

Approved: March 15, 1995
Date

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Mark Parkinson at 9:00 a.m. on March 7, 1995 in Room 531-N of the Capitol.

All members were present except: Senator Downey

Committee staff present: Mike Heim, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Senator Bob Vancrum
Attorney General Carla Stovall
Lynn Gansert
Maureen Frye
Mary Judy
Bob Bartunek, Home Builders Association

Others attending: See attached list

SB 212--Amending and supplementing the Kansas Consumer Protection Act; relating to enforcement.

SB 331--Concerning certain contractors for single-family residences; providing for reimbursement of certain losses caused by such contractors; providing for the imposition of fees on certain building permits and use of the revenues for that purpose.

The Chairman informed the committee that these two bills were introduced by Senator Vancrum to more substantively address the problem involved than **SB 224**, dealing with issuance of certificates of occupancy, would have. He noted that the bills would need to be acted upon today in order to get them through the process in time.

Senator Vancrum testified on both bills. He began with **SB 331**, explaining that it sets up a revolving reimbursement fund by putting a \$5.00 fee on permits to build or remodel homes. He feels that perhaps \$5.00 is not enough and possibly it should be raised to \$20 or \$25. The fund would be administered by the Attorney General. To collect from the fund, there must be a suit filed against a builder or a bankruptcy. The bill is limited, but at least it offers some mechanism for relief. In essence, a home owner must have exhausted all possibilities to recover before using the fund. The bill was modeled after a Colorado law.

Senator Vancrum confirmed that most of the money collected for the fund would come from home owners doing small remodeling jobs, and these would not qualify to use the fund.

As to **SB 212**, Senator Vancrum explained that it allows the Attorney General or District Attorney to recover the cost of consumer protection actions which involve a great deal of expense for attorneys to investigate.

Attorney General Carla Stovall testified in support of both **SB 331** and **212**. (Attachments 1 and 2)

Senator Feleciano asked if perhaps the fee for permits should apply only to those getting more than a \$30,000 improvement. Ms. Stovall agreed that this would be a possibility that should be considered.

Senator Feleciano stated that he feels the bills still do not address the fundamental problem of unscrupulous home builders. He feels that cities should become more accountable.

Senator Vancrum stood to comment that problems with homebuilders occur in Kansas because other states have remedies which Kansas does not. For example, Kansas does not have statewide licensing of home

CONTINUATION SHEET

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builders. Kansas has no statewide building codes, therefore, there is no central agency to enforce laws. And Kansas has no performance bonding. In response to Senator Feleciano's concern that the bills do not address the fundamental problem of unscrupulous builders, Senator Vancrum said these bills are remedial rather than preventative. He feels cities should act in a responsible way, but these bills do not address this issue.

Senator Reynolds asked if an attempt has ever been made to require licensure of home builders. Senator Vancrum answered that one attempt has been made, and the bill did not make it out of committee.

Senator Ranson stated her support for **SB 212**, but has problems with **SB 331** because all it really does is cause another fee for the consumer, and the same unscrupulous builders will continue. It takes responsibility away from the individual to check out a home builder and leaves the expectation that the government will take care of their problems.

The Chairman noted that he has a concern that the \$5.00 fee would not establish a large enough fund. Information is needed on how much money is needed in the fund and how many permits are issued in the state.

Lynn Gansert of Overland Park testified in support of the bills. She has been a victim of an unscrupulous home builder and has spent \$20,000.00 on experts and lawyers in her case. She has found that builders say litigation against them will take forever and an individual will not be able to afford it. She also has found that most lawyers do not want this type of case. She has not been able to find a source to offer her relief. The bills would be a start. She concluded that the Home Builders Association does not police their own people, and if they do not want the \$5 fee imposed, they should police their people.

Maureen Frye, a homeowner from Kansas City, Missouri, followed with further testimony in support of both bills. (Attachment 3)

Mary Judy, another Missouri resident, testified in support of the bills. She chose a Johnson County home builder to build her home in Missouri and has experienced similar problems as Lynn Gansert and Maureen Frye. She has an assessment of \$44,000.00 to repair her home. She feels that even a small recovery amount to take care of code violations would be of some help.

Bob Bartunek, Home Builders Association of Greater Kansas City, testified in support of **SB 212** but in opposition to **SB 331**. (Attachment 4)

Mr. Bartunek added that **SB 331** does not increase professionalism but is merely a guarantee of collection. Also, he feels the problems are being overstated, although he sympathizes with those who have testified regarding their losses and stress. Most of the homes involve one particular builder, and most home builders are very reputable. The Chairman asked Mr. Bartunek what the Home Builders Association is doing to address this one particular builder. Mr. Bartunek said the Home Builders Association of Kansas City has established a certified master builder program which is an accountability program. It requires a builder to give good warranties and requires a conciliatory arbitration procedure. The Chairman responded that the HBA has let things go to the point that it has come to the Legislature, therefore, it needs to actively address the problem. Mr. Bartunek reiterated that he feels the certified master builder program is such an attempt.

Senator Feleciano asked what the City of Overland Park has done to shut down unscrupulous builders. Sara Corless, Home Builders of Kansas City, stood to respond that the city is holding a seminar on building codes for builders today. Also, it has increased the number of inspectors and inspections. The educational process has been stepped up to better prepare builders.

There being no further time, the Chairman stated, with regard to **SB 331**, there is a need for more information about the fees before action is taken on the bill.

Senator Feleciano made a motion to report **SB 212** favorable for passage, Senator Tillotson seconded and the motion carried.

The meeting was adjourned at 10:00 a.m.

The next meeting is scheduled for March 9, 1995.



State of Kansas

Office of the Attorney General

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

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Testimony of
Attorney General Carla J. Stovall
Before the Senate Local Government Committee
RE: Senate Bill 331
March 7, 1995

Chairperson Parkinson and Members of the Committee:

Thank you for the opportunity to appear before you today to testify in support of Senate Bill 331.

I support Senate Bill 331. The homeowner recovery fund established by this bill will provide funds to reimburse homeowners who have incurred losses caused by dishonest or incompetent residential contractors who are unable to satisfy the losses after the homeowner has exhausted all civil remedies against the residential contractor (has obtained judgment which remains unsatisfied or is prevented from obtaining judgment due to the automatic stay provisions of the bankruptcy code).

The Attorney General's office has received between 9 and 36 complaints annually regarding home construction since 1988. In addition, we have received between 181 and 210 complaints annually regarding home improvements since 1988 (however, most of the home improvement complaints are under \$30,000 and would not qualify for reimbursement under this bill. Although the actual number of complaints regarding new home construction or home improvements costing over \$30,000 is not significant in relation to the 4,500 to 5,400 consumer complaints received by our office each year, the amount invested by each consumer is significantly higher than the average complaint. Because home construction or home improvement involve such substantial amounts, homeowners suffering losses by dishonest or incompetent residential contractors who are unable to pay are often financially devastated.

It is because of the financially devastating nature of these consumer losses that our office supports this bill.

Again, thank you for the opportunity to voice my support of this bill. I request your approval of the bill.

*Senate Local Gov't
3-7-95
Attachment 1*



State of Kansas

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Testimony of
Attorney General Carla J. Stovall
Before the Senate Local Government Committee
RE: Senate Bill 212
March 7, 1995

Chairperson Parkinson and Members of the Committee:

Thank you for the opportunity to appear before you today to testify in support of Senate Bill 212.

I support Senate Bill 212. This bill will allow my office and local district attorneys to recover attorney fees in consumer protection actions. Currently, attorney fees are recoverable by attorneys for private litigants. My office is currently able to recover investigative fees and expenses in consumer protection actions, but has encountered wide fluctuations in collecting these fees due to the lack of established standards or methodology of computing investigatory fees by the courts. However, courts have well established standards and methods for computing attorney fees which should result in consistent revenues to assist my office in enforcing the consumer protection act.

Since 1988, the consumer protection division of the Office of the Attorney General has received between 4,500 and 5,400 formal written complaints each year. Currently, the five consumer protection special agents have between 235 and 667 active open complaint files, or an average of 437 open complaint files per agent. Because of these high caseloads, we simply do not have the resources available to spend significant time actively investigating each of these complaints. As a result, much of our investigation is limited to gathering information from consumers and suppliers and attempting to determine from that information whether a deceptive or unconscionable act or practice has been committed. Even with this limited type of investigation, it is often difficult for our agents to process complaints within a time frame satisfactory to consumers or my office.

Allowing my office to collect attorney fees, like private litigants, will allow us to consistently generate revenues which will in turn provide a non-General Fund source to hire additional

*Senate Local Gov't
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agents to investigate consumer protection violations. This would lower the caseload of our agents, allow them to spend more time investigating each complaint, and enable them to conduct more active investigations. In addition, the threat of attorney fees should provide suppliers who have violated the consumer protection act with additional motivation to enter into settlement agreements or consent judgments without protracted litigation.

Again, thank you for the opportunity to voice my support of this bill. I request your approval of the bill.

CONTACTS

A CONVERSATION LOG

PERSON / GROUP

TITLE / CO. _____ ADDRESS _____

NAMES FAMILY, ASSOCIATES _____

(2)

DATES BIRTHDAY, ETC. _____

WHERE / WHEN MET:
REFERRED BY _____

O ▲ EXT.
H ▲

TIME
DATE

DISCUSSED REQUESTED, PROMISED

DATES OF
FOLLOW-UP

5
TIME

Her property did not support
the mortgage we would give her.
Lenders make mortgages
based on value. Only the
buyer & seller agree to value
but what one is willing to pay &
what the other is willing to accept.
An appraisal is done to support
this agreement. In Garretts
case, the county had devalued
the property, the defects are
visible. Her family missed
out on the lowest interest
rates in 20 years & were
unable to lower their payment
to provide some economic relief.
My heart broke for them
because I too had a builder
problem & somewhat understood
her plight.
In March of 93 we
signed a contract to build a home
at Rest Lake, Parkville, Mo.
The range of price of this home
was 1/4 million.

CONTACTS

A CONVERSATION LOG

PERSON / GROUP

TITLE / CO. _____ ADDRESS _____

NAMES FAMILY, ASSOCIATES (4)

ATES BIRTHDAY, ETC. _____

WHERE / WHEN MET REFERRED BY *Some may think we took the boards w/out but let me assure you how*

TIME DATE	DISCUSSED	REQUESTED	PROMISED	DATES OF FOLLOW-UP				S TIME
				1.	2.	3.	4.	
	<i>much courage that took.</i>							
	<i>only to be told we could face legal problems as a result of our actions.</i>							
	<i>We ultimately bought another home since we had to find a place to live after selling our home, living in an apartment with possessions in storage.</i>							
	<i>family</i>							
	<i>We contacted realtors, developers, attys general, HBA, Cert. Mast. Cities Bldg's, R.E. Brokers etc.</i>							
	<i>No one helped. After 1 year of pursuit at the Atty Gen. office they are now in the process of working on our behalf.</i>							
	<i>I tirelessly looked for others who might have suffered the same injustices. There are many. Here are a few families whose hardships are greater than mine. They live daily with the anxiety of a broken home.</i>							

CONTACTS

A CONVERSATION LOG

PERSON / GROUP

TITLE / CO.

ADDRESS

NAMES FAMILY, ASSOCIATES

(5)

ATES BIRTHDAY, ETC.

WHERE / WHEN MET:
REFERRED BY

O

▲

EXT.

H

▲

TIME DATE	DISCUSSED	DATES OF FOLLOW-UP		S TIME
		REQUESTED	PROMISED	
	<i>Families.</i> <i>Millers, Cedys Family</i> <i>the Hall John, the Bennett</i>			
	<i>the Alexander Family</i>			
	<i>the Taylor Family</i>			
	<i>the Fisher Family</i>			
	<i>the Smith Family</i>			
	<i>the Marcus Family</i>			
	<i>the Childs Family</i>			
	<i>the Rosevatch Family</i>			
	<i>the Novak Family</i>			
	<i>the Jennings</i>			
	<i>the Woods</i>			
	<i>the Shoepfers</i>			
	<p><i>Living in a home you cannot afford to fix, you cannot sell, you cannot refinance, you cannot move from is like a terminal disease. It goes on & on everyday & you constantly look for the cure. We are here to help to ask for your help in finding a cure.</i></p>			

CONTACTS

A CONVERSATION LOG

PERSON / GROUP

TITLE / CO. _____ **ADDRESS** _____

NAMES FAMILY, ASSOCIATES _____ (6)

DATES BIRTHDAY, ETC. _____

WHERE / WHEN MET: _____ **EXT.** _____

REFERRED BY: _____

O ▲
H ▲

TIME DATE	DISCUSSED	REQUESTED, PROMISED	DATES OF FOLLOW-UP	\$ TIME
	<p>What is so debilitating is that it spends you emotionally, physically, mentally, psychologically & in many instances spiritually.</p> <p>But why is this happening to me. We have one family who fears losing everything because if he were asked by his employer to transfer he could not sell his house & move. He stated "My wife & I cry each other every night & cry" looking for comfort.</p> <p>Taylor's Builder stated that 9 out of 10 homes are good. That means 10 out of 100 are bad. Johnson County says 2% that 180 a year out of 9,000 permits. Most people give up fighting.</p> <p>We are here to stay. These 2 bills are only a start. As stated licensing, performance, fines...</p>			

TO: Senate Local Government Committee
FROM: Home Builders Association of Greater Kansas City
DATE: March 7, 1995
RE: Senate Bill No. 331

The Home Builders Association of Greater Kansas City is pleased to have the opportunity to comment on Senate Bill No. 331.

Although the HBA supports efforts to protect home owners from unscrupulous practices by builders and remodelers, the proposed legislation is an inappropriate method of addressing that problem. Under the Bill a \$5.00 fee would be charged for every residential construction building permit. The fee would be the same for all remodeling and new construction. It is not graduated so that larger projects (which could eventually cause larger reimbursements by the fund) pay their proportionate share.

Furthermore, some jurisdictions in the State do not require building permits. Either those jurisdictions would not contribute their fair share toward the fund, or a different collection procedure must be established. Additionally, Building Codes vary in different areas, and therefore the standards applied for implementation of the legislation would also vary from area to area.

The HBA is not aware of any analysis having been conducted to project whether the receipts would be sufficient to fund all anticipated reimbursement claims. Claims could far exceed available funds, and there is no method for making up any shortage. In that regard, the legislation provides that the Attorney General shall determine which claimants shall be entitled to payments, which are specifically stated in Section 3(b) to be ". . . a matter of privilege and not of right . . ." The overly-broad delegation of authority to the Attorney General to determine recipients, without any standards for exercising that discretion, would certainly be subject to attack.

Although the definition of a "reimbursable loss" is somewhat ambiguous, it appears that the qualification standards would be quite strict. As a result, the fund would benefit only a small number of home owners. Home owners with claims under \$30,000.00 would not be eligible to make claims no matter how improperly they were treated by their contractor.

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The HBA believes that the relief created by the Bill is not warranted, and that other problems in the industry should be addressed first. A statewide Building Code, and requiring building permits and inspections in all areas of the State, are more appropriate ways to begin addressing problems.

Even if this type of remedy is considered appropriate, the Bill is not ready for passage in its present form. Among other things, the definition of a reimbursable loss should be clarified and tied to specific standards of misconduct. The presumption in Section 1(e)(2) regarding persons who build a house for themselves and sell it within a year would be inappropriate in many circumstances. Section 3(a)(3) regarding claims against contractors in bankruptcy should be coordinated with bankruptcy law regarding claims which are not yet liquidated in amount. There is no limitation for the time period for filing claims, or the maximum amount of any claim.

For these and other reasons, the HBA believes that Senate Bill No. 331 is an inappropriate method of addressing problems that may exist within the industry, and recommends that it be rejected.