

Approved Monday, February 23, 1987
Date

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS

The meeting was called to order by Senator David Kerr, Vice Chairman at
Chairperson

1:30 ~~xxx~~/p.m. on Tuesday, February 17, 1987 in room 313-S of the Capitol.

All members were present except:

Senator Dan Thiessen, Chairman

Committee staff present:

Gordon Self, Revisor's Office

Marion Anzek, Committee Secretary

Conferees appearing before the committee:

Thomas Marshall, Attorney - Blake & Uhlig, P.A. of Kansas City

Mr. Bill Williams, representing Heavy Constructors Association, a certified chapter of the Associated General Contractors of America.

Kathy J. Marney, Executive Director - Mechanical Contractors Association of Kansas.

Senator David Kerr, Vice Chairman called the meeting to order at 1:30 p.m.

The Vice Chairman said Senator Thiessen would not be here and we will be hearing opposition to SB112, and called upon the first conferee.

Thomas H. Marshall, Attorney representing Blake & Uhlig, P.A. of Kansas City.

Mr. Marshall said the State's prevailing wage law requires that workers on state-financed jobs received the wage that prevails for each craft involve in the communities where they are working. The prevailing wage often is the wage paid union employees for those jobs. The prevailing wage is the law that the state uses to avoid giving an advantage to a contractor who will reduce wages.

Mr. Marshall said complaints by contractors that their workers get ruined by being paid prevailing wages on government jobs "is a red-herring issue" that the committee should reject.

Those who assert that the elimination of K.S.A. 44-201 will result in massive savings in construction cost on State projects are notoriously misrepresenting the true state of affairs.

He urged that the committee act fairly and equitably in this matter and table SB112. (See Attachment 1)

Mr. Bill Williams representing Heavy Constructors Association, a certified chapter of the Associated General Contractors of America.

Mr. Bill Williams said the committee is seeking to repeal the existing statute 44-201. The statute sets a floor of wages paid by contractors on public projects and was created for the benefit of employees, not contractors, and it is public policy that payment of low wages shall not give a contractor an advantage in bidding on government construction contracts, and to avoid a depression of local labor markets by outside contractors who paid low wages to imported laborers.

He stated that in 1986 in Overland Park, KS. there were 26 imported, illegal mexican workers working on a major construction project who could not speak English and did not know how, where or when they were going to be paid.

He said we should not penalize our citizens who have acquired their skills, purchased homes and raised their families in our state, by allowing employers to reduce the wages of the employees. Seldom do those reductions of wages benefit the taxpayer, only the employers. (See Attachment 2)

Kathy J. Marney, Executive Director, representing Mechanical Contractors Association of Kansas.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS,
room 313-S, Statehouse, at 1:30 a.m./p.m. on Tuesday, February 17, 1987

Kathy J. Marney said she knew SB112 was a very controversial issue and a difficult decision for lawmakers to make. She believed that if the committee would take a close look at what the bill does, it might think twice before voting to repeal this law. The supreme court, has held that K.S.A. 44-201 was not enacted for the benefit of the contractor, but rather to protect employees by fixing a floor under wages on public projects. The court has further stated that K.S.A. 44-201 is an expression of public policy that payment of low wages shall not give a contractor an advantage in bidding for securing a public contract.

She said if dollars are all your looking at, we might as well do away with the law and let imported workers do all the state jobs, but you don't want that. (See Attachment 3)

Vice Chairman David Kerr asked if there were any other conferees wanting to testify on SB112, and having none said we would take the bill under advisement.

The meeting adjourned at 2:15 p.m.

BEFORE THE SENATE LABOR AND INDUSTRY COMMITTEE

Testimony of Thomas H. Marshall, Attorney
Blake & Uhlig, P.A.

February 17, 1987

RE: Senate Bill 112 (A Bill concerning K.S.A. 44-201)

Mr. Chairman, Members of the Committee, thank you for this opportunity to appear before you. My name is Thomas H. Marshall. I am an attorney practicing law with the firm of Blake & Uhlig, P.A. in Kansas City. Our firm has been involved in several items of litigation concerning K.S.A. 44-201, the Kansas prevailing wage law, and it has come to our attention that your Committee is presently considering Senate Bill 112 which proposes to repeal the very important safeguards of that law.

I urge that this Committee reject this Bill at its earliest opportunity. The provisions of K.S.A. 44-201 were enacted in order to prevent the payment of wages on State projects at rates lower than those currently being paid in the particular City or County in which the public construction is to take place. The clear purpose and intent of 44-201 is to avoid the necessarily disruptive market effects of employers on State projects who are able to underbid their competitors by virtue of paying lower wages to employees who perform the work. Because the State is required to award its contracts to the lowest responsible bidder, a contractor can achieve the low bid by decreasing wages paid to employees on the project were it not for 44-201. This would force the State to award its contracts for

construction to the contractors who are most willing to cut wages.

While I am fully cognizant of the desirability of conserving State funds and obtaining quality work for the lowest possible price, I strongly urge you to avoid imposing the burden of such budgetary economies only on working people who are involved in performing those construction projects for the State and its political subdivisions. Clearly, the people who work on those projects have the same interest in achieving a fair wage as any other worker in the State. 44-201 was adopted specifically for the purpose of avoiding a situation where those workers are left to experience all of the negative impacts of the competitive bidding process.

As you are no doubt well aware, the art in competitive bidding is not to deliver to the contracting owner all of the economies that a particular contractor can achieve during the course of constructing a particular project. Rather, the art in competitive bidding is to submit the lowest responsible bid by a few dollars on the particular project. Those who assert that the elimination of K.S.A. 44-201 will result in massive savings in construction costs on State projects are notoriously misrepresenting the true state of affairs. Contractors paying everything from minimum wage through union scale are all eligible, provided they meet certain threshold requirements, to bid on construction projects undertaken by the State. As you know, the low bidder is sometimes a contractor who is not limited by a collective bargaining agreement as to the wages which must

be paid while in other instances the successful bidder may be a contractor who is so limited. The addition of the statutory requirement of K.S.A. 44-201 to this process has been an attempt, in Kansas, to avoid any bidding advantage being enjoyed by those who pay extremely low wages to their employees on State construction. Rather than allowing the State to enter a particular market area and disrupt the existing wage structure in that area by giving such contractors an unfair advantage over other contractors in the same area, the provisions of the statute operate to limit the competition among contractors to those cost factors in the course of performing construction projects upon which all of them may compete fairly and equitably. It was to meet this specific concern that the legislature first adopted K.S.A. 44-201 in its original form in 1891.

There can be no question about the fact that as the wages of workers are depressed, the quality of workmanship, and therefore the quality of the completed construction must suffer. Depressing wages paid to construction workers generally is most likely to result in less skilled employees performing work on State construction projects and the problems which necessarily result from that situation clearly cannot inure to the benefit of the citizens of the State of Kansas.

Those who urge that compliance with 44-201 results in the artificial inflation of construction costs in the State of Kansas are obviously seeking to enjoy advantages over their competitors by reducing the amount of money they must pay their workers on State projects.

Please kill this Bill so that workers who perform labor on construction projects for the State of Kansas and its political subdivisions may receive a fair day's wages for a fair day's work. Do not allow the burden of the budget constraints, under which the State is compelled to operate, to fall solely on the backs of those employees who will be expending their efforts in the construction of such projects. Kansas workers should not be required to suffer the entire burden, as will surely occur, should the Bill currently under consideration be enacted into law.

I urge that you act fairly and equitably in this matter and table Senate Bill 112.

Thomas H. Marshall

THM:jd

Thank you for the opportunity to share with you our concerns on Senate Bill S112.

My name is Bill Williams. I live in Kansas City and represent the Heavy Constructors Association, a certified chapter of the Associated General Contractors of America.

Senate Bill S112 seeks to repeal the existing statute 44-201 which became law in the late 1890's. We are opposed to repeal of 44-201.

The statute sets a floor of wages paid by contractors on public projects. It was created for the benefit of employees, not contractors. It was, and is, an expression of public policy that payment of low wages shall not give a contractor an advantage in bidding or securing a public contract.

The Federal Government and numerous states, like Kansas, have agreed that prevailing wage laws are important. They are important because they provide crucial benefits to a number of different constituencies including workers, their communities, and the taxpayers themselves.

These laws were enacted to prohibit wage differentials

from becoming a major competitive advantage in bidding on government construction contracts and to avoid a depression of local labor markets by outside contractors who paid low wages to imported laborers. They insured that the economic power of the government as an employer would not contribute to the depression of local wage conditions. Most of the reasons for mandating a prevailing wage law are still valid today, if the prevailing wage is fairly determined and is the actual wage paid in a community. The result of setting a fair prevailing wage by county should be a maintenance of the status quo for Kansas, neither causing an inflationary effect nor deflating the local labor market. The effect of not pegging a prevailing wage would be to invite some of the abuses which led to the original laws and to make wages a major determinant in the awarding of contracts.

If there were no prevailing wage rates, certain contractors would have every incentive to cut wages in order to become the successful bidder on public works jobs. In the construction industry work is awarded to contractors through a system of competitive bidding -- that is, the lowest responsible bidder will be awarded the project. Labor is one of the few components of construction costs which a contractor can exercise any significant degree of control.

Local communities and taxpayers also derive important protections from prevailing wage laws. The old adage, "you get what you pay for," certainly holds true in the construction industry. Construction projects -- particularly those

in the public sector such as dams, power plants, highways, and schools -- require highly skilled labor. There is no doubt, without prevailing wage laws, that wages of construction workers could be cut substantially by hiring unskilled people. Would this really save the taxpayers money? The answer is no. First, unskilled workers certainly take longer to do a job than skilled workers. Therefore, productivity would be reduced and the cost to the taxpayer would rise. Second, if the government wants quality construction projects, with fewer long-run maintenance costs, then it must utilize skilled workers. In order to use qualified, well-trained construction workers, it is necessary to pay no less than the local prevailing wage rate.

An argument often used against prevailing wage laws is that they are inflationary -- that they cause construction wages to rise more rapidly than they otherwise would, and drive up the cost of public construction.

In fact, the opposite is true. Wage increases are not driving up prices in the construction industry. The real increase in cost in the construction industry has been material, equipment cost, real estate, and interest rates. Therefore, it makes no sense to try to solve the problem of inflation in construction costs by repealing prevailing wage laws. Cost of living continues to rise despite strong lids on salaries, wages, and fringe benefits. There is an old adage, "If it's not broke, don't fix it".

Skill, Integrity and Responsibility is the motto of the Associated General Contractors. Free enterprise is working without the exploitation of the workers. Let's not penalize our citizens who have acquired their skills, purchased homes, raised their families in our state, by allowing employers to reduce the wages of the employees. Seldom do those reductions of wages benefit the taxpayer, only the employer.

Thank you.

TESTIMONY
BEFORE THE
SENATE LABOR, INDUSTRY, & TOURISM COMMITTEE
BY
KATHY J. MARNEY
MECHANICAL CONTRACTORS ASSOCIATION OF KANSAS
FEBRUARY 17, 1987

Mr. Chairman and Members of the Committee:

My name is Kathy Marney, Executive Director of the Mechanical Contractors Association of Kansas. I appear before you today to testify in opposition to S.B. 112, repealing of the Prevailing Wage. I know this is a very controversial issue and a difficult decision for you as lawmakers to make. I believe if you real take a close look at what this bill does, you might think twice before voting to repeal this law.

I think we need to look at what the Supreme Court which has held that K.S.A. 44-201 was not enacted for the benefit of the contractor, but rather to protect employees by fixing a floor under wages on public projects. The court has futher stated that K.S.A. 44-201 is an expression of public policy that payment of low wages shall not give a contractor an advantage in bidding for securing a public contract.

These laws were enacted to prohibit wage differentials from becoming a major competitive advantage in bidding on government construction contracts and to avoid a depression of local labor markets by outside contractors who paid low wages to imported laborers. They insured that the economic power of the government as an employer would not contribute to the depression of local wage conditions. Most of the reasons for mandating a prevailing wage law are still valid today, if the pre-

prevailing wage is fairly determined and is the actual wage paid in a community. The result of setting a fair prevailing wage by district should be a maintenance of the status quo for Kansas, neither causing an inflationary effect nor deflating the local labor market. The effect of not pegging a prevailing wage would be to invite some of the abuses which led to the original laws and to make wages a major determinant in the awarding of contracts.

If the State of Kansas feels no obligation or concern for tax-paying construction workers to be paid a fair wage for their kind of work, then we should do away with the prevailing wage law. In fact, if economic is the sacred and only criteria with no other consideration, we can extend this rationale to importing foreign labor because it will save the taxpayers money in the short run. In the long run, in-state workers and construction companies pay their taxes in Kansas such as sales tax, property tax, taxes on cars and income taxes. Kansas Companies pay the corporate income taxes in Kansas and personal property taxes on all equipment in Kansas. It seems to me that the State of Kansas should have greater respect and concern for its construction workers than to allow the wage level to be set by the contractor paying the lowest wage. These contractors will eventually force all contractors to exploit their employees to the same extent in order to compete.

I urge you members of this Committee to vote no on S.B. 112. Thank you Mr. Chairman and Members of the Committee for allowing me to appear before you today.