

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairman David Wysong at 8:30 a.m. on March 11, 2009, in Room 545-N of the Capitol.

All members were present.

Committee staff present:

Ms. Margaret Cianciarulo, Committee Assistant
Mr. Norm Furse, Office of the Revisor of Statutes
Mr. Ken Wilke, Office of the Revisor of Statutes
Mr. Reed Holwegner, Kansas Legislative Research Department
Mr. Julian Efird, Kansas Legislative Research Department

Conferees appearing before the Committee:

Mr. Don Bowers, Building Consultant, Holmes Inspection Co.
Mr. John Lyle, Professional Engineering Inspections, Inc.

Others attending:

Please see attached list.

Continued hearing and possible action on HB2260 - an act concerning the Kansas home inspectors professional competence and financial responsibility act

Upon calling the meeting to order, Chairman Wysong announced the hearing on **HB2260** would continue and again called upon Mr. Don Bowers, Building Consultant, Holmes Inspection Co., who again offered a list of changes to the bill from an opponent's side and answering some of the testimony from yesterday's hearing including:

- if a home inspector uses an inspection agreement that includes a clause with a limit of liability clause and there is ever a problem, the buyer has no recourse.

Answer: the Kansas "Small Claims Process" allows an aggrieved consumer to file a claim against another party or business (including home inspectors) through the Kansas Court System for an amount up to \$4,000 without going to the expense of hiring an attorney.

- The Realtors (their lobbyist & President of KAREI) stated they have been working with all home inspectors groups and they are representing all home inspectors in Kansas.

Answer - of the five Home Inspector Associations (two State and three National) two groups had no input into the bill or contact with the Realtors. Mr. Bowers offered a breakdown of the 98 members on KAREI's web site including 14 who were out of business, one was deceased, and delete termite inspectors, etc. and why they are not representing all home inspectors in Kansas.

- Regarding professional engineers, of which there are over 50 degrees, they are not required to carry E&O insurance and would be exempt from the bill.

Answer - according to letters he received from the State Engineering Board, they state that 1&2 family houses are excluded from Kansas engineering laws and therefore the Board of Technical Registration has no jurisdiction over an engineer doing home inspections.

- Regarding the KAREI lobbyist's testimony concerning complaints against home inspectors.

Answer - Mr. Bower's group contacted consumer complaint resources like the Better Business Bureau, the Kansas Attorney General's office, etc. and found there were less than 13 complaints against home inspectors over the last three years.

He cited that this bill has no financial impact on the State.

Mr. Bowers then offered a sheet listing Professional Engineering Degrees and also, written testimony from:

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1. Ms. Nancy Seats, National President of Homeowners Against Deficient Dwellings Inc.(HADD) also offering correspondence stating non complaints from the national level.
2. Mr. Mike Pritchett, President, National Association of Home Inspectors, offering their concerns with the way the bill is written regarding:
 - A. The 105 Kansas counties - only eight were showing over 60,000 population or that 97 counties would not go to licensure until 2011;
 - B. The minimum liability issue, home inspectors could be held liable for up to \$10,000 minimum liability issue.
3. Ms. Betty Rose, Executive Director, Kansas State Board of Technical Professions' regarding the Board's opinion of PE's performing home inspections. (Enclosures were not included with her letter as mentioned)

A copy of Mr. Bowers' testimony, his list and attachments are (Attachment 1) attached and incorporated into the Minutes as referenced.

The Chair then called on Mr. John Lyle, Professional Engineering Inspections, Inc., who referred the Committee to a letter from the Kansas State Board of Technical Professions answering his question to them, "Is an engineer permitted to violate their professional conduct...." A copy of this letter is (Attachment2) attached hereto and incorporated into the Minutes as referenced.

The Chair asked Mr. Lyle, "basically you are asking to be taken out of this" to which Mr. Lyle agreed.

The Chair then called on Senator Schodorf who recalled from last year, that home inspectors would be required to have continuing education and so no one wanted them in their professions. The Chair stated that the Realtors were concerned that they may be liable for the home inspectors if there is a problem and so they are passing them onto this organization. Questions and comments then came from Senators Wagle, Holland and Schodorf including:

1. For Mr. Lyle, isn't there an easier way to do this?
2. And for Mr. Bowers regarding page 11, can you clarify "cannot limit his liability to anything less than \$10,000?" Are there products where you can readily turn to go buy this \$10,000 error omission policy for your type of business or where would you turn to find this type of coverage? Do you have to theoretically carry this \$10,000 for each home or leave it out there ad nauseam? Since the passage of this bill, has litigation decreased for Realtors and increased for home inspectors? And, is this \$10,000 error omission really the crux of the bill?

The Chair then called on Mr. Wilke who offered four handouts including:

1. His spread sheets of the bill from yesterday's meeting of Tuesday, March 10, 2009.
2. The Attorney General's opinion No. 2009-05, dated February 11, 2009.
3. The memorandum from Mr. Wilke dated March 11, 2009 regarding 12 potential issues and changes for this bill as amended by the House Committee.
4. A 2-page copy of the statute of the real estate commission.

He went on to explain his Memorandum, a copy which is included with the other three handouts is (Attachment 3) attached hereto and incorporated into the Minutes as referenced.

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Questions came from Senators Holland, Emler, Wysong of Mr. Wilke's memorandum including:

- Item 2 - a discussion and vote among Committee members regarding who on the board should be a home inspector, do we need to worry about a chain of succession, do we want to specify, or is it a board responsibility? Do you want to write in the bill a line of succession?

- Item 4, the Chair called on Mr. Barnes who suggested the following language be placed on page 9 under line 15, "all registered inspectors must retain all records relating to all individual inspections for 24 months following the inspection," putting back into a section where the heading is "all registered inspectors must do..." (What is the statute of limitations on this and is this the correct place to put this language?)

- Item 5, deals with inconsistency as shown on page 6, lines 9 through 17 that states the board may deny, suspend, or revoke a registration but on line 15 there is a mandatory revocation following conviction of a felony. However if you follow that language, originally you could suspend, revoke or deny a registration for conviction if a misdemeanor involving dishonesty or a felony occurs, now you turn around and revoke it. (Referred the Committee to his fourth handout, specifically K.S.A.58-3043, part 2 subsection E as an example and possible way to fix.) Senator Emler asked about Mr. Bowers' list earlier where he referenced page 6. Mr. Wilke said they could use but would still like to separate for clarity purposes.

The Chair asked Mr. Wilke if he made the change that was discussed in yesterday's hearing regarding "standard of practice" found on page 5, line 22?

The Chair then recognized Senator Emler who asked if Mr. Wilke could develop a balloon as though the Committee had adopted the changes shown in his memo?

Adjournment

As it was going on 9:30 a.m., the Chair adjourned the meeting after discussing upcoming Committee meetings.

The next meeting is scheduled for March 12, 2009.