

Approved: April 2, 2003 Carl Dean Holmes
Date

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:08 a.m. on February 10, 2003 in Room 526-S of the Capitol.

All members were present.

Committee staff present: Mary Galligan, Legislative Research
Dennis Hodgins, Legislative Research
Mary Torrence, Revisor of Statutes
Jo Cook, Administrative Assistant

Conferees appearing before the committee:
Charles Benjamin, Sierra Club
Bruce Snead
Tom Day, Kansas Corporation Commission

Others attending: See Attached List

HB 2131 - Update of energy efficiency standards for new commercial and industrial buildings

Chairman Holmes opened the hearing on **HB 2131**.

Charles Benjamin, appearing on behalf of the Sierra Club, testified in support of **HB 2131** (Attachment 1). Mr. Benjamin stated they urged the committee to find any way possible to assist the state with energy efficiency options and upgrades in order to cut utility bills and decrease air pollution and greenhouse gases.

Bruce Snead, a member of an External Committee for the State Energy Resources Coordination Council (SERCC), spoke to the committee as a proponent of **HB 2131** (Attachment 2). Mr. Snead stated that this bill was a result of the SERCC's meetings and was one of their requests outlined in the Kansas Energy Plan 2003.

Tom Day, Legislative Liaison for the Kansas Corporation Commission, addressed the committee in support of **HB 2131** (Attachment 3). Mr. Day, on behalf of the Commission's Energy Programs Division, stated that a number of Kansas jurisdictions were in the process of adopting the new guidelines for their local energy building codes and the state should be leading the way.

Gene Meyer, Extension Mechanical Engineer with Kansas State University, provided written testimony in support of **HB 2131** (Attachment 4).

Mr. Benjamin, Mr. Snead, and Mr. Day responded to questions from the committee. Copies of the statute in question were distributed for clarification (Attachment 5).

Chairman Holmes closed the hearing on **HB 2131**.

Tom Day distributed two documents in response to a request by the committee for information. The first document was on broadband services in Kansas as of December 31, 2002 and the second was a memorandum from Janet Buchanan, Chief of Telecommunications, with the tariffs setting out rates for physical and virtual collocation as established through a Stipulation and Agreement approved by the Commission in Docket Number 00-SWBT-733-TAR. Copies of these documents are available from Kansas Legislative Research Department or the Kansas Corporation Commission. Mr. Day responded to questions from the committee.

Chairman Holmes opened discussion regarding the upcoming debate on **HB 2019** and asked the committee to comment if they were planning to present amendments. Representative Myers stated he would be presenting amendments. Representative Sloan distributed a memorandum (Attachment 6) detailing his proposed amendments. Representative Neighbor indicated she would be offering a resolution as a possible substitute. Representatives Dillmore and Kuether also indicated they had amendments to offer.

The meeting adjourned at 10:15.

The next meeting will be Tuesday, February 11, 2003 at 9:00 a.m.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 10, 2003

| NAME | REPRESENTING |
|------------------|------------------------|
| Tom Day | KCC |
| George Barber | KS Consul Engns |
| Trudy Anon | AIA |
| MARK SCHREIBER | Westar Energy |
| Dave Holthaus | KEC |
| BRUCE SNEAD | SERCC - EUROPEAN COMM. |
| Bob Jayroc | SBC |
| Brett Sayre | SBC |
| Bruce Graham | KEPG |
| Cyril Comtr | GPE |
| Charles Benjamin | Sienna Club |
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Charles Benja

Kansas House Committee on Utilities

February 10, 2003

Testimony on HB 2131

By

Bill Griffith

Kansas Chapter of the Sierra Club

Thank you Mr. Chairman and members of the Utilities Committee for the opportunity to give testimony on behalf of HB 2131 which adopts the updated standards for thermal efficiency of ASHRAE/IESNA. This legislation will update the standards in this state for the first time in over ten years. Given the upgrades in technology since 1989 this will allow Kansans to obtain better efficiencies in energy in their homes and businesses. We would also like to offer our support for the proposed amendment Mr. Snead is offering. This amendment would allow the standards to be implemented in the best way possible.

Energy efficiency is the least expensive form of energy. Many studies have stated that the costs of efficiency upgrades cost far less money than building new power plants or the cost of electricity, natural gas, or propane. With the volatility of natural gas expected to continue over the next decade energy efficiency is a logical and intelligent choice whenever it can be implemented or encouraged.

We would encourage the House Utilities Committee to further investigate where it might be possible to assist our state with energy efficiency options and upgrades in order to cut utility bills and decrease air pollution and greenhouse gases. Thank you.

HOUSE UTILITIES

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ATTACHMENT **1**

**Utilities Committee
Kansas House of Representatives
Written Testimony of Bruce Snead
February 10, 2003**

HB 2131

Kansas Building Energy Codes and Proposed Amendment to HB 2131

The recently released *Kansas Energy Plan 2003*, developed by the State Energy Resources Coordination Council under the leadership of Dr. Lee Allison, included a specific recommendation regarding Kansas building energy codes, stating:

Update 1989 energy efficiency standards with ASHRAE 1999 standards for all new construction (ASHRAE – American Society of Heating, Refrigeration and Air Conditioning Engineers).

The House Committee on Utilities, of which you are a member, has introduced House Bill No. 2131, which aims to implement this recommendation.

At Dr. Allison's request, I had the privilege of serving on the External Committee, which assisted the Council regarding renewable energy and energy efficiency topics. Dr. Allison and the entire Council should be congratulated for accomplishing so much with incredibly limited time. Such a tight schedule inevitably means there will be items that need additional refinement as we move forward with implementation. Only about a week ago I suggested to Dr. Allison that we should consider moving forward from the 1999 version of ASHRAE/IES Standard 90.1 to the 2001 edition and I note HB 2131 reflects this. Since then I have had the opportunity to learn more about the current status of energy codes and their integral relationship with commercial and residential building codes being adopted at the local level in Kansas. Local adoption provides the most effective method of implementation.

In the early 1990's the three major model code organizations merged, forming the International Code Council. By the late 1990's the old model codes were no longer being updated, having been replaced by the new series of International Codes. A single code series for most issues reduces the regulatory burden on the entire building design and construction community, including architects, engineers, contractors, and code officials. As individual communities adopt the International Building Code for commercial buildings, and the International Residential Code for residential buildings most also adopt the International Energy Conservation Code (IECC). This was done in the City of Manhattan. The current 2003 version of the IECC, an evolution of the 2000 version, went to printers last month. Bill Wall with the International Council of Building Officials has graciously helped acquire prepublication copies for review, although the contents are quite well known from online resources. The commercial provisions of the IECC offer two compliance options. Chapter 7 simply says comply with ASHRAE/IES Standard 90.1, which is defined in Chapter 9 as the 2001 version, the same as proposed in HB 2131. Chapter 8,

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Design for Acceptable Practice for Commercial Buildings, provides a somewhat simplified set of requirements that are particularly appropriate for smaller buildings. I think it would be beneficial to make the state requirement consistent with what is happening at the local level. I would therefore like to recommend you consider offering a friendly amendment to HB 2131 along the following:

66-1227

Chapter 66.--PUBLIC UTILITIES
Article 12.--MISCELLANEOUSPROVISIONS

66-1227. Thermal efficiency of buildings; standards. (a) ~~The American Society of Heating and Air Conditioning Engineers/Illuminating Society of North America 1989-90-1 Standard or Code (ASHRAE/IES 90.1-89)~~ **International Energy Conservation Code 2003 (IECC 2003)** is hereby adopted as the applicable thermal efficiency standard for new commercial and industrial structures in this state.

(b) The state corporation commission has no authority to adopt or enforce energy efficiency standards for residential, commercial or industrial structures.

(c) Nothing in this section shall be construed to preclude a city or county from adopting or enforcing thermal efficiency standards for structures within the jurisdiction of such city or county.

The Council's recommendation states "all new construction." ASHRAE/IES Standard 90.1 does not address low-rise residential buildings while the IECC does. I would therefore hope the committee would also consider modifying K. S. A. 66-1228 as follows.

66-1228 (proposed revision)

Chapter 66.--PUBLIC UTILITIES
Article 12.--MISCELLANEOUSPROVISIONS

66-1228. Same; disclosures required on sale of new residence; exception. (a) Except as provided by subsection (b), the person building or selling a previously unoccupied new residential structure shall disclose to the *prospective* buyers information regarding the thermal efficiency of the structure on a form prepared and disseminated by the state corporation commission, which form shall be substantially as follows:

"ENERGY EFFICIENCY DISCLOSURE

This residence (mark one of the following):

- _____ 1. *Has been built to meet the energy efficiency standards of the International Energy Conservation Code 2003 or receives a Home Energy Rating score of 80*

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or greater when performed in accordance with the Mortgage Industry National Home Energy Rating System Accreditation Standard by a rater certified and listed by the Residential Energy Services Network (RESNET).

_____ 2. Has been built to include the following energy efficiency elements:

.....(existing statute language.)

This language incorporates three changes:

- 1) It moves from the Model Energy Code 1993 (MEC 1993), to its successor, the International Energy Conservation Code (IECC 2003). The MEC is no longer being updated.
- 2) It adds a provision permitting the use of the Home Energy Rating System (HERS) to determine compliance. The HERS program is a performance based market oriented approach to matching a home's energy performance with a buyer's expectations. A HERS provision like this was included in the simplified residential energy code compliance method based on the IECC 2000 developed by the Johnson County Building Officials and being adopted by many jurisdictions in Johnson County.
- 3) When the legislature worked on the issue of residential building codes in 1997 the solution they implemented was market oriented. Inform the consumer and let them decide. Unfortunately the form describing a home's energy performance characteristics typically shows up at closing, almost always to late to play a role in the homebuyer's decision making. The proposed language above would require disclosure of the information to prospective home buyers, an approach that seems consistent with what I believe was the original intent.

Energy policy is a broad and complex topic. There is much work yet to been done. But I think the Council has gotten us off to a very good start and I want to emphasize that my suggestions are offered in a positive spirit with the intent of supporting and building on the Council's initiative. I would be pleased to answer any questions or dialogue on these issues.

Bruce Snead

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INTERNATIONAL ENERGY CONSERVATION CODE®

2003

2-4

2003 International Energy Conservation Code®

First Printing: January 2003

ISBN # 1-892395-68-1 (soft)
ISBN # 1-892395-67-3 (loose-leaf)
ISBN # 1-892395-85-1 (e-document)

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CHAPTER 7

BUILDING DESIGN FOR ALL COMMERCIAL BUILDINGS

SECTION 701 GENERAL

701.1 Scope. Commercial buildings shall meet the requirements of ASHRAE/IESNA 90.1.

Exception: Commercial buildings that comply with Chapter 8.

REFERENCED STANDARDS

ARI—continued

| | | |
|----------------|---|------------------|
| 560—92 | Absorption Water Chilling and Water Heating Packages | Table 803.3.2(2) |
| 13256-1 (1998) | Water-source Heat Pumps - Testing and Rating for Performance - Part 1: Water-to-Air and Brine-to-Air Heat Pumps | Table 803.2.2(2) |

ASHRAE American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.
1791 Tullie Circle, NE
Atlanta, GA 30329-2305

| Standard reference number | Title | Referenced in code section number |
|---------------------------|---|--|
| 136—1993 (RA 2001) | A Method of Determining Air Change Rates in Detached Dwellings | 402.2.3.9 |
| 146-1998 | Testing and Rating Pool Heaters | Table 804.2 |
| 13256-1 (1998) | Water-source Heat Pumps - Testing and Rating for Performance - Part 1: Water-to-Air and Brine-to-Air Heat Pumps | Table 803.2.2(2) |
| 55—1992 | Thermal Environmental Conditions for Human Occupancy | 202 |
| 90.1—2001 | Energy Standard for Buildings Except Low-Rise Residential Buildings | 701.1, 801.2, 802.1, 802.2 |
| ASHRAE—1999 | ASHRAE HVAC Applications Handbook-1999 | 504.2.2 |
| ASHRAE—2001 | ASHRAE Fundamentals Handbook- 2001 | Table 302.1, 402.4.2, 502.2.1.1.2, 502.2.2, 503.3.1, 803.2.1 |
| ASHRAE—2000 | ASHRAE HVAC Systems and Equipment Handbook-2000 | 503.3.1, 803.2.1 |

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Tom Day

Kansas Corporation Commission

Kathleen Sebelius, Governor John Wine, Chair Cynthia L. Claus, Commissioner Brian J. Moline, Commissioner

**Utilities Committee
Kansas House of Representatives
Written Testimony of the Kansas Corporation Commission Staff
February 10, 2003**

HB 2131

Chairman Holmes and members of the Committee. I am Jim Ploger, manager of the Kansas Corporation Commission's Energy Programs Division.

Unfortunately, I am in Washington, DC, for the National Association of State Energy Officials (NASEO) Energy Outlook Conference this week and cannot be with you in person.

I want to convey my appreciation for the leadership and work of the State Energy Resources Coordination Council (SERCC) and its Chair, Dr. Lee Allison, and Vice Chair, John Wine.

One of the three priorities selected by SERCC for the 2003 Kansas Legislative Session was to bring the State of Kansas into modern energy codes compliance. House Bill 2131, introduced by the Committee, is a good faith effort to do just that.

The KCC Energy Programs involvement in promoting progressive energy building codes and standards during the past several years has been routinely recognized by the United States Department of Energy's Building Energy Codes Program, administered by the Pacific Northwest National Laboratory in Richland, Washington.

As a result of this leadership, Kansas has received over a \$1 million dollars of federal aid during the past 6 years to help educate the building community and public on the value of energy efficient residential and commercial buildings. Dozens of workshops and hundreds of builders, engineers, architects, and building code officials during the past several years have benefited from our educational activities.

As in many areas in today's fast moving world, building codes and standards are also changing fast. The "state-of-the-art" energy codes, coming off the press yet this month, is the 2003 International Energy Conservation Code.

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A number of Kansas jurisdictions, lead by communities in Johnson County, have or are in the process of adopting the IECC as their guidelines for energy building codes.

As suggested by energy efficiency experts at Kansas State University here today, I encourage you to consider the adoption of the IECC 2003 to make Kansas a leader in constructing efficient buildings.

Our office looks forward to our continuing role in providing leadership in the area of education and training of the citizens of Kansas in the art of building energy efficient structures.

Thank you for your consideration.

**Utilities Committee
Kansas House of Representatives
Written Testimony of Gene Meyer
February 10, 2003**

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HB 2131

Chairman Holmes and members of the Committee. I am Gene Meyer, Extension Mechanical Engineer with Engineering Extension of Kansas State University. Unfortunately, I am out of the state on February 10 so can only provide you with this written testimony.

The State Energy Resources Coordination Council is to be applauded for what was accomplished, especially in the brief time available. Recognition of the role building energy performance and conservation plays in Kansas' energy future is insightful and welcome. Modernizing building energy codes, while not assuring high performance buildings, will help raise the minimum performance of buildings while reducing the consumption of precious resources, delaying the construction of new power plants, and reducing associated emissions.

Kansas energy codes have evolved over the last several years. In 1997, the legislature adopted statutes requiring compliance with ASHRAE Std. 90.1 – 1989 for commercial buildings and either compliance with the Model Energy Code of 1993 or disclosure to the buyer the energy performance features of new homes.

ASHRAE Std. 90.1 – 1989 was written in the mid 1980s and represented a significant improvement over Kansas' lighting and thermal standards of the 1970s. The residential requirements, while not establishing true minimum standards, were intended to provide a market-driven approach by providing the new home buyer with information needed to make an informed decision.

In 1999, ASHRAE released a major revision to the standard that recognized and integrated advances made in lighting, heating, and air conditioning equipment and systems and removed requirements rendered obsolete by these advances.

During this same time, the three model building code councils joined to form a single code setting authority and released the International Code series including an updated energy code, the International Energy Conservation Code (IECC), for both commercial and residential buildings. The residential provisions of the IECC are similar to the older Model Energy Code but include advances in building technologies. The commercial provisions of the IECC provide two compliance paths for commercial building compliance. One path is to meet the requirements of ASHRAE Std. 90.1. A second path, often viewed as parallel to ASHRAE Std. 90.1, provides a less complicated but less flexible approach.

In 2000 and 2001, cities across Kansas reviewed the International Code series and many have adopted them. While some cities excluded the IECC 2000, others adopted it. None have adopted recent versions of ASHRAE Std. 90.1. A new version of the International

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Code series is being released in early 2003 with the IECC 2003 to be released in mid-February. Cities will begin the review and adoption process afresh in the coming months.

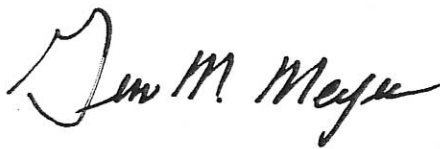
Amending House Bill 2131 to reference the IECC 2003 for commercial buildings will align state law with the direction being chosen by local communities while providing building design professionals with the flexibility of either ASHRAE Std. 90.1 – 2001 or the simplicity of the IECC 2003 rules.

The recommendation of the State Energy Resources Coordination Council was directed at “*all new construction*” but only addressed new commercial buildings. Revision of the current residential energy statute, K. S. A. 66-1228, to current codes would assist with their goal. Revisions to K. S. A. 66-1228 would update code references to energy codes that are being adopted by communities, provide the builder with greater flexibility in meeting energy codes should they choose to comply, and improve market-driven energy decisions by the consumer should the builder choose only to disclose the energy performance features. Proposed revisions include an update of the referenced standard to the IECC 2003, adding a Home Energy Rating of 80 or better as an option for compliance, and providing for disclosure of energy performance features to prospective buyers, not just the final buyer.

Energy codes are viewed by some in the building community as having no place in the code arena because they do not directly impact health and safety issues. However, the energy future of Kansas is in part controlled by the performance of the buildings we construct. The proposed revisions only update minimum standards, provide the builder of commercial and residential buildings greater flexibility, and empower the consumer with greater knowledge for making purchasing decisions.

As a mechanical engineer at Engineering Extension and having worked on energy code issues for many years, I encourage your consideration of these points in your deliberations on HB2131.

Cordially,

A handwritten signature in black ink that reads "Gene M. Meyer". The signature is written in a cursive style with a large, stylized initial "G".

Gene M. Meyer, P.E.
Engineering Extension
Kansas State University
ASHRAE member

(6) develop a statewide plan and program for alternative fueled motor vehicles.

(d) The commission may invite private sector representatives of energy production industry, motor vehicle manufacturing industry, public utility industry or such other persons who can provide information on alternative fueled motor vehicles to testify to or participate with the commission in exercising its duties.

(e) The commission shall make a report to the governor and the legislature on or before the first day of the regular legislative session of 1995. Such report shall include a report on the progress in obtaining the goals established in subsection (c). The commission shall make its final report and recommendations to the governor and the legislature on or before the first day of the regular legislative session in 1996.

History: L. 1994, ch. 212, § 1; July 1.

66-1227. Thermal efficiency of buildings; standards. (a) The American Society of Heating and Air Conditioning Engineers/Illuminating Society of North America 1989 90-1 Standard or Code (ASHRAE/IES 90.1-89) is hereby adopted as the applicable thermal efficiency standard for new commercial and industrial structures in this state.

(b) The state corporation commission has no authority to adopt or enforce energy efficiency standards for residential, commercial or industrial structures.

(c) Nothing in this section shall be construed to preclude a city or county from adopting or enforcing thermal efficiency standards for structures within the jurisdiction of such city or county.

History: L. 1997, ch. 132, § 17; May 8.

Source or Prior Law:
66-131a.

66-1228. Same; disclosures required on sale of new residence; exception. (a) Except as provided by subsection (b), the person building or selling a previously unoccupied new residential structure shall disclose to the buyer information regarding the thermal efficiency of the structure on a form prepared and disseminated by the state corporation commission, which form shall be substantially as follows:

"ENERGY EFFICIENCY DISCLOSURE

This residence (mark one of the following):

_____ 1. Has been built to meet the energy efficiency standards of the Model Energy Code of 1993

_____ 2. Has been built to include the following energy efficiency elements:

(1) Insulation values (R-value of insulation installed) for each of the following:

- Ceiling with attic above R-value _____
- Cathedral ceiling R-value _____
- Opaque walls R-value _____
- Floors over unheated spaces R-value _____
- Floors over outside air R-value _____

Foundation type:

- Slab-on-grade _____
- Crawlspace _____
- Basement and percent of basement walls underground _____

(2) Thermal properties of windows and doors for each of the following:

- Entry door(s) R-value _____
- Sliding door(s) R-value _____
- Other exterior doors R-value _____
- Garage to house door R-value _____
- Window U-value (determined from NFRC rating label or default table) _____

(3) HVAC equipment efficiency levels:

Heating systems:

- Gas fired forced air furnace AFUE rating _____
- Electric heat pump HSPF rating _____

Air conditioning systems:

- Electric unit SEER rating _____
- Electric heat pump EER rating _____
- Ground source heat pump EER rating _____

Duct insulation levels: Insulation R-value of ducts outside envelope _____

Thermostat:

- Manual control type _____
- Automatic set-back type _____

(4) Water heating efficiency levels:

- Water heater fuel type _____
- Water heater capacity _____
- NAECA energy factor _____

(b) If a structure is subject to both the national manufactured housing construction and safety standards act (42 U.S.C. 5403) and the federal trade commission regulation on labeling and advertising of home insulation, 16 CFR section 460.16, both as in effect on the effective date of this act, the builder or seller may disclose, instead of the information required by subsection (a), the information regarding such structure that is required to be disclosed pursuant to such federal act and regulation.

History: L. 1997, ch. 132, § 18; May 8.

Source or Prior Law:
66-131a.

66-1229. Utility bills, visually impaired or blind customers. On and after July 1, 2000, upon request of a visually impaired or blind customer, any provider of sewer, water, electric, gas or telephone service, or any provider of two or more of such services, whether public or private,

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 REPRESENTATIVE, 45TH DISTRICT
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TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENT
 CHAIRMAN: HIGHER EDUCATION
 MEMBER: UTILITIES
 ENVIRONMENT
 GENERAL GOVERNMENT &
 HUMAN RESOURCES
 BUDGET

February 8, 2003

To: House Utility Committee Members

Re: HB 2019 – Broadband Deployment

Conferees appearing before us during the eighteen hours of public hearings on HB 2019 have largely focused on telling us that the proposed removal of Kansas Corporation Commission oversight of SBC's broadband offerings is good for SBC and bad for CLECS. Both sides have implied that Kansans will benefit if "their" side prevails when we work the bill, *but no one guarantees that every Kansan will have access to broadband – whether we pass this bill or not.*

Candidly, I have struggled with this issue. In addition to the 18 hours of hearings, I have devoted at least that many hours rereading the testimony, doing additional research, exploring with the KCC staff where FCC-KCC responsibilities lie, repeatedly talking with many of the conferees, and calling the Federal Communications Commission (FCC) for additional help.

I remain frustrated that the focus has been on the companies involved and not, in my opinion, on Kansas consumers. Therefore, attached is an outline of a substitute bill that focuses on making broadband accessible to all Kansans. It is not "perfect," but it is offered in the interest of changing the focus from what is good for SBC, AT&T, Sprint, Birch, etc., to how do we avoid a permanent digital divide amongst our citizens. It also attempts to stimulate both investment and competition between providers and technologies. The substitute bill will not be acceptable to the conferees, but I have tried to balance their legitimate needs with the needs of our constituents. The key components of the proposed substitute bill are:

1. Expand the existing definition of telecommunications universal service to include access to broadband service at upstream and downstream speeds of not less than 200 kbps.

This would require that every Kansas telephone customer have access to broadband capabilities by January 1, 2006.

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ATTACHMENT 6

2. Require incumbent local exchange carriers (ILECs) to provide DSL or technologically equivalent service to all customers who do not have an existing provider of such service. Companies are provided the option of using their own facilities (investment), other providers' facilities, or through partnerships, etc.

This means that within the certificated service territory where no other broadband provider exists (e.g., cable), telephone company managers could decide to invest the money necessary to make broadband available or contract with an alternative provider. For example, SBC could decide to locate DSLAM equipment in every incorporated town/city within their service territory (and reach 78% of their customers with broadband) and contract with a fixed-base wireless (e.g., Pixius) to make such service available to their remaining customers.

3. Kansas Development Financing Authority financing support will be available for cities, counties, and other local governments to form partnerships with the private sector providers of broadband service (remember, up and down speeds of at least 200 kbps) where no incumbent provider exists. Funding will be available on a technologically neutral basis and the municipality shall not compete with an existing broadband provider.

The House passed a similar KDFFA financing option in 2002, but the Senate did not take action on the bill. In areas without an existing broadband provider, communities would issue a request for proposals (RFP) for deployment of that capability. Providers would make their best offer, either alone or in partnership with providers using other technologies, and the community would select the winner.

Thus, SBC could help Lecompton City and Douglas County Commissioners develop an RFP to bring broadband service to that area. SBC might partner with Pixius with a proposal; the Moundridge Telephone Company might offer to provide that service; or Cox Cable might team with Sprint's wireless operation.

4. An ILEC not subject to rate of return regulation upon request must provide the splitter function (voice-data) on a nondiscriminatory basis to allow CLECs access to the high and low frequency portions of the loop in any central office (currently required) or at a remote facility. Commission shall determine the appropriate price for this service taking into account TELRIC and wholesale market factors.

This recognizes that within competitive markets, customers may not truly be able to select the voice and data carriers they wish. The question that I asked SBC about switching from SBC voice to Birch, but wanting to retain ASI as my broadband provider was answered that SBC's technology did not permit me to retain ASI if I switched voice carrier. In my opinion, that means that I do not have a true choice of voice provider as the FCC ordered. Hence, the requirement for an effective splitter (it may also mean that SBC must change ASI's account tracking mechanism).

5. The Commission shall provide that no ILEC is required to provide any CLEC access to unbundled network equipment (UNEs) at regulated prices for more than 5 years. The Commission shall adopt rules to prevent CLECs from reforming or selling customers to an affiliate or other related company to circumvent this limitation. ILECs shall provide CLECs access to UNEs at nondiscriminatory, competitive wholesale-based prices.

FCC Chairman Powell has repeatedly stated his belief that CLECs should develop their own infrastructure after developing marketshare (i.e., financial strength). Because the Commission shares regulatory oversight over UNE pricing and access, I believe the state has the authority to define how long subsidized competition should exist. I propose that if a company has not established itself in a competitive marketplace within 5 years, it is not really interested in serving all customers within that market, but just those high-profit ones they can "cherry pick." I am interested in true competition.

In addition, I am troubled by unbundled network equipment (UNEs) being priced below competitive wholesale market-based rates in perpetuity. This is not fair, in my opinion, to the ILEC making the initial investment.

I also want to ensure that the CLECs do not exist for 5 years, change their names, and continue getting the lower priced access to customers. Hence, the requirement that the Commission develop rules to prevent such activity.

Concluding comments:

Committee members, this explanation of the proposed substitute bill (which remains a work in progress) is longer than I envisioned. But, it incorporates my belief that competition should exist, regulation serves a valuable purpose, and that consumer interests are pre-eminent.

I will offer the proposed substitute bill tomorrow when we begin deliberations on HB 2019. The proposed substitute bill is being drafted over the weekend as I write this "explainer," thus, I may "fine tune" the bill further after having a chance to actually read it myself. I wish to shift focus of our discussion from what is best for individual companies to what is best for all Kansans. As some elements of the proposed substitute bill discussed above may be considered innovative, I am providing you this document before our Committee deliberations begin. I will be pleased to talk with any of you between now and Tuesday's Committee meeting. I look forward to a stimulating Committee debate over how to best ensure that the long-term best interests of all Kansans, including the telecommunications providers, are protected.