

Written Testimony for the House Commerce Committee

Chairman Sean Tarwater and house members of the commerce committee, I would like to provide this committee some vital information about a proposed piece of legislation, HB 2526. My name is Ralph Pimentel. I am the president of National Building Consultants LLC, a consulting business that I started in 1988. Being the first business to provide whole house inspections and environmental surveys for the real estate industry in the Topeka area, I have seen the home inspection industry evolve from a time when ninety-five percent of home buyers had never heard of a home inspection to the present where nearly ninety-five percent of home buyers include home inspections in their real estate contracts.

Before starting National Building Consultants, I served as a certified building official for the city of Topeka and the city of Lawrence. In general, I have always been a proponent of good regulations such as the building codes that assure the construction of safe, reliable, and sustainable buildings for the public. In addition to ensuring building code compliance, I was appointed by the city of Topeka and the city of Lawrence to establish licensing programs for segments of the construction industries. Within a few months of my appointments, several thousand contractors and tradesmen received their occupational licenses in these two cities. Looking back, it is now evident that these two licensing programs accomplished their primary goals; to elevate the overall competency of the trade groups and to provide an additional layer of consumer protection.

Seeing first hand the direct consumer benefits of licensing, I was honored to be appointed to the first Kansas Home Inspectors Registration Board (KHIRB) in 2007. I was the only member to serve on the board from its inception until the the date when the statute was allowed to expire and the board was disbanded. When Governor Brownback vetoed the Home Inspectors Competency and Financial Responsibility Act thus allowing the statute to sunset in 2013, he issued a statement and listed the reasons why he decided to let the home inspector law expire. Governor Brownback said firstly, that he was committed to less regulation and government intrusion into small businesses. He also stated that homeowners had other forms of consumer protection through the Attorney General's office and through the court system. Most notably, he decided to end home inspection regulations because the home inspectors board "had proven to be incapable of regulating itself". This statement was an apparent reference to the numerous complaints filed with the Governor's office against the then board chair, Jeff Barnes (see attached email from Kim Borchers, director of appointments for Governor Brownback). None of these complaints were ever revealed to the board. After Mr. Barnes' term as chair had expired, he volunteered to serve as the executive secretary for the board and it was at this time the board was made aware of the problems associated with Mr. Barnes. Due to the volume and severity of the complaints forwarded to the board from Governor Brownback's office, the Attorney General's office instructed the board to eliminate the executive secretary position and to separate the board from Mr. Barnes (see attached letter from Attorney General, Derek Schmidt's office). The board voted unanimously to abolish the executive secretary position.

Governor Brownback also had to be disappointed by what appeared to be a pattern of denying homeowners any meaningful level of consumer protection. If you are wondering how this bill will impact the real estate industry, we can look back at those homeowners who filed complaints and sought relief from the Kansas Home Inspectors Registration Board (KHIRB) during the years 2008-2013. During that period aggrieved homeowners could file their complaints with the board and seek up to \$10,000.00 in relief for home inspection errors and omissions. If you are curious about the total amount of money received by aggrieved home buyers during those years, the answer is; zero. Not one homeowner ever received one penny of compensation. Even more troubling was when the board subsequently learned that Mr. Barnes, one of the individuals promoting this latest iteration of consumer protection, had systematically intercepted all of the consumer complaints and then informed the complainants that no compensation would be provided to them. As the KHIRB minutes affirm, during the five years this law was in effect, the board was never informed about any of the complaints filed against home inspectors nor was the board ever informed that every home buyer who had sought consumer protection had been denied any monetary compensation by Mr. Barnes, who along with another board member were the only ones to ever see these official complaints filed against home inspectors. Mr. Barnes also withheld from the board all of the complaints that had been filed with the Governor's office against him. When the Home Inspectors Competency and Financial Responsibility Act expired on July 1, 2013 the board was dissolved. That is a brief history of the first attempt to regulate the home inspection industry.

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Now, after having the senate commerce committee reject the attempts of Mr. Barnes pass the same failed statute, SB 176, for two years in a row, Mr. Barnes has decided to do an end around and have HB 2526 submitted to an unsuspecting house commerce committee. Members of this committee might want to contact Sen. Lynn (former chair of the commerce committee), former Sen, Eric Rucker, Sen. Tom Holland, and other senate committee members to hear about the multitude of reasons they rejected this poorly written and unconstitutional bill. You might also want to speak with Kim Borchers, direct of appointments for Governor Brownback and Asst. Attorney Generals Sara Fertig and Dwight Carswell. They will not only verify all of the aforementioned information but they can also provide you with a documented history of legal problems they had with Mr. Barnes.

Fast forward to now and this the fourth version of a bill to regulate home inspectors and again there are the same fatal flaws. The most glaring is the unnecessary exemption for engineers and architects licensed by the state of Kansas. None of the provisions of a state engineer or architect license apply to a real estate inspection, as defined by the statute. This is according to the opinion provided by the board's legal counsel, Sara Fertig and the Executive Director of the Board of Technical Professions (see attached letter). The Executive Direct of the Board of Technical Professions (BTP) stated in her letter to D.L. Bowers, that engineers and architects are not licensed to perform home inspections as defined in this bill. She goes on to state, "Therefore, the types of services described in your letter do not fall under the jurisdiction of the Kansas State Board of Technical Professions". These two statements hold true today.

I recently confirmed that Texas, Florida, Oklahoma, Ohio, Arizona, and other states do not exempt engineers and architects from their state licensing requirements, if they provide home inspection services as defined by their statutes. I believe it is imperative that all home buyers in Kansas be afforded all of the same levels of consumer protection that are at the core of this statute. Every home buyer should be assured that their inspector has demonstrated competency, is insured, financially solvent, and most importantly, that every home buyer has access to the exact same consumer protection remedies provided within this bill.

The following bullet points are an abbreviated list of the unconstitutional issues in this bill and need improvements to the consumer protection provisions for homebuyers and real estate professionals:

1. The bill should not exempt engineers, architects, or any individual who perform a home inspection in conjunction with a real estate contract as defined in the bill.
2. The bill contains unconstitutional provisions: *the unlawful delegation of legislative authority*. Requirements to approve pre-license education and continuing education offered by a trade association and the requirement for all individuals named to the advisory committee to be a member of a trade association have been deemed unconstitutional by an Attorney General's legal opinion prepared for the Home Inspectors Registration Board (see the attached letter from the AG'S office).
3. The advisory committee, to be created to assist the Attorney General in reviewing home inspection complaints, should only be comprised of home inspectors with more than one thousand inspections to ensure the highest level of expertise. The Governor should appoint one inspector from each congressional district and one member who is a licensed real estate broker to this advisory group.
4. The bill should include a criminal KBI background check. It is vital that homeowners be assured that individuals with serious criminal records not be given unvetted access to their homes or their families and that home buyers and sellers be assured the home inspector is insured and bonded.

In closing, I would like this committee to know that I have dedicated a vast majority of my business career and public career to helping property owners acquire, construct, repair, and maintain commercial and residential buildings. From my days as a journeyman and master licensed tradesman, through the years of being a building official for the cities of Topeka and Lawrence, I have always been an advocate for licensing, consumer protection, and public service. I will continue to offer my support and assistance to this committee and to the home inspection industry whenever possible. Chairman Tarwater and committee members, thank you for giving me the opportunity to provide you with my perspective and thank your time and for your efforts to improve the home inspection industry. I would welcome any request for additional information.