

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman William Mason at 1:30 p.m. on March 9, 2004 in Room 313-S of the Capitol.

All members were present except:

Representative Candy Ruff- excused
Representative Joann Freeborn- excused

Committee staff present:

Russell Mills, Legislative Research Department
Mary Torrence, Revisor of Statutes Office
Dennis Hodgins, Legislative Research Department
Rose Marie Glatt, Secretary

Conferees appearing before the committee:

PROPONENTS:

Ken Keller, Controller, Western Extralight Co.
Bill Miller, President, Building Erection Service Co & Midwest Crane
Dan Haake, President, Haake Foundations
Kathy Tolle, Vice President, National Association Credit Manager
Ken Daniel, Chairman/CEO, Midway Wholesale

OPPONENTS:

Rick Dodds, The Boeing Company
Wayne Hardy, Manager Contract Administration, Westar Energy
L.J. Leatherman, KS Trial Lawyers Assn.
Dean Ferrell, President/Owner, Ferrell Construction
Trudy Aron, Executive Director, AIA
Martha Neu Smith, Executive Director, KS Manufactured Housing Assn.
*written testimony only
Cory Peterson, Exec. VP, Association of General Contractors of Kansas
Phil Sewell, President, Central Mechanical, Wichita
Marlee Carpenter, VP, Governmental Affairs, KS Chamber of Commerce
Michael R. Murray, Director, Governmental & Public Affairs, SPRINT

Others attending: See Attached List.

Without objection, Representative Edmonds requested a bill be introduced that would create a felons registry specific to felons that have committed felonies with the use of firearms

HB 2853- Kansas fairness in private construction contract act

Ms. Torrence explained the bill provided that payment of the amount due a contractor, under a private construction contract, would have to be paid within 30 days, after the owner receives a timely, properly completed, undisputed request for payment. She explained definitions in the bill, penalties for non-payment, payment processes and escrow arrangements.

PROPONENTS:

Ken Keller, Controller, Western Extralight Company, stated the purpose of the legislation was to ensure that all parties involved in construction projects were treated fairly, and paid timely when work is properly performed (Attachment 1). He referred to a construction organization chart and AIA standard contract related documents A201-1997 and A401-1997 (copy on file at American Institute of Architects). He concluded by saying the fiscal note was zero and he urged passage of the bill.

CONTINUATION SHEET

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE at 1:30 p.m. on March 9, 2004 in Room 313-S of the Capitol.

Bill Miller, President, Building Erection Services Company, testified that the bill addressed the following issues: payment schedule requirement for all business tiers starting with owners to the suppliers of sub-contractors, penalties for non-payment, alternative securities, anti-immunity provision and issues relating to dispute resolution (Attachment 2). His testimony included: many testimonial support letters from members of the American Subcontractors Association, Greater Kansas City Chapter- a sample included, list of AGC Members, supporters of the Kansas Fairness in Private Construction Act, AIA Document G702 & G703 (Application and Certificate for Payment Form), Prompt Payment Laws in effect by state, Missouri prompt payment act and the ASA Members needs survey.

Dan Haake, President, Haake Foundations, testified in support of **HB 2853**, specifically the portion of the act that would set minimum standards for payment of invoices on construction projects. He stated that the bill would help small businessmen meet the financial demands of their businesses (Attachment 3).

Kathy Tolle, VP Operations, NACM Credit Services, Inc. rose in support of the bill and stated that their goal was to protect the typically smaller and more volatile Kansas companies who may or may not be able to financially fight for due payment and whose livelihood depends on prompt payment for work performed (Attachment 4).

Ken Daniel, Chairman/CEO, Midway Wholesale, appeared to advocate for measures that would guarantee payment for their products and services on a timely basis. Small business owners believed that the unfairness has reached an unbearable level and they see no way for the situation to correct itself (Attachment 5).

OPPONENTS:

Rick Dodds, The Boeing Company, opposed the bill stating that **HB 2853** results in a significant restriction on the legal rights of the citizens of Kansas. Boeing would prefer to resolve the negotiation of private construction issues outside of the legislative process (Attachment 6).

Wayne Hardy, Westar Energy, stated they oppose **HB 2853** because it disrupts normal negotiation between contractors and Westar Energy. Matters addressed by the bill are better dealt with in contract negotiations, if either a firm or its contractor breaches a contract (Attachment 7).

L J Leatherman, Kansas Trial Lawyers Association, offered comments in opposition to the bill. He identified areas of concern which included: loser pay provisions, confusion over whether the bill covers improvements only or construction of single family dwellings, period of time for dispute of bill, contract provision for remedies, and the question of responsible parties for attorney fees (Attachment 8).

Dean Ferrell, Ferrell Construction, opposed the bill stating that private investors are struggling to rationalize funding construction projects in Kansas, and the bill imposes restrictions on private owners that will be a deterrent to future investment in capital projects (Attachment 9). The additional rules would be impossible to enforce.

Trudy Aron, American Institute of Architects, stated that the bill would only provide more animosity between owners, architects, contractors, subcontractors and lower tiered subcontractors (Attachment 10). If passed it nearly guarantees that there will be litigation at the end of every building project. She stated that withholding of funds, in many cases, becomes the owner's only leverage to get the contractor to finish the work. Likewise, the contractor should have the same rights regarding their subcontractors.

Martha Neu Smith, Executive Director, KS Manufactured Housing Assn, stated they oppose the bill due to a concern over wording in Section 8. They interpreted that section to be an act that would apply to the original construction of single-family residential housing...it would not apply to any improvement made later to the structure (Attachment 11). If the intent was to not include single-family residential construction, they request that the word "improvement" be deleted.

CONTINUATION SHEET

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE at 1:30 p.m. on March 9, 2004 in Room 313-S of the Capitol.

WRITTEN TESTIMONY

Cory Peterson, Exec. VP, Association of General Contractors of Kansas, stated that **HB 2853** would unnecessarily restrict how private entities conduct business and would drive up owners' cost of construction (Attachment 12). They believe that there are two existing safeguards in place, contracts and mechanic's liens. Contract terms should be governed by contract law, not state statute.

Phil Sewell, President, Central Mechanical, Wichita stated that when the Specialty Contractors Council of the AGC of Kansas met at its recent annual convention, they determined their position to be the state should not set laws dictating payment terms between private entities (Attachment 13).

Marlee Carpenter, VP, Governmental Affairs, KS Chamber of Commerce, stated that the provisions in **HB 2853** would affect Kansas' competitive position, by increasing the cost of doing business in the state (Attachment 14).

Michael R. Murray, Director, Governmental & Public Affairs, SPRINT, believed that the bill is an unnecessary infringement on a company's ability to manage its operation (Attachment 15).

The hearing was closed on HB 2853. The meeting adjourned at 3:10 p.m. and the next meeting is March 10, 2004.

HOUSE FEDERAL & STATE AFFAIRS COMMITTEE GUEST LIST

DATE March 9, 2004 0

<u>NAME</u>	<u>REPRESENTING</u>
Mark Schreiber	Westar Energy
WAYNE HARDY	WESTAR ENERGY
Allison Yarbrough	Westar Energy
Ken Keller	Western Ectralite Co
KEN DANIEL	MIDWAY WHOLESALE
DEAN FERRELL	FERRELL CONST. OF TOPEKA, INC.
BILL MILLER	AMERICAN SUBCONTRACTORS ASSOC.
Ron Applebott	Water Dist No 1 of JoCo.
Tom Slatten	A G C / K S
Kathy Tolle	National Assn. Credit Mgt.
Rex Jones	The Boeing Company
John Friedrich	The Boeing Co.
William Smith	KRMCA
Wendy Williams	KRPPA - KRMCA
Freddie Allen	Amer Inst of Architects, Ks
Jim Gregory	Kansas Chamber of Commerce
Steve Johnson	Kansas Gas Service / ONEOK
Jim Gartner	SBC
Erik Santorius	City of Overland Park



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February 23, 2004

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Kansas City, MO 64102
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Maryland Heights, MO 63043
314-432-4560

Lee's Summit, MO

105 N.W. Victoria Drive
Lee's Summit, MO 64086
816-246-8300

N. Kansas City, MO

1124 Howell Street
N.K.C., MO 64116
816-421-5888

St. Joseph, MO

1302 Frederick Ave.
St. Joseph, MO 64501
816-450-1664

Sedalia, MO

1501 Thompson Blvd.
Sedalia, MO 65301
660-827-3880

Warrensburg, MO

608 N. Ridgeview Drive
Warrensburg, MO 64093
660-429-6900

Lawrence, KS

1811 West 31st Street
Lawrence, KS 66046
785-843-4174

Leavenworth, KS

4601 Brewer Place
Leavenworth, KS 66048
913-727-2941

Lenexa, KS

14903 W. 99th Street
Lenexa, KS 66215
913-438-1777

Manhattan, KS

221 Colorado Street
Manhattan, KS 66502
785-539-5665

Topeka, KS

4024 S. Topeka Blvd.
Topeka, KS 66609
785-266-3541

The Honorable William Mason, Chairperson
House Federal & State Affairs Committee
Kansas State Capitol Building
Room 170-W
300 SW 10th
Topeka, KS 66612

RE: THE KANSAS FAIRNESS IN PRIVATE CONSTRUCTION
CONTRACT ACT

Dear Representative Mason:

The purpose of this letter is to introduce you to House Bill 2853, the Kansas Fairness In Private Construction Contracts Act. We are requesting a hearing on this bill as soon after turnaround as possible.

The purpose of this proposed legislation is to ensure that the general contractor, the subcontractors, the subcontractors to a subcontractor, and material suppliers on construction projects are treated fairly, paid timely when work is properly performed, and requires accountability of each party to the contract.

First, let me introduce myself. I am Ken Keller, Controller of Western Extralite Company. We are a wholesale distributor of electrical supplies used in the construction industry. We have 13 locations, 5 of which are located in Kansas, and they include Topeka, Lawrence, Manhattan, Lenexa, and Leavenworth. Some of the elements of the proposed legislation are:

- Prompt pay – The owner must pay the general contractor in 30 days. The general in turn must pay the subcontractor in 7 days, and the subcontractor must pay his subcontractor or the supplier within 7 days. Both the owner and the general contractor have 5 days to dispute payments requests. If they do not, then they are deemed to be appropriate and need to be paid according to this schedule.
- In the event that payment is not made, then interest would accrue at 1-1/2% per month until paid. If payment still is not received, the general contractor, subcontractor, and suppliers have the right to stop work or, in the case of the supplier, stop supplying material and not be in default of the contract.

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March 9, 2004
Attachment 1

March 1, 2004

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The Honorable William Mason

- If legal action is required, the venue will be in the county where the project is located and will be under Kansas law. The loser of the legal action will be required to pay reasonable legal costs and attorney fees of the winner.
- The Broad Form Hold Harmless or Indemnity Agreement and the requirement to add additional insures will be void in the State of Kansas. This ensures that you are only responsible for your actions or in-actions and not that of others.
- Retainage will be limited to 5%. The general contractor cannot retain a higher percentage of retainage than is retained by the owner. The purposed legislation provides for alternative securities, which may be used in lieu of retainage. These securities are set forth in the proposal and would free up working capital for those that have retainage withheld. An important element of the retainage factor is the requirement that subcontractors are paid their retainage after substantial completion of work. Substantial completion is defined within the bill as sufficient completion, so that an owner can occupy or utilize the improvement or a portion of the improvements for its intended use. This will allow the subcontractors that perform work early in the project, such as earth movement, steel erection, and concrete work to be paid their retainage once they are completed. As it now stands, the retainage is often times tied up for 18 months or better, even though their work is entirely performed.
- Our proposed legislation does not apply to single family dwellings or multi-family dwellings of four or less.
- The fiscal note on our proposed legislation is zero.

We request that you set a hearing date on this bill as quickly as possible.

Our list of supporters is substantial and growing daily. Some of these are: National Association of Credit Managers, Electric League of Missouri and Kansas, NECA Kansas City Chapter, The Sheet Metal & Air Conditioning Contractors, National Association of Kansas City, Fire Sprinklers Association of Kansas City, American Subcontractors Association of Kansas City, plus countless individual business owners involved in the construction industry.

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The Honorable William Mason

Again, we ask for a hearing and the support of your committee.

Please contact me should you have any questions or comments regarding our proposed legislation.

Sincerely,

Kenneth R. Keller
Controller

/bb

Construction Organizational Chart

Owner

Tier I General Contractor

Tier II Subcontractor or supplier to
general contractor

Tier III Subcontractor to a subcontractor
or a supplier to a subcontractor

BUILDING ERECTION SERVICES COMPANY

15586 S. KEELER • P.O. BOX 970 • OLATHE, KANSAS 66051-0970
(913) 764-5560 • FAX (913) 764-2317

February 24, 2004

The Honorable Senator Susan Wagle
Kansas State Capitol Building, Room 128-S
300 SW 10th
Topeka, KS 66612

RE: Senate Bill S445

Dear Senator Wagle:

Building Erection Services Company, Inc. is a 27-year-old company with offices in Olathe and Topeka, KS and in St. Joseph, MO. We employ from 120 to 250 people and work in both Kansas and Missouri. This bill is very important to us, our employees, and our customers and suppliers. We depend on timely payment from our clients to pay labor, fringe benefits, and for materials used in construction projects in Kansas.

This bill will require timely payment from the owner to the general contractor, from the general contractor to the subcontractor and from the subcontractor to its sub-subcontractors or suppliers. If any tier does not make payments, interest will accrue and in the event litigation is necessary, the prevailing party shall be awarded its reasonable attorney fees and costs. Any tier also has the right to stop work until payment is made without being in default of the contract. This will allow general contractors, subcontractors, and suppliers to collect amounts due without the concern that the cost of collection would exceed the amount due. It will also deter frivolous litigation if the loser pays the winners costs.

Included in S445 is a provision for an alternative security to be posted in lieu of retainage being withheld. This greatly improves cash flow while still providing the owner with the protection that retainage was intended to provide. The bill also requires release of retainage for early finishing subcontractors, such as dirt work, foundation, or steel erection that are substantially complete in the initial stage of construction. Substantial completion is defined as when that portion of the work can be used for its intended purpose.

The anti-immunity provision makes each party to the contract responsible for their own actions and not for the actions of others. It prohibits circumvention of comparative negligence law by additional insured requirements.



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Attachment 2

The venue provision requires dispute resolution to take place in the county where the project is located and under Kansas law. It prohibits contract provisions that require mediation, arbitration, or litigation to take place in another state under different laws. This legislation has no cost to the state. It should benefit the state by increasing profits to general contractors, subcontractors, and suppliers by reducing interest costs and legal costs and by reducing bankruptcies.

We strongly encourage your support of this important legislation and we thank you in advance for your support.

Sincerely,

William R. Miller
President

WRM/bcm



AMERICAN SUBCONTRACTORS ASSOCIATION

GREATER KANSAS CITY CHAPTER
P.O. BOX 6400 KANSAS CITY, KS 66106
(913) 384-1255 FAX (913) 384-1255
E-Mail: kcasa@kc.rr.com

sample

February 27, 2004

TO: **Kansas AGC Specialty Contractors, Kansas Ready Mixed Concrete Association, and Kansas Aggregate Producers Association Members**

RE: *The Kansas Fairness in Construction Contracts Act (FICCA)*

The American Subcontractors Association (Greater Kansas City Chapter) has introduced legislation in Kansas known as *The Kansas Fairness in Construction Contracts Act (FICCA)*. This legislation requires timely payment for work performed or materials supplied on both public and private construction work in Kansas, as well as, other important provisions to restore fairness and accountability between parties to construction contracts.

The American Subcontractors Association, along with the National Electrical Contractors Association, The Sheet Metal and Air Conditioning Contractors National Association, The Kansas City Masonry Association, The Electric League, The Kansas Prestress Concrete Association, and others believe that since this legislation is critically important to subcontractors, material suppliers, and the customers that this legislation be passed this year.

We need your help and support to accomplish the goal of being paid for our work or materials and to be liable and responsible only for our own actions and not the actions of others.

If you think this will help you and your customers, please check the box that indicates your position and fax, mail, or e-mail back to us. Thank you in advance for your help.

YES NO This will be beneficial to my customer and me.

YES NO I will support the legislation.*

COMMENTS: *JACK FOSTER CO.
WICHITA*

Sincerely,

Bill Miller
Government Affairs

Fax Numbers: (913)-764-2317
(913)-384-1255

Mailing Address:

Bill Miller
Government Affairs
PO Box 970
Olathe, KS 66051

E-Mail: b.miller@builderec.com

*Your indication of support means that we are allowed to testify before House and Senate Committee hearings that you are in favor of this legislation.



SUPPORTERS OF THE KANSAS FAIRNESS IN PRIVATE CONSTRUCTION ACT
 KANSAS AGC SPECIALTY CONTRACTORS, KANSAS READY MIX CONCRETE ASSOCIATION AND
 KANSAS AGGREGATE PRODUCERS ASSOC.

Ludeman Insulation & Supply, Inc.	Wichita, KS
L.G. Pike Construction Company	Arkansas City
Central Steel	Wichita, KS
Precision Enviromental	Wichita, KS
Prestressed Concrete	Newton, KS
Kansas Building Products	Wichita, KS
Carter Waters	Kansas City, MO
Joe Conroy Contractor, Inc.	Topeka, KS
Waldinger Corporation	Wichita, KS
Central Mechanical Const. Co.	Wichita, KS
Leiser Construction	Madison, KS
Mechanical Systems, Inc.	Wichita, KS
Aztel Stucco Inc.	Valley Center, KS
Asbestos Removal & Maintenance	Wichita, KS
Frisbie Construction Company	Gypsum, KS
Mid-Continental Restoration Co., Inc.	Ft. Scott, KS
Drywall Construction, Inc.	Topeka, KS
Leavcon II, Inc.	Lansing, KS
Midwest Iron & Metal Co., Inc.	Hutchinson, KS
SKC Electric	Lenexa, KS
Overhead Door Company	Wichita, KS
Carl Harris Company	Wichita, KS

SUPPORTERS OF THE KANSAS FAIRNESS IN PRIVATE CONSTRUCTION ACT
 KANSAS AGC SPECIALTY CONTRACTORS, KANSAS READY MIX CONCRETE ASSOCIATION AND
 KANSAS AGGREGATE PRODUCERS ASSOC.

Interior Contractors, Inc.	Topeka, KS
Southwestern Electrical Co., Inc.	Wichita, KS
Permanent Paving, Inc.	Overland Park, KS
Jack Foster Company	Wichita, KS
Carter Waters Corporation	Olathe, KS - Wichita, KS
Stress-Cast, Inc.	Assaria, KS
Kilian Electrical Service, Inc.	Wichita, KS
Fahnestock Heating & A/C & Electric	Wichita, KS
Plumbing by Carlson, Inc.	Topeka, KS
Mies Construction Company	Topeka, KS
S.R. Coffman Construction, Inc.	Emporia, KS
B & B & Great-Plains Diesel Repair	Phillipsburg, KS
McCullough Excavation, Inc.	Wichita, KS
KVK, Inc. Building Systems Management	Woodbine, KS
Lower Heating & Air Cond. Inc.	Topeka, KS
Weathercraft Company	Garden City, KS
WB Construction, LLC	Wichita, KS
Omega Concrete	Kansas City, KS
Randall Hardy Construction Rental, Inc.	Salina, KS
Pearson Excavating, Inc.	Wichita, KS
Restoration & Waterproofing Contractors	Wichita, KS
Haven Redi-Mix	Haven, KS
Sharp Construction Company, Inc.	Wichita, KS

SUPPORTERS OF THE KANSAS FAIRNESS IN PRIVATE CONSTRUCTION ACT
KANSAS AGC SPECIALTY CONTRACTORS, KANSAS READY MIX CONCRETE ASSOCIATION AND
KANSAS AGGREGATE PRODUCERS ASSOC.

Heartland Specialty Contractors	Shawnee, KS

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OWNER: _____ PROJECT: _____ APPLICATION NO.: _____ Distribution to:
 PERIOD TO: _____ OWNER
 PROJECT NOS.: _____ ARCHITECT
 FROM CONTRACTOR: _____ VIA ARCHITECT: _____ CONTRACT DATE: _____ CONTRACTOR

CONTRACT FOR: _____

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

- 1. ORIGINAL CONTRACT SUM\$ _____
- 2. Net change by Change Orders\$ _____
- 3. CONTRACT SUM TO DATE (Line 1 ± 2)\$ _____
- 4. TOTAL COMPLETED & STORED TO DATE\$ _____
(Column G on G703)
- 5. RETAINAGE:
 - a. _____% of Completed Work\$ _____
(Columns D + E on G703)
 - b. _____% of Stored Material\$ _____
(Column F on G703)
 - Total Retainage (Line 5a + 5b or
Total in Column I of G703)\$ _____
- 6. TOTAL EARNED LESS RETAINAGE\$ _____
(Line 4 less Line 5 Total)
- 7. LESS PREVIOUS CERTIFICATES FOR PAYMENT
(Line 6 from prior Certificate)\$ _____
- 8. CURRENT PAYMENT DUE\$
- 9. BALANCE TO FINISH, INCLUDING RETAINAGE
(Line 3 less Line 6)\$ _____

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approved this Month		
TOTALS		
NET CHANGES by Change Order		

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By: _____ Date: _____

State of:

County of:

Subscribed and sworn to before
me this _____ day of _____

Notary Public:

My Commission expires: _____

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

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INSTRUCTION SHEET

AIA DOCUMENTS G702 and G703

A. GENERAL INFORMATION

1. Purpose and Related Documents

AIA Document G702, Application and Certificate for Payment, is to be used in conjunction with AIA Document G703, Continuation Sheet. These documents are designed to be used on a Project where a Contractor has a direct Agreement with the Owner. Procedures for their use are covered in AIA Document A201, General Conditions of the Contract for Construction, 1987 Edition.

2. Use of Current Documents

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A limited license is hereby granted to retail purchasers to reproduce a maximum of ten copies of a completed or executed G702 and G703, but only for use in connection with a particular Project. Further reproductions are prohibited without the express written permission of the AIA.

B. COMPLETING THE G702 FORM:

After the Contractor has completed AIA Document G703, Continuation Sheet, summary information should be transferred to AIA Document G702, Application and Certificate for Payment.

The Contractor should sign G702, have it notarized and submit it, together with G703, to the Architect.

The Architect should review G702 and G703 and, if they are acceptable, complete the Architect's Certificate for Payment on G702. The Architect may certify a different amount than that applied for, pursuant to Paragraphs 9.5 and 9.6 of A201. The Architect should then initial all figures on G702 and G703 that have been changed to conform to the amount certified and attach an explanation. The completed G702 and G703 should be forwarded to the Owner.

C. COMPLETING THE G703 FORM:

Heading: This information should be completed to be consistent with similar information on AIA Document G702, Application and Certificate for Payment.

Columns A, B & C: These columns should be completed by identifying the various portions of the Project and their scheduled value consistent with the schedule of values submitted to the Architect at the commencement of the Project or as subsequently adjusted. The breakdown may be by sections of the Work or by Subcontractors and should remain consistent throughout the Project. Multiple pages should be used when required.

Column C should be subtotaled at the bottom when more than one page is used and totaled on the last page. Initially, this total should equal the original Contract Sum. The total of column C may be adjusted by Change Orders during the Project.

Column D: Enter in this column the amount of completed work covered by the previous application (columns D + E from the previous application). Values from column F (Materials Presently Stored) from the previous application should not be entered in this column.

Column E: Enter here the value of Work completed at the time of this application, including the value of materials incorporated into the project which were listed on the previous application under Materials Presently Stored (column F).

Column F: Enter here the value of Materials Presently Stored for which payment is sought. The total of the column *must* be recalculated at the end of each pay period. This value covers both materials newly stored for which payment is sought and materials previously stored which are not yet incorporated into the Project. Mere payment by the Owner for stored materials does not result in a deduction from this column. Only as materials are incorporated into the Project is their value deducted from this column and incorporated into column E (Work Completed—This Period).

Column G: Enter here the total of columns D, E and F. Calculate the percentage completed by dividing column G by column C.

Column H: Enter here the difference between column C (Scheduled Value) and column G (Total Completed and Stored to Date).

Column I: This column is normally used only for contracts where variable retainage is permitted on a line-item basis. It need not be completed on projects where a constant retainage is withheld from the overall contract amount.

Change Orders: Although Change Orders could be incorporated by changing the schedule of values each time a Change Order is added to the Project, this is not normally done. Usually, Change Orders are listed separately, either on their own G703 form or at the end of the basic schedule. The amount of the original contract adjusted by Change Orders is to be entered in the appropriate location on the G702 form.

Construction Change Directives: Amounts not in dispute that have been included in Construction Change Directives should be incorporated into one or more Change Orders. Amounts remaining in dispute should be dealt with according to Paragraph 7.3 in A201.

D. MAKING PAYMENT

The Owner should make payment directly to the Contractor based on the amount certified by the Architect on AIA Document G702, Application and Certificate for Payment. The completed form contains the name and address of the Contractor. Payment should not be made to any other party unless specifically indicated on G702.

E. EXECUTION OF THE DOCUMENT

Each person executing the Agreement should indicate the capacity in which they are acting (i.e., president, secretary, partner, etc.) and the authority under which they are executing the Agreement. Where appropriate, a copy of the resolution authorizing the individual to act on behalf of the firm or entity should be attached.

CONTINUATION SHEET

AIA DOCUMENT G703 (Instructions on reverse side)

PAGE OF PAGES

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Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification, is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO.:

APPLICATION DATE:

PERIOD TO:

ARCHITECT'S PROJECT NO.:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G		H BALANCE TO FINISH (C - G)	I RETAINAGE (IF VARIABLE) RATE
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD		TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G ÷ C)		



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G703-1992

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INSTRUCTION SHEET

AIA DOCUMENTS G702 and G703

A. GENERAL INFORMATION

1. Purpose and Related Documents

AIA Document G702, Application and Certificate for Payment, is to be used in conjunction with AIA Document G703, Continuation Sheet. These documents are designed to be used on a Project where a Contractor has a direct Agreement with the Owner. Procedures for their use are covered in AIA Document A201, General Conditions of the Contract for Construction, 1987 Edition.

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B. COMPLETING THE G702 FORM:

After the Contractor has completed AIA Document G703, Continuation Sheet, summary information should be transferred to AIA Document G702, Application and Certificate for Payment.

The Contractor should sign G702, have it notarized and submit it, together with G703, to the Architect.

The Architect should review G702 and G703 and, if they are acceptable, complete the Architect's Certificate for Payment on G702. The Architect may certify a different amount than that applied for, pursuant to Paragraphs 9.5 and 9.6 of A201. The Architect should then initial all figures on G702 and G703 that have been changed to conform to the amount certified and attach an explanation. The completed G702 and G703 should be forwarded to the Owner.

C. COMPLETING THE G703 FORM:

Heading: This information should be completed to be consistent with similar information on AIA Document G702, Application and Certificate for Payment.

Columns A, B & C: These columns should be completed by identifying the various portions of the Project and their scheduled value consistent with the schedule of values submitted to the Architect at the commencement of the Project or as subsequently adjusted. The breakdown may be by sections of the Work or by Subcontractors and should remain consistent throughout the Project. Multiple pages should be used when required.

Column C should be subtotaled at the bottom when more than one page is used and totaled on the last page. Initially, this total should equal the original Contract Sum. The total of column C may be adjusted by Change Orders during the Project.

Column D: Enter in this column the amount of completed work covered by the previous application (columns D + E from the previous application). Values from column F (Materials Presently Stored) from the previous application should not be entered in this column.

Column E: Enter here the value of Work completed at the time of this application, including the value of materials incorporated into the project which were listed on the previous application under Materials Presently Stored (column F).

Column F: Enter here the value of Materials Presently Stored for which payment is sought. The total of the column *must* be recalculated at the end of each pay period. This value covers both materials newly stored for which payment is sought and materials previously stored which are not yet incorporated into the Project. Mere payment by the Owner for stored materials does not result in a deduction from this column. Only as materials are incorporated into the Project is their value deducted from this column and incorporated into column E (Work Completed—This Period).

Column G: Enter here the total of columns D, E and F. Calculate the percentage completed by dividing column G by column C.

Column H: Enter here the difference between column C (Scheduled Value) and column G (Total Completed and Stored to Date).

Column I: This column is normally used only for contracts where variable retainage is permitted on a line-item basis. It need not be completed on projects where a constant retainage is withheld from the overall contract amount.

Change Orders: Although Change Orders could be incorporated by changing the schedule of values each time a Change Order is added to the Project, this is not normally done. Usually, Change Orders are listed separately, either on their own G703 form or at the end of the basic schedule. The amount of the original contract adjusted by Change Orders is to be entered in the appropriate location on the G702 form.

Construction Change Directives: Amounts not in dispute that have been included in Construction Change Directives should be incorporated into one or more Change Orders. Amounts remaining in dispute should be dealt with according to Paragraph 7.3 in A201.

D. MAKING PAYMENT

The Owner should make payment directly to the Contractor based on the amount certified by the Architect on AIA Document G702, Application and Certificate for Payment. The completed form contains the name and address of the Contractor. Payment should not be made to any other party unless specifically indicated on G702.

E. EXECUTION OF THE DOCUMENT

Each person executing the Agreement should indicate the capacity in which they are acting (i.e., president, secretary, partner, etc.) and authority under which they are executing the Agreement. Where appropriate, a copy of the resolution authorizing the individual to act on behalf of the firm or entity should be attached.

1 of 4

49 + AC

40 + UC

19 April Mo

25

State	Public Contractor	Public Sub	Private Contractor	Private Sub
Alabama	Ala. Code § 41-16-3 (West, WESTLAW through end of 2001 Reg. Sess.)	Ala. Code § 41-16-3 (West, WESTLAW through end of 2001 Reg. Sess.)	Ala. Code §§ 8-29-1 to 8-29-4 (West, WESTLAW through end of 2001 Reg. Sess.)	Ala. Code §§ 8-29-1 to 8-29-4 (West, WESTLAW through end of 2001 Reg. Sess.)
Alaska	Alaska Stat. §§ 36.90.210 to 36.90.290 (West, WESTLAW through 2001 1 st Special Sess.)	Alaska Stat. §§ 36.90.210 to 36.90.290 (West, WESTLAW through 2001 1 st Special Sess.)	None	None
Arizona	Ariz. Rev. Stat. Ann. § 34-221 (West, WESTLAW through end of the Forty-Fifth Legislature, 2001 1 st Reg. Sess. And 1 st Special Sess.)	Ariz. Rev. Stat. Ann. § 34-221 (West, WESTLAW through end of the Forty-Fifth Legislature, 2001 1 st Reg. Sess. And 1 st Special Sess.)	Ariz. Rev. Stat. Ann. §§ 32-1129 to 32-1129.06 (West, WESTLAW through end of the Forty-Fifth Legislature, 2001 1 st Reg. Sess. And 1 st Special Sess.)	Ariz. Rev. Stat. Ann. §§ 32-1129 to 32-1129.06 (West, WESTLAW through end of the Forty-Fifth Legislature, 2001 1 st Reg. Sess. And 1 st Special Sess.)
Arkansas	Ark. Code Ann. §§ 19-4-1411, 22-9-205 (West, WESTLAW through 2001 Reg. Sess.)	None	None	None
California	West's Annotated California Codes, Pub. Cont. Code § 10261.5 (West, WESTLAW through Ch. 21 of 2002 Reg. Sess. Urgency Legis. And Ch. 2 of 3d Ex. Sess. And Mar. 5, 2002, election)	West's Annotated California Codes, Pub. Cont. Code § 10261.5 (West, WESTLAW through Ch. 21 of 2002 Reg. Sess. Urgency Legis. And Ch. 2 of 3d Ex. Sess. And Mar. 5, 2002, election)	Cal. Civ. Code §§ 3260 to 3260.1 (West, WESTLAW through CH. 21 of 2002 Reg. Sess. Urgency Legis. And Ch. 2 of 3d Ex. Sess. And Mar. 5 2002, election)	Cal. Bus. & -Prof. Code 7108.5 (1994) (West, WESTLAW through CH. 21 of 2002 Reg. Sess. Urgency Legis. And Ch. 2 of 3d Ex. Sess. And Mar. 5, 2002, election)
Colorado	Colo. Rev. Stat. § 24-91-103 (1) (West, WESTLAW through 2002 2d Reg. Sess.)	Colo. Rev. Stat. § 24-91-103 (2) (West, WESTLAW through 2002 2d Reg. Sess.)	None	None
Connecticut	Conn. Gen. Stat. §§ 4a-71 to 4a-75 (West, WESTLAW through Jan. 1, 2002)	Conn. Gen. Stat. § 49-41c (West, WESTLAW through Jan. 1, 2002)	Conn. Gen. Stat. §§ 42-158i to 42-158o (West, WESTLAW through Jan. 1 2002)	Conn. Gen. Stat. §§ 42-158i to 42-158o (West, WESTLAW through Jan. 1 2002)
Delaware	Del. Code Ann. tit. 29, § 6516 (LEXIS through 2001 Reg. Sess.)	Del. Code Ann. tit. 6, §§ 3501 to 3506; tit. 17, §§ 802 to 803 (LEXIS through 2001 Reg. Sess.)	None	Del. Code Ann. tit. 6, §§ 3501 to 3506 (LEXIS through 2001 Reg. Sess.)
District of Columbia	D.C. Code Ann. §§ 2-221.01 to 221.06 (Lexis through Dec. 28, 2001, issue of the D.C. Register)	D.C. Code Ann. §§ 2-221.01 to 221.06 (Lexis through Dec. 28, 2001, issue of the D.C. Register)	None	None
Florida	Fla. Stat. Ch. 218.70 to 218.79, 337.14 (LEXIS through 2001 Legis. Sess.)	Fla. Stat. Ch. 255.071, 287.0585 (LEXIS through 2001 Legis. Sess.)	Fla. Stat. Ch. 715.12 (LEXIS through 2001 Legis. Sess.)	Fla. Stat. Ch. 715.12 (LEXIS through 2001 Legis. Sess.)
Georgia	Ga. Code Ann. §§ 13-11-1 to 13-11-11 (LEXIS through 2001 Legis. Sess.)	Ga. Code Ann. §§ 13-11-1 to 13-11-11 (LEXIS through 2001 Legis. Sess.)	Ga. Code Ann. §§ 13-11-1 to 13-11-11 (LEXIS through 2001 Legis. Sess.)	Ga. Code Ann. §§ 13-11-1 to 13-11-11 (LEXIS through 2001 Legis. Sess.)
Hawaii	Haw. Rev. Stat. §§ 103-10 to 103-10.5 (LEXIS through 2001 3d Special Sess.)	Haw. Rev. Stat. §§ 103-10 to 103-10.5 (LEXIS through 2001 3d Special Sess.)	None	None
Idaho	Idaho Code § 67-2302 (LEXIS through 1 st Reg. Sess. Of the 56 th Legislature)	None	None	None

State	Public-Contractor	Public Sub	Private-Contractor	Private Sub
Illinois	Ill. Ann. Stat. Ch. 30, para. 540/0.01 to 540/7; Ch. 50, para. 505/1 (LEXIS through 2001-2002 Reg. Sess.)	Ill. Ann. Stat. Ch. 30, para. 540/7; Ch. 50, para. 505/1 (LEXIS through 2001-2002 Reg. Sess.)	None	None
Indiana	Ind. Code Ann. §§ 5-17-5-1 to 5-17-5-5 (LEXIS through 2001 Reg. Sess.)	Ind. Code Ann. § 5-17-5-4 (LEXIS through 2001 Reg. Sess.)	None	None
Iowa	Iowa Code §§ 573.12 to 573.14 (LEXIS through 2001 legislation)	Iowa Code §§ 573.12 to 573.14 (LEXIS through 2001 legislation)	None	None
Kansas	Kan. Stat. Ann. §§ 75-6401 to 75-6407 (LEXIS through 2001 Supplement)	None	None	None
Kentucky	Ky. Rev. Stat. Ann. §§ 45.453 to 45.458 (LEXIS through 2001 Reg. Sess.)	None	None	None
Louisiana	La. Rev. Stat. Ann. §§ 38:2191, 48:251.5 (LEXIS through 2001 Sess.)	La. Rev. Stat. Ann. §§ 9:2784 (LEXIS through 2001 Sess.)	None	La. Rev. Stat. Ann. §§ 9:2784 (LEXIS through 2001 Sess.)
Maine	Me. Rev. Stat. Ann. tit. 10, §§ 1111 to 1120 (LEXIS to 2001 Supplement)	Me. Rev. Stat. Ann. tit. 10, §§ 1111 to 1120 (LEXIS to 2001 Supplement)	Me. Rev. Stat. Ann. tit. 10, §§ 1111 to 1120 (LEXIS to 2001 Supplement)	Me. Rev. Stat. Ann. tit. 10, §§ 1111 to 1120 (LEXIS to 2001 Supplement)
Maryland	Md. Code Ann. State Fin. & Proc. §§ 15-101 to 15-108 (LEXIS through 2001 Reg. Sess.)	Md. Code Ann. Real Prop. §§ 9-301 to 9-304 (LEXIS through 2001 Reg. Sess.)	Md. Code Ann. Real Prop. §§ 9-301 to 9-304 (LEXIS through 2001 Reg. Sess.)	Md. Code Ann. Real Prop. §§ 9-301 to 9-304 (LEXIS through 2001 Reg. Sess.)
Massachusetts	Mass. Ann. Laws Ch. 30, § 39K (LEXIS through 2002 Ch. 97, Apr. 17, 2002)	Mass. Ann. Laws Ch. 30, § 39K (LEXIS through 2002 Ch. 97, Apr. 17, 2002)	None	None
Michigan	Mich. Comp. Laws §§ 125.1561 to 125.1565 (LEXIS through 2001 legislation)	None	None	None
Minnesota	Minn. Stat. §§ 16A.124 to 16A.1245, 429.041, 471.425 (LEXIS through 2001 legislation)	Minn. Stat. §§ 16A.1245, 137.36, 471.425 (LEXIS through 2001 legislation)	None	Minn. Stat. §§ 337.10 (LEXIS through 2001 legislation)
Mississippi	Miss. Code Ann. §§ 31-5-25, 31-5-27 (LEXIS through 2001 Reg. Sess.)	Miss. Code Ann. § 31-5-25, 31-5-27 (LEXIS through 2001 Reg. Sess.)	Miss. Code Ann. § 87-7-3 (LEXIS through 2001 Reg. Sess.)	Miss. Code Ann. § 87-7-5 (LEXIS through 2001 Reg. Sess.)
Missouri	Mo. Ann. Stat. § 34.057 (LEXIS through 1 st Extraordinary Sess. of 91 st General Assembly)	Mo. Ann. Stat. § 34.057 (LEXIS through 1 st Extraordinary Sess. of 91 st General Assembly)	None	None
Montana	Mont. Code Ann. §§ 17-8-241 to 17-8-244, 28-2-2101 to 28-2-2110 (LEXIS through 2001 legislation)	Mont. Code Ann. §§ 28-2-2101 to 28-2-2110 (LEXIS through 2001 legislation)	Mont. Code Ann. §§ 28-2-2101 to 28-2-2110 (LEXIS through 2001 legislation)	Mont. Code Ann. §§ 28-2-2101 to 28-2-2110 (LEXIS through 2001 legislation)

State	Public Contractor	Public Sub	Private Contractor	Private - Sub
Nebraska	Neb. Rev. Stat. §§ 81-2401 to 81-2408 (LEXIS through 2001 legislation)	None	None	None
Nevada	Nev. Rev. Stat. Ann. §§ 338.160 to 338.170 (LEXIS through 2001 Reg. and Special Sess.)	Nev. Rev. Stat. Ann. §§ 338.160 to 338.170 (LEXIS through 2001 Reg. and Special Sess.)	Nev. Rev. Stat. Ann. §§ 624.620 (LEXIS through 2001 Reg. and Special Sess.)	Nev. Rev. Stat. Ann. §§ 624.630 (LEXIS through 2001 Reg. and Special Sess.)
New Hampshire	None	None	None	None
New Jersey	N.J. Rev. Stat. §§ 52:32-32 to 52:32-34 (Lexis through 2001 2d Annual Sess.)	N.J. Rev. Stat. § 52:32-41 (Lexis through 2001 2d Annual Sess.)	None	N.J. Rev. Stat. §§ 2A:30A-1 to 2A:30A-2 (LEXIS through 2001 2d Annual Sess.)
New Mexico	N.M. Stat. Ann. §§ 57-28-1 to 57-28-11 (LEXIS through 2d Special Sess. of 45 th Legislature)	N.M. Stat. Ann. §§ 57-28-1 to 57-28-11 (LEXIS through 2d Special Sess. of 45 th Legislature)	N.M. Stat. Ann. §§ 57-28-1 to 57-28-11 (LEXIS through 2d Special Sess. of 45 th Legislature)	N.M. Stat. Ann. §§ 57-28-1 to 57-28-11 (LEXIS through 2d Special Sess. of 45 th Legislature)
New York	New York Consolidated Law Service, N.Y. Pub. Auth. Law §2880; N.Y. State Fin. Law §§ 139-f, 179-d to 179p (LEXIS through CH. 10, March 11, 2002, with the exception of CHS. 2-4)	N.Y. State Fin. § 139-f (LEXIS through CH. 10, March 11, 2002, with the exception of CHS. 2-4)	None	None
North Carolina	N.C. Gen. Stat. §§ 143-134.1 to 143-135 (LEXIS through 2001 Reg. Sess.)	N.C. Gen. Stat. §§ 143-134.1 (LEXIS through 2001 Reg. Sess.)	None	N.C. Gen. Stat. §§ 22C-1 to 22C-6 (LEXIS through 2001 Reg. Sess.)
North Dakota	N.D. Cent. Code §§ 13-01.1-01 to 13-01.1.06 (LEXIS through 2001 Reg. Sess.)	N.D. Cent. Code §§ 13-01.1-01 to 13-01.1.06 (LEXIS through 2001 Reg. Sess.)	None	None
Ohio	Ohio Rev. Code Ann. § 153.14 (West, WESTLAW through 2001-2002 General Assembly)	Ohio Rev. Code Ann. § 4113.61 (West, WESTLAW through 2001-2002 General Assembly)	None	Ohio Rev. Code Ann. § 4113.61 (West, WESTLAW through 2001-2002 General Assembly)
Oklahoma	Okla. Stat. tit. 61 §§ 113.1 to 113.3; tit. 62, §§ 41.4a to 41.4d (LEXIS through 2001 1 st Reg. Sess.)	None	None	None
Oregon	Or. Rev. Stat. § 279.435 (LEXIS through 2001 Reg. Sess.)	Or. Rev. Stat. § 279.435 (LEXIS through 2001 Reg. Sess.)	Or. Rev. Stat. § 701.420 (LEXIS through 2001 Reg. Sess.)	Or. Rev. Stat. § 701.420 (LEXIS through 2001 Reg. Sess.)
Pennsylvania	Pa. Stat. Ann. tit. 73, §§ 501 to 506 (LEXIS through 2001 Legis. Sess.)	Pa. Stat. Ann. tit. 73, §§ 501 to 506 (LEXIS through 2001 Legis. Sess.)	Pa. Stat. Ann. tit. 73, §§ 501 to 506 (LEXIS through 2001 Legis. Sess.)	Pa. Stat. Ann. tit. 73, §§ 501 to 506 (LEXIS through 2001 Legis. Sess.)
Rhode Island	R.I. Gen. Laws §§ 42-11.1-1 to 42-11.1-16 (LEXIS through Jan. 2001 sess.)	R.I. Gen. Laws §§ 42-11.1-3 (LEXIS through Jan. 2001 sess.)	None	None

State	Public-Contractor	Public Sub	Private-Contractor	Private Sub
South Carolina	S.C. Code Ann. §§ 29-6-10 to 29-6-60 (LEXIS through 2001 Sess.)	S.C. Code Ann. §§ 29-6-10 to 29-6-60 (LEXIS through 2001 Sess.)	S.C. Code Ann. §§ 29-6-10 to 29-6-60 (LEXIS through 2001 Sess.)	S.C. Code Ann. §§ 29-6-10 to 29-6-60 (LEXIS through 2001 Sess.)
South Dakota	S.D. Codified Laws Ann. §§ 5-26-1 to 5-26-8 (LEXIS through 2001 Sess.)	S.D. Codified Laws Ann. § 5-26-6 (LEXIS through 2001 Sess.)	None	None
Tennessee	Tenn. Code Ann. §§ 12-4-701 to 12-4-707 (LEXIS through 2001 Sess.)	Tenn. Code Ann. §§ 12-4-701 to 12-4-707 (LEXIS through 2001 Sess.)	Tenn. Code Ann. §§ 66-34-101 to 66-34-602 (LEXIS through 2001 Sess.)	Tenn. Code Ann. §§ 66-34-101 to 66-34-602 (LEXIS through 2001 Sess.)
Texas	Tex. Govt. Code Ann. §§ 2251.001 to 2251.043 (LEXIS through 2001 Sess.)	Tex. Govt. Code Ann. §§ 2251.001 to 2251.043 (LEXIS through 2001 Sess.)	Tex. Govt. Code Ann. §§ 28.001 to 28.008 (LEXIS through 2001 Sess.)	Tex. Govt. Code Ann. §§ 28.001 to 28.008 (LEXIS through 2001 Sess.)
Utah	Utah Code Ann. §§ 15-6-1 to 15-6-6 (LEXIS through 2001 2 nd Special Sess.)	Utah Code Ann. § 15-6-5 (LEXIS through 2001 2d Special Sess.)	None	Utah Code Ann. § 58-55-603 (LEXIS through 2001 2d Special Sess.)
Vermont	Vt. Stat. Ann. tit. 9, §§ 4001-4009 (LEXIS through Sept. 2001)	Vt. Stat. Ann. tit. 9, §§ 4001-4009 (LEXIS through Sept. 2001)	Vt. Stat. Ann. tit. 9, §§ 4001-4009 (LEXIS through Sept. 2001)	Vt. Stat. Ann. tit. 9, §§ 4001-4009 (LEXIS through Sept. 2001)
Virginia	Va. Code Ann. §§ 2.2-4347 to 2.2-4356 (LEXIS through 2001 Reg. and Special Sess.)	Va. Code Ann. § 2.2-4354 (LEXIS through 2001 Reg. and Special Sess.)	None	None
Washington	Wash. Rev. Code §§ 39.76.010 to 39.76.040 (LEXIS through CH. 3 of 2002 Reg. Sess.)	Wash. Rev. Code § 39.04.250 (LEXIS through CH. 3 of 2002 Reg. Sess.)	None	None
West Virginia	W. Va. Code §§ 7-5-7, 8-13-22d, 14-3-1 (LEXIS through 2001 Reg. and through 6 th Extraordinary Legis. Sess.)	None	None	None
Wisconsin	Wis. Stat. §§ 16.528, 16.53(2), 66.0135(2) (LEXIS through 2000-2001 legislation)	Wis. Stat. §§ 16.528, 66.0135(3) (LEXIS through 2000-2001 legislation)	None	None
Wyoming	Wyo. Stat. §§ 16-6-601 to 16-6-602 (LEXIS through 2001 Reg. Sess.)	None	None	None

"Prompt Payment Acts: Recent Developments and Trends" by John W. Hays, published in The Construction Lawyer, Volume 22, No. 3, Summer 2002. © 2002 by the American Bar Association. Reprinted with permission.

MISSOURI PROMPT PAY ACTS

	MISSOURI – PUBLIC	MISSOURI - PRIVATE
	RSMo. §§ 34.057 et seq.	RSMo. § 431.180 and RSMo. § 436.300 et seq.
SCOPE	All public works construction contracts	All contracts for <u>private design or construction</u>
REGULATES	<p>Payments from Gov't to General Contractor: Progress payments within 30 days of proper invoice Final payment within 30 days of project completion</p> <p>Payments from General Contractor to Subs Payment due to Subs within 15 days of receiving payment from Gov't NOTE: Payment is deemed "received" at the time the Gov't mails payment to the General Contractor</p>	<p>Payments from Owner to General Contractor Payments must be made in accordance with contract</p> <p>Payments from General Contractor to Subs Payments must be made in accordance with contract</p> <p>Payments from Subs to Sub-subs/suppliers Payments must be made in accordance with contract</p>
PENALTIES	<p>INTEREST: 1.5% per month from due date until payment</p> <p>ATTORNEYS FEES: Court may, in its discretion, award attorney's fees</p>	<p>INTEREST: The Court may award interest up to 1.5% per month on unpaid amounts in accordance with contract terms</p> <p>ATTORNEYS FEES: Court may, in its discretion, award attorney's fees</p>
DUTY TO REPORT DEFECTIVE WORK	General Contractor must report defective work to the Gov't that has been the subject of prior progress payments and deduct any such amounts from its next payment application	No duty set forth in the statutes <i>SHOULD DO ANYWAY</i>
RETAINAGE LIMITS	<p>Retainage shall not be more than 5% unless owner and architect/engineer determine that a higher rate is required to ensure performance</p> <p>In no case shall retainage exceed 10%</p> <p>Owner may withhold no more than 200% of the value of incomplete work after substantial completion</p>	<p>Retainage shall not exceed 10%</p> <p>General Contractors may not retain funds from subs in an amount greater than the amount retained by the Owner</p> <p>Retainage must be released within <u>30 days</u> of substantial completion</p> <p>Provides for the release of retainage to early finishing subs.</p> <p>Owner may withhold no more than 150% of the value of incomplete work after substantial completion</p> <p>General Contractor must pay retainage to subcontractors within <u>7 days</u> after receiving retainage from Owner</p>
SUBSTITUTE SECURITY OR RETAINAGE	None permitted	<p>Requires that an Owner or General Contractor release retainage within five days of receipt of "acceptable substitute security" including a letter of credit, cash or retainage bond = to retained amount.</p> <p>The Contractor is entitled to receive all interest earned on security substituted for the retainage</p>

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**American Subcontractors Association – Greater Kansas City
2003 Member Needs Assessment**

Advocacy for Subcontractors

1. Please indicate how serious of an impact each of the following construction or business issues has on your company's success. (Success may include profitability, productivity, manageability, business continuation, and/or other factors.)
(Give answer for each)

	Very serious	Somewhat serious	Not very serious	Not at all serious
Identifying new customers/jobs	35%	35%	30%	0
Slow progress payments	71%	24%	5%	0
Retainage	59%	35%	6%	0
Slow final payment	64%	30%	6%	0
Change orders	47%	35%	18%	0
Pay-if-paid clauses	76%	24%	0	0
Inability to stop work for nonpayment	53%	29%	18%	0
Onerous subcontracts – general	56%	22%	22%	0
Workers' compensation	24%	41%	29%	6%
Indemnification/hold harmless	47%	47%	6%	0
Additional insured requirements	47%	47%	6%	0
Other serious issues (specify)				

2. What is the most serious problem your business will face within the next three years?

- New work (2)
- Marketing issues
- Growth
- Retirements
- Shrinking markets
- Back charges
- Cash flow
- Slow payment with general contractors
- Collecting retainage
- Finding new work
- Slow final payment

Communication and Education

3. ASA-Greater Kansas City Newsletter is mailed monthly. How many of the last four issues of the ASA-GKC Newsletter did you read or look at?

- 65% 4 out of 4
- 17% 3 out of 4
- 17% 2 out of 4
- 0 1 out of 4
- 0 None

4. How many others in your company, *in addition to yourself*, read or look at the ASA-GKC Newsletter?

- 29% None
- 24% 1
- 24% 2
- 17% 3
- 6% 4
- 0 5
- 0 More than 5

5. Which of the following topics would you like to see covered in the ASA-GKC Newsletter?

- 76% ASA-GKC News
- 65% News from the state capital
- 76% Industry news

DAN HAAKE

TESTIMONY ON SENATE BILL 445
KANSAS FAIRNESS IN PUBLIC CONSTRUCTION CONTRACT ACT
AND
SENATE BILL 518
KANSAS FAIRNESS IN PRIVATE CONSTRUCTION CONTRACT ACT

NAME: DAN M. HAAKE
HOME ADDRESS: 18955 QUIVIRA ROAD
SPRING HILL, KANSAS 66083
VOICE # 913-592-2631

EMPLOYER: HAAKE FOUNDATIONS, INC.
10029 EAST 63RD TERRACE
RAYTOWN, MISSOURI 64133
VOICE # 816-737-2954
FAX # 816-737-3289

KANSAS STATE REGISTRATION NUMBER 736-661-0

I AM THE OWNER OF A MODEST CONSTRUCTION COMPANY
SPECIALIZING IN CONCRETE FOUNDATIONS FOR COMMERCIAL AND
INDUSTRIAL FACILITIES. OUR ANNUAL VOLUME OF WORK IS ABOUT
\$1.25 MILLION DOLLARS. OF THOSE DOLLARS A LITTLE MORE THAN ½
IS FROM KANSAS PROJECTS. OF OUR 14 OFFICE AND FIELD EMPLOYEES,
6 ARE RESIDENTS OF KANSAS.

I AM HERE TODAY TO TESTIFY IN FAVOR OF THE KANSAS FAIRNESS IN
CONSTRUCTION CONTRACT ACT. SPECIFICALLY THE PORTION OF THE
ACT THAT WILL SET MINIMUM STANDARDS FOR THE PAYMENTS OF

1 0 0 2 9 E. 6 3 R D T E R R A C E

R A Y T O W N, M I S S O U R I 6 4 1 3 3

8 1 6 • 7 3 7 • 2 9 5 4

INVOICES ON CONSTRUCTION PROJECTS. IT IS NORMAL PRACTICE TODAY FOR BIDDING DOCUMENTS AND CONTRACT DOCUMENTS NOT TO INCLUDE PAYMENT TERMS FOR EITHER PROGRESS PAYMENTS OR PAYMENTS ON RETENTION. OUR BEST EFFORTS TO GET COMMITMENTS FROM OWNERS OR GENERAL CONTRACTORS MORE OFTEN THAN NOT IS UNSUCCESSFUL. IT IS A REAL STRUGGLE TO MEET THE DEMANDS OF CASH WHEN WE HAVE NO COMMITMENT AS TO WHEN PAYMENTS OF MONEY START TO FLOW FROM OWNERS TO THE CONTRACTORS AND SUPPLIERS ON A PROJECT. THE PROVISION OF THIS LEGISLATION TO SET MINIMUM STANDARDS FOR PAYMENT OF MONEY FOR PROPERLY COMPLETED WORK WILL BE A BIG HELP IN MANAGING CASH FLOW.

WITH RESPECT TO RETENTION, I AM NOT SURE WHY IT IS EVEN NECESSARY. I GUESS OWNERS WANT TO HAVE LEVERAGE OVER GENERAL CONTRACTORS AND GENERAL CONTRACTORS WANT TO HAVE LEVERAGE OVER THEIR SUB-CONTRACTORS AND IN FACT RETENTION PUTS A REAL STRAIN ON EVERYONE'S BUSINESS RELATIONSHIP FROM THE ONSET OF THE PROJECT. BUT SINCE RETAINAGE IS HERE TO REFORM THE CONCEPT TO ALLOW CONTRACTORS AND SUB-CONTRACTORS TO OFFER SUBSTITUTE SECURITIES IN LUE OF RETENTION THAT WILL GUARANTEE CONTRACT COMPLIANCE SEEMS REASONABLE. IT ALSO SEEM REASONABLE TO PAY OFF SUB-CONTRACTORS THAT HAVE COMPLETED THEIR WORK AND NOT MAKE THEM WAIT TIL A JOB IS COMPLETED TO RECEIVE RETENTION PAYMENT.

THE AMOUNT OF EARNED REVENUES HELD AS RETENTION VARY FROM MONTH TO MONTH BUT IS GENERALY BETWEEN \$75,000 TO \$85,000. TO ALLOW US THE USE OF THIS MONEY AS IT IS EARNED SEEMS REASONABLE.



Testimony in support of House Bill 2853 by Kathy Tolle, Vice President of Operations for the National Association of Credit Management Kansas City Division.

The National Association of Credit Management is a network of 50 affiliated associations, which are the leading source for credit and financial management, providing information, products and services for effective business credit and accounts receivable management.

A part of our mission is to represent the business credit community with legislative efforts. NACM works to enact better laws, to modify and repeal outmoded federal and state laws affecting credit and finance.

Today, our local affiliate provides services to over 1000 companies, with 267 being local members, of which 124 are Kansas businesses. With the construction industry representing 40% of our local base, we are here today to represent these suppliers in support of the KANSAS FAIRNESS IN PRIVATE CONSTRUCTION CONTRACT ACT.

House Bill 2853 provides the contractor, subcontractor and suppliers fair treatment in undisputed request for payment. Our goal is to protect the typically smaller and more volatile Kansas companies who may or may not be able to financially fight for due payment and whose livelihood depends on prompt payment for work performed.

Credit depends on the ability and willingness of a customer to pay. Without that credit is meaningless. Help us support our state's construction industry with fair payment consideration to contractors, subcontractors and suppliers and pass House Bill 2853.

Thank you for your interest and attention.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kathy Tolle', is written over a light blue circular stamp.

Kathy Tolle, VP Operations
NACM Credit Services, Inc.



Midway Sales & Distributing, Inc. d/b/a

MIDWAY WHOLESAL

Topeka • Salina • Lawrence • Manhattan • Elwood • Kansas City • Wichita

**Testimony on House Bill 2853
House Federal and State Affairs Committee
March 9, 2004**

Mr. Chairman and Members of the Committee:

My name is Ken Daniel. I am Chairman and C.E.O. of Midway Wholesale. Today I am speaking for myself and my business partners.

I would like to speak in support of House Bill 2853.

Midway Wholesale is both a supplier and a subcontractor to the construction industry. In fact, more than 99% of our volume is with contractors and subcontractors. We are long-time members of both the AGC and of the National Association of Credit Managers, which are in opposition to one another on this bill.

It pains me greatly to advocate for measures which impinge on private contracts, but we have reached the point where the unfairness to those of us at the "bottom of the food chain" has reached an unbearable level. I see no way for the situation to correct itself. In fact, it continues to get worse and worse.

In 1970, when I started Midway Wholesale, the documents we had to accept from purchasers of our products and services were simple, straightforward, and fair. Over the years, more and more conditions and "boilerplate" have been added to those documents until today they are so biased in favor of those above us on the food chain that we are left only with a choice between high risks or no sale. We call this the "tyranny of the boilerplate".

There is also the "tyranny of the checkbook", where the weaker party is always "wrong" until they agree to the stronger one's conditions.

Virtually all of our customers are highly honorable and treat us fairly even though the documents don't require it. Unfortunately, there are always a few bad actors up the food chain who use the "tyranny of the boilerplate" and the "tyranny of the checkbook" to keep our money.

We are not a party to the contracts between building owners and contractors. However, our money is used to leverage and finance those contracts. Some of these contracts are completely financed with subcontractor and supplier money.

A recent trend that is highly disturbing is the dumping of liability onto those lower on the food chain. This is being driven by big insurance companies and a handful of large insurance agencies that specialize in contractor insurance, along with some large building owners. In a nutshell, this makes those of us who are low on the food chain pay for insurance to cover the bad acts of those higher on the food chain. This bill stops that abuse.

Finally, we are often forced to agree to subject ourselves to the authority of out-of-state courts when the jobs are in Kansas. This bill stops that abuse.

I encourage you to pass House Bill 2853. I would be happy to answer any questions.

House Federal and State Affairs Committee

House Bill 2853

Mr. Chairman and members of the House Federal and State Affairs Committee, The Boeing Company would like to offer its perspective on House Bill 2853 and explain why it cannot support it.

Kansas law has historically embraced the concept of freedom of parties to contract on mutually agreeable terms and conditions. As is well known, contracts are comprised of various provisions that reflect the parties' allocation of risks and liabilities. Examples include provisions relating to warranty, liquidated damages, indemnity for mechanics liens, and indemnity for patent infringement and trade secret information, all of which are commonly found in construction contracts, as are indemnity provisions for personal injury, property damage, economic loss, clauses pertaining to retainage, and limitation of remedies for delay which are included in the subjects covered by HB 2853. In Boeing's experience, all of these provisions are subject to substantial negotiation by the parties to produce an agreement that reflects the parties' allocation of risk and liability in exchange for an agreed upon purchase price for the building project. Under current Kansas law, the bargain ultimately reached by the parties on all of these points has been enforceable in the courts of Kansas by each party in situations where disputes arise.

For example, historically, Kansas courts have found the indemnification provisions of the kind prohibited in HB 2853 to be enforceable and not void as against public policy. Under Kansas law, such provisions are strictly

construed by the court and are enforceable so long as the provision expresses in clear and unequivocal terms the intent of the parties. Additionally, contractual indemnification provisions of the type prohibited by HB 2853 are insurable under currently available insurance policies.

Boeing believes the freedom to contract on legally permissible terms should continue to prevail. The provisions in HB 2853 relating to legislatively-mandated payment terms, retainage limits, non-waiver of damages for delay, and indemnification constitute a dramatic shift in the public policy of the State of Kansas. Section 3 of the Bill contains about 41 lines of text devoted to an owner's and contractor's payment responsibilities to a contractor or subcontractor, respectively, including specification of the number of days allowed for payment to be made, the interest rate for late payments, specification of the parties' rights over a disputed request for payment, or a submission of an improper invoice. Again, in Boeing's experience, each of these matters are negotiated in construction contracts as a part of reaching an overall bargain between the parties, and Boeing submits that the parties to a contract should remain free to allocate risk and liability as mutually agreed by the parties.

Section 4 of the Bill goes into lengthy detail in about 127 lines of text specifying the contractual requirements for retainage by owners and contractors. In the same manner as this Bill contravenes the current Kansas law of indemnification, this section contravenes the traditional practices in construction contracting regarding retainage and, in fact, effectively eliminates the parties' ability to agree on retainage as a method to protect the property owner. If property owners and contractors are unable to bargain for

retainage as a tool to attempt to ensure the timely and correct completion of the building contract by the contractor, property owners will be forced to insist upon performance bonds issued by sureties to substitute for such protection. In Boeing's experience, only the largest, long-established contractors are able to obtain surety bond coverage in today's business climate and, as a result, if HB 2853 would become law, many small and medium sized contractors, who otherwise would have been willing to agree to an appropriate retainage in lieu of surety bond coverage in order to have an opportunity to build a project, will instead be passed over for consideration on many projects. For these reasons, Boeing is concerned that the ultimate effect of the proposed retainage and other provisions of the Bill will be to increase the risk and cost of improving property in Kansas, thereby putting Kansas in a competitive disadvantage relative to states which continue to allow property owners and contractors to bargain on the matters covered by the Bill.

In closing, Boeing submits that HB 2853 results in a significant restriction on the legal rights of the citizens of Kansas. Boeing would prefer to resolve the negotiation of private construction contract issues outside of the legislative process.

**Testimony on HB 2853 before the
House Federal and State Affairs Committee**

**By
Wayne Hardy, Westar Energy
March 9, 2004**

Good afternoon Chairman Mason and members of the committee.

I am Wayne Hardy, manager contract administration for Westar Energy. We oppose HB 2853 because it disrupts normal negotiations between contractors and us. In our experience, both sides negotiate their differences and agree to terms of a contract. HB 2853 tips the balance in favor of contractors and imposes many disadvantages on firms that hire them.

Westar processes on average about 250 contracts for services a year. Our contract administration staff is comprised of four employees. Field management is responsible for contracted project tracking. HB 2853 would likely cause us to add personnel.

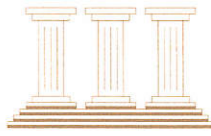
Once both sides agree to contract terms, it is not necessary to set money aside in an escrow account for retention. If the firm contracting has credit problems, the contractors can and do negotiate escrows to assure payment. If the firm is credit worthy, requiring escrows imposes an unnecessary financial expense and ties up funds that could otherwise be invested to grow the business.

We also believe that retention requirements should be negotiated. In our industry, the norm is 10 percent, but it varies depending on the type of contracted work. It varies from industry to industry, depending on the size of projects and the amount of money and risk involved.

The provision on invoice disputes is unreasonable. HB 2853 would require billing disputes to be initiated within five days of receipt of the invoice. If not, the invoice would be deemed correct. Westar contracts multi-million dollar projects, invoicing for which can be complicated and detailed. It simply is not reasonable to expect a contract administrator to catch errors and initiate disputes in such a short time. The provision encourages confusing invoicing and increased disputes, neither of which is a desirable business practice.

In summary, HB 2853 disrupts normal contract negotiation. Matters addressed by HB 2853 are better dealt with in contract negotiation. If either a firm or its contractor breaches a contract, both have adequate recourse. We encourage the committee to oppose HB 2853.

Thank you for the opportunity to address the committee this morning. I would be glad to answer your questions at the appropriate time.



KANSAS TRIAL LAWYERS ASSOCIATION

March 9, 2004

Lawyers Representing Consumers

TO: Members of the House Federal & State Affairs Committee
FROM: LJ Leatherman
RE: HB 2853

Chairman and members of the House Federal & State Affairs Committee thank you for the opportunity to submit comments in opposition to HB 2853. My name is LJ Leatherman and I currently serve as legislative vice chairman elect of the Kansas Trial Lawyers Association.

KTLA opposes HB 2853 if it applies to the construction of a single family residence. We also oppose the loser pay provisions contained in it.

Sec. 8 appears to somewhat limit the application of the Act to single family residences. However, the way the section is worded it only excludes "improvements" to single family residences. Therefore the primary construction of a single family home would fall under this Act. If that is the case, this Act unfairly favors the builder. In most commercial construction contracts the sophistication of both parties as it relates to drafting construction contracts is roughly equal. The same is not true for the vast majority of homebuyers. While a large company such as Boeing can negotiate the specific language it desires from the contractor, the same simply cannot be said of a homeowner.

Sec.3 gives the consumer a very short 5 day limit to dispute a bill from a contractor and if not disputed, interest automatically begins to accrue at 1.5% per month. This is too short a period of time to receive a bill, assess the scope of work contracted for and then determine whether or not the work billed for was done satisfactorily.

Sec. 6 nullifies any contract provision whereby a contractor or subcontractor waives remedies, but has no such counterpart for owners. Further, subsection (b) voids a contractors agreed upon obligations for indemnity for death or injury not "caused" by the contractor. Under contract law, the parties are presumed to understand what they contracted for and to unilaterally relieve the obligations of the contractor runs counter to established law. The contractor will almost always draft the construction contracts and to void provisions they had the ability to negotiate for upfront, again runs counter to common sense and accepted interpretation of contract law.

We are also opposed to the proposal in HB 2853 which would require the courts to assess the prevailing party's attorney's fees against the losing party. This violates longstanding principles of American law, and would have a chilling effect on the right of individuals to access the judicial system. This is the same issue that the members of the Senate recently rejected in SB 420. The loser pay provision in this act is equally objectionable.

Ever since James Madison wrote the Constitution, and Thomas Jefferson wrote the Bill of Rights, the right to a trial by jury has been preserved. When those documents were written they were way ahead of their time, and they still are because they allow litigants – regardless of background or economic status – to access the judicial system for resolution of disputes.

Soon after those immortal documents were written, the United States did away with what was known as the "English Rule", and the "American Rule", in which both parties are responsible for their own attorney's fees, was adopted. In the 1796 decision in *Arcambel v. Wisemen*, the United States Supreme Court rejected the English Rule stating that "the general practice in the United States is in opposition to the [English Rule]." More recently, in 1967, the United States Supreme Court held in *Fleischman Distilling Corp. v. Maier Brewing Co.*, that:

In support of the American rule, it has been argued that since litigation is at best uncertain one should not be penalized for merely defending or prosecuting a lawsuit.

The American Rule, in which both parties are responsible for their own attorney's fees, is a longstanding principle of American law and we respectfully request that the provision assessing attorney's fees be stricken.

Thank you for the opportunity to express our concerns about HB 2853.

Terry Humphrey, Executive Director

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Attachment 8

FERRELL

**CONSTRUCTION
OF TOPEKA, INC.**

TESTIMONY PRESENTED TO THE HOUSE COMMITTEE

ON FEDERAL AND STATE AFFAIRS

MARCH 9, 2004

BY

DEAN F. FERRELL

Mr. Chairman and members of the Committee

My name is Dean Ferrell. I am President and Owner of Ferrell Construction of Topeka, Inc., and I am a past president of the Associated General Contractors of Kansas. My company specializes in commercial building construction and, through the years, we have completed several State of Kansas projects.

I am writing to voice my opposition to House Bill No. 2853, regarding private construction contracts. At a time when private investors are struggling to rationalize funding construction projects in this state, this proposed law will only make matters worse. It will impose restrictions on private Owners that will be a deterrent to future investment in capital projects.

I am against this bill for the following reasons:

1. This bill "caps" retainage on private construction projects at 5%. Historically, retainage has been set at 10%. Contractors have accepted this as standard business, and this has not hurt our industry. We, as contractors, have the ability to negotiate better terms, but retainage on private projects has never been legislated by a governing body in the past; I certainly don't feel it is time to start now.
2. The retainage must be placed in an escrow account, with all fees to be paid for by the Owner. This would be just another expense required to do business in Kansas. Not only would this be an added expense, it would also be an accounting nightmare to oversee.

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3. The bill also mandates interest on late payments at 1.5% per “month”. That’s 18% per “year”. To me, this is out of line, especially when interest rates are so low at this time.

Owners and Contractors have always been able to “negotiate” the terms of their contracts. If the Owner has what the Contractor perceives as unreasonable terms, he certainly does not have to sign the contract or do business with that Owner. The same goes for relationships between Contractors and Subcontractors.

I just don’t believe it is right for the State to try to legislate contracts on private enterprise. We already have enough rules and regulations to contend with, as it stands. This bill will be impossible to enforce and will definitely be a deterrent to future investment in the State of Kansas. Private Owners, especially the larger ones, are not going to appreciate being told how to run their businesses.

In closing, I hope you will give strong consideration to opposing H.B. 2853. Thank you.

March 7, 2004

TO: Representative Mason and Members of the House Federal and State Committee

FROM: Trudy Aron, Executive Director

RE: **Opposition to HB 2853**



President
Rich Bartholomew, AIA
Overland Park

President Elect
Mark Franzen, AIA
Overland Park

Secretary
Jan Burgess, AIA
Wichita

Treasurer
Michael Seiwert, AIA
Wichita

Directors
Tracy Anderson, AIA
Manhattan
Richard Blackburn, AIA
Topeka
Joy Coleman, AIA
Lawrence

Douglas R. Cook, AIA
Olathe
Timothy J. Dudte, AIA
Wichita

Robert D. Fincham, AIA
Topeka
John Gaunt, FAIA
Lawrence

Jane Huesemann, AIA
Lawrence
J. Jones, Associate AIA
Manhattan

Michael G. Mayo, AIA
Manhattan
Rick McCafferty
Wichita

Tom Milavec, AIAS
Manhattan
Courtney Miller, AIAS
Lawrence

Bobbi Pearson, Assoc, AIA
Emporia
C. Stan Peterson, AIA
Topeka

Jennifer Rygg, Assoc, AIA
Wichita
Jason Van Hecke, AIA
Wichita

Kyle Wedel, AIAS
Manhattan

Executive Director
Trudy Aron, Hon. AIA, CAE
aron@aiaks.org

Good afternoon Mr. Chairman and members of the Committee. I am Trudy Aron, executive director, of the American Institute of Architects in Kansas (AIA Kansas.) I appreciate the opportunity to testify in opposition to HB 2853.

AIA Kansas is a statewide association of architects and intern architects. Most of our 700 members work in over 100 private practice architectural firms designing a variety of project types for both public and private clients including justice facilities, schools, hospitals and other health facilities, industrial buildings, offices, recreational facilities, housing, and more. Other members work in industry, government and education where many manage the facilities of their employers and hire private practice firms to design new buildings and to renovate existing ones.

We have never seen a bill that will provide more animosity between owners, architects, contractors, subcontractors and lower tiered subcontractors. If passed, it nearly guarantees that there will be litigation at the end of every building project.

The construction of a building involves many trades and, scores of workers. For example, different firms will provide excavating, structural steel, concrete work, electrical, mechanical, interior framing, drywall, painting, etc. The firm who holds the contract with the owner is responsible for delivering a completed project to the owner at a specified price and time. This firm is responsible for coordinating all the work and making sure it is completed.

The payment deadlines in HB 2853 will certainly be cause for friction and debate. The requirement for the owner notifying the contractor within 5 days of an improperly completed or disputed request for payment is ludicrous and will virtually guarantee that each request for payment will be disputed just to give the owner more time to determine that the request is proper.

One of the most frustrating times for owners and architects is at the end of a construction project when most, but not all, of the work has been done. The owner is anxious to occupy or use the project and the contractor is anxious to move on to other work. The contractor says the project is complete but when the owner and architect walk through the project, many items are not finished.

The withholding of funds, in many cases, becomes the owner's only leverage to get the contractor to finish the work. We believe the decision on what percentage of funds is retained should remain with the owner. Our current practice gives owners the option to reduce the amount withheld depending on many factors, including the type of project and the performance relationship the contractor has with the owner. In addition, the owner may, at any time during the project, reduce the amount withheld or return the retained funds before completion of the project. Likewise, the contractor should have the same rights regarding their subcontractors.

This is not a "fairness in private construction act." HB 2853 takes away the rights of the owner who pays for the project and gives them one more reason for not doing business in Kansas. Thank you for allowing us to testify in opposition to HB 2853. I will be happy to answer any questions you may have.



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kmha1@mindspring.com

**WRITTEN
TESTIMONY BEFORE THE
HOUSE FEDERAL & STATE
AFFAIRS COMMITTEE**

TO: Representative William Mason, Chairman
And Members of the Committee

FROM: Martha Neu Smith, Executive Director
Kansas Manufactured Housing Association

RE: HB 2853 – Concerning Private Construction Contracts

Chairman Mason and Members of the Committee, my name is Martha Neu Smith and I am the executive director of Kansas Manufactured Housing Association (KMHA). Thank you for the opportunity to provide written comments on HB 2853.

KMHA represents all facets of the manufactured housing industry, (i.e. manufacturers, retailers, community owners & operators; finance & insurance companies; service and suppliers and transporters).

KMHA would like to voice our concern with HB 2853. While it is our understanding that this bill was not meant to address single-family residential housing, the wording in Section 8 (page 7) causes us concern. The bill states, "The provision of the Kansas fairness in private construction contract act shall not apply to the improvement of single-family residential housing and multi-family residential housing of four units or less." The way we read Section 8 is, the act would apply to the original construction of single-family residential housing...it would not apply to any improvements made later to the structure.

If the intent were to not include single-family residential construction, we would respectfully request that the word "improvement" be deleted. We feel this change would clarify that intent.

Thank you for your consideration.

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**TESTIMONY OF
ASSOCIATED GENERAL CONTRACTORS OF KANSAS
BEFORE THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS
HB 2853**

March 9, 2004

By Corey D Peterson, Associated General Contractors of Kansas, Inc.

Mister Chairman and members of the committee, my name is Corey D Peterson, Executive Vice President of the Associated General Contractors of Kansas, Inc. The AGC of Kansas is a trade association representing the commercial building construction industry, including over 300 general contractors, subcontractors and suppliers throughout Kansas (with the exception of Johnson and Wyandotte counties).

The AGC of Kansas opposes HB 2853 and respectfully asks that you vote unfavorably on its passage.

HB 2853 would legislate payment terms of contracts between private entities. The AGC of Kansas feels these contract terms should be governed by contract law, not state statute.

AGC feels there are already safeguards in place for those doing business in the construction industry. Two such safeguards include: 1) Contracts and 2) Mechanic's Liens. Contracts detail binding payment terms and mechanic's liens offer a powerful tool in the collection of monies owed.

Also, HB 2853 includes stipulations for the establishment of an escrow account for the subcontractors on a project. The fee for this is to be charged to the owner. A prime contractor often has many subcontractors on a particular job, thus the accounting would be burdensome.

HB 2853 would unnecessarily restrict how private entities conduct business and will drive up owners' cost of construction, something our state can ill-afford as we recruit new businesses to Kansas.

It is AGC of Kansas' position that payment terms between contractors and owners, and general and subcontractors, should be worked out contractually between parties. If there are problems with timely payment, it should first be addressed in the confines of the industry, not before the legislature. AGC of Kansas has established a Specialty Contractors Council designed to address in a constructive manner such issues that may arise within the construction industry. This council has met and will continue to meet on this subject if warranted. Following healthy discussion at the recent AGC Annual Convention, it was agreed that while there are issues with timely payment in the public sector that need to be addressed, the AGC and its Specialty Contractors Council would oppose such legislation in the private sector.

The AGC of Kansas **respectfully requests that you vote unfavorably on HB 2853.** Thank you for your consideration.



Central Mechanical Wichita, Inc.

Plumbing #2395 • Mechanical #1787

P.O. Box 47343 • Wichita, KS 67201-7343 • 316-267-7676 • FAX 316-267-7684

**TESTIMONY
BY PHIL SEWELL
BEFORE HOUSE COMMITTEE ON FEDERAL and STATE AFFAIRS
HB 2853**

March 9, 2004

Phil Sewell, Central Mechanical Wichita, Inc., Wichita, KS

Chairman and members of the committee, my name is Phil Sewell and I am president of Central Mechanical Wichita, Inc. I also serve as chairman of the Specialty Contractors Council of the Associated General Contractors of Kansas. My company is a mechanical contractor, where I do work as both a subcontractor and prime contractor. The Specialty Contractors Council represents the **112 subcontractor members** of the AGC of Kansas.

I am speaking in opposition to **House Bill 2853** and ask that you vote against its passage.

As a business owner in Kansas, I do not feel it is appropriate that the state government become involved with how business is conducted between private owners and companies. Years have been spent perfecting contract documents and while still not perfect, these contracts offer contractors and owners many safeguards in which business can be done in a fair and equitable manner.

In the private sector, in addition to contracts, we have the benefit of the mechanics lien law to assist with payment. Additional laws telling private parties how to do business are not needed.

Included in this bill (HB 2853) are requirements for the establishment of escrow accounts for the subcontractors on job. When working as a prime contractor, I cannot imagine having to set up escrow accounts for all the subs that may be on one of my jobs.

The Specialty Contractors Council of the AGC of Kansas met at its annual convention to discuss this issue. It is their position that the state should not set laws dictating payment terms between private entities.

I am sure all companies from all industries would like to be paid in a timely manner. If contractors and owners have issues regarding payment, there are remedies in place, i.e. contracts and lien laws. The same can be applied to general contractors and subcontractors. Problems should be addressed between the entities or the industry involved. This is not the place for state government.

Again, I **respectfully request that you vote unfavorably on HB 2853**. Thank you for your time and I would be glad to answer any questions that you may have.

Phil A Sewell
President CMW Inc.

Plumbing • Heating • Air Conditioning

HS Fed & State Affairs
March 9, 2004
Attachment 13



The Force for Business

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Topeka, KS 66612-1671
785-357-6321
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www.kansaschamber.org

Legislative Testimony

HB 2853

March 9, 2004

Testimony before the Kansas House Federal and State Affairs Committee

By Marlee Carpenter, Vice President Government Relations

Representative Mason and members of the committee;

The Kansas Chamber has concerns with HB 2853. This bill would legislate contract rights in Kansas. We believe that negotiations should take place between parties and should not be mandated by the legislature.

The Kansas Chamber believes that the provisions in HB 2853 would affect the legal climate in the state and our competitive position. The bill would also increase the cost of doing business in the state by legislating additional burdens for businesses of all sizes.

We urge careful consideration of this matter.

The Kansas Chamber is the statewide business advocacy group, with headquarters in Topeka. It is working to make Kansas more attractive to employers by reducing the costs of doing business in Kansas. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have nearly 7,500 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, large and medium-sized employers all across Kansas.

HS Fed & State Affairs
March 9, 2004
Attachment 14



Michael R. Murray
Director
Governmental and Public Affairs

Midwest Operations
800 Southwest Jackson, Suite 1108
Topeka, KS 66612-1242
Voice 785 232 3826
Fax 785 234 6420

March 9, 2002

The Honorable Bill Mason
Chairman, House Federal and State Affairs Committee
Statehouse
Topeka, Kansas 66612

Dear Rep. Mason and Members of the Committee:

Sprint appreciates the opportunity to comment in writing on HB 2853 being heard today by the House Federal and State Affairs Committee. Sprint opposes the bill. Sprint believes HB 2853 is an unnecessary infringement on a company's ability to manage its operations. In addition, HB 2853 will increase a company's cost of doing business, and certain provisions appear to be contrary to industry standards.

Specifically, HB 2853 is contrary to the notion of contract negotiations. The bill would require an owner of property to pay a contractor within 30 days of receiving a bona fide request for payment. Terms for payment of work performed should be part of the give and take of contract negotiations, not a requirement of law. For example, a negotiated contract may call for payment to be made in a much shorter period than 30 days in return for a price discount. Conversely, a contractor could negotiate a higher price if payment is to be made over a longer period of time. These are cash management decisions made by the parties based on their particular business needs.

Regarding industry standards, the retainage provision appears to be at odds with what we generally find in contracts that include these provisions. The bill calls for retainage of 5%, while our experience indicates that most contracts call for 10%. Again, however, such provisions should be agreed to by the parties negotiating a contract, not required by law.

Requiring a third-party escrow agent is also an unnecessary and costly provision. Securing an escrow agent represents still another party and a contract to be negotiated, an exercise which is not without its costs. In addition, a fee is charged each time payment is made from an escrow account, costs which are ultimately passed on to the consumer.

The provisions of HB 2853 should be part of the give and take of contract negotiations, based on the business needs of the parties. These provisions should not be requirements of law. Respectfully, Sprint urges the Committee not to approve HB 2853.

Sincerely,

Michael R. Murray

HS Fed & State Affairs
March 9, 2004
Attachment 15