Approved:_____

Date 2/13/97

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairperson Don Myers at 9:00 a.m. on February 4, 1997 in Room 514-S of the Capitol.

All members were present except: Rep. Mayans - excused

Committee staff present: Lynne Holt, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Mary Shaw, Committee Secretary

Conferees appearing before the committee: Ron Burton, Assistant Staff Vice-President for Construction, Codes & Standards, National Assn. Of Home Builders
Karen France, Kansas Association of Realtors

Others attending: See attached list

Chairperson Myers mentioned that the Committee would be hearing proponent testimony regarding **HB 2140**. He opened the meeting for Committee discussion regarding the minutes of the January 22, January 23 and January 24, 1997 meetings. Representative Burroughs made a motion to accept the minutes and Representative Samuelson seconded the motion. Motion passed.

Hearing for Proponents on HB 2140: An act concerning building energy efficiency standards; amending K.S.A. 66-131A and repealing the existing section

The Chair mentioned that there were two written proponent testimonies distributed from Roy Worthington, Kansas Land Title Association (Attachment #1) and Art Brown, Mid-America Lumbermens Association (Attachment #2).

The Chair asked Mary Ann Torrence, Office of Revisor of Statutes, to brief the Committee on **HB 2140.** She explained that the bill would provide that the Corporation Commission would have jurisdiction over all utilities including municipally owned utilities and rural REC's (rural electric cooperatives) for the purpose of enforcing building energy efficiency standards with a couple of exceptions. One exception is that there would not be jurisdiction with regard to residential dwellings. The other exception would be there would not be jurisdiction with regard to commercial buildings, if they are located in the city or county which adopted and has in effect the standards for commercial structures that meet the federal energy policy act requirements. The Chair inquired if this would only apply to new construction. The Revisor responded that she believed that should be clarified. The Chair mentioned the Committee would take that clarification up at a later date.

The Chair introduced Ron Burton, Assistant Vice-President for Construction, Codes and Standards, National Association of Home Builders, Proponent (Attachment #3). He spoke in support of **HB 2140.**

The Chair introduced Karen France, Director, Governmental Affairs for the Kansas Association of Realtors, Proponent (Attachment #4). She reported that the Kansas Association of Realtors strongly supports the legislation presented, **HB 2140.**

Questions and discussion followed. The Chair thanked the conferees for appearing before the Committee. He mentioned that next week the Committee will be hearing the opponents to the bill. He reported that tomorrow the Committee would be hearing a briefing on stranded cost issues related to electric retail wheeling by Bill Steinmeier, Independent Consultant. The Chair requested that Staff provide a copy of the Kansas Corporation Commission Order issued January 24, 1996, to the Committee members.

The meeting was adjourned at 9:50 a.m.

The next meeting is scheduled for February 5, 1997.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 4, 1997

NAME	REPRESENTING
Joe Dick	KCKBPU
Derek Schmidt	Utilicorp United
Ebi Kazemi	" "
Al Lass	Utilicorp United
Brady Cantrell	CURB
James Wulf	KFB
Ronald Schiewe	KFB
Lester Goyen	KFB
Trudy Aron	Am Inst of Architects
Jamie Schwartz	KPOC
J.C. Long	UtiliCorp United, Inc.
Marsha Leonhard	Butler Co. Farm Bureau
Linda Doornbos	Butler Co. Farm Bureau
Jim K Miles	Kansas Electric Cooperatives
ED SCHAUB	WESTERN RESOURCES
George Barbee	Barbee & Assoc's,
JANET STUBBS	Ks. Bldg. IND. ASSN.
Kimberly Gulley	League of KS municipalities
Ron Burton	NAHB - Washington DC

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: FEB 4, 1997

NAME	REPRESENTING
CHARLES COTTRELL	NAHB
Jerry Wittman	Topeka Home Builders Association
DAVID B SCHLOSSER	PETE McGILL & ASSOC.

KANSAS LAND TITLE ASSOCIATION

Charles Stewart
President
P.O. Box 287
Oakley, KS 67748

Bill Regier
Vice President
P.O. Box 346
Newton, KS 67114

John M. Bell
Secretary-Treasurer
434 N. Main
Wichita, KS 67202

FEBRUARY 4, 1997

TO: HOUSE UTILITIES COMMITTEE

RE: TESTIMONY HOUSE BILL NO. 2140

FROM: KANSAS LAND TITLE ASSOCIATION

THE KANSAS LAND TITLE ASSOCIATION NEITHER SUPPORTS NOR OPPOSES THE SPECIFIC PROVISIONS OF HOUSE BILL NO. 2140.

HOWEVER, THE KANSAS LAND TITLE ASSOCIATION IS OPPOSED TO ANY REGULATION WHICH REQUIRES THE FILING/RECORDING OF ANY ENERGY EFFICIENCY COMPLIANCE INFORMATION IN THE CHAIN OF TITLE TO THE REAL ESTATE AT THE TIME OF SALE.

ENERGY EFFICIENCY IS NOT A MATTER OF TITLE AND SHOULD NOT BE A PART OF THE CHAIN OF TITLE TO REAL ESTATE.

FURTHER, REAL ESTATE CLOSING AGENTS ARE NOT IN A POSITION TO DETERMINE IF SUCH INFORMATION SHOULD BE FILED/RECORDED AT CLOSING - SUCH INFORMATION IS A MATTER ENTIRELY BETWEEN THE CONTRACTOR, THE OWNER AND THE PUBLIC UTILITY AND IS NOT A MATTER OF TITLE TO THE REAL ESTATE.

THE FILING OF SUCH ENERGY EFFICIENCY INFORMATION WILL ONLY "CLUTTER" THE REAL ESTATE RECORDS AND COULD OPEN THE DOOR TO THE FILING/RECORDING OF ANY NUMBER OF RELATED DOCUMENTS, SUCH AS BUILDING PERMITS, BUILDING CODE INSPECTION REPORTS, CERTIFICATES OF OCCUPANCY, ZONING ORDINANCES, ETC..

A CONTRACTOR'S COMPLIANCE WITH ENERGY EFFICIENCY STANDARDS IS NO MORE RELATED TO TITLE THAN COMPLIANCE BY THE CONTRACTOR WITH GENERAL BUILDING CODES RELATING TO HEALTH AND SAFETY, AND THERE IS NO PROVISION FOR MAKING COMPLIANCE WITH GENERAL BUILDING CODES A PART OF THE CHAIN OF TITLE TO REAL ESTATE.

RESPECTFULLY SUBMITTED,

Roy Worthington

KANSAS LAND TITLE ASSOCIATION

House Utilities
2-4-97
Attachment 1

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MLA
ARKANSAS KANSAS
MISSOURI NEBRASKA
OKLAHOMA

MID-AMERICA LUMBERMENS ASSOCIATION

WRITTEN TESTIMONY FOR THE HOUSE UTILITIES COMMITTEE

February 4, 1997 *House Bill # 2140*

Mr. Chairman, and members of the House Utilities Committee. My name is Art Brown. I represent the retail building material dealers in the State of Kansas through the Mid-America Lumbermens Association. Unfortunately, another committment keeps me from appearing before you personally today in regards to House Bill # 2140. I would however like to point out some pertinent information I feel would be of assistance in aiding this Committee as to the direction the Committee pursues in regard to this bill.

1) First and foremost, we as material suppliers are going to supply the material no matter what decision is made in regard to the outcome of this bill. Therefore, our involvement in this issue is minimal. I can tell you, that in the opinion of our members, that the material needed for energy effiecient houses are abudnent and in stock in retail building supply centers throughout the State. I can also tell you that in the opinion of the dealers we have visited with, that material being sent to job sites through the material estimates we compute for builders is more than adequate for any type of energy code available. Major improvements in the type of glass used in windows, the use of "Tyvak" an insulating board that surrounds the exterior walls of a residence and the different types of insulation for walls, ceilings and floors is being shipped on a regular basis to construction sights in the State of Kansas. We of course cannot speak to how these materials are applied once they are on the job site. If it would be the wish of the Committee, I can obtain a copy of such a material list to prove this point.

2) The change in consumer preference to window treatments has to be considered in any discussion of energy effienciency. Years ago, it was hard to put many windows in a house, simply because there was no consumer demand for them. Today, exotic windows are the norm in up scale housing developments and quite simply, many of these window treatments are not as comfortable in this climate. Even though the window itself is constructed for the optimum of energy effienciency, windows simply cannot provide the same type of energy effienciency as a solid wall with insulation in the wall cavity. It just simply cannot be done. This is a trade off the consumer has to decide for themselves. Asthetics or comfort. The dwelling simply will not have

LUMBER GROWS ON TREES

House Utilities
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Attachment 2

the energy effiencience if there is a large amount of wall space being utilized by windows.

3) Statewide codes are extremely hard to administer in our opinion. For many years, there has been discussion of a State wide building code. Most of the State of Kansas has no code oversight, and the people living in areas with no building codes feel no need to fund a building inspector when there is not a great deal of new construction taking place in many of these primarly rural areas. Most construction done in our rural areas is remodeling, or agricultural in nature. While we have sympathy for the opponents in regard to some of the building inadequacies they have experienced, quite simply, there are building inspectors in their areas who have oversights over such codes. The same can be said for an energy code. This is such a low priorty in the rural parts of our State that I can honestly say in 9 years of traveling the State of Kansas, I have never heard any person in Smith, Hamilton, Thomas or any other rural county ever express concern over the energy effieciency of their structure. I say this in the context of the dealers who tell me of customer complaints of their residence. There may be some other concerns, primarly finding someone to do the work, energy effieciency is not a primary concern and we don't feel adopting a State wide code does anything to solve a problem that seems to be focused in the urban areas.

4) Finally, we would agree with any consumer that their new home should have the optimum of energy effiencies. Every contractor owes it to the person for whom they are building their new house the upmost honesty in all phases of the construction cycle of their house, and that includes the quality of comfort one receives from using quality insulative materials. If it is the wisdom of the Committee to utilize a State wide energy code, than so be it. We would say that their are local codes that could certainly administer such a policy in a more cost effective manner and obtain the same result for the consumer. Again, this is a policy decision for the Committee to debate.

As many of you know, I am in the Capitol on a daily basis. Again, I'm sorry I could not be here personally today, but I would visit with you at any time about my testimony and address any comments you may have or questions you have about my remarks.

NAHB
NATIONAL ASSOCIATION
OF HOME BUILDERS

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TESTIMONY BEFORE THE UTILITIES COMMITTEE OF THE KANSAS STATE HOUSE OF REPRESENTATIVES
Concerning House Bill No. 2140

By: RON BURTON
Representing: The National Association of Home Builders and
The Kansas Building Industry Association
Date: February 4, 1997

Mr. Chairman and members of the Committee: Thank you for allowing me to present this testimony before you today and the opportunity to represent the 190,000 member companies of the National Association of Home Builders and the 1300 member companies of the Kansas Building Industry Association. My name is Ron Burton and I am Assistant Staff Vice-President for Construction, Codes and Standards at NAHB. The Construction, Codes and Standards Department's primary responsibility is to assist NAHB's members with construction issues and represent them in the building codes and standards regulatory process. Part of that work includes assisting home builders and other members with energy code compliance and acting as an advocate for the home building industry on residential energy efficiency. I am here in support of House Bill No. 2140.

Let me first tell you why NAHB and KBIA oppose the CABO Model Energy Code (MEC) as it is currently applied in Kansas. Please understand that I am not here to oppose energy efficiency in newly constructed homes. Quite the contrary. Home builders have been in the forefront of providing more energy efficient homes for many years and we continue to champion energy efficient building practices - in Kansas and throughout the country. In fact, since 1970 home builders have doubled the energy efficiency of the new homes they build. No, I am here to oppose the MEC because it requires measures that are not cost-effective and affordable for the new home buyer in Kansas, because MEC compliance is overly complicated and difficult to achieve, and because energy efficiency requirements are currently unfairly applied to new home builders and their customers, the new home buyer.

The MEC was developed through the private, voluntary model code development process maintained by the Council of American Building Officials (CABO). CABO is made up of the three major model building code organizations in the U. S.: 1) BOCA (Building Officials and Code Administrators), 2) ICBO (International Conference of Building Officials) and 3) SBCCI (Southern Building Code Congress International). In January, 1996, the MEC was turned over to the International Code Council (ICC), an organization dedicated to developing a single set of national model codes. ICC membership is also made up of the same three model code organizations. While CABO and later ICC have maintained a voluntary process, that simply means that they write and promulgate codes that are not mandatory until a federal, state or local jurisdiction adopts those codes as law.

This is not however a consensus process and therefore does not have the voting input of the industries or consumers that are most impacted by the codes as adopted by state and local jurisdictions. Home builders and their representatives participate in the process, but this participation is limited to proposing changes and

House Utilities
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Attachment 3

testifying before a committee of building officials that decide on the content of the code. We are not always successful in keeping costly provisions out of the voluntary codes, such as those that exist in the MEC, because we do not have a vote on the committees that decide these critical issues. That is why almost all adopting jurisdictions modify or amend the codes in their adoption processes. Many states and local governments either do not adopt MEC or modify its provisions to respond to the realities consumers must face in their areas. This was illustrated most recently in Michigan and New Jersey.

After adopting the MEC as a state mandatory code, the Michigan legislature reversed that decision and has instructed the state code regulatory agency to write a new energy code for Michigan's citizens that reflects a cost-effective and affordable approach to energy savings in new home construction. The New Jersey legislature recently declared the MEC is not cost-effective and affordable for its citizens and has mandated that earlier editions of the BOCA codes that do not include mandatory MEC provisions be enforced statewide. Other states are also considering how to deal with energy requirements in cost-effective and affordable ways.

The MEC has always focused primarily on the thermal envelope of buildings to achieve energy efficiency. This has resulted in a disproportionate reliance on added insulation to achieve compliance with the code. The simple fact is that it is easy to comply with the MEC by adding more insulation but difficult to show compliance by doing a better job of preventing air leakage or providing more efficient heating and cooling equipment. These techniques can frequently result energy savings equal to or greater than adding more insulation and at lower costs to the home buyer. As an example, a blower door test to detect air leakage could show quite a lot of air leakage in a house that meets the MEC and a home that is built very tight could easily fail to meet the MEC even though it uses no more energy than the first house. In short, the MEC sets a baseline efficiency for buildings that can be achieved in many different ways, but it rewards the most costly techniques to achieve that efficiency level in most cases.

Additions to existing buildings are also covered by the MEC and this poses an even greater problem for our remodeler members and their customers. Many new additions will fail to comply with the MEC regardless of the amount of insulation installed. This is because the window area of most additions is relatively large compared to the whole house, and in the case of sunroom additions makes up the bulk of the added wall area. Home owners making improvements to their existing homes generally want more windows and the MEC severely penalizes this added window area. Many jurisdictions have found that requiring compliance with the MEC has the potential to significantly and negatively impact the remodeling industry in their area and have taken steps to amend the code to eliminate the problem.

By far the greatest problem the MEC poses for new home buyers and builders in Kansas is the added costs required to meet the code. Conservative cost estimates by the insulation industry, a group clearly opposed to H.B. 2140, and provided to this Committee show that compliance will add $1,300 to the price of a new home. I take exception to their $1,300 figure and suggest to you that compliance costs will be much higher in most cases. Their claims are not supported by any data. Using an $0.82 per square foot price for R-13 fiberglass batt insulation, $1300 would only cover the cost of insulating the basement of a 2450 square foot house and this does not even include the framing of the walls to accept the insulation. Additionally, insulating the basement of a home, one of the requirements of the MEC in Kansas, is not a cost effective use of one's energy improvement dollars because most basement walls are naturally insulated by the soil on the outside of the basement walls.

However, to simplify matters I would like to demonstrate the negative impact on Kansas home buyers using the insulation industry's own numbers. The Housing Economics Department at the National Association of Homebuilders has done extensive research in the area of housing affordability and how increased home costs eliminate potential buyers from the housing market. Using average incomes and mortgage qualifying information for Kansas, we have determined that a $1000 increase in the cost of a new home would keep 5641 potential

eholds from being able to purchase a home (see attached Affordability Methodology and state by state figures). A $1,300 first-cost increase would therefore result in over 6000 Kansas families being eliminated from the home buying market. While it is true that buying a home with added energy efficiency features can be a long-term benefit to homeowners, this benefit comes at a price - the disenfranchisement of a significant number of potential buyers. These potential homeowners cannot benefit if they cannot afford to buy the home in the first place.

You were also told that this first-cost increase would add a minimum of $96 per year to the mortgage payments for the buyer. Again using the insulation industry's figures, you were told that adding this first-cost would result in a savings in energy costs of $174 per year. I also dispute this claim as our analysis shows a significantly lower energy savings from MEC compliance. However, I will continue using these figures for the purposes of illustration. Their figures would result in a net savings of $78 per year. It seems the insulation industry agrees with a long-standing NAHB assessment that a 7 year payback is required for a home improvement to be economically justified. However, the $78 net savings per year on a $1,300 investment results in a payback period of over 16 years. By any measure, this is not an effective use of a new home buyer's dollar.

More importantly, compliance with the MEC will put the "burden" of saving energy on the new home buyer alone. In an average year, approximately 8,000 new homes are built in Kansas. Again using the insulation industry's figure of $1,300 for MEC compliance, this results in a total cost impact of $10.5 million to the new home buyers in this state each year. This does nothing to alleviate the real energy efficiency problem in the housing stock - the older existing home. We have estimated that if simple and inexpensive air infiltration reduction measures (approximately $200 per house) were taken by the owners of existing homes over 15 years old in Kansas, more energy could be saved than compliance with the MEC for new homes alone.

As current Kansas law provides, and as enforced by the Kansas State Corporation Commission, MEC compliance must be shown by the builder through completion of the "Residential Building Energy Efficiency Compliance Certification Form" or declaring to the home buyer that the home does not meet the Commission's adopted energy efficiency standards on the "Declaration of Self-Exemption and Non-Compliance" form. While this may seem to make the MEC voluntary in Kansas, I assure you it results in quite the opposite. A builder choosing not to add the excessive costs to comply with the MEC is forced to tell the home buyer that his home is of lesser quality than a similar home that shows compliance. That is absolutely not the case and forcing admission of such false information both confuses the home buyer and unfairly characterizes the builder and his product. As I will address later in my testimony, NAHB has determined that new home builders in Kansas are currrently meeting the MEC energy efficiency targets or coming very close to doing so. To use the narrow limits of the MEC to make such judgements of the home and its builder ignores the fact that builders do not now nor have they ever needed an energy code to improve the energy efficiency of their homes. They have done so voluntarily and consistently by responding to the market demands of their customers which has led to the tremendous gains in energy efficiency evident in today's new home.

I would also like to address other misinformation provided to the Committee by those opposed to H.B. 2140. I am in receipt of copies of letters sent to you by the North American Insulation Manufacturers Association (NAIMA) and Schuller International, Inc. These letters contain numerous errors about the MEC and its impact on Kansas homeowners.

NAIMA's claim that federally financed mortgage programs, such as VA and FHA insured mortgages, would no longer be available to new home buyers in Kansas is totally false. Regardless of what you do regarding mandatory imposition of the MEC, new homes offered for sale using federal assistance programs such as FHA or VA must be built to the MEC provisions by federal law. The 1992 Energy Policy Act preempted state law for homes built within the guidelines for these federal programs. These programs would still be available to any

purchasing a home from a builder who chooses to offer homes qualifying under FHA, VA or other fe programs, as is the case in the overwhelming majority of states that have not adopted the MEC.

The insulation industry has stated that 68 million BTU's of energy will be saved each year in Kansas, and the emission of over 3200 tons of pollution into the atmosphere will be eliminated if SB 74 is defeated. There is no basis for such a statement. Furthermore, one would have to know the level of energy efficiency being provided in new homes built in Kansas to quantify such figures. NAHB has surveyed home builders in Kansas and found that the vast majority of new homes currently meet or come very close to meeting the efficiency baselines contained in the MEC. Given that fact, the savings quoted by the insulation industry are suspect at best. Figures such as 68 billion BTU's saved per year can also be misleading. While this is a large number, it is important to remember that a typical home uses over 1 million BTU's per day for space heating, resulting in the use of over 100 million BTU's in a single heating season, not to mention the BTU's needed to cool the home in the Summer.

Furthermore, voluntary programs sponsored by the utility companies and other groups in Kansas and other states are far more effective in raising the efficiency levels of newly constructed homes than mandatory regulations can ever be. NAHB has tracked the success of these programs over the past 2 years and found that nationwide, builder participation in these programs is strong and growing stronger. Homes built to the provisions of these programs are 10% - 30% more efficient than the MEC. These programs are stimulating the market and providing potential home buyers with the incentives needed to eliminate the first-cost problems inherent in regulatory solutions. Incentives such as energy efficiency financing programs that eliminate the first-cost added down payment required when expensive energy efficiency measures are included, are just now becoming available through these voluntary programs. These incentives are not available to buyers purchasing homes that simply meet an artificial code requirement regulated by the state.

Finally, unlike what was stated in the letter from Schuller International, Inc., energy efficiency standards would not be eliminated if H.B. 2140 is enacted. Regardless of federal, state or local regulatory statutes, Kansas builders, like all home builders in this country, already adhere to strict energy efficiency standards. Our customers demand certain standards and features when they buy new homes and one of those is a level of energy efficiency they can both afford and benefit from while they live in the home. If builders did not provide what their customers wanted, they would not be in the business of providing housing very long. Builders in Kansas have responded and we're doing our part to increase the energy efficiency of Kansas housing.

In the face of the facts I have presented, I believe you will agree it is not prudent to impose a complicated and unfair energy code that is clearly not cost-effective and affordable for new home buyers. This is especially true since the MEC imposes added burdens on that segment of the market that is already the most energy efficient leaving the tremendous energy savings potential of the existing housing stock untouched.

Thank you for the opportunity to address you and I will be glad to answer any questions you may have.

Affordability Methodology For A Change in House Price

If the price of a new home increases because of an added building code requirement, then fewer households can afford to purchase a new home. For large, expensive new homes, the mandated changes may not constitute a noticeable portion of the final price, may already be incorporated into the home, or may induce the buyer to reduce cost in some other way. However, for modest, first time homebuyer homes, these options are not available and increases in cost can mean fewer homebuyers are able to afford to purchase.

NAHB has developed a method for estimating how many households are priced out of the market when new home prices increase. The procedure involves calculating the number of households in each state that can afford to purchase the average priced new home insured by the Federal Housing Administration (FHA). The income required to afford a home is defined as the minimum income needed to financially qualify under FHA rules (labeled Income Needed in following tables).

Currently, the FHA rules require that the total of mortgage payments (principal and interest)[1], taxes, and insurance is no more than 29% of household income. The minimum income needed is defined as the amount needed to meet FHA qualification minimums. The benchmark house price for each state is the average price of a new FHA-insured home in 1995. FHA homes were chosen as representative of an entry level new homes.

Income distributions for the states are derived from the 1990 Census of Population and Housing and then adjusted to reflect current conditions. The first adjustment is to assume that the number of households in each category has grown at an annual rate of 1%. The Census median income, by state, is then adjusted to 1995 by multiplying the adjusted distribution of households by the ratio of the 1995 to 1989 median income.[2]

Once the above values are determined, it is simply a matter of looking at the income distribution and counting how many households in the state can afford the average new FHA house. Once this value is calculated, the median house price is increased by $1,000 and the procedure is repeated and the differences noted. Thus the number of households priced out of the market for a $1,000 increase in new home price can be estimated.

The accompanying summary table lists the average number of households in each state that are priced out of a modest home purchase as the result of a $1,000 increase. The longer table shows the number of households who income qualify to purchase a new FHA-insured home as a percentage of all households.

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[1]A mortgage rate of 7.8% is used here, which was the median contract interest rate for FHA insured mortgages on new homes in 1995. A 10% downpayment is assumed. Taxes and insurance values, by state, are calculated from the Public Use Microdata Sample of the Census of Population and Housing, 1990. For greater detail on tax rates and insurance, see Emrath and Dubin, "Variation in Residential Property Tax Rates," *Housing Economics* Nov. 1994; and Kochera, "Home Characteristics and Property Insurance," *Housing Economics* Dec. 1994.

[2]1995 incomes are taken from HUD Income Data, Notice PDR-95-03; while the 1989 incomes are taken from the Census of Population and Housing, 1990: Summary Tape File 3-C/ prepared by Bureau of the Census.

Number of Households Priced Out of the New Home Market
By a $1,000 Increase in Price

State	Entry-level New Home Price (a)	Income Needed To Purchase Entry Level New Home (b)	# of Households Priced Out by $1,000 Increase (c)
Alabama	$77,656	$22,995	7,374
Alaska	$132,961	$41,844	740
Arizona	$97,220	$29,461	6,255
Arkansas	$73,060	$22,756	5,069
California	$117,890	$34,747	35,014
Colorado	$104,629	$33,383	6,539
Connecticut	$125,543	$39,138	3,774
Delaware	$99,048	$29,674	930
District of Columbia	$103,202	$30,489	876
Florida	$87,651	$27,058	29,825
Georgia	$91,580	$28,542	10,433
Hawaii	$158,249	$44,711	1,404
Idaho	$91,582	$28,968	2,114
Illinois	$138,405	$45,713	18,073
Indiana	$96,716	$30,684	10,952
Iowa	$78,385	$27,207	6,765
Kansas	$78,670	$26,436	5,641
Kentucky	$79,948	$24,477	7,738
Louisiana	$83,324	$24,434	7,625
Maine	$101,368	$32,209	2,280
Maryland	$124,528	$38,667	7,797
Massachusetts	$112,400	$34,697	9,870
Michigan	$84,408	$30,891	17,783
Minnesota	$100,779	$32,234	7,997
Mississippi	$74,742	$22,988	4,843
Missouri	$96,443	$30,250	8,750
Montana	$83,612	$27,765	1,950
Nebraska	$84,933	$30,435	3,316
Nevada	$109,899	$33,249	2,548
New Hampshire	$114,633	$38,459	1,783
New Jersey	$111,499	$37,065	12,484
New Mexico	$88,046	$26,485	2,970
New York	$110,560	$37,092	31,547
North Carolina	$89,158	$27,656	13,800
North Dakota	$86,861	$29,802	1,295
Ohio	$105,105	$33,755	17,234
Oklahoma	$80,472	$25,493	7,272
Oregon	$96,635	$34,651	5,965
Pennsylvania	$105,112	$34,471	21,439
Rhode Island	$107,491	$34,250	1,865
South Carolina	$77,220	$23,786	6,236
South Dakota	$83,081	$30,173	1,508
Tennessee	$83,457	$25,904	10,745
Texas	$88,146	$29,437	29,715
Utah	$94,943	$29,626	2,700
Vermont	$112,221	$36,910	966
Virginia	$104,162	$31,834	10,778
Washington	$105,451	$32,896	8,546
West Virginia	$84,236	$24,760	3,720
Wisconsin	$110,977	$40,804	8,675
Wyoming	$72,649	$22,376	812
Total United States	*$96,808*	*$30,577*	*436,330*

(a) Sales price of an entry level new home as measured by the average sales price of new homes purchased in 1995 with FHA insurance.

(b) Minimum household income necessary to purchase the entry level home in column (a). Income needed is based on financial qualifications rules that limit

Kansas Association of REALTORS®

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TO: THE HOUSE UTILITIES COMMITTEE

FROM: KAREN FRANCE, DIRECTOR, GOVERNMENTAL AFFAIRS

DATE: FEBRUARY 5, 1997

SUBJECT: HB 2140, BUILDING ENERGY EFFICIENCY STANDARDS

Thank you for the opportunity to testify. The Kansas Association of REALTORS® strongly supports the legislation presented for your consideration.

The bill actually presents two issues. The first issue is whether the state should be in the business of dictating the level of energy efficiency new homes have. The second issue is what that standard should be and how it should be enforced

Issue #1 Should the state be in the business of dictating the level of energy efficiency new homes have? We feel the answer to this question is no.

Under a new requirement that went into effect last year for single family homes, our members must now disclose information to prospective purchasers about the possible presence of lead-based paint in all homes built prior to 1978. This disclosure takes on a multi-part process.

First, the agent must ascertain, either from the seller or public records whether the house was built prior to 1978. If it was, the agent must get the seller to sign off on a form disclosing whether or not they know whether they have any actual knowledge of lead-based paint hazards in the house and whether they have any record or report pertaining to any lead-based paint hazards in the house. If the house was built prior to 1978, they must provide prospective purchasers with the EPA pamphlet titled "Protect Your Family from Lead in Your Home" and a copy of the disclosure signed by the seller prior to the prospective purchaser becoming obligated to purchase the property. The purchaser then, must be provided a 10 day period (or lesser time if the parties mutually agree) in which to have testing done. If lead is found and the purchaser is concerned, the seller and buyer can agree how to handle the problem. This is all done by placing a contingency clause in the sales contract.

You ask, what does this have to do with Model Energy Codes? I explain this process to you to make a contrast to what government already requires in the name of the protection of the public. The opponents of this legislation have tried to soft peddle the severity of the requirements adopted by the KCC. They have pointed out that compliance is "voluntary" and a builder has 6 ways to comply and then only has to disclose if the requirements are not met.

Now, back to lead based paint. The only ways that I have been able to overcome my members'

House Utilities

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Attachment 4

frustration at carrying out the heavy burdens of the disclosure requirements is to point out that, first, this is a safety concern. There are many well-documented studies which show the harmful effects lead based paint can have on children over time if ingested either through the air or mouth. The effects can be anything from reduced learning capacity to convulsions. No one wants children damaged in this way. Second, if the EPA had their way, they would have **required** that every property be tested and remediated prior to sale. My members know what a mess that could be in the process of trying to sell homes. Third, I point out that if they do not make sure all of these steps are complied with, they can be liable for **three times the actual damages** awarded to anyone found to have been damaged by lead based paint. This information seems to provide the encouragement necessary to carry out their responsibilities.

The MEC 93 requirements have nothing to do with the safety of the public, let alone the endangerment of children. Yes, it could be worse because, if many of the persons you heard from last week had their way they would have mandatory compliance, much like the EPA wanted mandatory testing and remediation for lead based paint. Third, there are no real penalties for non-compliance—yet. Unless you count the penalties incurred by a builder who built a house last October and doesn't yet have full utility hook up and now is faced with either disclosing non-compliance and reducing the potential value of the property he built or trying to comply by going back and adding all of the requirements of the MEC.

Or maybe you could look at the penalties this has on the homebuyer. Much of the testimony last week was centered upon how great it is for home buyer for the state to have these "minimum standards". Is it great for me as a home buyer to increase the cost of for my family to get into our dream home? The number generally thrown around is that it would **only** add $1,300 to the price of an average home and that would be amortized over the life of a 15 year or 30 year loan. Allegedly, this would only add $9.54 to the monthly payment—what a bargain! Until you look more closely. According to one of my members who specializes in selling new homes in the $80-$85 thousand dollar range, the purchaser would have to show additional income of $30-$35 per month in order to qualify for a mortgage increased by $1,300. How many home buyers in your communities who are buying in this price range could come up with that additional monthly income, on top of what they already have to have in order to qualify? Additionally, it is said these homes would save $15 per month in utility bills. That is only half the additional amount of monthly income needed to qualify for the mortgage in the first place.

The threat that home buyers would not be eligible for favorable energy efficient mortgage financing appears to be overstated. An informal survey of my members who deal in new home construction indicates that neither the buying public is coming forward asking for more energy efficient homes qualifying for this kind of financing, nor are the lenders who are most active in the market coming to my members pointing out that they should build more energy efficient homes because the lenders had more favorable financing available, thus increasing the number of purchasers who would want to buy these home. As a matter of fact, the name of Capitol Federal Savings has been mentioned as a lender who has these more favorable term mortgages available for energy efficient homes. I visited with one of their top loan officers yesterday and he indicated he was not aware of an occasion when more favorable terms had been allowed just because the buyer alleged some energy efficiency in a home. He did not feel handing one of

these MEC 93 disclosure forms would encourage them to do so.

It may very well be that VA, FHA, FMHA or HUD programs may require certain standards in order to qualify for their mortgage programs. This is nothing new. These programs have always had different requirements than the private mortgage market, oftentimes more stringent requirements on the condition of the property and less stringent on the purchaser's financial ability. These requirements will continue, regardless of what the KCC or this legislature does.

ISSUE # 2 What should the energy standard be and how should it be enforced?

Energy efficiency is a market driven issue, not a safety one like the lead based paint issue. Why should the state be in the business of demanding some artificial level of energy efficiency, when the consumer can determine for themselves what level of energy efficiency they want and what level they can **afford.**

If you are really concerned about protecting the public, why give consumers a false sense of security? The professionals who build homes have or will provide you with evidence that CABO MEC93 does not necessarily deliver the benefits promised. The professionals who oppose this legislation are those who stand to benefit from the sale or installation of these products. If the professionals who build homes believed that either the market demanded the kind of efficiency alleged to be delivered here or they believed themselves that it was necessary, they would need no government mandate. Evidently, we have neither case here.

If, in fact some sort of energy codes must be adopted, why does the state have to be the one enforcing this, why not leave it to local communities to determine this issue? Testimony presented last week indicated the City of Hays has done so. Time and time again we hear during the property tax lid debates that the state should return "local control" to the cities and counties. Legislators are urged to let the elected officials make their own decisions for their communities and the electorate can vote them out if they do not like it. What is affordable in some communities is not affordable in other communities. Why should the state be deciding this?

Finally, the forms approved by the Commission place additional requirements which far exceed anything mentioned in the Order. The KCC Order dated January 24, 1997 provides in paragraph (6) that "Certification of both residential and commercial structures shall be made on forms approved by the Commission. The utility responsible for enforcement shall, in each case, retain certification and non-compliance forms with the accompanying documentation for three (3) years."

There is no mention in the Order of any requirement for builders to notify prospective purchasers or "any agent offering the house for sale for the first time" to provide the non-compliance form. More important, the Order makes no mention of any requirement that the non-compliance form be attached to and recorded with the deed. Yet in the 2nd and 3rd paragraphs of the "Declaration of Self-Exemption and Non-Compliance" form the KCC has taken it upon themselves to go beyond their own order and adopt these overly burdensome

requirements.

How are we to know on which properties the declaration should be provided? I return to my earlier example of a house that was built in October but sold in February. Do we look to the day the house was permitted, the day it was started, the day the utilities were hooked up, or when the sale occurs? What if the house was under contract before the January deadline, but that contract didn't close and it has to be put back on the market? Do we go back and get a declaration signed? What have we done to the marketability of a home if we inadvertently get and present a declaration for a home that we later find out didn't need one? What have we done to the builder businessman who built the house in good faith, only to have this Order kick in a somewhat *ex post facto,* or after the fact method?

A deed is a legal instrument that conveys ownership or title to an interest in real estate from a grantor to a grantee. By historical tradition, deeds address certain basic necessities such as the names of the grantor and grantee, consideration, words of conveyance, a statement of the interest conveyed, and a description of the real estate. Deeds are not to be weighed down with issues of what energy efficiency codes may or may not have been met. Not even safety compliance issues would be put in the deed. Why would a reference on a deed regarding what the utility bills may or may not be, be included?

Additionally, the requirement that this be recorded with the deed puts our members, as well as any attorney or title company at risk when they perform a closing and prepare the paperwork necessary to effect a transfer of title. By having this requirement on this form, you put these people in the precarious position of preventing a transfer to occur on time, just to verify whether or not this declaration was required. Delays in closing cause problems for lenders, buyers and sellers. And for what? The misplaced belief that the adoption of MEC 93 will guarantee some level of utility cost savings? Does this make sense?

In closing, we ask you to examine what has occurred on this issue, the rationale behind it and the enforcement method adopted. Government cannot do everything for everyone. This picture of government does not look like the kind of message we need to be sending to either the building industry or the buying and selling public. It brings to mind the old joke about the man who knocks on the door and when the door is answered the man announces, "Hi, I'm from the government, I'm here to help." We urge your support of this legislation.

State of Kansas

Residential Building Energy Efficiency Compliance Certification Form

Declaration of Self-Exemption and Non-Compliance

Date: _____

_____, builder of record of the residential dwelling unit known as _____ hereby exercises his or her right to exempt said residential building from all requirements of the Kansas Corporation Commission's residential building energy efficiency standards, as set forth in the Commission's order in docket number 190,381-U.

Said builder hereby acknowledges that such home may not qualify for certain current and future federal mortgage programs, including those promoted by the Veterans Administration, Federal Housing Authority and Farmers Home Administration, and Housing and Urban Development agencies. Builder also acknowledges that such home may use more energy, and may therefore experience higher electric and/or natural gas utility bills, than a home constructed to meet the Commission's adopted energy efficiency standards.

Said builder also certifies that a signed copy of this form will be provided to the buyer or any agent offering said house for sale for first time occupancy, and that all such agents shall be instructed to provide a copy of this form to all prospective home buyers prior to acceptance of any offer to purchase said dwelling unit. Said builder further certifies that a copy of said form shall be attached to and made a part of the recorded Deed for said property at the time of sale.

_____ _____
Builder Date

_____ _____
Owner Date

Return this form to your local utility

State of Kansas

Residential Building Energy Efficiency Compliance Certification Form

(To be completed by builder)

Builder: _____

Building Address: _____

City: _____

The above builder certifies that the new residential building constructed at the above address either (check the appropriate block):

1) Does not meet the energy efficiency requirements of CABO MEC93 _____

Attach builders disclosure form with owners signature.

– or –

2) Does meet the energy efficiency requirements of CABO MEC93 _____

Verify compliance method below:

a) Building is designed and constructed to CABO MEC93 (attach documentation such as NAHB consolidated worksheet) _____

b) Building is designed and constructed using prescriptive requirements table for the applicable climate zone (attach table and circle selected building components) _____

c) Building is designed and constructed using one of the trade off compliance options (attach compliance option sheet and circle selected option) _____

d) Building is designed and constructed using MECcheck software (attach printout of MECcheck evaluation sheet) _____

e) Building energy performance is verified by a qualified HERS rating equivalent to CABO MEC93 (attach HERS documentation) _____

f) Building complies to energy efficiency of CABO MEC93 by detailed system analysis method, per CABO MEC93 chapter 4 regardless of the use of renewable energy sources (attach documentation) _____

Builder's Signature/Date _____ / _____

Return this form to your local utility