

Approved: 3/27/96
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES.

The meeting was called to order by Chairman Ben Vidricksen at 9:05 a.m. on March 26, 1996 in Room 254-E of the Capitol.

All members were present except:
Senator Papay - Excused
Senator Rock

Committee staff present: Hank Avila, Legislative Research Department
Ben Barrett, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Martha Ozias, Committee Secretary

Conferees appearing before the committee:
Larry Holloway - Kansas Corporation Commission

Others attending: See attached list

HB 2707 - CONCERNING BUILDING ENERGY EFFICIENCY STANDARDS

Larry Holloway testified that the Commission does not support or oppose this bill but it cannot support it in its present form because it reverses a carefully considered order that had been previously studied. In addition they have an interest and responsibility in the advancement of energy efficiency. He explained their position and reviewed the background citing previous legislation and policies. He pointed out that this legislation would remove the Commission's ability to adopt residential energy efficiency building codes and if passed, future code revisions would need to be considered. Mr. Holloway addressed issues to consider and presented two alternatives that they would fully support. (Attachment 1)

The Chairman asked Mr. Holloway what would happen if the Committee did not take action on this bill or would put a moratorium on it until July 1, 1997. He responded that it would have the same effect.

At that point Senator Lawrence made a motion to move the bill favorably out of Committee. This was seconded by Senator Harrington. Motion carried.

There being no further business the Chairman asked for a motion on the minutes. Senator Jones made a motion to approve the minutes of the March 21st and March 25th meetings. Senator Lawrence seconded this and the motion carried.

The meeting was then adjourned by the Chairman at 9:30 a.m.

BEFORE THE SENATE TRANSPORTATION AND UTILITIES COMMITTEE

**PRESENTATION OF THE
KANSAS CORPORATION COMMISSION ON
HB 2707**

The Commission does not support or oppose this bill. The State Corporation Commission implements energy efficient building standards for new residential and commercial buildings through its jurisdictional electric and natural gas utilities. This proposal appears to affect the Commission's current jurisdictional authority to enforce those building standards as follows:

- 1) Rural Electric Cooperatives that have deregulated under the provisions of K.S.A. 66-104d would be returned to the KCC's jurisdictional authority for building standards.
- 2) The Commission could not require utilities to enforce building codes in a city or county that has adopted energy efficiency standards for commercial structures that meet the minimum standards for such structures under the federal energy policy act of 1992.
- 3) The Commission would no longer have authority to adopt energy efficiency standards for any residential structure.

Explanation of the Commission's Position

The Commission does not oppose this bill. Historically, the Commission's adoption and enforcement of energy efficient building standards is the result of policy closely coordinated with the legislature. In fact, the legislature initially expanded the Commission's authority over municipal utilities specifically for the purpose of providing statewide adoption and enforcement of energy efficiency in building construction. While adopting and enforcing building codes is an unusual role for the Commission, it is one that was undertaken with the encouragement and support of the legislature. For this reason the Commission does not oppose legislation removing this authority.

The Commission does not support this bill in its present form because it reverses a carefully considered order by the Commission. In addition, the Commission has an interest and responsibility in the advancement of energy efficiency. Additional demand for electricity, for example, creates a need for additional investment by the utility, and this often causes an increase in the rates that customers must pay. Furthermore, the Commission remains sensitive to environmental issues involving the generation of electricity. Conservation of energy is one of the simplest and most effective methods to limit power plant emissions.

Background

This testimony will discuss the history of the Commission's orders affecting energy efficiency standards in new residential and commercial buildings, requirements under the energy policy act of 1992, recent Commission action, and changes in responsibilities if this legislation is enacted.

History of Thermal Treatment Standards¹

The following is a brief summary of the legislative and Kansas Corporation Commission actions taken since 1975 to address energy efficiency in building construction.

1975 Special Committee on Energy and Natural Resources adopts proposal No. 62.

This proposal established statewide minimum building codes affecting new construction and any remodeling or reconstruction in excess of 25% of the gross area of the existing building. An architect or an engineer had to certify the energy compliance of each design prior to receiving a building permit in any locale. It would have set a maximum annual BTU /gross square foot of floor area energy use for residences and schools, offices and commercial buildings, hospitals, and assembly and mercantile buildings

¹ From a brief review of the minutes of the House and Senate and Special Committee on Energy and Natural Resources' minutes for the years 1975 through 1978, as well as the transcripts for the KCC docket 110,766-U.

(the actual number for each category would be determined by ASHRAE Standard 90P). The director of state architectural services would be authorized and directed to promulgate and adopt rules and regulations to enforce and insure compliance with the provisions of the act. Provisions would be provided to allow exemptions of up to 20% over the maximum usage on a case by case basis.

HB 2669 (formerly Proposal #62) 1976 legislative session

The proposal was changed to adopt ASHRAE Standard 90-75, lower the exemption allowance to 10%, and to apply to any new addition or reconstruction of outside roof, walls and floor. In addition several exemptions were provided including any residential building outside city limits, any farm building, any remodeling or repair costing less than \$30,000, or buildings constructed by the owners or by builders for their own use. This bill was defeated in committee.

HB 2435 1977 legislative session

This bill was a weakened version of the previous session's HB 2669. It adopted insulation standards only in communities that already had building codes and building inspectors. In addition it was not mandatory, but instead allowed anyone who didn't wish to comply to pay a charge on excess energy used by not complying. After some consideration this bill was tabled by the sponsor based on the KCC opening a docket to consider heat loss standards.

Docket # 110,766-U - KCC hearings in April, 1977

this was a show cause order concerning all electric and natural gas utilities in reference to changes in tariffs to restrict connections in new residential dwellings and new commercial buildings to those meeting insulation requirements. The existing order was issued and placed in effect beginning November 1, 1977. At this time the KCC had no jurisdiction over municipal electric and gas utilities for the purposes of establishing these requirements.

HB 2698 1978 legislative session

This bill adopted KSA 66-131a. This statute gave the KCC jurisdiction over municipal owned and operated electric and gas utilities for the purposes of restricting connections to their systems with respect to heat loss standards.

SB 435 1992 legislative session

This bill adopted KSA 66-104d. This statute allowed certain electric cooperatives the option of becoming exempt from regulation of the state corporation commission except for matters of certified territory and the wire stringing rules. This in affect removes deregulated electric cooperatives from KCC jurisdiction in respect to heat loss standards.

The Energy Policy Act of 1992 (EPACT)

This federal legislation contains numerous energy efficiency requirements. From the standpoint of building codes, each state is required to:

- Adopt a commercial energy efficient building code that meets or exceeds the ASHRAE/IES² Standard 90.1.
- Consider, after public hearing, adoption of a residential energy efficient building code that meets or exceeds CABO MEC92³.
- Administrators of agencies that control federally backed mortgages such as FHA, FmHA, VA and HUD are also required to adopt CABO MEC 92 or any subsequent energy efficient building code within 1 year of DOE's adoption.
- Each state had 2 years to comply or could request an extension. EPACT provided no details of any federal action that would be taken against any state that did not comply.

2 American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE); Illuminating Engineering Society of North America (IES)

3 Council of American Building Officials (CABO); 1992 Model Energy Code (MEC92).

- The secretary of the Department of Energy is required to consider new revisions of either code and require the states to adopt (or in the case of residential codes, consider adopting) the new code revision if it is determined that the new revision will result in significant energy savings.
 - Each state then has 2 years to adopt the new code revision. As initially, the commercial building requirements are mandatory and the residential requirements must be considered following a public hearing. Federal mortgage requirements must adopt the new revision within 1 year.

Subsequent DOE action

In July, 1994 the secretary of DOE issued a finding that adopted the latest revision of the model energy code, CABO MEC 93 and the codified version of ASHRAE 90.1.

Docket 190,381-U KCC April 11, 1994

This docket opened a general investigation of the Residential and Commercial Building Code Energy efficiency standards as required by Title 1 of the EPACT. The following action has been taken to date:

- September 29, 1994 - KCC staff issued a draft memo for comment on the adoption of CABO MEC 93 and ASHRAE Standard 90.1 (and the codified version). This memo was sent to all Kansas electric and gas utilities, as well as representatives of the building industry and other parties that had expressed an interest, and requested comments on the staff's proposed position.
- October 24, 1994 - KCC staff requested a one year extension from DOE to comply with the building code requirements - DOE granted request.
- December 1994 - KCC staff received final comments from respondents. To address comments regarding increased costs of

applying such a code discussions began to obtain funding to provide an independent third party investigation.

- March 1995 - KCC energy office applied for a DOE grant to fund investigation of increased building costs due to adoption of residential code.
- May 1995 - DOE denied KCC request. KCC consultant efforts refocused on providing expert evaluation of existing codes and methods of compliance.
- September 18, 1995 - KCC staff issues letter to DOE requesting another one year extension - DOE granted extension to October 24, 1996.
- December 12, 1995 - Technical and public hearing.
- January 23, 1996 - Commission issued order (staff memo and order attached)

Elements of Commission order

- Adoption of ASHRAE/IES 90.1-89 Standard or Code for new commercial buildings
 - Natural gas or electric utility required to receive certification prior to providing permanent service.
- Adoption of CABO MEC 93 disclosure for new residential buildings
 - Natural gas or electric utility required to receive either 1) certification, or 2) signed owner disclosure prior to providing permanent service.⁴

⁴ The order allows multiple avenues for the builder to certify code compliance, however the builder may also inform the owner that the home does not comply to CABO MEC93. In this case the owner reads and signs a disclosure statement informing the owner that the house does not qualify for certain mortgages and that it may use more energy than a house that met the code. In this case the owner provides the signed disclosure

- Utilities in cities or counties that have adopted codes that equal or exceed energy efficiency standards adopted by the Commission are allowed to turn code enforcement obligations over to local code authorities.

Affects of Proposed Legislation on the Commission's Order

Several aspects of this legislation do not affect the current Commission order:

- The order already allows utilities to turn code enforcement over to local code authorities.
- The Commission order has already adopted the commercial building codes mandated by the Energy Policy Act of 1992 (EPACT) .
- This legislation would expand the Commission's authority to adopt these required commercial building codes to include all electric and natural gas utilities, by returning jurisdiction over rural electric cooperatives that have deregulated under the provisions of K.S.A. 66-104d.

However, one point that needs to be addressed is that this legislation would remove the Commission's ability to adopt residential energy efficiency building codes. It is important to point out that under the Energy Policy Act the Secretary of DOE, in the future may adopt later revisions to the CABO Model Energy Code and require the State of Kansas to hold public hearings to consider adopting these revisions. With passage of this legislation, future code revisions would then need to be considered either by the legislature or another designated state agency. The Commission has procedures in place to conduct public hearings as a routine part of their decision making process, while this process may be more difficult to implement for some other agencies.

statement to the utility and receives permanent service.

Issues to Consider

The Commission's order does not require new homes to meet CABO MEC93. What it does require is the builder to tell his customer whether or not the home meets the code. The Commission's order requires homeowners to be informed if they are purchasing a home that may not qualify for certain federal loans and that may experience high utility bills. A customer may still choose to purchase a new home that does not meet these energy efficiency requirements, however they will be informed of the possible consequences of that choice.

The Commission's order allows 6 different ways to verify compliance, including a worksheet developed by the National Association of Home Builders. The intent is to make code verification as simple as possible for the builder. The new homeowner, the mortgage lender and everyone who will inhabit the home for the next 80 to 100 years, depend on the level of builder knowledge and expertise that was assumed in developing these verification options.

The Commission's order fulfilled the State's obligation under the federal Energy Policy Act. The Commission Staff spent hundreds of manhours researching the issues, soliciting opinions and preparing testimony. The Commission spent over \$26,000 in obtaining and utilizing the opinions and analysis of expert consultants. The transcripts of the technical and public hearings are being provided for your consideration.

The Commission's authority and responsibility in regulating electric and natural gas utilities clearly includes the environmental and economic benefits of efficient energy usage. The Commission's consideration of energy efficiency requirements for the construction of new residential and commercial buildings has been thoughtful, public, fair and unbiased. However, a primary responsibility of the Commission is the regulation of public utilities, not the building industry. Historically, the Commission has been tasked, by the legislature, to adopt and enforce energy efficient building codes. You must decide if this responsibility and authority should be removed or transferred to another agency.

Alternatives

The Commission would fully support either of the following alternatives:

- 1) Amending HB 2707 to remove section 131a.(b)(2). With this revision the bill would restore the Commission's authority to adopt energy efficiency standards for deregulated electric cooperatives, an obvious oversight of the 1992 rural electric cooperative deregulation legislation.
- 2) Amending HB 2707 to remove all Commission authority to adopt energy efficient building standards. This would require additional legislation to reassign or establish the mandatory energy efficient building standards for commercial buildings. However, the same responsibility would need to be assumed for the residential building codes to consider future residential building code revisions if HB 2707 were adopted in its current form.