

Approved: March 25, 2005  
Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 A.M. on March 21, 2005 in Room 241-N of the Capitol.

All members were present.

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research Department  
Norm Furse, Office of Revisor of Statutes  
Renaë Jefferies, Office of Revisor of Statutes  
June Evans, Committee Secretary

Conferees appearing before the committee:

Ken Keller, Western Extralite Company  
Bill Miller, Building Erection Services Company  
Dan Haake, Haake Foundations  
Dave Massey, National Association of Credit Managers  
Corey Peterson, Association of General Contractors of Kansas  
Pat Tryon, Westar Energy

Others attending:

See attached list.

The Chairman opened the hearing on **Sub SB 33 - Fairness in private construction contract act.**

Staff gave a briefing stating this was new language to the law. Staff recommended some technical amendments. The Senate voted the bill out 36-3. There is not a fiscal note.

Ken Keller, Western Extralite Company, testified as a proponent to **Sub SB 33**. When this bill was passed out of the Senate it was agreed that an amendment was needed (Attachment 1). (The Chairman asked for testimony)

Bill Miller, representing Building Erection Services Company, and American Subcontractors Association, Inc., testified as a proponent to **Sub SB 33**. Mr. Miller reviewed the guidelines for a successful construction project. The contractor pays each subcontractor the amount received from the owner on its account promptly but not later than seven days after receipt. A subcontractor should require that a no damages for delay clause be stricken or else modified to permit a claim for compensation in addition to the extension of time, so long as the delay was not the fault of the subcontractor. Because mechanics' liens are generally derivative claims, all parties claiming by, through, or under the general contractor have implicitly waived their respective lien rights by reason of the general contractor's waiving its underlying right to a mechanics' lien under the applicable state law. Most American Institute of Architects (AIA) documents published since 1906 have contained in their titles the words "Standard Form." The term "standard" is not meant to imply that a uniform set of contractual requirements is mandatory for AIA members or others in the construction industry. Rather, the AIA standard documents are intended to be used as fair and balanced baselines from which the parties can negotiate their bargains. As such, the documents have won general acceptance within the construction industry and have been uniformly interpreted by the courts.

If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' written notice to the Contractor, stop the work of this subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate adjustment, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay and remobilization (Attachment 2 - filed in Chairman's office).

Dan M. Haake, Haake Foundation, testified as a proponent to **Sub SB 33**, stated it was not unreasonable for payment terms of a contract to be clear and understood. If that was the case he would not be testifying for

## CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:00 A.M. on March 21, 2005 in Room 241-N of the Capitol.

this bill as it would not be needed (Attachment 3).

Dave Massey, Chairman of the Board of Directors for the National Association of Credit Managers, Kansas City Division, Inc., testified as a proponent to **Sub SB 33**. This legislation would provide some protection to subcontractors and material suppliers in the construction industry while, if enacted, would have virtually no negative effects on owners and general contractors that presently practice fair payment practices.

The absence, or withholding, of fair and timely payment for properly completed work can create severe financial hardship on small Kansas businesses. These businesses are arguably the least able to afford the expense of unnecessary payment delays (Attachment 4).

Corey D. Peterson, Executive Vice President of the Associated General Contractors of Kansas, testified as a proponent with amendments plus the balloon amendment offered by Mr. Keller. The first amendment is to protect the ability to obtain a lien release upon payment. Five business days for contractor payment is stated in many contracts, including AGC standard contracts, but not all. These standard contracts were developed as model contracts, not as law. Adding an extra two days would enable more flexibility for unusual projects or situations where the billing cycle would not allow for a five day turnaround (Attachment 5).

Dan Morgan, a proponent to **Sub SB 33**, stated the bill addressed a number of controversial issues that either set one segment of the industry against another or set the construction industry's interests against the interests of owners and users of construction services and the Missouri law is a doable alternative. That law provides powerful enforcement punch to private construction contracts by awarding attorney fees to the prevailing party in a lawsuit or arbitration and imposing significant interest penalty provisions against any part to a construction contract that fails to live up to any of the terms of its agreement.

The subcommittee of the Senate Commerce committee was able to modify the original bill and arrive at a substitute that removes the controversial issues, adds the enforcement provisions that were recommended and provides a timetable for payments by owners, contractors and sub contractors that mirrors industry standards (Attachment 6).

Pat Tryon, project architect, Westar Energy, testified as an opponent to **Sub SB 33**. The bill has the noble intent of ensuring fairness among all parties engaged in a private construction contract. Our opposition begins on line 38 of page 2. The interest rate identified in three places is 20% higher than the current statutory rate of 15% per year for nonpayment on bonds, promissory notes and other written documents for payment of money. Westar Energy suggests amending the bill's language to not exceed the statutory rate established in K.S.A. 16-207.

The time limits for payments are adequate for the owners, but the short timeframe in Section 3 (3) (f) and (g) could increase disputes between general contractors and subcontractors. Increasing disputes will not create fairness.

Section 5 penalizes owners. An owner may make timely payment to the general contractor, but the general contractor fails to pay the subcontractor in accordance with the timeframe in this section.

The "loser pays" is a remedy initially devised for a party that does not have adequate means to pay for legal services. Shifting the prevailing party's attorney's fees to the loser is not the norm in the United States. The responsibility for each side to pay their own legal fees is a distinct part of the judicial system... in fact it is known as the "American Rule" (Attachment 7).

The Chairman asked Ms. Aron if she could return March 22 to give testimony as time had elapsed. Ms. Aron said she would be able to come back on Tuesday.

The meeting adjourned at 10:27 a.m. The next meeting will be March 22, 2005.

The following written testimony was submitted: Jim DeHoff, Executive Director, AFL-OCIO (Attachment 8); Chris Wilson, Executive Director, Kansas Building Industry Association (KBIA) (Attachment 9). Mcihael

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:00 A.M. on March 21, 2005 in Room 241-N of the Capitol.

R. Murray, Director, Governmental and Public Affairs, Sprint (Attachment 10).

COMMERCE AND LABOR COMMITTEE

Date March 21, 2005

NAME	AGENCY
WAYNE HARDY	WESTAR ENERGY
Pat Tryan	Westar Energy
Allyson Yarbrough	Westar Energy
Bill MILLER	ASA - BUILDING ERECTION,
Ken Keller	ASA - Western Extralite Co
Rose V. Whorton	ASA - WESTERN Extralite Co
David F. Masses	NACM, KC Division, Inc.
DAN M. HAAKE	ASA HAAKE FOUNDATIONS
Mark Schreiber	Westar Energy
David Kensingler	Kensingler and Associates
DAVID SPRAGUE	KENSINGER & ASSOCIATES

March 21, 2005

Testimony of Ken Keller – Substitute for SB33 House Commerce & Labor Committee

Mr. Chairman, first let me thank you and your committee for this opportunity to address you on the merits of Substitute SB33, The Kansas Fairness in Private Construction for Contract Act.

I'm Ken Keller, Controller of Western Extralite Company. We are a wholesale distributor for electrical supplies. We supply electrical product to the construction industry. We have service centers in Topeka, Lawrence, Lenexa, Leavenworth, and Manhattan with various locations in Missouri.

My purpose today is to introduce you to substitute for SB33. Bill Miller and others will get more into specific details.

But first we will distribute our balloon to this bill. When this bill was voted out of the Senate 36-3 it was with the understanding that there was some housekeeping changes that needed to take place in the House. These changes provide clarity, but do not alter intent or purpose of the bill. When the original bill was introduced to the Senate Commerce Committee it was seven pages. There were three committee meetings and four sub-committee meetings where the bill was examined line by line with many compromises taking place. Both the proponents and opponents had many opportunities to express their likes and dislikes before we came up with this three page bill agreed to by all concerned. This is truly a compromise bill and no one is totally pleased with the end result, but all agreed it is good legislation and will benefit all in the construction industry.

The bill deals with fairness. The Golden Rule: Treat others as you want to be treated. A current Kansas State Senator recently told me "When it comes to construction, subcontractors are treated as subhuman. Our proposed legislation will insure the general contractor, subcontractor, and suppliers are treated fairly and are paid timely for work properly performed. For those of you who are unfamiliar with the construction industry phase, open your handout to the first page to the Construction Organizational Chart. On top you have the owner. He is responsible for financing the project and hiring the general contractor. The owner receives the economic gain from the completed project.

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Tier II is the subcontractor who actually performs the work: the plumber, carpenter, electrician, heating and air conditioning, etc.

Tier III is normally the supplier who provides material for the project. Sometimes on a large job the subcontractor will hire other subcontractors to help on the project and they become Tier III and the supplier to Tier IV. There are several parts to our proposed legislation. Virtually all of it comes from the AIA, American Institute of Architects, standard contract and related documents. This is the Bible of the construction industry. For your convenience we have supplied you with some of this documentation in your handout. Bill Miller will review this with you in a moment.

An important part of this bill is prompt pay. You must be paid timely for work properly performed. Substitute SB33 calls for the owner to make payment within 30 calendar days from the receipt of an approved payment request. In the event there is an exception, the unchallenged portion of the invoice is due within 30 days. Once paid, the general has five working days to pay the subcontractor who, in turn, has five working days to pay the supplier.

You may hear that 30 days is not enough time to pay. This is not true. In the early to mid-80s the federal government realized they were putting small business out of business because of poor paying habits. The government established a 30-day time frame for payment and pay interest for payments after 30 days. If the federal government can pay in 30 days, anyone can.

What options exist if payment schedules are not met? First, the unpaid party can stop work. After payment is 7 business days past due, a written notice can be given and you can stop work after 7 additional business days without penalty for being in default of the contract.

If that action doesn't get the unpaid party paid, then a claim can be made in court and, if successful, the unpaid party will get the money due, plus interest at 18% per annum, plus he will be paid his court cost and reasonable attorney's fees by the losing party.

The venue for any court action or arbitration will be in the county where the project is located and subject to Kansas law. No longer will we deal with contracts calling for venue in New York, California, wherever.



Our proposed legislation deals with a few changes to retainage. Retainage is an amount withheld from each payment and is theoretically paid when the project is completed. The purpose of the retainage is to provide leverage for the owner and general contractor to see that the work is performed as specified. Retainage should be paid in full once the project is completed. Retainage will be limited to 10% and if unpaid according to the terms of the contract will be subject to 18% annual interest.

Our bill eliminates certain egregious terms from some construction contracts. The following provisions in contracts for private construction shall be against public policy:

1. You cannot waive your rights to litigation.
2. You cannot waive your rights to file a mechanic's lien or bond claim.
3. You cannot waive your rights for subrogation for losses covered by insurance.
4. Contingent or conditional payment terms are not a defense to enforce mechanic's lien rights.

Substitute for SB33 does not apply to single family dwellings or multiple units of four or less. The fiscal note is "0".

I urge you to support passage of Substitute SB33, The Kansas Fairness in Private Construction Contract Act.

Thank you.

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6	AIA 401 Contract Provisions
7	AGC of Kansas Standard Contract
8	Egregious Contract Terms
9	Current Missouri Bill on Subrogation SB1 Missouri Contingent Payment Provision not a defense to Mechanics Lien
10	States with Prompt Pay Laws both Public and Private

(Booklet filed in Chairman's Office)

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**DAN HAAKE**

March 21, 2005

House Committee Members on  
Commerce and Labor  
State Capitol  
Topeka, Kansas 66612-1504

Committee Member,

I am here today to ask for your consideration and support for this Bill. I am the Owner of a small concrete foundation company based out of Raytown, Missouri registered in the State of Kansas performing about 1.5 million dollars in subcontract labor work and a little better than half is on the Kansas side of state line. We have a work force of 15 and about half reside in Kansas.

I would like to share with you the pay terms of our typical contract. During the bidding process we bid plans and specs (See Notebook) where the billing process is clearly indicated and the payment process is clearly unclear. If we choose to proceed, our Subcontracts with the General Contractor are clear as to when the General Contractor will pay us, usually 15 days after they have been paid by the Owner. Thus leaving the payment process clearly unclear.

Finally, I have two actual jobs I have performed that shows actual billing dates, billing amounts, lapsed days between billing and payments as well as the cost of money for these days and the cost does not include the actual working days in front of the billing date.

It is my opinion that it is not unreasonable for payment terms of a contract to be clear and understood and if that was the case, I would not be here today. Please give this Bill your consideration.

Sincerely,



Dan M. Haake

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**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**

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Cost of Money Analysis

3/18/05

Job	Contract Amt	App#	Invoice Amt	Invoice Date	Date Paid	Days Paid	Cost of \$	Retention Amt	Retention Date	Ret Amt Pd	Date Retention Pd	Days Pd	Cost of Retention		
CABOT	161,363.00	1	24,575.40	10/22/2003	01/08/04	50	336.65	2,730.60	11/20/03	1,365.30	03/18/05	485	362.83		
											1,365.30	01/14/05	420	157.10	
			36,863.10	12/19/2003	02/05/04	48	484.78	4,095.90	12/19/03	2,047.95	03/18/05	457	512.83		
											2,047.95	01/14/05	392	219.94	
			34,132.50	01/20/2004	03/02/04	42	392.76	3,792.50	01/20/04	1,896.25	03/18/05	425	441.59		
											1,896.25	01/14/05	360	187.03	
			1,365.30	03/23/2004	04/27/04	35	13.09	151.70	03/23/04	75.85	03/18/05	362	15.05		
											75.85	01/14/05	297	6.17	
			25,749.04	09/20/2004	11/01/04	42	296.29	2,861.01	09/20/04	1,430.50	03/18/05	181	141.87		
											1,430.51	01/14/05	116	45.46	
Turner	110,375.00	1	21,650.06	10/20/2004	12/02/04	42	249.12	2,405.59	10/20/04	1,202.79	03/18/05	150	98.86		
											1,202.80	01/14/05	85	28.01	
			430.20	11/09/2004	1/06/05	59	6.95	47.80	11/09/04	23.90	03/18/05	131	1.72		
											23.90	01/14/05	66	.43	
			460.80	12/28/2004	03/01/05	63	7.95	51.20	12/28/2004	25.61	03/18/05	83	1.16		
											25.59	01/14/05	18	.13	
								avg 48 days	1,787.59						2,220.17
			75,091.86	12/20/01	02/26/02	68	1,398.97	8,343.54	12/20/01	834.35	04/23/03	489	111.78		
											7,509.19	02/24/03	431	886.70	
			8,343.54	01/22/02	02/26/02	35	80.01	927.06	01/22/02	92.96	04/23/03	457	11.64		
								834.10	02/24/03	399	91.18				
9,204.30	04/26/02	06/14/02	49	123.56	1,022.70	04/26/02	102.27	04/23/03	362	10.14					
								920.43	02/24/03	304	76.66				
720.00	04/30/02	06/14/02	45	8.88	80.00	04/30/02	8.00	04/23/03	358	.78					
								72.00	02/24/03	300	5.92				
1,652.40	05/03/02	06/14/02	42	19.01	183.60	05/03/02	18.36	04/23/03	355	1.79					
								165.24	02/24/03	297	13.45				
-427.50	05/14/02	06/14/02	31	-3.63	-47.50	05/14/02	-4.75	04/23/03	344	-.44					
								-42.75	02/24/03	286	-3.34				
1,152.90	11/20/02	12/18/02	28	8.84	128.10	11/20/02	12.81	04/23/03	155	.54					
								115.29	02/24/03	97	3.06				
3,742.20	03/18/03	04/23/03	33	33.83	415.80	03/18/03	415.80	04/23/03	36	4.10					
													1,213.96		
						avg 41 days	1,669.47								

Testimony of David F. Massey, Chairman  
Board of Directors, NACM Kansas City Division, Inc.  
Proponent of Senate Bill 33  
The Kansas fairness in private construction contract act  
March 21, 2005

Good Morning, Chairman Dahl, Vice Chairman Novascone and members of the House Commerce and Labor Committee. Thank you for allowing me to speak this morning.

My name is Dave Massey. I am the chairman of the board of directors for NACM, Kansas City Division, Inc.

The legislation under your consideration today will provide some protection to subcontractors and material suppliers in the construction industry while, if enacted, will have virtually no negative effects on owners and general contractors that presently practice fair payment practices.

The absence, or withholding, of fair and timely payment for properly completed work can create severe financial hardship on small Kansas businesses. These businesses are arguably the least able to afford the expense of unnecessary payment delays.

This bill does not ask for, nor does it provide, "special" treatment for the typically much smaller subcontractors. The provisions within this bill for venue and the right to stop work simply provide a fair mechanism for the subcontractor to defend itself in situations where timely payment is not forthcoming.

These businesses don't want to stop work and they certainly don't want to go to court, regardless of venue. These businesses just want to be paid, timely and in full, for their properly completed work.

The National Association of Credit Managers, Kansas City Division, Inc., supports any legislation that will assist trade creditors in accomplishing this goal. Thank you.

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**TESTIMONY OF  
ASSOCIATED GENERAL CONTRACTORS OF KANSAS  
BEFORE HOUSE COMMITTEE ON COMMERCE AND LABOR  
Substitute Senate Bill 33**

March 21, 2005

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

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

**The AGC of Kansas supports Substitute Senate Bill 33, but requests that you make the following amendments:**

- Page 2, Line 16**            **See AGC balloon for two amendment possibilities.**
- Page 2, Line 42**        **Change “five” business days to “seven” business days.**
- Page 3, Line 3**         **Change “five” business days to “seven” business days.**
- Page 3, Line 5**         **Change “sixth” business day to “eighth” business day.**

The first amendment above is to protect the ability to obtain a lien release upon payment. Five business days for contractor payment is stated in many contracts, including AGC standard contracts, but not all. These standard contracts were developed as model contracts, not as law. Adding an extra two days will enable more flexibility for unusual projects or situations where the billing cycle will not allow for a five day turnaround.

While AGC philosophically opposes government dictating contract terms between two private persons, it supports Sub. SB 33 due to respect for the subcontractors who have indicated problems with timely payment and contract terms that would be considered one-sided. It is important to mention however, that this is not a wide-spread problem in our industry and it has been stated that the bill was prompted because of a few so called “bad contractors” in one geographic region.

Following several months of work between industry members and efforts of a Senate Commerce Subcommittee, SB 33 (now Sub. SB 33) closely resembles HB 2248, which was introduced in this committee by the AGC of Kansas. The key differences are the inclusion of prescriptive contract limits on the time of payment and the contract terms that would become against public policy.

The AGC of Kansas **respectfully requests that you consider the above amendments and approve Substitute SB 33 for passage as amended.** Thank you for your consideration.

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March 18, 2005

The Honorable Don Dahl  
Room 170-W  
State Capitol, 300 SW 10<sup>th</sup> Avenue  
Topeka, KS 66612-1504

Re: Support for Substitute for Senate Bill No. 33

Dear Representative Dahl:

The purpose of this letter is to advise you of our support for the proposed Substitute for Senate Bill No. 33, known as the "Kansas fairness in private construction act". The Builders' Association represents 935 general contractor, subcontractor and supplier members engaged in commercial building construction in Kansas and Missouri. Nearly half of our members are domiciled in Kansas or perform work in the state.

As originally introduced, SB 33 addressed a number of controversial issues that either set one segment of our industry against another or set the construction industry's interests against the interests of owners and users of construction services and we recommended current Missouri law as a "doable" alternative. That law provides powerful enforcement punch to private construction contracts by awarding attorney fees to the prevailing party in a lawsuit or arbitration and by imposing significant interest penalty provisions against any party to a construction contract that fails to live up to any of the terms of its agreement.

We are pleased that a subcommittee of the Senate Commerce Committee was able to modify the original bill and arrive at a substitute that removes the controversial issues, adds the enforcement provisions that were recommended and provides a timetable for payments by owners, contractors and subcontractors that mirrors industry standards. We commend the subcommittee for its work and all interested parties for their willingness to meet and compromise to an acceptable conclusion. We recommend your support for the Substitute for SB 33 and thank you for your thoughtful consideration of this important issue.

Sincerely,

Dan Morgan  
President

Comme Labor  
3-21-05  
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**Testimony on Substitute for Senate Bill 33**  
**Before the House Commerce and Labor Committee**  
**By Pat Tryon, Westar Energy, Topeka, Kansas**  
**March 21, 2005**

Good morning Chairman Dahl and members of the committee, my name is Pat Tryon, project architect for Westar Energy.

Substitute for Senate Bill 33, as did the original SB 33, has the noble intent of ensuring fairness among all parties engaged in a private construction contract. Westar Energy supports that goal and respects the terms agreed to in all contracts we sign. However, in our opinion, the substitute bill could actually increase disputes among the parties.

We have no issues with page 1 through line 34 of page 2 of the bill. The reasons for our opposition begin on line 38 of page 2. The interest rate identified in three places in the bill is 20% higher than the current statutory rate of 15% per year for nonpayment on bonds, promissory notes and other written documents for payment of money. Westar Energy suggests amending the bill's language to not exceed the statutory rate established in K.S.A. 16-207.

The time limits for payments are adequate for the owners, but the short timeframe in Section 3 (3) (f) and (g) could increase disputes between general contractors and subcontractors. Increasing disputes will not create fairness. Our payment schedules are based on the complexity of the job. Building a power plant is different than building a Pizza Hut. The owner or general contractor must have adequate time to review the invoice and inspect the work. We have been asked several times in the discussions on this bill, "What timeframe do you need?". Our consistent response is we can't say because it's dependent on the job. Because invoices can vary so widely between simple and complex, terms of payment should be negotiated between contractor and subcontractor. The contract should dictate the appropriate payment schedule...not legislation.

Section 5 penalizes owners. An owner may make timely payment to the general contractor, but the general contractor fails to pay the subcontractor in accordance with the timeframe in this section. Then the job is halted and the owner has paid for work that is not being completed. The problem lies between the general contractor and the subcontractor. It would be like a person paying cash for a new car that the dealer says is at the factory. However, a work stoppage at the factory prevents the car from being shipped. The customer is out the money with no value provided in its place. Again, this section will likely encourage more litigation instead of providing fairness to all parties. If this section cannot be deleted, Westar Energy suggests the addition of the word "undisputed" in line 18 between the words "any" and "payment". This term is used in previous sections and the

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inclusion ensures consistency. We also suggest that the added costs of the work stoppage not be passed on in any manner to a higher tier party that is not part of the aggrieved contract. Thus, an owner would not pay the demobilization, delay and remobilization costs of the stoppage if the dispute exists between the general contractor and the subcontractor.

Our final comment is on section 6. The "loser pays" is a remedy initially devised for a party that does not have adequate means to pay for legal services. Shifting the prevailing party's attorney's fees to the loser is not the norm in the United States. The responsibility for each side to pay their own legal fees is a distinct part of the judicial system... in fact it is known as the "American Rule." The parties in private construction contracts are going concerns and should be able to at least pay for their own legal defense. If the business were in such dire straits as to not be able to afford their own legal defense to bring a lawsuit, this requirement would place them in even further financial debt if they lose. If this clause is intended to act as an incentive for businesses that lack resources to retain an attorney, this section may instead be a deterrent to filing a lawsuit. The aggrieved party may be hesitant to file because they know if they lose they would have to pay both parties' legal expenses. That is not a risk that businesses with few resources would be willing to take, especially when you consider that the legal fees for litigation often exceeds the dollar amount of damages being sought. A "prevailing party attorneys' fees clause" is something that can be agreed to contractually. Each party can then decide for itself whether it has the monetary means to take on that financial risk in event of a dispute. It is not something that should be required by statute.

Westar Energy remains committed to adhering to all terms within our contracts. We also expect the other parties to our contracts to adhere to their contractual responsibilities. Fairness in contracts should be followed religiously. However, we know there are bad actors out there that ruin the process for the majority. This bill in its current form won't cure the bad actors and will impose unnecessary burden on honest owner companies.

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

# Kansas AFL-CIO

2131 S.W. 36th St.

Topeka, KS 66611

785/267-0100

Fax 785/267-2775



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**Ron Eldridge**

Executive Secretary  
Treasurer  
**Jim DeHoff**

Executive Vice  
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**Wil Leiker**

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*Mike Brink  
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Barbara Fuller  
Rick Greeno  
David Han  
Jerry Helmick  
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Larry Horseman  
Jim Keele  
Lloyd Lavin  
Jerry Lewis  
Shawn Lietz  
Pam Pearson  
Dave Peterson  
Emil Ramirez  
Steve Rooney  
Debbie Snow  
Richard Taylor  
Wilma Ventura  
Betty Vines  
Dan Woodard*

TESTIMONY ON Substitute S.B. 33  
to the House Commerce & Labor Committee

by Jim DeHoff, Executive Secretary  
Kansas AFL-CIO  
March 21, 2005  
9:00 A.M., Rm 241-N

Chairperson Dahl and Committee Members:

I am Jim DeHoff, Executive Secretary of the Kansas AFL-CIO. I appear before you today in support of Substitute S.B. 33.

In the Construction Industry there has been a major problem collecting payments for completed construction work. The reason this problem exists, in some cases, is that if an owner or contractor can hold onto payments owed to subcontractors or general contractors, they simply make more money. This can be in the form of interest earned or simply not having to pay interest on a construction loan from a bank. The delay in payments to general contractors or subcontractors has caused contractors to be late on health and welfare payments and other fringe benefits owed to individual workers.

We ask that you support Substitute S.B. 33 and help correct this serious problem.

Thank you.

Jim DeHoff  
Executive Secretary

JD:da  
kape/aft4565



Comm Labor  
3-21-05  
Atch # 8





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STATEMENT OF THE KANSAS BUILDING INDUSTRY ASSOCIATION

TO THE HOUSE COMMERCE COMMITTEE

REPRESENTATIVE DON DAHL, CHAIR

REGARDING SUBSTITUTE FOR S.B. 33

MARCH 21, 2005

Mr. Chairman and Members of the Committee, I am Chris Wilson, Executive Director of the Kansas Building Industry Association (KBIA). KBIA is the professional trade association of the residential construction industry in Kansas.

SB 33 is applicable to commercial construction of over multi-family housing of more than four units. We do have many members who are involved, either as general contractors or subcontractors, in the construction of such units. We have had numerous concerns about this legislation over last session and this one, with regard to its intrusion into private contract rights. At this time, the Senate Substitute is a much better bill than previous versions.

One concern we have is with subsection (f) on lines 41-43 of page two and lines 1 and 2 on page 3. This requires a contractor to pay its subcontractors within five business days of receipt of payment, or under subsection (g) on page 3, to pay interest. This seems onerous. What bills or requests for payment are due within five days or interest accrues? What if the contractor is out of town on other business, or ill? What constitutes receipt? Is it the mailbox rule, where receipt is effective when the owner mails the payment? If so, it may not actually be in the contractors hands until five business days later. We would suggest lengthening the time in this provision.

Thank you for your consideration.



CHRISTINA M. WILSON, Executive Director

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Comm labor  
3-21-05  
Atch # 9



**Michael R. Murray**  
Director  
Governmental and Public Affairs

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Voice 785 232 3826  
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March 22, 2005

TO: Members of the House Commerce and Labor Committee  
FROM: Mike Murray, Director of Governmental Affairs, Sprint  
RE: Substitute for SB 33

Mr. Chairman and Members of the Committee:

Sprint appreciates the opportunity to comment in writing on Substitute for SB 33 being heard today in the Commerce and Labor Committee.

Sprint opposes the bill, and believes the bill is an unnecessary infringement on a company's ability to manage its operations.

Specifically, Substitute for SB 33 interferes with contract negotiations by requiring an owner of property to pay a contractor within 30 days of receiving a timely, properly completed, and undisputed request for payment. Terms for the 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.

Can the bill be fixed? In Sprint's view, no. The bill simply is undue governmental interference in negotiations between a willing buyer and a willing seller—between a property owner and a contractor. It is a solution looking for a problem.

Respectfully, Sprint asks that you vote NO on Substitute for SB 33.

Comm Labor  
3-21-05  
Atch #10