	\$4500	PUBLIC	YES	-	NO	YES
Coffey	YES	NO	65	0	-	-	YES	YES	NO	YES
Comanche	YES	NO	32	0	0	GOVT	YES	YES	NO	YES
Cowley	YES	YES	30	1	\$5200	PUBLIC	YES/97%	YES	NO	-
Crawford	YES	YES	22	0	\$7500	BUSINESS	YES/95%	YES	NO	-
Decatur										
Dickinson	YES	YES	32	0	-	-	NO	YES	NO	YES
Doniphan										
Douglas										
Edwards										
Elk	YES	NO	38	0	\$500	GOVT	YES/99%	YES	NO	NO
Ellis	YES	NO	20	0	\$7000	-	YES	YES	NO	YES
Ellsworth	YES	NO	20	0	\$1100	PUBLIC	YES/93%	YES	NO	YES
Finney	NO	NO	53	1	\$6,500	NONE	YES	YES	NO	NO
Ford	YES	NO	21	0	\$9,000	PUBLIC	FAIR	YES	NO	YES
Franklin										
Geary	YES	-	8	0	0	COURT	YES	-	NO	YES
Gove										
Graham	YES	NO	50	0	0	PUBLIC	NO	NO	NO	NO
Grant	YES	NO	37	0	\$1800	PUBLIC	YES	YES	NO	-
Gray										
Greeley										
Greenwood										
Hamilton	YES	NO	-	0	\$200	7-10	YES	YES	NO	YES
Harper	YES	NO	68	0	0	GOVT.	YES/99%	YES	NO	NO
Harvey	YES	YES	17	0	\$3300	GOVT.	YES	YES	NO	YES
Haskell										
Hodgeman										
Jackson	YES	NO	54	0	\$3000	GOVT.	YES	YES	-	YES
Jetterson	YES	-	58	0	\$4000	GOVT.	YES/95%	YES	NO	NO
Jewell	YES	YES	49	0	\$765	-	YES/97%	-	NO	-
Johnson										
Kearny	YES	NO	21	0	\$350	PUBLIC	YES	YES	NO	YES
Kingman	YES	NO	45	0.5	\$3,000	PUBLIC	YES/95%	YES	NO	YES
Kiowa	YES	NO	27	0	\$1000	PUBLIC	YES	YES	NO	NO
Labette	YES	NO	25	0	\$1100	PUBLIC	YES/80%	YES	NO	YES
Lane										
Leav' worth	YES	YES	22	0	\$5000	PUBLIC	YES	YES	-	YES
Lincoln	YES	NO	43	0	\$400	GOVT.	YES/90%	NO	NO	NO

COUNTY	1	2	3	4	5	6	7	8	9	10
Linn										
Logan	YES	NO	73	0	\$4,500	PUBLIC	NO	NO	YES	YES
Lyon	YES	NO	17	0	\$10,000	PUBLIC	YES	NO	NO	YES
Marion							YES/1992	YES	NO	NO
Marshall										
McPherson										
Meade	YES	NO	28	-	-	-	YES	YES	NO	NO
Miami	YES	NO	49	-	\$2500	GOVT.	YES/1990	-	NO	NO
Mitchell										
Montgomery	YES	NO	5	4	\$4000	GOVT	YES	YES	NO	YES
Morris	YES	YES	2	0	\$300	PUBLIC	YES	YES	NO	YES
Morton	YES	NO	25	0	0	GOVT	YES	YES	NO	NO
Nemaha	YES	NO	44	0	0	PUBLIC	YES/1990	YES	NO	-
Neosho										
Ness	YES	NO	33	0	\$1200	PUBLIC	YES/FNR	YES	NO	YES
Norton	YES	NO	32	1	0	BUSINESS	YES	YES	NO	YES
Osage	YES	NO	-	0	0	PUBLIC	YES	NO	NO	YES
Osborne										
Ottawa	YES	YES	37	0	\$1500	NONE	YES/1952	-	NO	NO
Pawnee										
Phillips										
Pot'wa'mic	YES	YES	46	0	0	-	YES/1952	YES	-	NO
Pratt	YES	NO	23	0	-	PUBLIC	YES/1952	YES	NO	NO
Rawlins										
Reno	YES	YES	24	0	\$13,000	NONE	NO/1952	NO	YES	-
Republic										
Rice	YES	NO	25	0	\$1,500	GOVT.	YES/1952	YES	NO	YES
Riley	YES	YES	20	1	\$14,500	GOVT	YES/1982	NO	NO	YES
Rooks	YES	YES	28	0	\$1300	GOVT.	YES/1952	YES	NO	YES
Rush	YES	NO	32	0	0	GOVT.	NO/1900	YES	NO	YES
Russell	YES	NO	22	0	\$2000	-	NO	-	NO	YES
Saline	YES	YES	-	2	\$8000	BUSINESS	NO	NO	NO	YES
Scott										
Sedgwick	YES	YES	23	0	-	GOVT.	YES	-	NO	YES
Seward	YES	NO	8	-	\$3800	GOVT.	YES	YES	YES	NO
Shawnee										
Sheridan										
Sherman	YES	NO	25	0	\$400	PUBLIC	YES	-	NO	YES
Smith	YES	YES	40	0	0	-	YES/1982	YES	NO	NO
Stafford	-	YES	-	0	-	-	YES	YES	NO	-
Stanton										
Stevens										
Sumner										
Thomas	YES	YES	33	0	\$15600	NONE	YES/1952	YES	NO	NO
Trego	YES	YES	44	0	\$200	GOVT.	YES	YES	NO	YES
Wabaunsee	YES	YES	45	0	0	-	YES	YES	NO	YES
Wallace	YES	NO	40	0	\$300	GOVT.	YES/1952	YES	NO	YES
Washington	YES	YES	-	-	-	-	YES	YES	-	NO
Wichita	YES	NO	40	0	0	GOVT.	YES	YES	NO	NO
Wilson	YES	YES	35	0	\$4500	GOVT.	YES/1952	YES	NO	NO
Woodson	YES	NO	42	1/2	\$1125	LOCAL ORGS.	YES	YES	NO	NO
Wyandotte	YES	NO	-	0	\$60,000	GOVT	NO	YES	YES	YES

Attachment II

COMMITTEE REPORT

TO: Legislative Coordinating Council
FROM: Special Committee on Federal and State Affairs
RE: PROPOSAL NO. 27 - PHYSICALLY HANDICAPPED
STANDARDS*

Under Proposal No. 27, the Special Committee on Federal and State Affairs was directed to conduct "an examination of the feasibility of requiring all public and private buildings to meet standards for making the structures accessible to and usable by the physically handicapped and of requiring the establishment of parking spaces for the handicapped in all localities."

Background

The Kansas Legislature has enacted several legislative proposals concerning the physically handicapped and the removal of architectural barriers. These statutes are briefly summarized below.

Public Buildings. K.S.A. 58-1301 et seq. requires that all buildings and facilities constructed after January 1, 1970, with monies appropriated by the state or any political subdivision thereof, conform to the American National Standards Institute specifications (ANSI A117.1) for making buildings and facilities accessible to, and usable by, the physically handicapped. Responsibility for this act is given to the Division of Architectural Services and to the local governing bodies of counties, municipalities, and other political subdivisions. The act also applies to buildings constructed or remodeled in excess of 25 percent of gross area.

School Buildings. K.S.A. 31-150 requires that the construction of school buildings include reasonable provisions, as approved by the State Architect, for making the buildings and facilities accessible to and usable by the physically handicapped.

Atch. II

Discrimination. Legislation enacted in 1974 amended the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) to prohibit discriminatory practices against physically handicapped persons in employment and public accommodations. However, the new language was not to be construed to require the construction of any special facilities or fixtures.

Hunting and Fishing Permits. K.S.A. 1976 Supp. 32-154d allows physically disabled persons to hunt or fish from land or water vehicles which are specifically adapted for that purpose. These special permits are issued without cost by the Forestry, Fish and Game Commission.

State Capitol - Accessibility. K.S.A. 1976 Supp. 75-3764a authorizes the Director of Architectural Services to construct an entrance so as to provide access to the Capitol by handicapped persons, remodel facilities within the Capitol to make them accessible to handicapped persons, and to post signs indicating the entrance and the accessible facilities.

Curb and Sidewalk Construction Standards. K.S.A. 1976 Supp. 12-696 establishes standards for the construction of curbs and sidewalks to provide accessibility to handicapped persons. The standards apply to all new and replacement construction of curbs and sidewalks done by cities, counties, and townships.

Employment Discrimination. 1977 S.B. 369 (Chapter 183, 1977 L.) amends the Kansas Act Against Discrimination to prohibit a contractor from discriminating on the basis of a physical handicap unrelated to a person's ability to engage in a particular work.

Standards of Accessibility for Voting Places. 1977 S.B. 283 (Chapter 128, 1977 L.) requires that each voting place be made accessible and usable by elderly persons and the physically handicapped. Certain standards of accessibility are prescribed in the act.

Proposed Legislation. Two bills were introduced during the 1977 Legislative Session concerning the physically handicapped. H.B. 2269 would require that all governmental and public buildings and facilities conform to certain standards for making the buildings and facilities accessible to and usable by the physically handicapped. Buildings and facilities constructed with both public and private funds would be required to meet accessibility standards established in the bill. S.B. 219 would require that certain public buildings provide parking spaces for handicapped persons. The bill would also establish penalties for unauthorized use of such handicapped parking spaces. Under the bill, unauthorized use of a parking space reserved for handicapped persons would be a Class C misdemeanor. Both bills are being carried over in the Senate Committee on Federal and State Affairs.

Committee Activity

During the course of this study, the Committee heard testimony from representatives of the following groups and organizations: The Department of Social and Rehabilitation Services; the Department of Human Resources; the Kansas Committee on Employment of the Handicapped; the Governor's Advisory Committee on Aging; the Kansas Association of Realtors; the Division of Architectural Services; the Kansas Savings and Loan League; the Kansas State Park and Resources Authority; People First; Intracity Transit of Topeka; Kansas State University; the Topeka-Shawnee County Human Relations Commission; the Topeka-Shawnee County Housing Accessibility Project; and interested legislators and individuals. The Committee also reviewed existing Kansas legislation in this area and examined new federal regulations which require that certain federally-funded programs be made accessible to the physically handicapped. In addition, the Committee studied the accessibility standards established by the American National Standards Institute.

Most of the testimony received by the Committee urged that legislation be enacted to eliminate architectural barriers in both public and private buildings and facilities. Conferees noted that there are over 230,000 physically disabled persons in Kansas; that all citizens will benefit from the removal of architectural barriers; and

that enactment of H.B. 2269 and S.B. 219 is the next logical and necessary step to correct barrier conditions in all places of public accommodation and, thus, establish a legal right for equality and social integration for the physically handicapped citizens of Kansas.

Various cost estimates indicated that additional costs for barrier-free new construction could be expected to average from .5 percent to 3 percent over the cost of conventional construction. Conferees stated that the goals of citizens with physical disabilities, limitations, or impairments are to have access to and throughout all buildings and facilities in order that they may live more normal, more equal, lives and assume full responsibilities as citizens. It was noted that the architectural barriers which exist in society today are the greatest obstacles which prohibit handicapped individuals from enjoying independence in their lives. Testimony indicated that, since 1974, all 50 states and the District of Columbia have, through legislation, executive orders, or building codes, required the elimination of architectural barriers in certain public buildings. Proponents of H.B. 2269 stated that this legislation would strengthen the existing Kansas requirement for public buildings and would extend the barrier-free requirement to certain private buildings. It was asserted that the sophisticated exemption provisions in the bill would assure that no unreasonable construction demands were placed upon facilities constructed with either public or private funds. Most conferees agreed that H.B. 2269 was a positive step which would give physically disabled citizens more control over their own lives and the ability to create their own lifestyles.

Other testimony indicated that it would be desirable to amend the state tax laws to include a tax credit for the construction or renovation of barrier-free buildings; that certain provisions of H.B. 2269 are ambiguous and should be clarified; that consideration be given to exempting one- and two-family dwellings and small commercial structures from the requirements; and that enactment of H.B. 2269 would produce many new employment opportunities for physically handicapped persons.

The Secretary of the State Department of Social and Rehabilitation Services (SRS) reviewed the regulations promulgated on May 4, 1977, by the Department of Health, Education, and Welfare to implement Section 504 of the Rehabilitation Act of 1973, PL 93-112. These regulations require that programs receiving federal funds from the Department be made accessible to the physically handicapped. The Secretary presented a tentative estimate that the cost of making SRS programs and facilities accessible could range from a minimum of \$335,000 to a high of \$3-\$4 million if total compliance is required by the federal agency.

Conclusions and Recommendations

The Committee concludes that further legislative efforts should be made to eliminate architectural barriers and to increase the number of accessible buildings and facilities in the state. The Committee has prepared three bills designed to improve the accessibility of both public and private buildings and facilities in Kansas and to insure the provision of accessible parking spaces near public buildings. The Committee believes that the recommended bills will enhance the quality of life for the citizens of the state who are handicapped, disabled, or elderly, through a combination of mandatory accessibility standards, tax incentives, and penalty provisions. Therefore, the Committee recommends enactment of _____ Bill _____, _____ Bill _____, and _____ Bill _____. The three bills are summarized below.

Building Accessibility Standards. _____ Bill _____ would require that governmental and public buildings and facilities conform to certain standards for making the buildings and facilities accessible to, and usable by, the physically handicapped. The main provisions of the bill are as follows.

- 1) After January ¹⁻¹⁻⁷⁹~~1~~, 1980, all governmental buildings and facilities constructed or renovated in this state would have to conform to American National Standards Institute requirements concerning accessibility by the physically handicapped. All new public buildings constructed after January ~~1~~, 1980, would have to meet the accessibility standards. 1-1-79
- 2) "Governmental buildings" would include all buildings, structures, streets, and sidewalks used by the public that are constructed, purchased, leased, or rented by moneys appropriated by the state or any political subdivision.
- 3) "Public buildings" would include all buildings, structures, streets, and sidewalks used by the public that are constructed, purchased, leased, or rented by the use of private funds, including rental apartment complexes and temporary lodging facilities which contain 20 or more units.

- 4) Waivers of the standards could be granted for construction or renovation projects if (a) an acceptable alternative to a particular standard would fulfill the purpose of the act, or (b) the incremental construction cost to conform to the standards exceeds 7 percent of the total construction or renovation costs.
- 5) Violations of the standards in the construction or renovation of a building or facility would constitute a Class A misdemeanor.
- 6) Temporary or permanent injunctions restraining an individual from violating the standards could be sought in district court.
- 7) Responsibility for enforcement of the act is placed upon: (a) the Division of Architectural Services for school buildings and construction or renovation projects for which state funds are utilized; (b) the local governing bodies of counties, municipalities, and other political subdivisions for projects utilizing funds of the political subdivision; and (c) the county or district attorney for projects involving the use of private funds.

Income Tax Credit. _____ Bill _____ would establish an income tax credit for renovation expenditures to make dwellings and buildings used in a trade or business accessible to the handicapped. The maximum tax credit for expenditures to make the taxpayer's dwelling accessible would be an amount equal to 25 percent of the cost of renovation or \$1,250, whichever is less. The maximum tax credit for renovation expenditures to make a building used in a trade or business accessible would be an amount equal to 25 percent of the cost of renovation or \$10,000 or an amount equal to the taxpayer's income tax liability in the taxable year for which the credit is claimed, whichever is least.

Handicapped Parking Spaces. _____ Bill _____ requires that, after January 1, 1979, every building and facility open to the public, which was constructed by moneys appropriated by the state or any political or taxing subdivision thereof, shall be provided with at least one accessible parking space, clearly marked as being reserved

for handicapped persons or persons responsible for the transportation of a handicapped person. Only vehicles which bear the special handicapped license plates issued by the Division of Vehicles would be permitted to park in the reserved spaces. Unauthorized use of the parking spaces would be punishable by a fine of not less than five dollars.

The Committee recommends that the 1978 Legislature take favorable action on all of the bills summarized above.

Respectfully submitted,

Sen. John Crofoot,
Chairperson
Special Committee on Federal
and State Affairs

Rep. Ardena Matlack,
Vice-Chairperson
Sen. Leroy A. Hayden
Sen. Edward F. Reilly, Jr.
Sen. Frank Smith
Rep. Carlos Cooper

Rep. Stan Gibson
Rep. Anthony Hensley
Rep. Joseph M. Mikesic
Rep. Tom Slattery
Rep. Kathryn Sughrue



The State of Wisconsin
Department of Justice
Madison
53702

Attachment III

BRONSON C. LA FOLLETTE
ATTORNEY GENERAL

October 5, 1977

National Bureau of Standards
U.S. Department of Commerce
Washington, D.C. 20234

Office of Policy Development and Research
Division of Energy Building Technology and Standards
Department of Housing and Urban Development
Washington, D.C. 20410

Re: Urea Formaldehyde Based
Foam Insulation
NBS Technical Note 946--
July 1977

Gentlemen and Madams:

I am writing to you after reviewing a recent National Bureau of Standards Technical Note sponsored by the Department of Housing and Urban Development. Although this Technical Note does indicate that it is designed only to present currently available information, the material set forth in the Note provides a basis for governmental concern far beyond the conclusions reached in the Note's synopsis.

Investigation by our Office of Consumer Protection has revealed that shrinkage of applied urea formaldehyde foam results in a 50 per cent reduction in effective insulating efficiency as compared to lab-tested samples. The Technical Note also identified shrinkage as an area of major concern. However, calculations which could have demonstrated this dramatic reduction in insulating value are absent from the Note. Moreover, certain calculations were made on improper assumptions concerning foam shrinkage. Indeed, information in my possession leads me to believe that the use of urea formaldehyde foam insulation in the walls of private homes is of limited value and may, in fact, deteriorate or disintegrate and cause considerable economic loss to the homeowner.

Due to the energy shortage, this foam is being used in unprecedented quantities as wall insulation for older homes. Massive advertising and promotional efforts have resulted in numerous contracts

Attch. III

which total in the millions of dollars in Wisconsin alone. I am sure the same stands true for other northern states. It greatly concerns me that this product is being permanently injected into thousands of homes without adequate scientific data establishing the value, durability and efficiency of this foam as a home insulator.

Delay in evaluating this product becomes critical for two reasons: (1) once injected, the foam is permanent and cannot be replaced or supplemented with additional insulation, and (2) there are a finite number of older homes for which this type of foam insulation is suitable. At the current rate of installation of this aggressively marketed product, subsequent warnings to the consuming public may simply be too late.

Specifically, my concerns about urea formaldehyde foam are as follows:

1. The effect of foam shrinkage on insulation values. Industry specifications state that the "R" value of one inch of urea formaldehyde foam ranges between 4.8 and 5.5 as a cold weather insulation. These specifications also indicate a shrinkage factor ranging between 1.6 and 3.8 per cent. What is not disclosed is the fact that shrinkage of the foam can reduce the in place insulating effectiveness of the foam by about 50 per cent. For example, a foam filled 3-1/2 inch wall cavity should have an "R" rating of 17.5 assuming a per inch "R" value of 5. In fact, after shrinkage of 3 per cent, the effective "R" value of the wall cavity is 8.4. This insulative loss is caused by gaps in the insulation occurring as the result of shrinkage. A failure to disclose this dramatic reduction would clearly have an adverse impact on a consumer's purchasing decision and may well determine the type of insulation selected and the price paid for it.

2. The absence of any positive data on the durability, or resistance to decomposition, of this product under conditions likely to occur in northern states. At page 29, the Technical Note states:

"At the present time, reliable information on the durability of urea-formaldehyde foam, or its ability to perform over a long period of time as an efficient thermal insulation is not available."

However, at page 47, NBS test results show the likelihood of degradation or disintegration under conditions of high temperature and humidity, a condition often encountered in midwestern states during the summer months. The report states:

"These NBS results suggest that foams should not be applied in areas subjected to high temperature and high humidity."

3. Health hazards. At least one Wisconsin resident has experienced adverse effects as the result of the release of formaldehyde gas. At page 58, the Note indicates a relatively small number of incidents of odor problems, but comments on problems in eliminating the odor.

"This points out a disturbing aspect to the formaldehyde odor problem. Although the incidence of occurrence may be minor, a problem, if it does occur, may be major and in extreme cases, require an expensive solution such as removal and replacement of the foam."

The Note states, at page 59, that the risk of formaldehyde odor--or toxicity--increases with improper manufacture, mixing or application of the formaldehyde resin. Such a condition is most likely to occur during heavy sales and installation activity as is now in progress in Wisconsin. It also states, as to odor problems, "the foam should not be applied in areas subjected to high temperature and high humidity,"--i.e., a typical Wisconsin summer day.

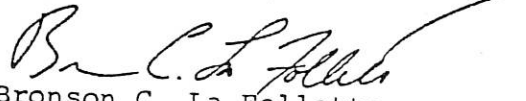
I raise these issues with you in the hope of finding the most expeditious resolution possible to the problem that an untested, and questionable, insulating foam is being permanently injected into a large number of homes.

The synopsis at page 4 of Technical Note 946 does not adequately reflect the seriousness of its own findings, including the lack of evidence in critical performance areas. The first page of the synopsis lists all the advantages of the foam and thus tends to legitimize the product as a viable home insulator. Cautionary language later in the synopsis does little to dispel this first impression. This becomes particularly significant in Wisconsin since the synopsis has been circulated as an informational document for consumers by another Wisconsin state agency.

Please consider this letter as my petition that the Department of Housing and Urban Development, and other responsible federal agencies, clarify and remedy this situation prior to further consumer injury and prior to the time current proposed legislation dealing with tax relief for home insulation expenses is passed.

I would be more than willing to meet with your representatives to further explain my position or assist in any efforts you may institute to rectify this matter.

Sincerely yours,


Bronson C. La Follette
Attorney General

BCL:jfk

- cc: The White House
Wisconsin Congressional Delegation
Federal Energy Administration
Federal Trade Commission
The Attorneys General
Wisconsin Senate Committees on
Commerce
Joint Finance
Judiciary & Consumer Affairs
Wisconsin Assembly Committees on
Commerce & Consumer Affairs
Environmental Quality
Joint Finance
Wisconsin Department of Administration
State Office of Planning & Energy
Wisconsin Department of Agriculture, Trade & Consumer Protection
Wisconsin Department of Industry, Labor & Human Relations
Wisconsin Department of Local Affairs & Development
Wisconsin Department of Revenue
Wisconsin Public Service Commission
University of Wisconsin Extension
Department of Engineering
Energy Extension Service

Attachment IV

COMMITTEE REPORT

TO: Legislative Coordinating Council
FROM: Special Committee on Federal and State Affairs
RE: PROPOSAL NO. 26 - INSULATION STANDARDS*

Under Proposal No. 26, the Special Committee on Federal and State Affairs was directed to conduct "a review of the necessity of establishing fire and safety standards for insulation materials in order to protect the public from hazardous insulation materials."

This proposal resulted from a concern expressed that, given the energy problem and the state and federal tax credits available for homeowners who insulate their dwellings, greatly increased usage of home insulation materials can be expected in the future. These factors could also lead to an increased number of insulation products being developed and the establishment of new insulation manufacturing businesses and insulation application firms. The concern expressed was that some of these products may be hazardous and that some insulation manufacturers and applicators may attempt to foist dangerous insulation products on an uninformed public.

Committee Activity

The Committee heard testimony from the State Fire Marshal's Office; the Consumer Protection Division of the Attorney General's Office; the Director of Architectural Services; the Kansas Power and Light Company; several fire insurance companies; various manufacturers of insulation products; local building code officials; and interested legislators and individuals. The Committee also reviewed regulatory approaches used by other states and proposed federal insulation standards.

Proponents of some type of state regulation stated that, if inferior insulation products are permitted in Kansas, homeowners will be cheated, receive faulty products, and may even lose their lives. The state must develop some form of regulatory program, such as minimum standards, licensure or bonding of insulation manufacturers and applicators, or a quality control program for insulation products, in order to protect the consumer from unscrupulous business practices.

Atch. IV

Representatives of insulation manufacturers and applicators stated that the vast majority of the industry is concerned with quality control, high production and application standards, and the safety of insulation products. They noted that most manufacturers conduct quality control tests and many utilize Underwriters' Laboratories or some other independent testing laboratory to assure the quality of their products. These representatives noted that several standards are already in existence for insulation materials: standards have been developed by the National Fire Protection Association, the Department of Housing and Urban Development, and the various insulation trade associations. It was stated that intelligent enforcement of existing standards, in conjunction with a widescale consumer education program, would alleviate many of the problems now encountered by homeowners. In addition, all of the model building codes contain standards for insulation products which will probably be strengthened in the future. Several federal agencies are also currently considering the adoption of minimum standards for insulation products. With regard to the small minority of unscrupulous insulation manufacturers and applicators, it was recommended that a state licensing or bonding program or a statewide minimum quality standard be developed. However, an effective consumer education program was felt to be of primary importance.

A representative of the Consumer Protection Division of the Attorney General's Office stated that very few complaints had been received concerning insulation materials. However, it was noted that, in the past six months, over 60 solar energy or insulation firms have applied for incorporation in Kansas and that the Consumer Protection Division expects an increased number of complaints in the future. The Assistant Attorney General stated that the most efficient way to enforce insulation requirements in the state would be to establish uniform standards within the Kansas Consumer Protection Act.

Conclusions and Recommendations

The majority of the Committee believes that the spiraling costs of energy and the availability of federal and state tax credits will lead to greatly increased demands for insulation products. This increased demand will, in turn, give rise to a number of unscrupulous insulation businesses. Although various standards do exist, there is at present no way to uniformly enforce these standards in the state. Similarly,

even though several federal agencies are considering the adoption of insulation standards, it may be several years before these regulations are promulgated. Therefore, the majority of the Committee recommends that a uniform state standard be established by amending the Kansas Consumer Protection Act to prohibit the sale or application of insulation materials ^{not meeting} with ~~less than~~ a Class 2 flame spread rating in Kansas and to require that the flame spread rating be noted on the insulation or its bag label. This approach, the inclusion of a uniform standard in the Kansas Consumer Protection Act, will place enforcement responsibility on the Office of the Attorney General and eliminate the need to establish state licensure, bonding, or testing programs. The majority of the Committee believes that this is the most efficient and economical approach to protect the public without placing an undue burden on ethical insulation businesses and, therefore, recommends that the 1978 Legislature take favorable action on _____ Bill _____.

Additionally, the Committee received, during the course of the study, a proposal from Wichita State University to develop a six-month research program to test insulation materials sold in Kansas to determine their flammability characteristics. The Committee has contacted the Kansas Energy Office regarding this proposed program and urges that Office to seek funding to implement the testing program at Wichita State University.

Respectfully submitted,

Sen. John Crofoot,
Chairperson
Special Committee on Federal and State Affairs

_____, 1977

Rep. Ardena Matlack,
Vice-Chairperson
Sen. Leroy A. Hayden
Sen. Edward F. Reilly, Jr.
Sen. Frank Smith
Rep. Carlos Cooper

Rep. Stan Gibson
Rep. Anthony Hensley
Rep. Joseph M. Mikesic
Rep. Tom Slattery
Rep. Kathryn Sughrue