

Approved: 3-18-98
Date

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION & ELECTIONS.

The meeting was called to order by Chairperson Kent Glasscock at 9:00 a.m. on March 17, 1998, in Room 521-S of the Capitol.

All members were present except: Representative David Haley, Excused

Committee staff present: Mary Galligan, Legislative Research Department
Mike Heim, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Fulva Seufert, Committee Secretary

Conferees appearing before the committee: Mr. Thomas E. Slattery, Executive Vice President, Associated General Contractors of Kansas, Inc.
Ms. Martha Neu Smith, Executive Director, Kansas Manufactured Housing (Written only)

Others attending: See attached list

Representative Sharp made a motion to approve the minutes of March 16, 1998, and Representative Horst seconded. Motion passed.

Chairman Glasscock called the Committee's attention to the fiscal note for **HB 3000**.

The Chair opened the Public Hearing for **SB 489**.

SB 489 - Construction contracts; providing procedure for partial payment

Chairman Glasscock welcomed Mr. Thomas E. Slattery, Executive Vice President, Associated General Contractors of Kansas, Inc., who spoke as a proponent for **SB 489**. Mr. Slattery said that **SB 489** was introduced at the request of the Associated General Contractors of Kansas, Inc. He also said that the bill had been made more simple and acceptable through substantial remodeling in the Senate. Mr. Slattery said that the value of the bill now is that it does provide a structure and some guidelines for a contractor to use escrow and securities provisions if agreed to by the public owner. (Attachment 1.)

Representative Cox inquired if this was possibly a prevailing wage vehicle, and Mr. Slattery said that his question was well taken and suggested that research would have to answer, but that this was not their intent.

There being no further questions, the Chair closed the Public Hearing on **SB 489**.

Chairman Glasscock asked for the Committee's pleasure in regard to **SB 489**.

Representative Wilk made a motion to pass out **SB 489** marked favorable, and Representative Cox seconded. Motion passed.

The Chair asked Representative Cox to carry the bill.

Chairman Glasscock asked the Committee to turn its attention to **SB 561**, the smoke detector bill. The Chair called the Committee's attention to the written testimony regarding an amendment submitted by Ms. Martha Neu Smith, Executive Director, Kansas Manufactured Housing. (Attachment 2.)

Representative Benlon encouraged the Committee not to amend the bill due to the fact that it has had such a difficult time in the Senate.

Representative Benlon made a motion to pass out **SB 561** marked favorable for passage, and Representative Wells seconded. Discussion followed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION & ELECTIONS, Room 521-S Statehouse, at 9:00 a.m. on March 17, 1998.

Representative Powers asked if he understood Representative Benlon correctly that she did not want to touch the bill, and Representative Benlon stated again that she would prefer that it not be changed in any way so that it would stand a better chance of passing the House.

Representative Horst said that it was necessary for her to be out of the room when the testimony was presented and that today she was quickly trying to read the contents. She wanted to know where the particular amendment would be inserted before she voted. She also wanted to know the concerns about improper maintenance.

Revisor Theresa Kiernan addressed her specific concerns about the insertion, and Representative Campbell explained that the requirement of smoke detectors in manufactured homes is federal law and that there is concern that the owner or occupant is not held responsible.

Representative Horst said that, of course, there would still be the possibility that an amendment could be made from the Floor.

Representative Dillon made a substitute motion to amend SB 561 with the Manufactured Housing balloon and to pass SB 561 out marked favorable for passage. Representative Welshimer seconded. Discussion followed. For point of clarification, the amendment requires customers of manufactured houses to be required to have a working smoke detector.

Representative Long expressed concern about how the law could be enforced for homeowners to keep smoke detectors operable.

Representative Dillon commented that the amendment only applies to certain areas of new construction.

Representative Horst said that she thought the amendment was requested because landlords are concerned about their liability.

Representative Huff stated that the legislation basically speaks to the three following concerns: 1) Enforcement in new construction; 2) Request for a home inspection; and 3) No authorization to enter solely for compliance, but only when responding to a fire except in the case of a false alarm.

Representative Long wanted clarification as to what was considered to be a manufactured home, and Chairman Glasscock responded that a manufactured home is constructed off site.

The vote was taken on Representative Dillon's substitute motion to amend the bill with the Manufactured Housing balloon and to pass SB 561 out marked favorable for passage with Representative Welshimer's second. Motion passed.

The Chair announced that Representative Campbell would carry **SB 561**.

The meeting adjourned at 9:30 a.m.

The next meeting is scheduled for March 18, 1998.

**GOVERNMENTAL ORGANIZATION & ELECTIONS
COMMITTEE GUEST LIST**

DATE: TUESDAY, MARCH 17, 1998

NAME	REPRESENTING
Ron Seebor	Dot Admin
MIKE III Gangey	Wellington Fire Dept
John M. Loyal	Wellington Fire Dept / KS AFC
Tom Stattery	AGE of Ks
John Petersen	AGE of Ks
Judy Moler	Ks. Assoc of Counties
Steve Woolington	KDOT
DARYL DANIELS	D. of A. Accounts & Reports
Pat Rehman	Ks Fire Service Alliance
Bill Watts	KDOT
Jim KEATING	KANS. FIRE CHIEFS ASSOC
Janie Strambora	SO Co
Don Stegelman	Ks. SAFE KIDS Coalition
BUCK HARTLEY	SHAWNEE FD. / KS AFC
Elena Murr	S9M
Dave Sterbenz	Kansas State Firefighters
Jeff Hudson	Shawnee Fire Dept.
Laura A. Wichman	St. Manys Fire Dept.
Wilbur F. Stam Jr	S.C.F.D. #3 Rossville - Ks.

Don Moler

League of KS Mun.



**TESTIMONY BEFORE THE HOUSE GOVERNMENTAL ORGANIZATION AND
ELECTION COMMITTEE**

BY THOMAS E. SLATTERY, EXECUTIVE VICE PRESIDENT

ASSOCIATED GENERAL CONTRACTORS OF KANSAS, INC.

MARCH 17, 1998

Chairman Glasscock and members of the committee, Senate Bill 489 was introduced at our request and is also supported by the Kansas Contractors Association, the Heavy Constructors of Kansas City and the Builders Association/AGC of Kansas City.

On its way through the Senate, SB 489 underwent some substantial remodeling which made it more simple and acceptable.

Since retainage is not a concept that the average person deals with on a regular basis, I would like to take just a moment to explain this unique aspect of the commercial construction industry. Typically on a commercial construction project, the contractor submits monthly pay requests for work completed and materials used. After the pay request is approved by the architect or engineer, it is common practice for the public owner, school district, KDOT, city or regents institution to withhold a portion of the pay request, sometimes as high as 10%. This money withheld is called retainage. The retainage is continued on subsequent payments to the contractor

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Attachment 1

through the rest of the project. However, after the job is 50% complete the percent withheld is sometimes reduced through the rest of the project. For example, on a ten million dollar building project the first request for payment might be five hundred thousand dollars, however the contractor would only receive four hundred and fifty thousand dollars and the remaining fifty thousand dollars would be retained. This would continue through the balance of the project and the contractor could eventually have between half a million to a million dollars being held at no interest.

This retainage represents money earned by the contractor, but unpaid until final completion of the project. This causes contractors to incur additional costs in the form of loan interest or the opportunity cost of forgone investment earnings.

Following are the four major provisions of the bill as it was amended:

I. The cap of 5% on retainage was deleted. (Line 25)

II. Paragraph b, line 28 provided that on contracts over one million dollars (\$1,000,000), contractors could request that retained funds be placed in an interest-bearing escrow account in an approved financial institution as specified in the bill. The contractor would be responsible for establishing and paying any fees associated with the account. The interest on the funds deposited in the account would be paid to the contractor as it is earned. This agreement would provide that the retained funds would be returned to the public entity in the event that the contractor has defaulted. This paragraph was amended to require approval of the public entity before any action

regarding escrow would be allowed. (Lines 30 & 31)

III. Paragraph e, page 2, line 4 would have provided that on contracts over one million dollars (\$1,000,000), after retainage had been withheld the contractor could have requested that approved securities, i.e. U.S. Treasury Bonds, Notes, Certificates of Deposits or bonds of the state of Kansas or political subdivisions, be substituted for the retained monies. Substituted securities would have to be equal to or exceed the amount of the retained funds. This was amended to require approval of the public entity before substitution of securities be allowed. (Lines 7 & 8)

IV. If during the course of the project the contractor should default, the retained funds or substituted securities would revert to the public contracting entity.

Sections 2, 3, 4 & 5 of the bill were modifications to current statutes that would have made them conform to the new language and have been deleted.

We conducted a survey of other AGC chapters throughout the United States. As a result of this survey, we have information from AGC chapters in twenty different states that provide for the substitution of securities or the escrow concept we have suggested. In addition to that, I have attached to the testimony a one page article which indicates thirty one states have similar provisions.

Members of the committee, with the Senate amendment deleting the 5% cap on retainage along

with making the escrow and substitution of securities totally dependent on approval by the public entity, I believe all objections to this proposal have been removed.

The value of the bill now is that it does provide a structure and guidelines for a contractor to use escrow and securities provisions if agreed to by the public owner. Having these guidelines as a part of the statutes, we hope public owners will be more inclined to participate in this concept.

We respectfully request your favorable consideration of Senate Bill 489 as amended.

Thank You.

MAKING YOUR RETAINAGE DOLLARS WORK FOR YOU!

by Martin S. Bodner

For those contractors who work in the public sector, the government requirement for cash retainage or "retained percentages" poses two problems: minimizing the amount of money that your money earns and maximizing the impact on your tax liability.

Simply put, retainage is money that the government agency withholds from the contractor until completion and final acceptance of the project. Retainage is actually a method of withholding funds earned by the contractor in the performance of his work. Depending on the size of the contract, this amount can be quite significant and can have a bearing on earnings. In addition, administrative processing delays often result in losses of substantial income to the contractor and may even necessitate the borrowing of funds to cover costs.

However, recognizing the need for a better and fairer method of doing business together, 31 states now allow contractors to substitute approved securities in lieu of cash retainage. These securities are usually tax-free bonds issued in the state in which the contractor is working or U.S. Treasury Certificates - T-Bills, T-Notes, or T-Bonds.

Though the details vary from state to state, in general, the contractor must deposit (with a specified custodian) a sufficient quantity of marketable securities whose liquidation value is at least equivalent to the amount of cash retainage available. The government agency has control over the escrow account and the contractor receives the interest income generated by the investment. Final and full payment to the contractor is accomplished following the same procedures under customary retainage agreements.

Taking advantage of this concept gives the government agency "protection" while allowing the contractor to earn interest income and possible capital gains on otherwise dormant dollars. Your lending institution and bonding company will endorse this concept because you are building a portfolio of hard assets, with an emphasis on capital preservation.

As in other investments, your philosophy can vary from the conservative to the aggressive. For example, if you gear the maturity dates of your bonds to the completion date of the job, you eliminate market risk. You may also buy securities with somewhat extended maturities so that they may cover guarantee periods and may be transferred from one contract to another.

This second method will ultimately generate cash flow on the second and subsequent usage of the same bond.

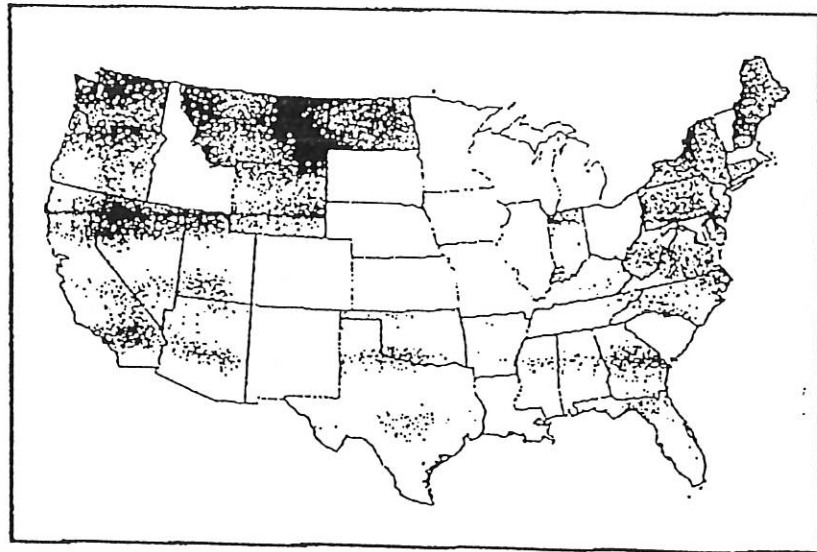
Finally, there are additional benefits to this approach above and beyond receiving interest income and the use of the retainage money on the second use of the same security. For example, from the contractor's point of view, the investment of retainage dollars may allow for tax strategies not previously available. And from the government agency's point of view, not only are new markets created for municipal bonds and school districts, but lower bids may result based on the anticipated earnings from the interest on these securities.

If your company is doing public works business in a state that does not allow for this retainage alternative, I strongly suggest that you lobby and work through your professional associations for such a provision. If your company is doing public works business in one of the 31 states listed below, I urge you to seriously consider this exciting and profitable alternative.

Martin S. Bodner is Vice President/Retainage Specialist for PaineWebber of Morristown, New Jersey and has been dealing with contractors in the public sector for ten years. Martin graduated from Northeastern University in 1962 and is active in a variety of professional organizations.

The 31 states that have approved this practice are:

Alabama	New Hampshire
Arizona	New Jersey
Arkansas	New York
California	North Carolina
Connecticut	North Dakota
Delaware	Oklahoma
Florida	Oregon
Georgia	Pennsylvania
Indiana	Rhode Island
Kentucky	Tennessee
Louisiana	Texas
Maine	Utah
Mississippi	Virginia
Montana	Washington
Nevada	West Virginia
	Wyoming





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March 16, 1998

Representative Kent Glasscock
Statehouse, 183-W
Topeka, Kansas 66603

Dear Representative Glasscock:

It is my understanding that SB 561 will be worked in the House Governmental Organization and Elections Committee either Tuesday or Wednesday of this week. Kansas Manufactured Housing Association offered an amendment to SB 561, which would require the owners and occupants of manufactured housing to maintain their smoke detectors in working condition as the bill requires for owners/occupants of other dwelling units.

As stated in my testimony, the manufactured housing industry has hardwired smoke detectors in all their homes since 1976, as required under the federal manufactured home construction and safety standards act. While this **federal preemptive law** requires smoke detectors be installed in all our homes, it does not address the homeowners responsibility to maintain the detectors. KMHA's amendment would bring the owner/occupants of manufactured housing under the requirements of this act.

Fire safety is important for **ALL** Kansas residents. I respectfully ask for your support of the KMHA amendment.

Sincerely,

Martha Neu Smith
Executive Director

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Attachment 2