

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE.

The meeting was called to order by Chairman Donald Dahl at 9:00 a.m. on February 12, 2003 in Room 243-N of the Capitol.

All members were present except: Representative Rob Boyer, Excused

Committee staff present: Jerry Ann Donaldson, Kansas Legislative Research Department
Renaë Jefferies, Revisor of Statutes
June Evans, Secretary

Conferees appearing before the committee: Janet Stubbs, Administrator of the Kansas Building Industry Workers Compensation Fund

Others attending: See attached sheet

The Chairman called the meeting to order at 9:00 and stated that Ms Stubbs was out of town on February 10 when the hearing was held on **HB 2129**. She will give her testimony today.

Janet Stubbs, Administrator of the Kansas Building Industry Workers Compensation Fund, an opponent testified that **HB 2129** was viewed as another level of government bureaucracy. This is a duplication of efforts already being performed by the federal government and is working effectively. There is also opposition of the expense to the carriers at a time when workers compensation rates are rising because of increased health care costs and the trickle down effect of September 11 (Attachment 1).

Representative Ruff asked Ms. Stubbs if she was under the impression that the Department of Human Resources is pushing for a state OSHA?

Ms. Stubbs replied that in the past the Division of Workers Compensation was under the Department of Human Resources. This was before the change of administration.

Representative Ruff asked if Phil Harness and his group was pushing Representative Bethell to do this bill?

Ms. Stubbs replied she didn't think so and thought Representative Bethell had his own reasons maybe because he experienced an inspection by OSHA.

Representative Ruff asked Ms. Stubbs if she has had the opportunity to talk to the new Secretary of Human Resources.

Ms. Stubbs replied she had not but would be glad to do so.

Representative Ruff said her understanding with the new Secretary and new Governor was that a new OSHA state plan was the furthest thing from their mind. The change of the people at the top might have a new attitude.

The Chairman stated **HB 2129** would be worked on February 18 so be prepared to discuss it.

The Chairman asked of the Committee to turn their attention to **HB 2064: Filing times on certain liens extended for property other than residential property.**

During the hearing on February 5, "Notice of Intent to Perform" was brought up in the testimony. The Chairman asked Staff to brief the committee on "Notice of Intent to Perform". Presently, only pertains to new residential property (Attachment 2).

The Chairman stated that if any member wanted to ask a question of anyone in the audience, that this request

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE at 9:00 a.m. on February 12, 2003 in Room 243-N of the Capitol.

should be made to the chairman. The Floor was opened for a motion.

Representative Patterson moved and Representative Rehorn seconded to move **HB 2064** out of committee favorably for passage. Discussion followed.

Representative Grant asked what the advantage was to having 180 days for commercial property. This bill does not affect the 90 days for residential property.

Representative Rehorn said he heard this bill in Judiciary. In past years similar versions have alternately passed the House and Senate. He believed it should have become law but due to some Chairman it did not. This is no big deal. He believe less liens would be filed and there would be less problems for contractors if they had six months time limit.

Representative Johnson said he believed this was one of the more controversial issues he has been involved with. He stated he has received a lot of mail on this issue and was reluctant to think this committee should rush in and take action. He heard that one side might be willing to compromise for 120 days. Representative Johnson said he could not support 180 days.

Representative Holland asked one of the audience member's why they needed 180 days instead of 120 days?

Tom Moore, Attorney, Kansas City, Missouri, responded that 120 days is still not adequate to get the problems taken care of. 180 days is the breaking point. If there is a need to file a lien after 180 days there is a definite problem. With a shorter time frame have to file a lien just because payment was not made.

Representative Yoder made a Substitute Motion, Representative Carlin seconded to amend with a Notice of Intent as the Bankers Association requested in their testimony.

Representative Yoder and Representative Carlin withdrew their Substitute Motion.

Representative Grant moved and Representative Johnson seconded a Substitute Motion to Table **HB 2064** February 20. At that time Representative Yoder could have an amendment in writing.

The Chairman said "To Table" is non-debatable.

There was a question on the vote and a show of hands was requested: 10 Yeas – 6 Nays.

The Chairman said the motion "To Table" until February 20 carried.

The Chairman asked the committee members to read the bill and come back with a clear idea of what they desired. He requested that amendments be in writing so they could be distributed to the members on February 20.

The meeting adjourned at 10:40 a.m.

COMMERCE AND LABOR

DATE February 12, 2003

NAME	REPRESENTING
JOHN C. BOTTENBERG	Dettnerbaugh
Janet Stubbs	KBIA
Kathy Olsen	Ks Bankers Assoc
STEVE MOHAM	MOHAM CONSTRUCTION
Will CARSON	ABC
Cory Peterson	AGC of Kansas
Wendy McDermis	KRMCA
Woody Moses	Ks. Cong. Prod. Assoc
Thomas D. Moore	Moore Kennessy Freeman
Ken Keller	NACM
Bill MILLER	AMERICAN SUB CONTRACTORS ASSOC.
Chuck Stones	ICBA

HOUSE
COMMERCE AND LABOR COMMITTEE
FEBRUARY 10, 2003
HB 2129

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is Janet Stubbs, Administrator of the Kansas Building Industry Workers Compensation Fund, a homogeneous pool established under the Kansas Statutes to provide workers compensation coverage for members of the residential and light commercial construction industry. We currently provide coverage for approximately 700 companies representing approximately \$9.5 million in premium. I am also Executive Officer for the Kansas Building Industry Association with a current membership of approximately 1700 companies throughout the State of Kansas. The 2003 Legislative Policy Statement adopted by the KBIA includes opposition to the establishment of a Kansas OSHA.

HB 2129 is viewed as another level of government bureaucracy, which is a duplication of efforts already being performed by the Federal government, which we believe is working effectively. We venture to say that the public sector proponents are viewing this as an opportunity to expand and secure their jobs. The private sector proponents believe they will have better opportunity to avoid fines by the State. However, we have heard the division staff state that they hate to see these fines go out of state.

There are ways for the private sector to avoid fines. For example, the two construction pools in Kansas provide safety consultants to their members. The KBIWCF has two full time OSHA trained Loss Control/Safety Consultants who visit member companies and educate management on how to eliminate hazards on their jobsites or workplace. The Kansas statutes say insurance carriers will make safety consultations available to their clients. Has this been being enforced? Not to my knowledge.

The Division currently provides consultation to companies that request inspection and suggested safety improvements. During the period of time the State is performing this service and providing time for the company to comply, OSHA cannot come on the jobsite. Our concern about that operation comes from first hand knowledge of keeping OSHA off the premises resulting in the contractor feeling secure and failing to operate in a safe manner. It is a "protection" for the contractor and has lasted throughout the construction process while the workers comp coverage provider bears the risk of injury. The Division is paid handsomely by OSHA for this now. Would that continue if the fines were sent to the State coffers?

In addition to our objection to establishing another state level of bureaucracy and duplication of efforts, we oppose the expense to the carriers at a time when workers compensation rates are rising because of increased health care costs and the trickle down effect of 9/11. Excess insurance coverage expense has more than tripled for some undesirable class codes such as construction. This will only exacerbate the problem. During the interim, Legislators expressed concern regarding funding for a State OSHA when the State already had budget problems. Now a new money source has been chosen at a time when carriers are struggling and some are already leaving Kansas.

The KBIA & KBIWCF urge you to question the benefits to be derived. Are we looking for another way to fund the current staffing level? Are we appeasing owners of companies that have been fined? As I have pointed out, OSHA has an appeal procedure as is provided in HB 2129.

We urge you to oppose HB 2129.

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2-12-03
Atch # 1



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60-1103b

Chapter 60.--PROCEDURE, CIVIL

Article 11.--LIENS FOR LABOR AND MATERIAL

60-1103b. Subcontractors' liens; new residential property. (a) As used in this section, "new residential property" means a new structure which is constructed for use as a residence and which is not used or intended for use as a residence for more than two families or for commercial purposes. "New residential property" does not include any improvement of a preexisting structure or construction of any addition, garage or outbuilding appurtenant to a preexisting structure.

(b) A lien for the furnishing of labor, equipment, materials or supplies for the construction of new residential property may be claimed pursuant to K.S.A. 60-1103 and amendments thereto after the passage of title to such new residential property to a good faith purchaser for value only if the claimant has filed a notice of intent to perform prior to the recording of the deed effecting passage of title to such new residential property. Such notice shall be filed in the office of the clerk of the district court of the county where the property is located.

(c) The notice of intent to perform and release thereof provided for in this section, to be effective, shall contain substantially the following statement, whichever is applicable:

NOTICE OF INTENT TO PERFORM

"I

(name of supplier, subcontractor or contractor)

(address of supplier, subcontractor or contractor)

do hereby give public notice that I am a supplier, subcontractor or contractor or other person providing materials or labor on property owned by

(name of property owner)

and having the legal description as follows:

RELEASE OF NOTICE OF INTENT TO PERFORM NO. _____ AND WAIVER OF LIEN

"I

(name of supplier, subcontractor or contractor)

of

(address of supplier, subcontractor or contractor)

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Labor*

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Atch # 2

do hereby acknowledge that I filed notice of intent to perform no. _____ covering property owned by

(name of property owner)

and having the legal description as follows:

In consideration of the sum of \$ _____, the receipt of which is hereby acknowledged, I hereby direct the clerk of the district court of _____, Kansas to release the subject notice of intent to perform and do hereby waive and relinquish any statutory right to a lien for the furnishing of labor, equipment, materials or supplies to the above-described real estate under the statutes of the state of Kansas."

(d) When any claimant who has filed a notice of intent to perform has been paid in full, such claimant shall be required to file in the office in which the notice of intent to perform was filed, and to pay any requisite filing fee, a release of such notice and waiver of lien which shall be executed by the claimant, shall identify the property as set forth in the notice of intent to perform, and state that it is the intention of the claimant to waive or relinquish any statutory right to a lien for the furnishing of labor or material to the property. Upon such filing, the notice of intent to perform previously filed by such claimant shall be of no further force or effect, and such claimant's right to a lien under K.S.A. 60-1101 and 60-1103, and amendments thereto, shall be extinguished.

(e) Any owner of the real estate upon which a notice of intent to perform has been filed, or any owner's heirs or assigns, or anyone acting for such owner, heirs or assigns, and after payment in full to the claimant, may make demand upon the claimant filing the notice of intent to perform, for the filing of a release of the notice and waiver of lien as provided for in subsection (d), unless the same has expired by virtue of the provisions set forth in subsection (f).

(f) Notwithstanding the requirements of subsections (d) and (e), a notice of intent to perform shall be of no further force or effect after the expiration of 18 months from the date of filing the same, unless within such time the claimant has filed a lien pursuant to K.S.A. 60-1101 and 60-1103, and amendments thereto.

History: L. 1986, ch. 217, § 3; L. 1996, ch. 233, § 1; July 1.

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