

Approved March 1, 1991
Date

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by Sen. Don Montgomery at
Chairperson

9:00 a.m./~~p.m.~~^{xxx} on February 28, 1991 in room 531-N of the Capitol.

All members were present except:

Sen. Gaines

Committee staff present:

Theresa Kiernan, Revisor of Statutes
Mike Heim Legislative Research
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Thomas E. Slattery, Associated General Contractors of Kansas, Inc.
Dan Morgan, Kansas City Chapter Associated General Contractors
Gus Meyer, Rau Construction Company
William A. Larson, Legal Counsel for Associated General Contractors of Kansas
Joel Cochran, National Electrical Contractors Association
Edward R. Moses, Kansas Ready Mixed Concrete Association
James D. Jones, Kansas Department of Transportation
Ernie Mosher, League of Kansas Municipalities

SB 260 - Concerning the payment for construction goods and services.

Thomas E. Slattery, who requested the introduction of the bill, testified first in support of the bill. (Attachment 1).

Dan Morgan, Kansas City Chapter Associated General Contractors, followed with testimony in support of the bill. (Attachment 2).

Gus Meyer of Rau Construction Company followed in support. (Attachment 3).

Next in support was William A. Larson, Legal Counsel for Associated General Contractors of Kansas. (Attachment 4).

Joel Cochran, National Electrical Contractors Association gave further testimony in support of the bill. (Attachment 5).

Final testimony in support was given by Edward R. Moses, Kansas Ready Mixed Concrete Association. (Attachment 6).

James D. Jones, Kansas Department of Transportation, testified in opposition to SB 260. (Attachment 7).

Final testimony was given by Ernie Mosher, League of Kansas Municipalities, in opposition to the bill. (Attachment 8).

The Chairman asked Mr. Mosher if he could pinpoint problems that might occur if the bill were passed. Mr. Mosher gave examples of problems which could occur and reiterated that he feels the contractors' problems can be handled in other ways than being grouped under one state law.

Sen. Lee expressed her sentiment that contractors should have prompt payment from government agencies just as a private individual is expected to make prompt payments on bills. She also asked Mr. Jones to further explain why extra personnel would be needed for final payments if the bill were passed.

Mr. Heim questioned Mr. Larson as to how the language dealing with frivolous defense and attorneys' fees in the bill is different from current law as the bill appears to be a duplication of current law. Mr. Larson explained that the bill applies to a specific situation, and it is easier to get a judge to adopt it when there is specific language such as is in this bill.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOGAL GOVERNMENT,
room 531-N, Statehouse, at 9:00 a.m. ~~9:00~~ on February 28, 1991

Mr. Mosher offered a compromise. He could support the bill if changed to read that in the absence of something being done locally, the provision in the bill spelling out specifics in the contract is the basic rule.

The Chairman asked that the bill continue to be worked on by interested parties, and it will be taken up at a later date.

The Chairman called the committee's attention to a letter which had been distributed from the Mayor of Lenexa regarding SB 25 which had been previously heard. (Attachment 9). The committee will consider SB 25 at tomorrow's meeting.

With regard to SB 24 concerning fire districts, Sen. Burke informed the committee that he has had an amendment drafted that removes Overland Park and leaves it under current law.

The minutes of February 27 were approved.

The meeting was adjourned at 9:58 a.m.

Date: 2-28-91

GUEST REGISTER
 SENATE
 LOCAL GOVERNMENT

NAME	ORGANIZATION	ADDRESS
Jimi Jones	KDOT	Topeka
Art Davis	City of Lenexa	City of Lenexa
JOEL Cochran	NECA	Topeka
BEV BRADLEY	KS ASSOC of COUNTIES	TOPEKA
Mary Vincent	ABC of KS	Topeka
KEM Stodgell	KDOT	Topeka
John Klavenschmidt	KDOT	Topeka
<i>[Signature]</i>	<i>[Signature]</i>	Topeka
JERRY McELROY	MCAK	Topeka
R.D. ANDERSEN	R.D. Andersen Inc	Topeka
Clay Pearson	Johnson County	Lawrence
ER Moses	KRMCA & KAPA	Topeka, KS
Kandra Schneider	Shadow to Sen. Burke	Wichita, KS
Jeremy Johnson	Shadow to Sen. Lee	Wichita, KS
Tom Slattery	Topeka	ABC of KS
Will Larson	Topeka	ABC of KS
Gus Rau Meyer	Rau Construction	Overland Park, KS
DAN MORGAN	ABC of KC	Kansas City

Testimony Before The Senate Local Government Committee

On SB 260

Thomas E. Slattery

Associated General Contractors of Kansas, Inc.

February 28, 1991

Mr. Chairman and members of the Committee I am Tom Slattery executive vice president of Associated General Contractors of Kansas.

Again let me express our thanks to you Mr. Chairman and the Committee for the courtesy of introducing SB 260.

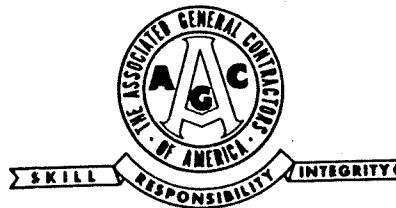
AGC of Kansas supports the concept of prompt payment for all members of the construction chain from owners, general contractors, subcontractors and material suppliers, as outlined in SB 260. Twenty-five states now have prompt pay legislation on public works projects in one form or another. The most recent of these was the state of Missouri which passed a bill very similar to SB 260 last April.

In an effort to keep our testimony from being repetitive I will not cover the specifics of the bill but will leave that to conferees who have a closer working knowledge of the issues.

AGC does urge your favorable consideration of SB 260 and after the hearing if I can assist members of the Committee with any further information I will welcome the opportunity.

Thank you.

Senate L.G.
2-28-91
Attachment 1



TESTIMONY BEFORE THE SENATE
LOCAL GOVERNMENT COMMITTEE
REGARDING SENATE BILL NO. 260

by Dan Morgan

Kansas City Chapter
Associated General Contractors
and
The Builders' Association

Thank you, Mr. Chairman, and members of the Committee. My name is Dan Morgan. I appear before you this morning in support of Senate Bill No. 260 on behalf of the Builders' Association and the Kansas City Chapter, Associated General Contractors. Our Association represents some 765 general contractors, subcontractors and material or service suppliers engaged in the commercial and industrial building construction industry in the western two-thirds of Missouri and the Kansas City metropolitan area. That includes Johnson and Wyandotte Counties in Kansas. The majority of our members are located in the Kansas City area. Approximately one-fourth of our 765 members are domiciled in Kansas.

Before I outline the basic provisions found in Senate Bill 260, I would like to briefly explain why we have joined with the AGC of Kansas and other industry trade associations in asking for this prompt payment legislation in the first place and how we got to this point in the legislative process.

Over the past three years we have received an ever-increasing number of phone calls from general contractors and subcontractors alike who have experienced very serious cash flow problems due to

late progress payments and delayed release of retainage. Late payment has become a real issue in our industry, both in public works construction and in private sector work. At this point I should remind you that Kansas does have a Prompt Payment Act of its own which does provide for prompt payment by government agencies for goods and services, including "construction services". This act requires government agencies to pay within 30 days of receipt of goods or services or receipt of the bill whichever is later. The current act imposes an interest penalty at a rate of 1-1/2% per month after the 30th day unless payment is made within a 15-day grace period. If, however, payment is not made by the 45th day, then interest is owed from the 30th day.

The construction industry really needs a more comprehensive prompt payment law that will address the unique characteristics and practices of the industry. I will address some of these briefly in just a minute and Mr. Gus Meyer will touch on this also in his testimony.

In response to the developing "payment crisis" in our industry, our board of directors appointed a special Prompt Payment Committee to study the problem and recommend possible solutions. The committee was composed of an equal number of subcontractors and general contractors so that a fair and equitable resolution of the problem would be arrived at within our own organization.

After a number of meetings and considerable research and review of other states' prompt payment laws, a comprehensive legislative proposal was drawn up borrowing some of the best concepts and language from several of our sister states. The proposal was then approved by our board of directors and that proposal forms the basis for the bill before you this morning. I would point out that, like our Prompt Payment Committee, our board of directors is made up of both subcontractors and general contractors.

After reaching a consensus within our own association we felt it necessary to run this proposal by other contractor and subcontractor associations throughout the state in order to see whether we

had industry support for the proposed legislation. We felt it important to have a broad base of support within our own industry prior to coming to the Kansas Legislature. To that end, we have joined with AGC of Kansas in co-sponsoring the proposal and we have received the support of the major local subcontractor trade groups such as the National Electrical Contractors Association and the Mechanical Contractors Association.

I would inform you that we successfully pursued very similar legislation in Missouri last year. In the process of doing that a number of political subdivisions came forward to express concerns with certain aspects of the prompt payment and retainage provisions in the bill. With the assistance of Prompt Payment Committee Chairman Gus Meyer who is here today we met and worked with representatives of all those groups in order to address their specific concerns. Among the public entities we worked with were the Office of Administration, Division of Design and Construction, the Highways and Transportation Commission, the Missouri Association of Counties, the Municipal League, the Association of Municipal Utilities, the Kansas City Public Works Department and the Suburban School Districts of Greater Kansas City. We were very pleased with the willingness of all those groups to sit down and talk with us and to help with amendments that addressed their particular concerns. We have already visited with a number of interested groups in Kansas as well and let me say now that if there are any additional technical problems that should be addressed we will be glad to work with any affected public entity on them. We do feel that we have a very sound proposal but if some fine tuning is needed we will be happy to do that.

Now let me quickly outline the main provisions of this bill. Senate Bill 206 would provide the following:

- A "goal" of five percent retainage is established in the bill, unless the public owner and architect or engineer determine that a higher rate is required to ensure performance.

Retainage, however, shall not exceed ten percent of the value of the contract or subcontract.

- A subcontractor may receive an early release of retainage if the owner, the contractor and the architect or engineer decide that the subcontractor's performance has been completed and the subcontractor can be released prior to substantial completion of the contract without risk to the public owner.
- Prompt payment shall be made by the public owner within thirty (30) days following the delivery of materials or construction services or the date upon which the invoice is delivered to the person or place designated by the public owner.
- Prompt payment of retainage shall be made by the public owner to the contractor after substantial completion of the contract work and acceptance by the public owner's authorized representative.
- Prompt payment shall in turn be made by the contractor to his or her subcontractors and suppliers within fifteen (15) days of receipt of payment from the public owner. Payment within 15 days is also required throughout the lower tiers in the contracting chain.
- Prompt final payment shall be made by the public owner to the contractor, by the contractor to his or her subcontractors and suppliers and so on throughout the contracting chain.

- An interest penalty, at the rate of one and one-half percent per month shall be imposed against any party to the contract for failure to pay promptly without reasonable cause.
- And finally, reasonable attorney's fees may be awarded to the prevailing party in a lawsuit when it is determined that (a) the losing party in a lawsuit had withheld payment without good faith or reasonable cause, or (b) the losing party in the lawsuit had pursued any legal proceeding therein that was found to be "frivolous" in nature and in bad faith.

In conclusion, I would just repeat that we are very pleased with the way the various political subdivisions that we have met with have worked with us. We will continue to work with any group that still sees technical or procedural problems with the bill. More than anything, we view this legislation as a way to police payment procedures within our own industry and a way to address a very real cash flow problem within the industry.

Mr. Chairman, that concludes my testimony. I would be glad to try to answer any questions the committee might have at this time. Our Prompt Payment Committee Chairman Gus Meyer is here this morning to help with technical questions. Thank you very much.

RAU CONSTRUCTION CO.

SINCE 1870



913-642-6000

9650 NALL AVENUE

OVERLAND PARK, KANSAS 66207

February 27, 1991

KANSAS PROMPT PAY AND RETAINAGE PROPOSAL

Notes for Senate Committee Hearings 2/27/91.

SENATE BILL No. 260

New Section 3, Paragraph (a) - This would apply to all construction Contracts by any public entity in the State of Kansas.

New Section 3, Paragraph (b) - The Public Entity shall pay the Contractor within 30 days after the later of the date of receipt of material or construction services covered by the application, the date upon which the application was duly delivered to the person or place designated by the Public Owner, or the date the Contractor approves the public owners estimate. The payment shall have a retainage of not more than 5% unless a higher rate, not to exceed 10%, is deemed necessary.

New Section 3, Paragraph (c) - The payment is considered paid when mailed or hand delivered.

New Section 3, Paragraph (d) - The Public Entity at the discretion of the Public Entity, Architect, Engineer and Contractor may release individual Contractor's retentions prior to completion of the project if it is determined the work has been satisfactorily completed and that there is no risk to the Public Entity. This can be a total release of retention, or a partial release with the balance held being 200% of the value of the work to be complete or remedied. This paragraph is meant to eliminate some of the inequities placed on Contractors who have completed their work at the beginning of a project, and then have to wait through the duration until the project until it is complete to receive their retention. This paragraph is not ment to require the Public Entity to maker partial releases of retentions.

New Section 3, Paragraph (e) - The retention from the Public Owner shall be paid within 30 days after substantial completion, delivery of retention application to the person or place designated by the Public Owner, and completion of any other documentation as required by the Contract Documents. If there are minor items remaining to be completed or remedied, an amount equal to 200% of the work shall be held until these items are complete and accepted.



Senate L.G.
2-28-91
Attachment 3

RAU CONSTRUCTION CO.

February 27, 1991

KANSAS PROMPT PAY AND RETAINAGE PROPOSAL

Notes for Senate Committee Hearings 2/27/91.

Page 2 of 4

New Section 3, Paragraph (f) - If these applications or retentions are not paid within 30 days of receipt, they shall be subject to late payment charges of 1½% per month calculated from the expiration of the 30 day period until the time they are paid.

New Section 3, Paragraph (g) - The contractor shall not withhold upon his subcontractors or material suppliers any retention in excess of 10%. If the contractor receives less than full payment, he shall pay his Subcontractors and Material Suppliers a prorata share of what he receives unless the Public Entity has not released full payment for a specific area of work which he is rejecting or otherwise determines are unsatisfactory in which case the Contractor shall withhold those specific funds from the Subcontractors or Suppliers involved.

New Section 3, Paragraph (h) - If the Contractor fails to pay his Subcontractors or Material Suppliers within 15 days after receipt of his payment, he shall pay them in addition to the payment due them interest in the amount of 1½% per month calculated from the expiration of the 15 day period until the time they are paid. This clause and procedure shall follow through the lower tiers of the contracting chain.

New Section 3, Paragraph (i) - Final payment shall be within 30 days of the earliest: 1) completion of the project within the terms of the plans and specification. 2) the project is certified complete by the project Architect or Engineer having authority to make such certification. 3) the project is certified complete by the Contracting Authority.

New Section 4 - The Public Entity has the right to withhold payment to the Contractor for any portion of the application that is due to unsatisfactory work, defective construction, disputed work, failure to comply with the Contract, third party claims or reasonable evidence that the Contractor cannot complete project for the unpaid balance of the contract.

RAU CONSTRUCTION CO.

February 27, 1991

KANSAS PROMPT PAY AND RETAINAGE PROPOSAL

Notes for Senate Committee Hearings 2/27/91.
Page 3 of 4

New Section 5 - The Contractor has the right to withhold from his application any application from Subcontractors or Suppliers due to unsatisfactory work, defective construction, disputed work, failure to comply with the Contract, third party claims or reasonable evidence the Subcontractor or Supplier cannot complete projects for the unpaid balance of the Contract.

New Section 6 - Should the Contractor determine after the application has been made that Subcontractor or Material Supplier should not be paid for any of the reasons in Paragraph 5, the Contractor can withhold these payments but must deduct any undistributed amounts from the next application for payment. Upon resolution of these withheld amounts, they shall again be included in the next application and paid promptly in accordance with the provisions of this document.

New Section 7 - When a Contract is paid by an estimate prepared by the Public Entity, it shall be paid within 30 days after the estimate was required to be completed by the Public Entity. The payment shall have a retainage of not more than 5% unless a higher rate, not to exceed 10%, is deemed necessary. If these estimates are not paid within 30 days of receipt, they shall be subject to late payment charges of 1½% per month calculated from the expiration of the 30 day period until the time they are paid.

New Section 8 - No late payment penalties will be applied if monies owed are withheld in good faith and with reasonable cause. If it is determined by a court of competent jurisdiction that these monies were not withheld in good faith and with reasonable cause then the court may impose a penalty of 1½% per month, and, at its discretion may award reasonable Attorney's fees. If any action brought pursuant to this is determined to be frivolous and in bad faith, the court shall require the initiating party to pay reasonable costs incurred by the other parties including Attorney's fees.

RAU CONSTRUCTION CO.

February 27, 1991

KANSAS PROMPT PAY AND RETAINAGE PROPOSAL

Notes for Senate Committee Hearings 2/27/91.
Page 4 of 4

Key Points:

1. Encompasses all public work (i.e.: State County, City, School, other public entities).
2. Sets retention at a maximum of 5% unless the Public Entity determines it is in its best interest to be at maximum of 10%.
3. Allows for release of specific retention after substantial completion of portions of a project if approved by the Contractor, Architect/Engineer and Public Entity, and it is determined that this will be made without risk to the Public Entity.
4. Spells out prompt payment terms of 30 days for the Public Entity to the Contractor and 15 days for the Contractor to Subcontractors and Material Suppliers. 1½% per month interest charge for non-payment.
5. Items 2, 3 & 4 above all apply to subsequent tiers in the contracting chain.

TESTIMONY BEFORE THE SENATE COMMITTEE ON LOCAL GOVERNMENT
SENATE BILL 260

WILLIAM A. LARSON

LEGAL COUNSEL FOR
ASSOCIATED GENERAL CONTRACTORS OF KANSAS

February 28, 1991

My name is William A. Larson. I am with Gehrt & Roberts, Chartered, a law firm in Topeka, Kansas. Our firm is legal counsel for the Associated General Contractors of Kansas.

I have been asked to talk to you today by the AGC which I and others in my firm have represented for a number of years because of my experience dealing with payment problems in the building construction industry. I have had occasion to represent a number of contractors and subcontractors on payment disputes, which oftentimes involved mechanic's liens, payment bonds, performance bonds, public works bonds and statutory bonds.

I've also had the opportunity, if not extensively, at least regularly, to write and talk about the areas of bonding, mechanic's liens and payment disputes over the last 10 to 15 years.

I have not been asked to talk about the specifics of Senate Bill 260, but rather to explain why, given the experience I've had in this field, I think this is a good bill.

At the outset I want to point out that I am a big proponent of this bill and similar ones that have been passed in other states. I have, once a year, for the last several years, obtained my lobbyist badge on behalf of the AGC for the specific purpose of testifying in front of various Senate and House committees on proposed changes to the mechanic's lien statutes and

Senate L.G.
2-28-91
Attachment 4

the bonding statutes of this state. I have taken the position, consistent with the position of the AGC, that it would be unwise to make drastic changes in the lien laws and bond laws as they affect the commercial sector of the building construction industry. The reason for this is twofold.

It has been my experience and I believe the experience of most people involved in this field, that most of the problems that arise from payment disputes which result in lien claims are in the residential construction and renovation area. The second reason is that the AGC and others involved in the industry do not want to do anything that will seriously disrupt the way in which the building construction industry works. Nevertheless we have recognize that there can be payment problems in the commercial construction building industry. Possibly no more than in other industries, but any problems are really too many.

I believe Senate Bill 260 is a means of attempting to address some of these problems in a rational, careful and nondisruptive manner.

In my experience there are a number of reasons that give rise to mechanic's liens or bond claims. Among those reasons are that contractors will at times divert money they receive on one project to another project without first paying their subcontractors and suppliers on the project on which they received the money. This may be done innocently on the assumption that funds from other sources will be available to eventually pay the subcontractors and suppliers. When those funds do not materialize,

the subcontractors and suppliers go unpaid and file claims. Subcontractors may divert money in the same way that contractors may divert money, or if some subcontractors are not paid by the contractor, they will in turn not have the funds available to pay material suppliers. In some instances there may be unscrupulous owners, contractors or subcontractors who withhold payment from their contractors, subcontractors or suppliers, on purpose, in an attempt to force the unpaid party into taking payment for less than what is truly owed in order to avoid having to sue for payment. Finally there is, of course, the situation where there is a good faith dispute between a contractor or subcontractor or supplier or whomever in which one party believes the money is honestly not owed while the other believes it is.

In one fashion or another in the public construction area to which Senate Bill 260 is limited, the provisions of this bill address each of these situations. Certainly there is a much greater incentive for the contractor or subcontractor not to divert construction funds when faced with the possibility of paying 18% per annum for failure to pay within the time period specified in the bill. The potential of paying attorney's fees in the event suit is brought is a considerable incentive.

Since there is a greater incentive not to divert construction funds from a project and to make sure that the subcontractors and lower tier people are paid, the subcontractors and lower tier people will receive their money and also have a greater incentive to insure that their subcontractors and lower

tier suppliers are paid. In other words, the bill has a ripple effect.

For the situation where a contractor or a sub attempts to withhold payment in order to negotiate a lower payment, the risks are much greater under the provisions of Senate Bill 260. If the court is to determine that payment was withheld without a good faith controversy, there is again the imposition of an 18% per annum interest assessment as well as attorney's fees which can be substantial. It is important to note that while the payment of attorney's fees may be provided for in some subcontract agreements for failure to make payment in accordance with the contract provisions, it is not uniformly done, and it is questionable whether it can be enforced. Here there is a statutory provision that requires the payment of attorney's fees when it is determined that withholding the funds was made without just cause or excuse.

In the instance of a good faith controversy the bill protects the owner, contractor, subcontractor or whoever it may be who is withholding the funds, and there is no penalty imposed.

Overall, this bill, in the public sector, simply provides a better remedy for a contractor, subcontractor, material supplier or whomever it may be, to insure that payment is made in a prompt and timely fashion.

It is the position of the Associated General Contractors of Kansas that prompt payment in construction projects benefits everyone in the chain of construction. It should be noted that this bill not only requires the owner to make prompt payment, but

also requires the contractor, subcontractor and frankly anyone in the construction chain to make sure that payment is made within a reasonably prompt period of time.

In my view the big advantage to this bill as opposed to some of the other more drastic bills I have seen is that it does not seriously disrupt the manner in which construction projects are handled.

Even though this bill is limited to the public sector, I for one feel that if it is passed, which I believe it should be, and implemented, and if it appears to be successful in encouraging prompt payment in construction projects, then it should be considered a guideline for expanding prompt payment legislation into the private construction area.

I would urge the adoption of Senate Bill 260.

TESTIMONY BEFORE THE
SENATE LOCAL GOVERNMENT COMMITTEE

February 28, 1991

Joel Cochren
National Electrical Contractors Association

Mr. Chairman and members of the committee,
thank you for your time this morning.

My name is Joel Cochren; I am the director of
the National Electrical Contractors Association here
in Topeka.

I am here today to testify in favor of Senate
Bill 260. I represent electrical contractors
throughout the state of Kansas.

I talked to a contractor yesterday who told me
his story involving two projects at Kansas State
University and Emporia State University.

In the Kansas State University job, the final
inspection for the completed job was in November,
1990. He received his last payment just yesterday,
which represents 11 percent of the contract or about
\$9,000. In the meantime, while he was carrying the
~~state~~ ^{contractor} on this money, he was being assessed an
interest charge of 18 percent annually by his
supplier. Unfortunately, he does not have that
luxury under his construction contract.

Senate L. G.
2-28-91
Attachments + 5

The situation at Emporia State University was similar. This time with a general contractor. The job was completed the first of December and the retainage of 10 percent will probably be paid to him around the end of March if he is lucky.

Again, I thank you for your time and hope that you will give favorable consideration toward this bill when it comes to a vote.

KRMCA

Kansas Ready Mixed
Concrete Association

KAPA

Kansas Aggregate
Producers' Associatio

February 28, 1991

To: The Senate Committee on Local Government]

From: E. R. Moses, Managing Director , Kansas Ready Mixed Concrete Association and the Kansas Aggregate Producers Association

Subject: Testimony on Senate Bill 260

Mr. Chairman and members of the committee my name is Edward R. Moses Managing Director of the Kansas Ready Mixed Concrete Association and the Kansas Aggregate Producers Association. I appear before you today representing our association in support of SB260. This bill is designed to clarify procurement transactions between contractors and suppliers with local units of government. We believe SB260 to be a fair and reasonable measure.

This measure would require local units of government to pay for accepted goods and services within a specified period of time or pay interest. We think such legislation is necessary for the following reasons:

- During recent years political subdivisions have been employing several sophisticated financial management tools. For example Capital Improvement Programs (CIP) funded by bond sales, Multi Year Financial Overviews (MYFO), and cash management strategies which call for the deceleration of payments in order to temporarily invest cash.
- Conversely, these same political subdivisions wish to and are required to adhere to procurement by competitive bid, which results in the purchase of goods and services at discounted prices. The result being that providers of goods and services are forced to discount their products while being unable to negotiate the terms of payment.

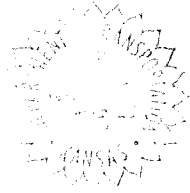
In the past many suppliers have been willing to supply goods and services at a discount as governments have been considered "good pay". However, during the last few years our industry has observed a trend in local government practices to lengthen payment periods. For example many members have reported it is not unusual to have cities and counties take up to 75 to 80 days in settling bills for routine supplies and services. Settlements which commonly took place in 30 to 45 days less than ten years ago.

We feel the passage of SB260 would go a long way in reducing this problem. We are aware many political subdivisions are opposed to mandates requiring payments. Because local units of government are required to procure by law through the competitive bid process; we feel it is also necessary to establish the payment rules in that manner.

We thank you for the opportunity to appear before you today.

Senate L. Gr.
2-28-91
Attachment b

STATE OF KANSAS



KANSAS DEPARTMENT OF TRANSPORTATION

Gary Stotts
Secretary of Transportation

Docking State Office Building
Topeka 66612-1568
(913) 296-3566

Joan Finney
Governor of Kansas

February 28, 1991

Senator Don Montgomery
Chairman, Senate Local Government Committee
State Capitol

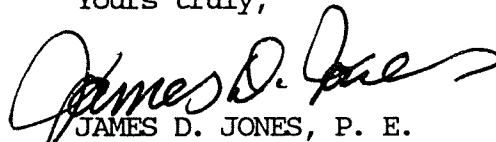
RE: SENATE BILL 260

Dear Senator Montgomery:

The Kansas Department of Transportation opposes Senate Bill 260 as written for the following reasons:

1. Final payment must be made to contractors within 30 days of completion of the work.
2. KDOT reduces the amount retained on contracts to a very small amount unless there are problems with the contract. It would cost substantially in accounting practices to keep track of this for virtually no reason. This would require a minimum of ten (10) personnel statewide to meet these requirements.
3. A second part of the Bill requires 100% payment to sub-contractors when they complete their work on the projects. Not retaining money on the entire contract would require a lot of additional accounting problems.

Yours truly,


JAMES D. JONES, P. E.
Director of Operations

Senate L.G.
2-28-91
Attachment 7



**League
of Kansas
Municipalities**

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL/112 WEST SEVENTH ST., TOPEKA, KANSAS 66603/AREA 913-354-9565

TO: House Committee on Local Government
FROM: E.A. Mosher, Executive Director, League of Kansas Municipalities
RE: SB 260--Prompt Payments for Public Works Contracts
DATE: February 28, 1991

By unanimous action of the League's State Legislative Committee, we appear in opposition to SB 260. We believe the bill is an unwanted intervention in local affairs, bordering on micro-management.

While the bill appears carefully crafted, we suggest this is the kind of legislation that breeds more and more bills in the future. We don't believe that such a single state law, no matter how carefully prepared, can be fair and workable in application to all local conditions, from the smallest drainage district to the largest city.

We call to your attention that a contract, by definition, requires a mutual agreement as to its terms. Public works contracts of significant size normally include detailed provisions as to frequency of payment based on schedules of completion. Some public contracts are not accompanied by detailed specifications, but they are still contracts.

If a city enters into a public works contract without some mutual understanding about all the terms and conditions of performance and payment, we believe that is their problem, not the problem of the state legislature. Similarly, if a contractor enters into a public works contract without an understanding on these matters, we think it's their problem, not the problem of the state legislature.

If a city or other public agency does not conform to the contractual agreements, or the contractor does not conform, their remedy is in court or by mediation. We simply do not think we need more state laws on this subject, and urge that SB 260 be reported adversely.

Senate L. G.
2-28-91
Attachment 8



City of Lenexa

Phone (913) 492-8800
FAX (913) 492-0374

February 28, 1991

Senator Don Montgomery
Chairman, and Members of the
Senate Local Government Committee
State Capital
Topeka, Kansas 66612

RE: SB 25

Dear Senator Montgomery and Members of the Committee:

I am writing to relay some comments regarding SB 25 that has been discussed in the Local Government Committee this session. This particular bill is being sought to clear up and clarify a statute that has been very ambiguous. The Kansas League of Municipalities initiated and supported this bill on behalf of the cities of the State of Kansas and Lenexa supports this legislation.

However, it has come to my attention that a representative of the Greater Kansas City, Missouri Home Builders Association has requested some modifications to this bill, and specifically an amendment that would require a super majority (2/3) vote of the Governing Body to increase any fees over \$100. For the record, Lenexa has a minimum of forty (40) different fees ranging from one hundred dollars on up. In fact, revenues derived from fees help to decrease the burden on the property tax. Philosophically, those who benefit directly from a particular service should pay for a portion of it. In addition, this action would represent another infringement by the state into local matters and further hinder our ability to make democratic decisions at the local level.

Finally, I want to relay to the committee that the City of Lenexa has tried to work with the Greater Kansas City Home Builders Association on fees for over a year. We understand the HBA's concern with increased fees and know they are working with Johnson County, as well as Leawood and Olathe on similar concerns. I want to emphasize that this is not a statewide concern, but rather, a Johnson County concern which the HBA should work out with each individual city and the County.

I would be pleased to answer any questions you might have. Please feel free to call me at (913) 492-8800.

Sincerely,

Rich Becker
Mayor

A handwritten signature in black ink, appearing to be "Rich", written over a large, loopy flourish.

Senate L.G.

2-28-91

Attachment 9