

Approved 3-13-89
Date

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Senator Lana Oleen at
Chairperson

1:35 ~~am~~/p.m. on February 28, 19 89 in room 531-N of the Capitol.

All members were present except:

Committee staff present: Julian Efird - Research
Jill Wolters - Revisor
Nancy Jones - Secretary

Conferees appearing before the committee: Janet Stubbs, Home Builders Asso of Kansas
Bud Hensen, Lawrence, Ks.
Helen Stevens, Electrical Contractors
Jerry Blair
Jim Cranford, Heart of America
Tim Pinnick
Tom Slattery
Kathy Marney, Mechanical Contractors
Jeff Prince

Hearing on:

SB - 267 Creating a construction Trade Board

Janet Stubbs testified in support of SB 267 stating that this is the most controversial subject in the industry today. Responsibilities of Code officials is to ensure the health and safety of the public and they have the power to revoke contractors licenses. Presently there are no building inspectors on the Board of Technical Professions. A registration provision for individuals and corporations has been proposed by the Home Builders Association. Committee members were asked to read her testimony in full, as she has limited her remarks in deference to Chairman Oleen's request. (Attachment 1)

Bud Hensen stated it is important that industries be self-regulating and 18 stated now have a construction trades licensing board similar to the one being proposed. Contracting licensing does not come under the power of the Code enforcement officials at present. The Board of Appeals created by the UBC Code provides for the building official to be ex-officio and this position cannot vote on construction issues. If a board is created with the proposed bill, it is important to ensure that composition includes all industry professionals to be certified. (Attachment 2)

Helen Stevens stated the state should not be involved in the certification process, which is now at the local level, and therefore opposes SB 267. Makeup of the board is the central issue and it needs representation for local political subdivisions. It is felt SB 267 needs additional study and any action should be delayed until HB 2124 can be discussed in Committee. (Attachment 3)

Jerry Blair expressed opposition for the following reasons: multiple family residential contractors and remodeling contractors licenses are unnecessary; proposed board could be controlled by the contractors; SB 267 will take away Home Rule Powers of separate jurisdiction; and there is inclusion of a "Grandfather Clause" in Section 7. (Attachment 4)

Jim Cranford opposes the proposed bill as makeup of the board could give a majority to the contractors. There is no requirement for certification of contractors as there is with the plumbing, electrical and mechanical contractors. It is felt HB 2124 better serves the interests of all people. (Attachment 5)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION,
room 531-N Statehouse, at 1:35 ~~xxx~~ p.m. on February 28, 19 89

Tim Pinnick gave four reasons for opposing the proposed legislation. 1) Provision is made for payment of three fees, where one fee of a maximum amount would suffice. 2) The passing grade is lowered to 70% from 75%. 3) Five contractor categories are established and should only be three. 4) The general public is not represented on the Board. Mr. Pinnick feels HB 2124 accomplishes the tasks for a comprehensive certification program.
(Attachment 6)

Tom Slattery feels that HB 2124 addresses the problem of reciprocity for contractors in political subdivisions and provides for a central registry of certified contractors to be maintained and that issue should be considered by this committee. New section 6 of SB 267 is a far-reaching clause and should be treated separately. Mr. Slattery proposed no action be taken at this time on this bill.
(Attachment 7)

Kathy Marney supports the concept of SB 267 but favors HB 2124. Board makeup is more equitable in HB 2124. The mandates for any person taking out a permit to register with the Secretary of State should be considered in a separate bill. Ms. Marney urged the committee not to support SB 267.
(Attachment 8)

Jeff Prince feels contractor's desire to control the Board with passage of SB 267, and that this bill will call for certification of all professional trades, with the exception of contractors. SB 267 is not addressing the interests of the general public's health, welfare and safety. Building officials should be included on the board to serve as watch dogs. The committee was urged to compare SB 267 with HB 2124 before taking action.
(Attachment 9)

Chairman Oleen announced that hearing on SB 224 will be held on March 2, 1989.

Meeting adjourned.

GUEST LIST

COMMITTEE: SENATE GOVERNMENTAL ORGANIZATION

DATE 2/28/89

NAME	COMPANY / ORGANIZATION	ADDRESS
Wayne Marches	KS. AFL-CTO	
Jan De Hoff	" " "	
JARRELL B. BLAIR	City of AUGUSTA, KS	
Donald D. Rector	Jackson County KS	
Jim Crawford	HOAC/ICBO	
JEFF TRINE	City of Derby/HOAC	
Dave Cortiss	League of Municipalities	
Dan Ramlow	Kansas Contractors Assn.	
Nelen Stephens	NECA	
Spenny Roubicek	Ks. Contractors Assoc.	
Frank Liff	State HBA	
Jerry Zolzewski	Dodge City area homebuilders assoc.	
Janet Stubbs	HBA of Kansas	
M.S. MITCHELL	VICHTA AREA BUILDERS ASSOCIATION	
Kusler Westberg	Ho. Office - Interim Budget	
Agnes Smith	High + Dept - Kansas Auctioneers Association	
Linda Clanton	Ks. Dept of Human Resources	
Ray J. Manney	Mich Contractors Board of Ks.	
Bud Hentzen	Hentzen Contractors Inc.	
John Reynolds	Kansas State Historical Society	
TIM PINNICK	CODES ENFORCEMENT DIVISION, City of Lawrence	
STEVE KENTON	HBA OF GTR KC.	
DAW MORGAN	Builders' Assn, KC Chapter, AGC	
Al Kotick	DHR - 401 Topolay Ave., Topeka, KS	
Dr. Phillipie	KOHR - 512 S.W. 6TH, Topeka, KS.	
Craig Wolfe	Craig Wolfe Custom Homes 9844 Georgia ^{KCK}	
PAUL K. HENTZEN	Hentzen Contractors INC. ^{wichita} over →	

KURT KUHLMANN
GABE BROWN
Tom Bickimer
Tom Slattery

MCKENZIE LAND CO INC.
BEK Building, Inc
Bickimer Const. Inc.
AGC of Ks

SHAWNEE, KS &
SHAWNEE, KS
O.P., KS.
Topeka, KS

SENATE
GOVERNMENTAL ORGANIZATION COMMITTEE

TESTIMONY OF
HOME BUILDERS ASSOCIATION OF KANSAS
SB 267
FEBRUARY 28, 1989

CHAIRPERSON OLEEN AND MEMBERS OF THE COMMITTEE:

My name is Janet Stubbs, Executive Director of the Home Builders Association of Kansas. A trade association with a membership statewide of approximately 1900 members.

I am appearing today in support of SB 267 which addresses one of the most controversial subjects within the industry today, and currently the topic of discussion at every meeting of the National Association of Home Builders.

The most recent information supplied me by NAHB lists 36 states with some form of "licensure" and 18 states with Construction Industry Licensing Boards of varying compositions, depending upon the categories of the industry which are being licensed. (Note the attachment listing the various states.) It is a method of an industry policing itself.

Two types of "licensing" programs exist in other states--(1) a simple registration process, similar to the provisions contained in Section 6 of this bill, and (2) a certification process requiring that some sort of minimum qualifications be exhibited either by examination or proof of experience.

As I attend seminars and panel discussions on this issue, the reasons given for establishment of a program are limitation of competition, removing the "flakes" from the industry in order to add some professionalism, and the protection of the consumer.

A 1986 joint task force on licensure was comprised of appointees from the NAHB and the National Association of State Contractors Licensing Agencies and found a great deal of interesting information, not the least of which was that licensure is not a cure all or control mechanism for dishonest or unskilled contractors.

THE KEY IS EFFICIENT PERMITTING AND INSPECTION PROCESSES COMBINED WITH PUBLIC EDUCATION.

BACKGROUND

In 1985, HB 2153 and HB 2237 were introduced which permitted reciprocity for plumbers and electricians and established a Board.

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HBAK opposed the establishment of a Board and the extensive authority which was given. This legislation permitted revocation of a license at the state level, gave subpoena powers to the Board, permitted employment of state inspectors, required \$10,000 surety bonds and other financial information.

HBAK worked with representatives of the plumbers and electricians to obtain the reciprocity provisions which were enacted in Senate Substitute for HB 2153 and HB 2237. The legislation of 1986 did not implement a Board but did permit reciprocity through exams based upon the codes effective July 1, 1986, prepared by Block & Associates of Florida.

The current law permits a plumber or electrician to take a "local" examination, if he does not want the ability to go to another city to work without the necessity of taking another examination. If he wants to work in more than one city, he may take the Block test and, if a passing grade is received, will be given certification and be permitted to work in any city which requires licensure of these trades.

However, the 1986 legislation did not establish a uniform statewide passing score, and in an opinion issued March 5, 1987, the Attorney General of Kansas stated that:

"Allowing one city or county to set the standard for all other cities or counties results in the unauthorized delegation of legislative authority and contravenes the power to make laws that is vested in the House of Representatives and the Senate."

He ruled it to be unconstitutional and, if challenged, would enable a city to refuse to issue a license to an applicant who obtained certification in a city with a lower passing score requirement.

In the 1988 session, SB 663, SB 704 and SB 705 were introduced which gave reciprocity to plumbers, electricians, and mechanical contractors AND established a Board. A uniform passing score was proposed in this legislation to alleviate the constitutional problem.

HBAK opposed these bills due to the establishment of the Board, which we continued to view as additional bureaucracy and feared that it was a "foot in the door" to be expanded later to the format proposed in the 1985 legislation, which we did not believe to be in the best interest of the general membership of the industry or the consumer.

HBAK does not and has never opposed reciprocity or the establishment of a uniform passing score.

In an attempt to work with other representatives of the industry, HBAK studied this during the interim and have agreed to the establishment of a Board for the sole purpose of "reviewing and approving exams". However, we strongly oppose establishment of a Board containing regulators of the construction industry, the code officials.

The information supplied by NAHB indicates that only 1 of the 18 states with licensure boards has allocated a place for a code official. Florida has a 15 person board with 1 slot for a code official. The other 17 boards are totally self-regulating and require appointment of industry members covered by the law, with varying degrees of experience required for eligibility of appointment.

The responsibilities of code officials, in our view, is to ensure the health and safety of the public through competent, conscientious inspectors making inspections of the work during construction. They have the power at the local level to suspend or revoke a contractor's license.

The purpose of examinations or licensure is to determine a basic knowledge of construction methods and codes. Neither guarantee quality workmanship, in compliance with all code requirements, at the job site. For example, we all know it is wrong and unsafe to drive in excess of the speed limit, yet I am sure none of us can say that we have not done so. Code enforcement officers are the law enforcement officers of the construction industry. Their efforts should be directed toward enforcement of the code in their respective jurisdictions. The Kansas Highway Patrol enforces traffic laws but they do not make up the driver's license exams.

Current exams are compiled by Block & Associates. A firm which prepares exams for more than 20 states over various codes. Although they are willing to work with states on the subject emphasis for the exams, they do the wording for the actual questions. They send surveys to the contractor categories as to the type construction being done in a state so they will know what type questions to ask. Therefore, we see no reason for a local regulator being placed on the Construction Trades Board of Kansas when the boards of other trades and professions are comprised of only representatives of licenses for that particular board. The Board of Technical Professions licenses individuals who must work with local building inspectors. Yet there are no building inspectors serving on that board. Why should the construction industry be different?

You may hear testimony from opponents that there must be representative of the cities, the building inspectors, on the board or the cities will give additional testing to members of the construction industry. This legislation, as well as current law, does not permit additional testing. It was that very thing that prompted the initial legislation in 1985. Legislation which was not opposed by the League of Municipalities.

HBAK has always supported the Home Rule concept and we do not see this legislation as removing that authority.

You may hear statements that residential contractors are seldom interested in reciprocity and therefore, not affected by this legislation. However, I would submit that residential contractors are licensed in some cities, and that number seems to be increasing.

Therefore, they will be taking the exam approved by the proposed board because many cities will adopt only the state approved test rather than compose a "local" test.

HBAK does support increased professionalism in the industry and has proposed the inclusion of a registration provision requiring each individual or corporation who obtains a local building permit to have a registration number which would be acquired through an annual filing with the Secretary of State. This is covered under Section 6.

We ask your support of SB 267 which would permit the industry to have control of its own destiny as other trades have.

ALABAMA: State Licensing Board for General Contractors
34-8-20 **5 members**
each member shall be a general contractor with ten
years experience.
at least 1 member in highway construction
at least 1 member in public utilities construction
at least 1 member in building construction

ARKANSAS: State Licensing Board for Contractors (not for
residential contractors)
Act 150 of 1965, Section 2 **5 members**
each must have ten years experience in "responsible
charge of construction projects
at least 1 member in highway construction
at least 1 member in sewer and waterworks
construction
at least 1 member in building construction

CALIFORNIA: Contractors State License Board
Business and Professions Code, Div. 3, Chap.9, Art. 1, 7000-7002
13 members
the six contractor members must have 5 years
experience
1 general engineering contractor
2 general building contractors
2 specialty contractors
1 member of a labor organization representing a
building trade
7 public members

FLORIDA: Construction Industry Licensing Board
489.107 **15 members**
all contractors must have 5 years experience
3 general contractors
3 building or residential contractors
1 roofing contractor
1 sheet metal contractor
1 air conditioning contractor
1 mechanical contractor
1 pool contractor
1 plumbing contractor
2 lay persons
1 building official

HAWAII Contractors License Board
Chap. 444-3 **13 members**
contractors must have 5 years experience
5 general engineering or building contractors
5 specialty contractors
3 noncontractors
each county must be represented

IDAHO Public Works Contractors State License Board
Title 54, Chap. 19-05 **5 members**

contractors must have 5 years experience
1 heavy construction contractor
1 highway construction contractor
2 building construction contractor
1 specialty contractor

LOUISIANA State Licensing Board for Contractors
37:2151 **12 members**

contractors must have 10 years experience
3 highway and street construction contractors
3 building and/or industrial construction
contractors
1 mechanical construction contractor
1 electrical contractor
1 subcontractor -- other than electrical or
mechanical construction
2 to represent the construction industry generally
or the public at large
1 member in oil field construction

MARYLAND Home Improvement Commission
Art. 56, Sec. 250 **7 members**

3 with experience in the home improvement industry
1 with banking or finance experience
3 consumer representatives

MASSACHUSETTS: The State Building Code Commission established a
Board of Examiners to license construction
supervisors.

MICHIGAN: Residential Builders and Maintenance and Alteration
Contractors Board

Act 299 of 1980, 339.301 **9 voting members**
6 members must have a license
3 represent the general public

MISSISSIPPI: State Board of Contractors
Chap. 505, Sec. 8, Sec. 31-3-3 **7 members**

2 road contractors
2 building contractors
1 plumbing or heating & AC contractor
1 electrical contractor
1 water and sewer system contractor

NEVADA: State Contractors Board
624.040,050 **7 members**

6 must have a license and 5 years experience
1 representative of the general public

NEW JERSEY: There is no board under the New Home Warranty and Builders Registration Act administered by the Department of Consumer Affairs Home Improvement Advisory Board

Chap. 41 17:16c-91 **8 members**

4 with experience as home improvement contractors or suppliers
2 with experience in financing home building or improvement loans
2 public members

NEW MEXICO: Construction Industries Committee
The New Mexico law sunsetted, but the discussion draft for a new law contains the same Committee breakdown:

9 members

1 representative of residential construction
1 electrical contractor
1 mechanical contractor
1 architect (or engineer in the draft)
1 general contractor
1 representative of the liquefied petroleum gas industry
1 public member
1 subcontractor representative
1 representative of organized labor
all regions in the state must be represented

NORTH CAROLINA: Licensing Board for General Contractors
Sec. 87-2 **7 members**

5 general contractors
1 highway construction contractor
1 public utilities contractor
1 either highway, utility or building contractor
1 residential construction contractor
2 public members

OREGON: Builders Board
701.205 **5 members**

3 builders including 1 remodeler
1 public member
1 elected representative of governing bodies of local government

RHODE ISLAND: Proposed Builders Board
SB 3337, Substitute A **7 members**

4 builders
1 current member of the building codes standard committee (This section of the bill was confusing, but I believe it is correct. Next week I will double check with RIBA.)
1 public member
1 architect

SOUTH CAROLINA: Residential Home Builders Commission
Sec. 40-59-20 **7 members**
3 consumers
4 residential builders with five years experience

40-11-20 Board for Contractors
7 members
1 highway contractor
1 public utilities contractor
1 building contractor
1 heating, plumbing or air conditioning contractor
1 electrical contractor
2 consumers

TENNESSEE: Board for Licensing Contractors
62-6-104 **7 members**
1 "subcontractor in privity with the owner"
1 home builder
1 noncontractor
4 contractors with 10 years experience

SB 935, Public Chapter 851 Home Improvement Commission
subdivision of the Board
3 home improvement contractors
1 public member

UTAH: Contractors Board
58 A-1a-2 **5 members**
1 general engineering contractor
1 general building contractor
1 home builder
1 specialty contractor
1 public member

VIRGINIA: State Board for Contractors
Chap. 7, Art. 1, Sec. 54-115 **9 members**
1 highway contractor
1 utilities contractor
1 commercial & industrial buildings
1 single-family residential contractor
1 home improvement contractor
1 subcontractor
1 who sells construction materials and supplies
2 citizen members

WEST VIRGINIA: no licensing law.

A 1988 bill proposed including 3 "skilled craftsmen" on a 15 member Board. It did not pass.
In 1987 HB 2176 would have included 2 members of the general public, 3 labor representatives and 10 contractors with 5 years experience.

Abstracters' Board of Examiners	KSA 74-3901	3 abstracters
Accountancy, State Board of	KSA 1-201	5 CPA's, 1 municipal acct, 1 public
Agriculture, State Board	74-502 et seq.	farm organizations appoint delegates
Barber Examiners, Board of	KSA 74-1805	3 barbers, 2 public
Behavioral Sciences Reg. Bd.	KSA 74-7402	2 cert. psychol, 2 licensed, 2 public
Cosmetology, State Board of	KSA 74-2701	5 cosmetologists
Corn Commission	1988 SB 637	9 growers, by district
Dealer Review Board	KSA 6-2412	2 new car dealers, 2 used car dealers 1 salvage dealer, 2 public
Dental Board	KSA 74-1404	3 dentists, 1 hygienist, 1 public
Emergency Medical Services	1988 HB 2639	1 doctor, 2 county commissioners, 4 legislators, 1 EMS instructor-coordinator, 1 hospital administrator 1 firefighter, 3 attendants
Engineers (Board of Tech.Prof.)	KSA 74-7001	3 engineers, 1 land surveyor 3 architects 1 landscape architect 1 public
Grain Advisory Comm.	KSA 34-121	1 farmer, 1 banker, 1 public terminal grain warehouse operator, 1 stockholder in farmers coop
Grain Sorghum Comm.	1986 SB 637	9 growers, by district
Healing Arts	KSA 65-2812	5 MD's, 3 DO's, 3 DC's, 1 DPM, 3 public
Milk Advisory Comm.	KSA 65-737b	4 engaged in milk industry, 1 public
Mortuary Arts, State Bd.	KSA 74-1701a	3 morticians, 2 public
Nursing, St. Bd.	KSA 74-1106	5 RN's, 2 LPN's, 2 mental health techs 2 public
Optometry, Bd of Examin.	KSA 74-1501	3 optometrists, 1 public
Pharmacy, Board of	KSA 74-1603	5 Reg.Pharm, 1 public
Real Estate Commission	KSA 58-3034	3 Real Estate brokers, 2 public
Savings & Loan Board.	KSA 74-3113	5 S & L operators/managers 2 public
Soybean Commission	1986 SB 637	7 growers, by district
Veterinarians, Board of	KSA 47-818	4 licensed, 1 public
Wheat Comm.	1988 HB 2967	7 growers, by district



1623 So. Mead
Wichita, KS 67211

SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION
SENATE BILL NO. 267 FEBRUARY 28, 1989

INTRODUCTION

Madame chairperson and members of the committee, I am Bud Hentzen, President of Hentzen Contractors Inc. in Wichita Kansas.

I am also a member of the Wichita Area Builders Association, but I am not here representing them. I,m sure they will have their own person here to do that.

As some of you already know, I sit on the Board of County Commissioners in Sedgwick County, But I am not here at this time representing Sedgwick County.

I am here as an independent businessman speaking on behalf of my family contracting business.

ENDORSEMENT

I endorse the general provisions of Senate Bill No. 267. I will limit my comments only to the make up of the proposed Construction Trades Board.

As the bill is now written the board is to be made up of industry professionals with one local public official. I agree with this make-up.

POINT #1:

Nearly all of the various industry oversight boards in Kansas are composed only of members of those particular professions. Almost without exception there are no regulators on these boards.

It is an important part of our free enterprise system that our industries are self-regulating. Like most of our industries the construction industry has always been, and should remain self-regulating.

Information from the National Association of Home Builders lists 18 states with a construction trades licensing board similar to the one proposed in this bill. Only one state has

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allocated a position for an enforcement official, and in that case only one position.

Apparently those 18 states also recognize the importance of self regulation in the construction industry and the continued separation of powers that maintains our American system of government.

POINT #2:

This idea of separation of powers leads me to my second point:

Contractor licensing, or in other words, who is entitled to operate as a contractor in the state of Kansas does not come under the powers of the enforcement officials.

Our police departments don't set the speed limits or decide who can drive on our roads. No, our elected officials make the laws and the police departments enforce them. The role of the building officials is one of enforcement only. The powers and duties of the building officials as stated in the Uniform Building Code published by the International Conference of Building Officials (ICBO) are: to enforce all the provisions of this code. For such purposes, he shall have the powers of a law enforcement officer.

The key to effective enforcement is efficient permitting and inspection procedures.

The purpose of the UBC code as stated in the first chapter is: to provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location and maintenance of all building and structures within a particular jurisdiction.

It says nothing about licensing. 7

POINT #3:

There is a Board of Appeals created by the code in each jurisdiction adopting the UBC. The purpose of that board, as stated in the code is: to determine the suitability of alternate materials and methods of construction and to provide for reasonable interpretation of this code. That



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board is made up entirely of industry people. The building official is an ex officio member, does not vote and simply acts as secretary.

Where the board proposed in this bill is to determine the suitability of a test, it makes sense that it too should be composed solely of industry professionals with possibly the state architect to be ex officio and act as secretary.

CONCLUSION

In conclusion, I encourage you to maintain the separation of powers our American system depends on, and if a board is necessary, see that the proposed board is composed of the industry professionals it seeks to certify.

I want to thank you for listening and will answer any questions.

BERNARD A. HENTZEN

PRESIDENT
HENTZEN CONTRACTORS INC.

Part I

ADMINISTRATIVE

Chapter 1

TITLE, SCOPE AND GENERAL

Title

Sec. 101. These regulations shall be known as the "Uniform Building Code," may be cited as such and will be referred to herein as "this code."

Purpose

Sec. 102. The purpose of this code is to provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location and maintenance of all buildings and structures within this jurisdiction and certain equipment specifically regulated herein.

Scope

Sec. 103. The provisions of this code shall apply to the construction, alteration, moving, demolition, repair and use of any building or structure within this jurisdiction, except work located primarily in a public way, public utility towers and poles, mechanical equipment not specifically regulated in this code, and hydraulic flood control structures.

Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

Wherever in this code reference is made to the appendix, the provisions in the appendix shall not apply unless specifically adopted.

Application to Existing Buildings and Structures

Sec. 104. (a) General. Buildings and structures to which additions, alterations or repairs are made shall comply with all the requirements of this code for new facilities except as specifically provided in this section. See Section 1210 for provisions requiring installation of smoke detectors in existing Group R, Division 3 Occupancies.

(b) Additions, Alterations or Repairs. Additions, alterations or repairs may be made to any building or structure without requiring the existing building or structure to comply with all the requirements of this code, provided the addition, alteration or repair conforms to that required for a new building or structure. Additions or alterations shall not be made to an existing building or structure which will cause the existing building or structure to be in violation of any of the provisions of this code nor shall such additions or alterations cause the existing building or structure to become unsafe. An unsafe condition shall be deemed to have been created if an addition or alteration will cause the existing building or

Chapter 2

ORGANIZATION AND ENFORCEMENT

Creation of Enforcement Agency

Sec. 201. There is hereby established in this jurisdiction a code enforcement agency which shall be under the administrative and operational control of the building official.

Powers and Duties of Building Official

Sec. 202. (a) General. The building official is hereby authorized and directed to enforce all the provisions of this code. For such purposes, he shall have the powers of a law enforcement officer.

(b) Deputies. In accordance with prescribed procedures and with the approval of the appointing authority, the building official may appoint such number of technical officers and inspectors and other employees as shall be authorized from time to time. He may deputize such inspectors or employees as may be necessary to carry out the functions of the code enforcement agency.

(c) Right of Entry. Whenever necessary to make an inspection to enforce any of the provisions of this code, or whenever the building official or his authorized representative has reasonable cause to believe that there exists in any building or upon any premises any condition or code violation which makes such building or premises unsafe, dangerous or hazardous, the building official or his authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the building official by this code, provided that if such building or premises be occupied, he shall first present proper credentials and request entry; and if such building or premises be unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the building official or his authorized representative shall have recourse to every remedy provided by law to secure entry.

(d) Stop Orders. Whenever any work is being done contrary to the provisions of this code, the building official may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the building official to proceed with the work.

(e) Occupancy Violations. Whenever any building or structure or equipment therein regulated by this code is being used contrary to the provisions of this code, the building official may order such use discontinued and the structure, or portion thereof, vacated by notice served on any person causing such use to be continued. Such person shall discontinue the use within the time prescribed by the building official after receipt of such notice to make the structure, or portion thereof, comply with the requirements of this code.

(f) Liability. The building official, or his authorized representative charged with the enforcement of this code, acting in good faith and without malice in the discharge of his duties, shall not thereby render himself personally liable for any

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damage that may accrue to persons or property as a result of any act or by reason of any act or omission in the discharge of his duties. Any suit brought against the building official or employee because of such act or omission performed by him in the enforcement of any provision of such codes shall be defended by this jurisdiction until final termination of such proceedings, and any judgment resulting therefrom shall be assumed by this jurisdiction.

This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating or controlling any building or structure for any damages to persons or property caused by defects, nor shall the code enforcement agency or its parent jurisdiction be held as assuming any such liability by reason of the inspections authorized by this code or any certificates of inspection issued under this code.

(g) **Cooperation of Other Officials and Officers.** The building official may request, and shall receive so far as is required in the discharge of his duties, the assistance and cooperation of other officials of this jurisdiction.

Unsafe Buildings or Structures

Sec. 203. All buildings or structures regulated by this code which are structurally unsafe or not provided with adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life are, for the purpose of this section, unsafe. Any use of buildings or structures constituting a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage or abandonment is, for the purpose of this section, an unsafe use. Parapet walls, cornices, spires, towers, tanks, statuary and other appendages or structural members which are supported by, attached to, or a part of a building and which are in deteriorated condition or otherwise unable to sustain the design loads which are specified in this code are hereby designated as unsafe building appendages.

All such unsafe buildings, structures or appendages are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedures set forth in the Dangerous Buildings Code or such alternate procedures, as may have been or as may be adopted by this jurisdiction. As an alternative, the building official, or other employee or official of this jurisdiction as designated by the governing body, may institute any other appropriate action to prevent, restrain, correct or abate the violation.

Board of Appeals

Sec. 204. In order to determine the suitability of alternate materials and methods of construction and to provide for reasonable interpretations of this code, there shall be and is hereby created a Board of Appeals consisting of members who are qualified by experience and training to pass upon matters pertaining to building construction and who are not employees of the jurisdiction. The building official shall be an ex officio member of and shall act as secretary to said board. The Board of Appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official.

NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION
of
Topeka and Wichita

TO: Senate Governmental Organization Committee

SUBJECT: Senate Bill #267

Madam Chairman and Members of the Committee:

My name is Helen Stephens representing NECA, the National Electrical Contractors Association.

As most of you know, the initial certification process was passed in 1986 setting up a system whereby a plumber or electrician could take the certification test in one political subdivision, go to another licensing subdivision, and be issued a license without further testing. This process assured the trades they could work in other political subdivisions without delays in testing.

This process, as passed, left the authority for testing with the political subdivisions. It also left revokation of a license with the local entities.

We oppose Senate Bill 267, as we believe the state should NOT be involved in the certification process, which is now entirely at the local level.

Last year we appeared before you on bills similar to #267. The 1988 bills set a uniform passing grade of 75, with provisions for those who passed at 70; it also allowed future tests to be based on updated codes; and set up a board through Architectural Services to review the test, select a test-provider, and set a uniform test to be given by political subdivisions. The board's scope was narrowly defined and was permitted to meet only one day per year. The makeup of the board was and still is the central issue.

25% no representation consent
We believe that representation for the local political subdivisions, through the inspectors, is an important factor in having this process maintain its integrity. It is true, an "elected official" could review the test; but only someone connected with day-to-day construction and remodeling can be aware of the practical application of the questions pertaining to the certification process and its focus on contractors, electricians, plumbers, and the HVAC trade. We do support code enforcement officers having the input for the local subdivisions. For this reason, we also oppose Senate Bill #267.

One provision of Senate Bill 267 is very viable, but does need additional study. This pertains to "insurance records" maintained by the Secretary of State. Late in 1988, all parties involved supported the concept, but did not support putting it before the 1989 legislature, until proper research and study had been done. We still support the concept, but believe a good deal of study is required to make it operational.

The 1988 bills I referred to did pass the Senate; although too late for House action. We have a bill in the House pertaining to this subject. It has had a hearing, and is awaiting committee action.

We ask that you take no action on this bill until House Bill 2124 is before you. Thank you for the opportunity to share our view.

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City of Augusta

TESTIMONY BEFORE THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION.
28 February, 1989
SPEAKING IN OPPOSITION TO SENATE BILL No. 267.

Madam Chairman, Members of the Committee,

My name is Jerry Blair, City Inspector, representing the City of Augusta, Kansas, speaking in opposition to Senate Bill No. 267.

Let me begin by stating for the record that the City of Augusta, Kansas, after careful study of both the House and Senate Bills, is a firm supporter of House Bill No. 2124 and opposed to Senate Bill No. 267.

The City of Augusta opposes Senate Bill No. 267 for the following reasons:

- (1) "Multiple-family Residential Contractor," this license category is unnecessary because it is covered by the Building Contractor's category. The three building categories of General, Building and Residential contractors are sufficient categories.
- (2) "Remodeling Contractor," this license category should not be considered because a remodeler should have the same license category as required for the complete building when it was first built. The remodeler who doesn't know or understand the complexities of structural framing in a building or structure can cause greater damage and potential hazards when removing framing which weakens the structure and/or adding new framing which could add an additional live or dead load to the existing structure. Remodelers must have the same amount of knowledge as the contractor who built the entire new structure.
- (3) "Construction Trades Board" New Section 3 (a) make-up of the Board. The proposed board as outlined by this bill would or could be controlled by the contractors, who would authorize the State Competency Examinations. The City of Augusta strongly feels that a State Board must have an equal parity of Building Officials on any proposed construction trades board.

City of Augusta

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The sole existence of a Building Official, like the building code itself, is to provide minimum standards to safeguard life or limb, health, property and public welfare. The majority of jurisdictions in the State of Kansas have adopted the model codes with enforcement officials. The Jurisdiction's responsibility is to the homeowner or building owner to insure compliance to the code and the construction of a safe building which protects the public welfare.

Contractors, unfortunately, must consider above all else, making a profit, be it at the expense of the code, the building owner or the public welfare. This is not to say that there are no good contractors in our communities, as with most laws, they are enacted to protect the communities against the few bad contractors.

A balanced board will be more likely able to uphold the current high standards of competency under the Block and Associates Examination.

- (4) Of all the sections of this bill, the City of Augusta is against the New sections 6 and 7.

Section 6 will take away Home Rule Powers now controlled by the separate jurisdictions. The City of Augusta requires contractors to post both a bond and insurance requirements as well as the general provisions for testing and licensing. The State of Kansas has in existence various state laws that govern workers compensation and tax identification numbers that cover all businesses. This section would add another law which is already on the books.

This provision will make all contractors register with both the Director of Architectural Services for the certificate of examination with an annual fee of \$20 and with the Secretary of State to remain in business with an annual fee of \$10. This bill will cost the contractors a flat fee of \$30 a year to be registered with two separate state offices just to stay in business. Another new expense added to the cost of bonds, licenses and insurance

City of Augusta

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required by the different jurisdictions. The City of Augusta can not find any justification for a contractor to be registered by the Secretary of State. Many small contractors would be hurt or put out of business by this section. The State of Kansas is not known for large business protectionism against the small businesses.

Part (e) deals with home owners who have always enjoyed special considerations in most jurisdictions. The City of Augusta allows a home owner to build a single family dwelling every five years and can do all the work and required construction except tap the Cities sewer main or install the electrical service entrance. A home owner can obtain as many permits as he/she wants during any year for remodeling and additions to the existing structure or to even add unattached structures on the property. The City of Augusta does not allow a property owner to work on any other property owned by the individual except for the single family dwelling. The provisions of this section will now require that each home owner will have to be registered by the Secretary of State if he or she does more than one project per year. Does this also mean that they must also qualify under the provisions of the competency examination for a contractor? If they are required to be registered as a contractor, they must be tested like a contractor. Now we are forcing the home owners to either become a contractor or hire a contractor to do all projects over the first one. I personally have had three or four separate projects going during one year and I do not want to be registered as a contractor, to some it would be a conflict of interest.

- (5) The New section 7 is nothing more than a "Grandfather Clause," which the City of Augusta is opposed to in any form. The City of Augusta in 1981 grandfathered all licensed electricians who held a license for more than one year to the level of Master Electrician. This was a big mistake on the cities part. Our creditability was

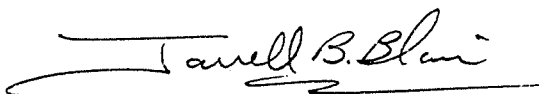
City of Augusta

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lessened greatly among our sister cities. Learning from our previous mistake, the City of Augusta adopted the first Mechanical Code in 1982 that required all mechanical specialists to take an examination as proof of their competency. The Governing Body has given tentative approval and will shortly adopt the new 1988 editions of the model codes and will require the Block & Associates Examination for all builders working in the city. Again, no grandfather provision, in fact not one of our local builders has suggested they be grandfathered into holding a license. Not one local builder has objected to taking the examination. The City of Augusta will only accept the Block & Associates examination for any license issued by the city.

- (6) In conclusion, the City of Augusta (is opposed) to Senate Bill No. 267 because the proposed board will not insure the public welfare; section 6 will remove some of the home rule powers now held by the city, will impose a hardship on the small contractors and home owners; and section 7 would grandfather all existing building contractors without the required state certificate of examination.

Thank You,



Jarrell B. Blair,
City Inspector



Heart of America Chapter

International Conference of Building Officials

SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

1988 - 1989

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EDUCATION
JERRY BLAIR

CODE CHANGES
HOWARD UHL

NOMINATING
JIM CRANFORD

Ms. Chairperson, members of the Committee, my name is Jim Cranford. I am Chairman of the Board of Directors of the Heart of America Chapter of the International Conference of Building Officials. Our Chapter is comprised of building officials from across the State of Kansas.

I am here today to speak in opposition of Senate Bill 267.

From our viewpoint, there are many concerns with the various aspects of this bill, but I will limit my comments to the New Section 3 beginning on line 113 regarding the creation of a "Construction Trades Board," which should say: ". . . there is hereby established a building trades board of examinations to define the board's responsibility. . ."

We object to the make up of the board. Under this act the board would be comprised of nine members as follows:

1. Plumbing Contractor - Certified under this act as a Master Plumber.
2. Electrical Contractor - Certified under this act as a Master Electrician.
3. Mechanical HVAC Contractor - Certified under this act.
4. General Contractor - Not Certified.
5. Residential Contractor - Not Certified.
6. Multi-family Residential Contractor - Not Certified.
7. Remodeling Contractor - Not Certified.
8. Local Public Official - Not necessarily involved in code enforcement.
9. Either a General Contractor, Residential Contractor, Multi-family Residential Contractor or a Remodeling Contractor.

It could be interpreted that the authors of this bill were attempting to gain control of the board with the possibility of 5 or more positions being filled from their organization. Also the bill omits testing for multi-family and remodeling contractors (line 110 through 112). So there is no reason they should have representation of a board to designate tests for other contractors! No code enforcement officials have been included on this board.

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Presently local jurisdictions determine the tests to be given to contractors. We are willing to share that responsibility with a recognized board, but it is essential that code enforcement officials be included on the board to evaluate the tests under consideration so that we can be assured that the tests are of sufficient substance to adequately test the applicants competency.

The make up of the board in this bill requires that the plumbing, electrical and mechanical contractors be certified under the provisions of this act, but the authors of this bill have not required the certification of themselves to be on this board; the only requirement is that they be in business for five years (line 121 through 128).

Under the provisions of HB2124, all members from the construction field as well as code enforcement officials are required to be certified.

I would ask that you compare the merits of HB2124 with SB267 and judge for yourselves which bill would best serve the best interests of all the people.

Thank you for your time and consideration.

TESTIMONY

To: Members of the Senate Committee on Governmental Organization
From: Tim Pinnick, Codes Enforcement Officer, City of Lawrence
RE: Senate Bill No. 267
Date: February 28, 1989

The Codes Enforcement Division of the City of Lawrence opposes Senate Bill No. 267 for the following reasons:

1. S.B. No. 267 provides for the payment of three fees; instead, one fee of a maximum amount should cover expenses by the Board and duties performed by the Director of Architectural Services. The fee paid to the Secretary of State and the fee's use should be deleted because this type of registration is beyond the scope of this legislation.
2. S.B. No. 267 establishes a minimum passing grade of 70% for all categories. The current exam preparer, Block and Associates, recommends a minimum passing score of 75%. The City of Lawrence requires a minimum passing grade of 75% and wishes to continue with 75%.
3. S.B. No. 267 establishes five building and remodeling contractor categories; instead, the five should be reduced to the following three:
 - General Contractor "A" was General Contractor;
 - General Contractor "B" was Building Contractor and Multi-family Building Contractor;
 - General Contractor "C" was Residential Contractor and Remodeling Contractor.

All examining categories are tested over the Uniform Building Code and condensing the categories will not diminish the level of technical knowledge. In return, this will simplify the administering of examinations, the registration of certified persons, and better serve the construction community.

4. S.B. No. 267 provides for nine voting members; five are general contractor(s), Multi-family Building Contractor(s), Residential Contractor(s) and Remodeling Contractor(s). The general public is not represented and the one public official is not required to be technically knowledgeable in construction or construction codes. The Board should reflect each discipline or certification and the public at large. Also, two nationally certified code enforcement officers should serve on the Board. Code enforcement officers typically contract their jurisdiction with the exam preparers (Block and Associates) and would offer the Board insight not available to other members.

As an alternative to Senate Bill No. 267, the Code Enforcement Division of the City of Lawrence is a proponent of House Bill No. 2124 because it accomplishes the required tasks for a comprehensive trades certification program.

Summaries of the S.B. No. 267 and H.B. 2124 are provided on the next page.

SUMMARY OF S.B. No. 267

Testing Agency	FEES	Passing Grade	Exam Code	Exam Categories	Voting Board Members
City or County or Director of Architectural Services	Testing Agency Exam Fee, Local Agency Board Expenses, State Architect	70%	UBC	Gen. Contractor	Gen. Contractor
				Building Contractor	
				Multi-Family Cont.	Multi-Family Cont.
				Residential Cont.	Residential Cont.
				Remodeling Cont.	Remodeling Cont.
	\$20 Registration Fee, State Architect		NEC	Master Elec.	Master Elec.
				Journeyman Elec.	
	\$10 Registration Fee, Sec. of State		UMC	HVAC Master	HVAC Master
				HVAC Journ.	
			UPC	Master Plumber	Master Plumber
Journeyman Plumber					
					One, General Cont. or Residential Cont. or Remodeling Cont.
					One, Public Official

SUMMARY OF H.B. NO. 2124

Testing Agency	FEES	Passing Grade	Exam Code	Exam Categories	Voting Board Members
City or County	Testing Agency Exam Fee, Local Agency	75%	UBC	Gen. Contractor "A"	Gen. Contractor "A"
				Gen. Contractor "B"	Gen. Contractor "B"
				Gen. Contractor "C"	Gen. Contractor "C"
	\$20 Registration Fee, Director of Architectural Services		NEC	Master Elec.	Master Elec.
				Journeyman Elec.	Journeyman Elec.
			UMC	Master HVAC	Master HVAC
				Journeyman HVAC	Journeyman HVAC
	UPC		Master Plumber	Master Plumber	
			Journeyman Plumber	Journeyman Plumber	
					Code Enf. Officer
					Code Enf. Officer



TESTIMONY BEFORE SENATE GOVERNMENTAL
ORGANIZATION COMMITTEE

ON SB 267

by

ASSOCIATED GENERAL CONTRACTORS OF KANSAS, INC.

Thomas E. Slattery

2-28-89

Neutral position

Madam Chairperson and members of the committee, I am Tom Slattery, Executive Vice President of Associated General Contractors of Kansas. AGC of Kansas is a trade association representing members of the construction industry. We have approximately 270 members which include general contractors, subcontractors and associate members.

AGC of Kansas supports the concept of reciprocity proposed in SB 267. It is becoming increasingly common for political subdivisions to require certification or licensure of general contractors before they are able to perform work in the community by passing a test. This can cause a problem by limiting the ability of general contractors to bid work in several locations if they have not been tested by that particular political subdivision.

HB 2124 currently in the House Governmental Organization Committee addresses this same issue in a more thorough

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manner than SB 267. The house bill was strongly endorsed by AGC of Kansas along with a number of other trade associations. One important section of the house bill provides for a central registry of certified contractors to be maintained by the Department of Architectural Services. I don't see this important function addressed in SB 267. Also, New Section 6 on page 7 requiring all persons obtaining a building permit to file certain information with the Secretary of State is more far reaching than the reciprocity issue. We don't necessarily disagree with this idea but we believe it should be treated separately, in more detail and not in conjunction with the reciprocity issue.

I would respectfully request that the committee not take action on SB 267 in the hopes that you will have the opportunity to have hearings and take action on HB 2124.

TESTIMONY
BEFORE THE
SENATE GOVERNMENTAL ORGANIZATION COMMITTEE
BY KATHY J. MARNEY
MECHANICAL CONTRACTORS ASSOCIATION OF KANSAS
FEBRUARY 28, 1989

Chairman Oleen and members of the Committee:

My name is Kathy Marney, Executive Director of the Mechanical Contractors Association of Kansas. I appear before you today in opposition to S.B. 267, but support the concept of the bill.

At the present time, H.B. 2124, a construction trades bill similar to S.B. 267, is in Governmental Organization in the House. After a year of lengthy meetings, the AGC, PHCCA, NECA, IBCO and MCAK felt we had a bill which best represented our industry.

There are a few differences between H.B. 2124 and S.B. 267. In H.B. 2124 the standard passing grade is set at 75% instead of 70% as in S.B. 267. The make up of the Board in H.B. 2124 allows for two building official representatives to be appointed to the Board. Whereas, S.B. 267 does not allow for building officials to be apart of the Board. Also, the intentions of both bills are for volunteer reciprocity between cities but in addition to S.B. 267, Section 6, mandates for any person taking out a permit, be registered with the Secretary of State showing proff of liability insurance and workers compensation. We agree with the philosophy but felt it should have been a separate bill.

Chairman Oleen and members of the Committee, I urge you not to support S.B. 267.

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February 28, 1989

I would like to express appreciation to the chair and members of the committee. My name is Jeff Prince, and I am the Building Trades Official for the City of Derby, Kansas.

I am here today to speak in opposition to Senate Bill 267. A short time ago, our coalition consisting of the Associated General Contractors; Plumbing, Heating, and Cooling Contractors; National Electrical Contractors Association; and the Heart of America Chapter of The International Conference of Building Officials held a meeting in the Office of a Representative here in Topeka. Our goal was to gain consensus with the Home Builders Association of Kansas. After much hard work, our coalition gave concessions to the point that the make up of the board would consist of 6 contractors, and only 2 code enforcement officers, in House Bill 2124. Initially parity was desired to maintain the check and balance system.

After all that work, the other party would not support even that attempt at consensus. We have tried to work with them, but to no avail.

They desire to control the board. They can attain control by having more contractors on the board thus more votes, or by having all contractors on the board. "A board by the contractors for the contractors." They may have as many votes as 5, and the other contracting trades total vote power would be only 4. They call for the other trades to be certified, but do not make that requirement of their own.

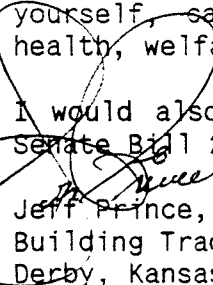
The Home Builders Association does not want any Building Code Enforcement Officers on the board--period. Lying before you is written fact, Senate Bill 267, lines 115 thru 126. In Lines 123 and 124, it calls for a "local public official." A "local public official" could end up quite possibly being a state, city, or county commissioner who just happens to be a contractor, another vote on the contractors side.

Senate Bill 267 is not in the interest of the health, welfare, or safety of the general public. Senate Bill 267 is a Bill designed by specific contractors for specific contractors and would give them control of the board. If the board members in Senate Bill 267 were placed as presented, the the contractors could exert pressure on a company desiring to supply the tests without any checks or balances. Thus, the tests would be in danger of being over-simplified.

Building Officials should be included on the board because they are not motivated by profit and loss. They would serve as the watch dog in the general public's interest.

There are a number of problems with Senate Bill 267. In the interest of time and to avoid repetition, I would ask that you to review the written materials provided to you. Also, I would ask you to make a closer examination of this Bill with reference to the facts that have been presented. House Bill 267 is not a Bill in keeping with the welfare of the general public. You must ask yourself, can we afford to sacrifice the interests of the general public's health, welfare, or safety. I think not!

I would also ask you to compare the merits of House Bill 2124 with those of Senate Bill 267. Thank you.


Jeff Prince,
Building Trades Official
Derby, Kansas

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2/28/89
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