Approved: 2-7-97
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES.

The meeting was called to order by Chairperson Don Sallee at 8:09 a.m. on February 4, 1997 in Room 254-E of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Linda Bradley, Committee Secretary

Conferees appearing before the committee: Ron Burton, Assistant Staff Vice-President of Home Builders - Washington D. C.
Carolyn Hall, Consumer Advocate - KC
Karen Franze, Kansas Association of Realtors - Topeka
Jim Dehoff, AFL-CI0 - Topeka
Charles Benjamin, Kansas Sierra Club and Kansas Natural Resources Council

Others attending: See attached list

Chairperson Don Sallee called the meeting to order.

The Committee heard both proponents and opponents on **SB 74**, which concerns building energy efficiency standards.

Ron Burton's testimony was as a proponent. See (Attachment 1).

Carolyn Hall spoke for Maxine Taylor, a homeowner from Belton, Missouri, formally from Kansas, as an opponent. See (Attachment 2).

Karen Franze's testimony was as a proponent. See (Attachment 3).

Jim Dehoff's testimony was as an opponent. See (Attachment 4).

Charles Benjamin's testimony was as an opponent. See (Attachment 5).

The meeting adjourned at 8:59 p.m.

The next meeting is scheduled for February 5, 1997.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

SENATE ENERGY & NATURAL RESOURCES COMMITTEE GUEST LIST

DATE: February 4

NAME	REPRESENTING
DAVID B SCHROSSER	PETE McGILL & ASSOC
Larry Holloway	KCC
Jim Ploger	KCC
George Barbee	Barbee & Assoc
Jerry Nettman	Topeka Home Builders Assn.
Mike Penny	Topeka Home Builders Assn.
Mark McCrory	Topeka Home Bldrs assn.
Eric Mian	Stryker Co.
Lynn Satzler	Stryker Co.
Frank Weitham	Topka Home Builders Assc.
M.S. Mitchell	KBIA
Charles Cottrell	NAHB - Washington DC
Ron Burton	NAHB - "
Debbie Brown	Crosby Inc. Realtors
Karen Francl	Ks. Assn. of REALTORS
Robin Lehman	Lawrence Home Builders Assn.
Cita McGee	Pete McGee & Associates
Charles Ricklefs	USDA Rural Development

SENATE ENERGY & NATURAL RESOURCES COMMITTEE GUEST LIST

DATE: _____

NAME	REPRESENTING
Tom Bruno	Allen & Assoc.
Janet Stubbs	KBIA
Jim Allen	KBIA
Charles Benjamin	KNRC/KS Sierra Club
Dave Holtzman	Western Resources
Martha Lou Smith	KMHA
Ramey Speaker	KDOCH
Stan Butler	KDOCH

NAHB
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TESTIMONY BEFORE THE ENERGY AND NATURAL RESOURCES COMMITTEE OF THE KANSAS STATE SENATE
Concerning Senate Bill No. 74

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 Senate Bill No. 74.

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 testifying before a committee of building officials that decide on the content of the code. We are not always

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Attachment 1

su ful 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 S.B. 74, 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 households 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 S.B. 74. 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 buyer purchasing a home from a builder who chooses to offer homes qualifying under FHA, VA or other federal

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 S.B. 74 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.

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

2/4/97
Senate Bill 74

At a prior hearing it was stated that senior citizens do not purchase new houses. I am here to tell you that they do. It is a different world today. Life expectancy is much greater than in the past and senior citizens are more mobile than ever. We are moving everywhere and buying new homes whether it is a single family residence as in my case or a condo or a patio home.

I recall about 10 years ago that Olathe did away with the requirement that tar paper be placed under composition shingles. A number of new homes were built without that amenity. I also recall that within a fairly short time a lot of roofs were leaking and a big flap ensued.

As a former Kansas resident, I moved to Missouri after 2 really sour experiences with the purchase of new houses. In the first case it was as if the construction crew was unable to do any job correctly--for example, a full length window was installed behind the kitchen sink and the wrong type of siding was put on the entire house. In the second instance an engineer that I hired told me that no house should have been constructed in the area in which mine was located.

There are many unscrupulous and unethical builders today. Even a lawsuit or the threat of a lawsuit does not cause them to respond to a home owner's complaints. At the present time there seems to be no way to hold them accountable for slip-shod building practices.

I sincerely believe that if the Model Energy Standards are done away with in the State of Kansas, the purchaser of a new home will be placed in a more precarious position than they are already in today.

I also believe that a domino effect will be created with other states soon following the same path. I do not want to sound like "Chicken Little" but it is possible that the items covered by the Energy Standards will be offered to the buyer of a custom built home as "extras" and will be largely omitted from the "spec" houses they build.

Thank you for your time and attention,
Maxine Taylor

Energy & Natural Resources
February 4, 1997
Attachment 2

Kansas Association of REALTORS®

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TO: THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

FROM: KAREN FRANCE, DIRECTOR, GOVERNMENTAL AFFAIRS

DATE: FEBRUARY 5, 1997

SUBJECT: SB 74, 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'

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Attachment 3

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.

Kansas AFL-CIO

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Testimony Presented to
Senate Energy & Natural Resources Committee
Senate Bill 74
January 28, 1997
by
Jim DeHoff

Mr. Chairman & Committee Members:

I am Jim DeHoff, Executive Secretary of the Kansas AFL-CIO. I appear before you today to urge you not to pass SB 74, which removes the regulatory authority of the Kansas Corporation Commission concerning energy standards.

The Kansas Corporation Commission has regulated building energy standards since 1977. The basic purpose of these standards is to require homebuilders to certify to utilities that homes meet minimum energy standards before electric service is connected. After twenty years, it is rather late in the game for the argument to be used that the KCC is an inappropriate place for this authority.

The only **real** purpose of this bill is to totally exempt home builders from any obligation to comply with any form of residential energy standard. It would be up to the contractor how much insulation to use or even whether to use it at all. The regulation by the KCC affords the consumer the only real guarantee that a home they are buying is truly energy efficient. In addition, studies have shown that homes built under the code required by the KCC, are more affordable. Increased building costs are more than offset by savings in energy costs to the homeowner, making the overall housing cost lower to the consumer.

We urge you to recommend SB 74 unfavorable for passage.

Thank you
Jim DeHoff
Executive Secretary-Treasurer

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Attachment 4

4-1

Testimony of
Charles Benjamin
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Kansas Natural Resource Council
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935 S. Kansas Avenue, Suite 200
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Senate Bill 74
Senate Committee on Energy and Natural Resources
January 28, 1997

Thank you for the opportunity to express strong opposition to this proposed bill. This bill sets the wrong policy and sends the wrong message about efficient energy usage and the conservation of our natural resources. It is a sham to argue that this is a de-regulation bill or a bill that reduces regulation.

The real purpose of this bill is to totally exempt home builders from any obligation to comply with any form of residential energy standard, unless it is done locally, a circumstance that exists in very few areas of the state. It places home buyers in the position of "buyer beware." There are many competent and responsible home builders in Kansas, for whom buyers should not have to beware. Such builders probably already meet the standard and the KCC has simplified the process in its order of 1/23/96 so that the time and paperwork is insignificant. But for the home builder who lacks knowledge or is unscrupulous, this bill simply allows them to pick the consumer's pocket.

The KCC first adopted basic building thermal standards in 1977. Energy standards for buildings make good sense. Today's buildings will last well into the future and it is important to recognize that the cost and availability of energy in the future may be very different from what it is today. Energy efficiency is much more cost effective when placed in buildings at the time of construction rather than trying to retrofit buildings some years later. The KCC order thus represents a very conservative strategy. It is also a strategy that will provide greater security to home buyers by informing them that homes meet minimal standards. It is also important to point out that homeowners who certify to a utility that a home does not meet the standards may still obtain utility service. In other words, the KCC order allows a builder to persuade a willing home buyer that compliance with the energy efficiency codes is not necessary.

There are secondary benefits to the KCC order. These include a reduced need for power plants, reduced pollution, and reduced risk from future energy price spikes. It is estimated that compliance with the Model Energy Code in the first year will save nearly 70 billion Btu's of energy, and thus prevent 3,200 tons of carbon dioxide, sulfur dioxide, nitrogen dioxide and particulate matters from entering the atmosphere. The Commission's order is simply good public policy and makes good sense for the individual building owner.

Kansas ranked 26th in energy consumption in 1993, consuming 1.1 quadrillion Btu's of energy. 18% of that total went to residential buildings, and 16% went to commercial buildings.

21% of new home sales in Kansas in 1993 were financed with federally financed or guaranteed mortgages. Federal mortgages through the VA, FHA, or FmHa require compliance with the Model Energy Code

It is true that compliance with the Model Energy Code might increase the construction costs of a new 1,900 square foot home by about $1,300. That translates into a monthly mortgage payment increase of about $8 to $10. But the estimated cost savings in energy for the first year alone are $174. In the fourth year of payments, the average single-family home owner in Kansas would have saved more money than was expended, and the savings would continue to grow after that time.

Should this bill pass, housing affordability in Kansas would actually decrease because new construction would not automatically qualify for Federal loan guarantees. Buyers in Wichita and Topeka, for example, can get mortgage

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guarantee insurance from the FHA with $2000 less annual income under the current KCC regulation than the annual income he or she would need if the bill passes. Federal mortgage requirements are "stretched" in the debt ratio allowed if the home meets the Model Energy Code. Separate analyses by Pacific Northwest Labs and The U.S. Energy Department show that the requirements of the Model Energy Code result in positive cash flow for the home buyer. The value of energy savings exceeds the increased principal and interest payments. Compliance with the Model Energy Code makes housing more affordable, not more expensive.

The first clause in the bill removing the Commission's authority to adopt commercial building standards in areas that adopt building codes that have equivalent standards is largely irrelevant. The Commission's order on this subject clearly spells out a similar intent. Paragraph seven of the 1/23/96 order states: "Jurisdictional utilities may request that the Commission release them from their enforcement obligation in areas where local building code authorities have in effect energy codes that meet or exceed the thermal efficiency standards and enforcement provisions adopted by the Commission."

The existing regulations are far too complex and it is questionable whether they are always honored. The KCC order notes that the existing standard is actually somewhat stricter than the new Model Energy Code would be for buildings around 2,500 square feet. The big advantage of the Model Energy Code is that it can be much more quickly and easily understood by builders and buyers. Additionally, there are multiple ways to determine if a home meets the requirements.

The KCC order is very flexible. The builder does not even need to comply. The builder can exempt himself by signing a form that says the building does not meet the Model Energy Code and that the home buyer may have difficulty with certain federal mortgage programs. That disclosure simply states the truth. What are the home builders afraid of? Do they want the ability to say that their homes are energy efficient when in fact they are not?

There are five ways in the KCC order for a builder to comply. There are three sets of criteria in each of Kansas' five climate zones. This alternative includes options to trade thermal efficiencies among various components of a home. A builder can use the Model Energy Code's computer software developed by Pacific Northwest Laboratory for the U.S. Department of Energy. A builder can obtain a satisfactory rating by an approved Home Energy Rating System which is equivalent to compliance with the Model Energy Code. This is the most market driven approach and the best long term strategy for achieving the level of efficiency the home buyer wants to invest in.

How does a home buyer know whether or not to believe the ads she sees that says a home is energy efficient? Unless there is a way to measure these basic levels of efficiency, there is no real way for consumers to make valid comparisons. Unless buyers have enough information to make informed choices then the free market system cannot work. The KCC order provides basic information to the buyer and sufficient flexibility for the builder. While the current rule could be stronger, to repeal even this modest effort at protecting consumers would be unconscionable.

It is my understanding that the KCC plans a series of educational workshops to inform builders of the order and how to achieve compliance. We fully support such educational endeavors.

Finally, it is necessary to point out that legislative reversal of this policy would be an unwise interference with the KCC. It this bill passes, it would be historically unprecedented. There is no previous legislation to my knowledge that reverses a KCC decision made following an evidentiary hearing. The Commission conducted both a technical hearing and a public hearing. All points of view were considered, including that of the main proponent of this legislation. KNRC intervened in the KCC hearing Our witness was Russ Rudy who has conducted energy audits on more than 500 Kansas homes. He showed the Commission and the House Committee photos of leaky homes even in the upper price brackets.

There comes a time when an issue has been resolved by the body best able to consider and weigh the evidence. The quasi-judicial administrative proceedings of the KCC are the best place to resolve this issue. This bill, if passed, would represent a major insult to the deliberative processes of a major independent state agency.