

Approved: 2/17/98
Date

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR.

The meeting was called to order by Chairman Al Lane at 9:05 a.m. on February 17, 1998 in Room 526-S of the Capitol.

All members were present except: Rep. David Adkins - excused

Committee staff present: Jerry Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Bev Adams, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

Rep. Geringer made a motion to approve the minutes of January 27, 29, 30 and February 3, 4 and 5. The motion was seconded by Rep. Crow. The minutes were approved as written.

Chairman Lane thanked all the members of the sub-committee for all the hard work and dedication in trying to resolve **HB 2591**. He then turned the meeting over to Rep. Boston for the sub-committee's report.

Report by Rep. Boston from Sub-Committee on **HB 2591**:

The sub-committee composed of Rep. Boston as Chairman and Rep. Geringer, Rep. Grant, Rep. Mason, and Rep. Pauls have held several meetings to examine and discuss the matter, and work out a recommendation to bring to the full committee.

On a vote of 3-2, the sub-committee made the recommendation to the full committee to support the passage of **HB 2591** with an amendment that would enact a moratorium on the \$25,000 penalty provision as it relates to self-employed subcontractors. They also recommend the formation of a Task Force, by resolution, composed of legislators and members of the public to further study the many facets of the subcontractor situation. Included in the report were the many topics that were presented and discussed by the sub-committee. (See Attachment 1)

Rep. Beggs made a motion to accept the sub-committee report with revisions made by Researcher Jerry Donaldson. Rep. Crow seconded the motion. The motion passed.

After much discussion, it was decided that Bob Nugent, Revisor, would make balloons with amendments that would address several of the issues that concern members of the committee. These would be available for discussion and possible final vote on Thursday, February 19, 1998. Among these issues are: looking into the penalty provision, a moratorium on the \$25,000 penalty for subcontractors who do not obtain coverage for employees, and limiting provisions of the bill to the construction industry only.

Rep. Grant made a motion to have Bob Nugent, Revisor, draft a resolution to recommend the formation of a Task Force to study the subcontractor situation. It was seconded by Rep. Mason. The motion passed.

Chairman Lane adjourned the meeting at 9:58 a.m.

The next meeting is scheduled for February 18, 1998.

February 17, 1998

To: House Committee on Business, Commerce, and Labor

From: Jerry Ann Donaldson, Principal Analyst

Re: Subcommittee Recommendations—Revised

Throughout the deliberations on the subcontractor issues in the context of coverage under the Workers Compensation Act, the subcommittee has struggled with the complexities involved. See attached memorandum. The subcommittee has agreed there is a problem and has endeavored to reach a solution that would be workable for the parties involved. In reaching the final recommendation to the full Committee, the subcommittee recommends the following:

1. Support H.B. 2591, as currently drafted, that is, to repeal those provisions of 1997 H.B. 2011 that amended K.S.A. 44-505 and K.S.A. (1996 supplement) 44-508 regarding self-employed subcontractors performing work for a contractor and further, to amend the bill as outlined in No. 2.
2. Add a provision to H.B. 2591 that would enact a moratorium on the penalty provision from the date of enactment of 1997 H.B. 2011 as it relates to self-employed subcontractors.
3. Recommend the formation of a Task Force, by resolution, composed of legislators and members of the public to further study the many facets of the subcontractor situation.

February 17, 1998

To: House Business, Commerce, and Labor Committee

From: Jerry Ann Donaldson, Principal Analyst

Re: Subcommittee Deliberation on Subcontractor Issues

1998 H.B. 2591, as drafted, would repeal those provisions of 1997 H.B. 2011 that requires self-employed subcontractors to come under the Workers Compensation Act and to provide their own workers compensation insurance. A Business, Commerce, and Labor Subcommittee was appointed and held several meetings to examine and review this matter and, as a result, discussed and reviewed a variety of topics central to the debate on the subcontractor issue.

The following list, although not necessarily exhaustive, and not necessarily in the order of priority, illustrates the range of topics that were presented and discussed before the Subcommittee:

- the overall policy issue of whether subcontractors should be covered under the Workers Compensation Act;
- the issue of whether workers compensation coverage is actually an exclusive remedy;
- the issue of consideration of recommendations of the Workers Compensation Advisory Council that deliberated the overall issue of coverage of self-employed subcontractors;
- the amount of premiums paid by some subcontractors and whether a lower premium might make coverage more palatable and whether this could translate into reduced coverage at a reduced price;
- the issue of whether subcontractors should have their own coverage to "follow" them, rather than to be covered under a general contractors' policy, especially when a subcontractor may work at more than one site on any given workday;
- the issue of whether an individual subcontractor could get workers compensation coverage for a specified and certain time frame, such as in the warm weather months, when the construction and building trades are busiest;
- the issue of allowing corporate officers to "opt out" of workers compensation coverage on themselves—a provision whereby, such contractors could incorporate and then "opt out";

- the payroll threshold issue of \$20,000 and whether this amount should be lowered (or raised) and what effect such a change would have on subcontractors;
- the issue of whether to establish a special state fund that would assist subcontractors in some form of state-sponsored coverage;
- the issue of subcontractors who, at times, act as general contractors, and how to handle this situation;
- the issue of how other states handle these matters and whether Kansas wants to adopt provisions of another state (for example, the State of Colorado is cited as having a cap of \$15,000 on a tort suit filed by a corporate officer against the corporation);
- the issue of notice of cancellation;
- the issue of whether a more fully exhaustive examination of the central concerns that were brought out in the Subcommittee forum is needed, *i.e.*, an interim study, and whether the makeup of such a study group should consist of public and private members;
- the issue of whether the terms involved in discussions such as those before the Subcommittee can be defined so that discussion participants have a clear understanding of concepts that are being debated;
- the issue of whether the general contractor should be relieved of tort liability exposure when a self-employed subcontractor does not have workers compensation coverage on himself or herself;
- the issue of whether to allow self-employed subcontractors to self-insure;
- the issue of whether to allow self-employed subcontractors to continue to obtain a certificate of coverage, such as is currently allowed;
- the issue of whether to address the fine of \$25,000 that can be levied against a subcontractor who does not obtain coverage for employees, as required under the Workers Compensation Act; and
- the issue of recommendations regarding H.B. 2591. Possibilities can include:
 - pass H.B. 2591 as is;
 - do not pass H.B. 2591, which would leave the current law provisions of 1997 H.B. 2011 intact; or
 - pass H.B. 2591 with changes, such as restricting certain provisions to the construction industry.