

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 A.M. on February 21, 2005 in Room 123-S of the Capitol.

All members were present except:

Jay Emler- excused

Committee staff present:

Susan Kannarr, Kansas Legislative Research Department

Kathie Sparks, Kansas Legislative Research Department

Helen Pedigo, Revisor of Statutes

Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

Jim Edwards, Governmental Relations Specialist, Kansas Association of School Boards

Others attending:

See attached list.

Chairperson Brownlee opened the meeting by introducing Jim Edwards, Governmental Relations Specialist for the Kansas Association of School Boards to give his testimony. Mr. Edwards stated the Kansas Association of School Boards is in support of **SB 107**. Mr. Edwards and the Department of Labor came to an agreement on **SB 107**. A balloon is attached to his written testimony. (Attachment 1)

Upon completion of Mr. Edwards' testimony the Committee discussed what is happening now and the need for **SB 107**. Mr. Edwards and Mr. Wayne Michael from the Department of Labor joined in the discussion answering questions of the Committee regarding the balloon. Several questions were answered about part-time work such as summer work by teachers and if they could apply for unemployment and if students who work in the summer are eligible to claim for unemployment when summer is over. The answer was "no". This bill was written originally to apply to only rule 10 coaches. The way the law is written today is if they are laid off from their real job they could apply for unemployment on both jobs. Since the Committee asked the bill be amended to cover more than the rule 10 coaches, the bill was amended. There was also discussion about striking paragraph b. Senator Brownlee asked why they were striking paragraph (B). Mr. Michael from the Department of Labor stated paragraph (B) did not make sense and he couldn't find anyone who knew why it was in the bill.

Senator Schodorf moved to accept the amendment to the bill. Senator Kelly seconded. Motion carried. Senator Schodorf moved to pass SB 107 out favorably as amended. Senator Kelly seconded. Motion carried.

Chairperson Brownlee announced that the other bills on the agenda for today were not ready to work. They are still being worked on. There was some discussion on **SB 233** and what brought this bill to the Committee. Senator Barone stated possibly the reason they don't have more signed up as agritourism operators is because they have to be a licensed food service carrier. There was discussion with Matt Jordan from the Department of Commerce. He stated the Department of Commerce, KDHE and Department of Ag have come together and agreed upon a compromise that will be in committee tomorrow. There was also discussion on the agritourism and liability insurance.

SB 173 was discussed and it may not be needed at this time since the two issues in Ft. Scott have be resolved. Senator Barone asked the bill to be blessed to give the Committee time see where they stand with the dialog with the Department of Transportation on the two issues in Ft. Scott.

Chairperson Brownlee introduce Helen Pedigo, Legislative Research. Ms. Pedigo distributed written copy of **HB 2464** which is related to **SB 259**. (Attachment 2) A second balloon was offered by Senator Brownlee and Ms. Pedigo explained the balloon. (Attachment 3) Discussion continued on the **SB 259**.

Chairperson Brownlee turned the discussion to the new balloon for **SB 33**. (Attachment 4) There was extensive discussion on the balloon and the Committee agreed the new balloon does not address all the

CONTINUATION SHEET

MINUTES OF THE Senate Commerce Committee at 8:30 A.M. on February 21, 2005 in Room 123-S of the Capitol.

concerns of the Committee. Chairperson Brownlee stated the general contractors have stated they are going to be penalized with the passage of this bill. There are many good general contractors. But there are some "bad actors" as general contractors who do not treat subcontractors appropriately in contract terms and that is when it is appropriate to intervene and indicate certain contract provisions will not be allowed. The effort is not to intervene with any contract which is already in force. The contractors who may feel penalized would be those who need to make changes because of poor contract language now in use. The discussion continued on **SB 33**. There was discussion on the problem with the subcontractors and general contractors being regional. Chairperson Brownlee stated it was more than regional. Senator Jordan stated he needed more information on the contracts. Senator Jordan also has concerns regarding the second balloon. Senator Wysong also has concerns and is not comfortable with the balloon. He suggested just increase the percentage penalty and stated that would encourage general contractors to pay sooner. The discussion continued with the consensus being the balloon needs more work.

Chairperson Brownlee announced that tomorrow **SB 33** would be on the agenda and also Kansas, Inc. would like to come back tomorrow and testify. The Committee discussed **SB 260**. Senator Schodorf sated sometimes it is harder to disband or abolish something, you keep trying to make it work and put money into it and think it has potential but sometimes you have to just say it is time to stop. Senator Wysong feels it should go to the Senate floor for discussion and let the whole body decide.

Meeting adjourned at 9:20 a.m. with the next meeting scheduled for tomorrow, Tuesday, February 22, 2005 at 8:00 a.m. in room 123S.

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS

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Testimony on **SB 107**
before the
Senate Commerce Committee

by

Jim Edwards, Governmental Relations Specialist
Kansas Association of School Boards

February 18, 2005

Chairs Brownlee and Jordan and Members of the Committee:

Thank you for allowing me the opportunity to appear today to express KASB's support for **SB 107**, a measure which would prohibit charging an employer's account unless an employee is found to be eligible for benefits. Specifically, the employees we are talking about are classified as temporary and/or part-time employees and would be best recognized as substitute teachers or Rule 10 coaches.

In some recent unemployment decisions from administrative law judges (ALJ), the ALJ's have separated the question of qualifications for benefits from the question of whether an employer's account should be charged. As a result, schools are being charged for unemployment benefits in these cases unless an employee is fired for engaging in misconduct. Apparently, being ignored is the *USD 500 v. Womack* decision which suggests the individual must qualify for benefits before an employer's account can be charged. It appears legislative clarification is necessary.

Thank you for the opportunity to offer our thoughts on this important measure and I would be happy to answer questions.

Senate Commerce Committee

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Attachment 1-1

1 unavailability of federal appropriations and grants for such purpose occurs
 2 or in which such change in liability for payment of such federal tax occurs
 3 and for each year thereafter, the rate of contributions of each contributing
 4 employer shall be equal to the total of 5% and the rate of contributions
 5 as determined for such contributing employer under K.S.A. 44-710a and
 6 amendments thereto. The amount of contributions which each contrib-
 7 uting employer becomes liable to pay under this paragraph (2) over the
 8 amount of contributions which such contributing employer would be oth-
 9 erwise liable to pay shall be credited to the employment security admin-
 10 istration fund to be disbursed and paid out under the same conditions
 11 and for the same purposes as other moneys are authorized to be paid
 12 from the employment security administration fund, except that, if the
 13 secretary determines that as of the first day of January of any year there
 14 is an excess in the employment security administration fund over the
 15 amount required to be disbursed during such year, an amount equal to
 16 such excess as determined by the secretary shall be transferred to the
 17 employment security fund.

18 (c) *Charging of benefit payments.* (1) The secretary shall maintain a
 19 separate account for each contributing employer, and shall credit the
 20 contributing employer's account with all the contributions paid on the
 21 contributing employer's own behalf. Nothing in the employment security
 22 law shall be construed to grant any employer or individuals in such em-
 23 ployer's service prior claims or rights to the amounts paid by such em-
 24 ployer into the employment security fund either on such employer's own
 25 behalf or on behalf of such individuals. Benefits paid shall be charged
 26 against the accounts of each base period employer in the proportion that
 27 the base period wages paid to an eligible individual by each such employer
 28 bears to the total wages in the base period. Benefits shall be charged to
 29 contributing employers' accounts and rated governmental employers' ac-
 30 counts upon the basis of benefits paid during each twelve-month period
 31 ending on the computation date.

32 (2) (A) Benefits paid in benefit years established by valid new claims
 33 shall not be charged to the account of a contributing employer or rated
 34 governmental employer who is a base period employer if the examiner
 35 finds that claimant was separated from the claimant's most recent em-
 36 ployment with such employer under any of the following conditions: (i)
 37 Discharged for misconduct or gross misconduct connected with the in-
 38 dividual's work; or (ii) leaving work voluntarily without good cause attrib-
 39 utable to the claimant's work or the employer or (iii) ~~is disqualified for~~
 40 ~~benefits pursuant to K.S.A. 44-706 and amendments thereto.~~

41 ~~(B) Where base period wage credits of a contributing employer or~~
 42 ~~rated governmental employer represent part-time employment and the~~
 43 ~~claimant continues in that part-time employment with that employer dur-~~

New: K.S.A. 44-710(c)(2)(A)(iii) Where base period wage credits of a contributing employer or rated governmental employer represent part-time employment, defined as less than 20 hours per week or less than \$2,500 in base period wages.

Delete K.S.A. 44-710(c)(2)(B)

1 ~~ing the period for which benefits are paid, then that employer's account~~
 2 ~~shall not be charged with any part of the benefits paid if the employer~~
 3 ~~provides the secretary with information as required by rules and regula-~~
 4 ~~tions. For the purposes of this subsection (c)(2)(B), "part-time employe-~~
 5 ~~ment" means any employment when an individual works concurrently for~~
 6 ~~two or more employers and also works less than full-time for at least one~~
 7 ~~of those employers because the individual's services are not required for~~
 8 ~~the customary, scheduled full-time hours prevailing at the work place or~~
 9 ~~the individual does not customarily work the regularly scheduled full-time~~
 10 ~~hours due to personal choice or circumstances.~~

11 (C) No contributing employer or rated governmental employer's ac-
 12 count shall be charged with any extended benefits paid in accordance
 13 with the employment security law, except for weeks of unemployment
 14 beginning after December 31, 1978, all contributing governmental em-
 15 ployers and governmental rated employers shall be charged an amount
 16 equal to all extended benefits paid.

17 (D) No contributing employer, rated governmental employer or re-
 18 imbursement employer's account shall be charged for any additional benefits
 19 paid during the period July 1, 2003 through June 30, 2004.

20 (E) No contributing employer or rated governmental employer's ac-
 21 count will be charged for benefits paid a claimant while pursuing an ap-
 22 proved training course as defined in subsection (s) of K.S.A. 44-703 and
 23 amendments thereto.

24 (F) No contributing employer or rated governmental employer's ac-
 25 count shall be charged with respect to the benefits paid to any individual
 26 whose base period wages include wages for services not covered by the
 27 employment security law prior to January 1, 1978, to the extent that the
 28 employment security fund is reimbursed for such benefits pursuant to
 29 section 121 of public law 94-566 (90 Stat. 2673).

30 (G) With respect to weeks of unemployment beginning after Decem-
 31 ber 31, 1977, wages for insured work shall include wages paid for previ-
 32 ously uncovered services. For the purposes of this subsection (c)(2)(G),
 33 the term "previously uncovered services" means services which were not
 34 covered employment, at any time during the one-year period ending De-
 35 cember 31, 1975, except to the extent that assistance under title II of the
 36 federal emergency jobs and unemployment assistance act of 1974 was
 37 paid on the basis of such services, and which:

38 (i) Are agricultural labor as defined in subsection (w) of K.S.A. 44-
 39 703, and amendments thereto, or domestic service as defined in subsec-
 40 tion (aa) of K.S.A. 44-703, and amendments thereto, or

41 (ii) are services performed by an employee of this state or a political
 42 subdivision thereof, as provided in subsection (i)(3)(E) of K.S.A. 44-703,
 43 and amendments thereto, or

SENATE BILL No. 259

By Committee on Commerce

2-11

PROPOSED AMENDMENT
PROVISIONS OF HB 2464
February 21, 2005

Senate Commerce Committee

2-21-05

Attachment 2-1

9 AN ACT concerning workers compensation; relating to administrative
10 law judges; compensation; amending K.S.A. 2004 Supp. 44-551 and
11 75-5708 and repealing the existing sections.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section. 1. ~~K.S.A. 2004 Supp. 44-551 is hereby amended to read as~~
15 ~~follows: 44-551. (a) The duties of the assistant directors of workers com-~~
16 ~~ensation shall include but not be limited to acting in the capacity of an~~
17 ~~administrative law judge.~~

18 ~~(b) Each administrative law judge shall be an attorney regularly ad-~~
19 ~~mitted to practice law in Kansas. Such attorney shall have at least five~~
20 ~~years of experience, with at least one year of experience practicing law in~~
21 ~~the area of workers compensation.~~

22 ~~(c) The annual salary of each administrative law judge shall be an~~
23 ~~amount equal to 80% of the annual salary paid by the state to a district~~
24 ~~judge, other than a district judge designated as chief judge. Administrative~~
25 ~~law judges shall devote full time to the duties of such office and shall not~~
26 ~~engage in the private practice of law during their term of office. No ad-~~
27 ~~ministrative law judge may receive additional compensation for official~~
28 ~~services performed by the administrative law judge. Each administrative~~
29 ~~law judge shall be reimbursed for expenses incurred in the performance~~
30 ~~of such official duties under the same circumstances and to the same extent~~
31 ~~as judges of the district court are reimbursed for such expenses.~~

32 ~~(d) Applications for administrative law judge positions shall be sub-~~
33 ~~mitted to the director of workers compensation. The director shall deter-~~
34 ~~mine if an applicant meets the qualifications for an administrative law~~
35 ~~judge as prescribed in subsection (b). Qualified applicants for a position~~
36 ~~of administrative law judge will be submitted by the director to the work-~~
37 ~~ers compensation ALJ nominating committee for consideration.~~

38 ~~(e) There is hereby established the workers compensation ALJ nom-~~
39 ~~inating committee which shall be composed of two members appointed as~~
40 ~~follows: The Kansas AFL-CIO and the Kansas chamber of commerce and~~
41 ~~industry shall each select one representative to serve on the workers com-~~
42 ~~ensation ALJ nominating committee and shall give written notice of the~~
43 ~~election to the secretary who shall appoint such representatives to the~~

~~committee. In the event of a vacancy occurring for any reason on the nominating committee, the respective member shall be replaced by the appointing organization with written notice of the appointment to the secretary of labor within 30 days of such vacancy.~~

~~(f) (1) Upon being notified of any vacancy in the position of administrative law judge, the nominating committee shall consider all qualified applicants submitted by the director for the vacant position of administrative law judge and nominate a person qualified therefor. The nominating committee shall be required to reach unanimous agreement on any nomination to the position of administrative law judge. With respect to each person nominated, the secretary either shall accept and appoint the person nominated by the nominating committee to the position of administrative law judge for which the nomination was made or shall reject the nomination and request the nominating committee to nominate another person for that position. Upon receipt of any such request for the nomination of another person, the nominating committee shall nominate another person for that position in the same manner.~~

~~(2) Each administrative law judge shall hold office for a term of four years and may be reappointed. Each administrative law judge shall continue to serve for the term of the appointment or until a successor shall have been appointed. Successors to such administrative law judge positions shall be appointed for terms of four years.~~

~~(3) If a vacancy should occur in the position of an administrative law judge during the term of an administrative law judge, the nominating committee shall nominate an individual from the qualified applicants submitted by the director to complete the remainder of the unexpired portion of the term. With respect to each person so nominated, the secretary either shall accept and appoint the person nominated to the board or shall reject the nomination and request the nominating committee to nominate another person for the position. Upon receipt of any such request for the nomination of another person, the nominating committee shall nominate another person for the position in the same manner.~~

~~(g) Following the completion of a term, administrative law judges who wish to be considered for reappointment to their positions shall be deemed to have met the qualification requirements for appointment as administrative law judge and shall be considered for renomination by the workers compensation ALJ nominating committee.~~

~~(h) (1) Administrative law judges shall have power to administer oaths, certify official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, documents and records to the same extent as is conferred on the district courts of this state, and may conduct an investigation, inquiry or hearing on all matters before the administrative law judges. All final orders~~

Handwritten initials/signature

1 ~~Awards, modifications of awards, or preliminary awards under K.S.A. 44-~~
 2 ~~534a and amendments thereto made by an administrative law judge shall~~
 3 ~~be subject to review by the board upon written request of any interested~~
 4 ~~party within 10 days. Intermediate Saturdays, Sundays and legal holidays~~
 5 ~~shall be excluded in the time computation. Review by the board shall be~~
 6 ~~a prerequisite to judicial review as provided for in K.S.A. 44-556 and~~
 7 ~~amendments thereto. On any such review, the board shall have authority~~
 8 ~~to grant or refuse compensation, or to increase or diminish any award of~~
 9 ~~compensation or to remand any matter to the administrative law judge~~
 10 ~~for further proceedings. The orders of the board under this subsection~~
 11 ~~shall be issued within 30 days from the date arguments were presented~~
 12 ~~by the parties.~~

13 (2) (A) If an administrative law judge has entered a preliminary
 14 award under K.S.A. 44-534a and amendments thereto, a review by the
 15 board shall not be conducted under this section unless it is alleged that
 16 the administrative law judge exceeded the administrative law judge's ju-
 17 risdiction in granting or denying the relief requested at the preliminary
 18 hearing. Such an appeal from a preliminary award may be heard and
 19 decided by a single member of the board. Members of the board shall
 20 hear such preliminary appeals on a rotating basis and the individual board
 21 member who decides the appeal shall sign each such decision. The orders
 22 of the board under this subsection shall be issued within 30 days from
 23 the date arguments were presented by the parties.

24 (B) If an order on review is not issued by the board within the ap-
 25 plicable time period prescribed by subsection (b) (1), medical compen-
 26 sation and any disability compensation as provided in the award of the
 27 administrative law judge shall be paid commencing with the first day after
 28 such time period and shall continue to be paid until the order of the
 29 board is issued, except that no payments shall be made under this pro-
 30 vision for any period before the first day after such time period. Nothing
 31 in this section shall be construed to limit or restrict any other remedies
 32 available to any party to a claim under any other statute.

33 (C) In any case in which the final award of an administrative law judge
 34 is appealed to the board for review under this section and in which the
 35 compensability is not an issue to be decided on review by the board,
 36 medical compensation shall be payable in accordance with the award of
 37 the administrative law judge and shall not be stayed pending such review.
 38 The employee may proceed under K.S.A. 44-510k and amendments
 39 thereto and may have a hearing in accordance with that statute to enforce
 40 the provisions of this subsection.

41 ~~(D) Each assistant director and each administrative law judge or~~
 42 ~~special administrative law judge shall be allowed all reasonable and nec-~~
 43 ~~essary expenses actually incurred while in the actual discharge of official~~

1 ~~duties in administering the workers compensation act, but such expenses~~
2 shall be sworn to by the person incurring the same and be approved by
3 the secretary.

4 ~~(j) Administrative law judges shall be subject to the authority and~~
5 ~~direction of the director of workers compensation, and comply with such~~
6 ~~performance standards and requirements as shall have been established~~
7 ~~by agency administrative regulations.~~

8 ~~++(k) In case of emergency the director may appoint special local~~
9 ~~administrative law judges and assign to them the examination and hearing~~
10 ~~of any designated case or cases. Such special local administrative law~~
11 ~~judges shall be attorneys and admitted to practice law in the state of~~
12 ~~Kansas and shall, as to all cases assigned to them, exercise the same pow-~~
13 ~~ers as provided by this section for the regular administrative law judges.~~
14 ~~Special local administrative law judges shall receive a fee commensurate~~
15 ~~with the services rendered as fixed by rules and regulations adopted by~~
16 ~~the director. The fees prescribed by this section prior to the effective date~~
17 ~~of this act shall be effective until different fees are fixed by such rules~~
18 ~~and regulations.~~

19 ~~++(l) All special local administrative law judge's fees and expenses,~~
20 ~~with the exception of settlement hearings, shall be paid from the workers~~
21 ~~compensation administration fee fund, as provided in K.S.A. 74-712 and~~
22 ~~amendments thereto. Where there are no available funds or where the~~
23 ~~special local administrative law judge conducted a settlement hearing, the~~
24 ~~fees shall be taxed as costs in each case heard by such special local ad-~~
25 ~~ministrative law judge and when collected shall be paid directly to such~~
26 ~~special local administrative law judge by the party charged with the pay-~~
27 ~~ment of the same.~~

28 ~~++(m) Except as provided for judicial review under K.S.A. 44-556~~
29 ~~and amendments thereto, the decisions and awards of the board shall be~~
30 ~~final.~~

31 ~~Sec. 2. K.S.A. 2004 Supp. 75-5708 is hereby amended to read as~~
32 ~~follows: 75-5708. (a) There is hereby established within and as a part of~~
33 ~~the department of labor a division of workers compensation. The division~~
34 ~~shall be administered, under the supervision of the secretary of labor, by~~
35 ~~the director of workers compensation, who shall be the chief administra-~~
36 ~~tive officer of the division. The director of workers compensation shall~~
37 ~~be appointed by the secretary of labor and shall serve at the pleasure of~~
38 ~~the secretary. The director shall be in the unclassified service under the~~
39 ~~Kansas civil service act and shall receive an annual salary fixed by the~~
40 ~~secretary of labor, with the approval of the governor. The director of~~
41 ~~workers compensation shall be an attorney admitted to practice law in~~
42 ~~the state of Kansas. The director shall devote full time to the duties of~~
43 ~~such office and shall not engage in the private practice of law during the~~

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5

1 director's term of office.

2 (b) The director of workers compensation may appoint two assistant

3 directors of workers compensation and also may appoint not to exceed

4 10 administrative law judges. Such assistant directors and administrative

5 law judges shall be in the ~~classified~~ unclassified service. The assistant

6 directors shall act for and exercise the powers of the director of workers

7 compensation to the extent authority to do so is delegated by the director.

8 The assistant directors and administrative law judges shall be attorneys

9 admitted to practice law in the state of Kansas, and shall have such pow-

10 ers, duties and functions as are assigned to them by the director or are

11 prescribed by law. The assistant directors and administrative law judges

12 shall devote full time to the duties of their offices and shall not engage

13 in the private practice of law during their terms of office.

14 (c) Assistant directors and administrative law judges shall be selected

15 by the director of workers compensation, with the approval of the sec-

16 retary of labor. Each appointee shall be subject to either dismissal or

17 suspension of up to 30 days for any of the following:

18 (1) Failure to conduct oneself in a manner appropriate to the ap-

19 pointee's professional capacity;

20 (2) failure to perform duties as required by the workers compensation

21 act; or

22 (3) any reason set out for dismissal or suspension in the Kansas civil

23 service act or rules and regulations adopted pursuant thereto.

24 No appointee shall be appointed, dismissed or suspended for political,

25 religious or racial reasons or by reason of the appointee's sex.

26 Sec. 3. K.S.A. 2004 Supp. 44-551 and 475-5708 are hereby repealed.

27 Sec. 4. This act shall take effect and be in force from and after its

28 publication in the statute book.

in accordance with subsections (c) and (e)

classified

; or

(4) with regard to administrative law judges, upon decision of the workers compensation advisory council as provided in subsection (f)

(e) (1) Applications for appointment as an administrative law judge under this section shall be submitted to the director of workers compensation. The director shall determine if an applicant meets the qualifications for appointment, including at least five years experience, one in the area of workers compensation. Qualified applicants will be submitted by the director to the administrative law judge nominating committee established under paragraph (e)(2) for consideration.

(2) There is hereby established the administrative law judge nominating committee which shall be composed of two members appointed as follows: The Kansas AFL-CIO and the Kansas chamber of commerce and industry shall each select one representative to serve on the administrative law judge nominating committee and shall give written notice of the selection to the secretary who shall appoint such representatives to the committee. In the event of a vacancy occurring for any reason on the nominating committee, the respective member shall be replaced by the appointing organization with written notice of the appointment to the secretary of labor within 30 days of such vacancy.

(3) Upon being notified of a vacant administrative law judge position, the nominating committee shall consider all qualified applicants submitted by the director for the vacant position and nominate a qualified person. The nominating committee shall be required to reach unanimous agreement on any administrative law judge nomination. With respect to each person nominated, the director either shall accept and appoint the person nominated by the nominating committee or shall reject the nomination and request the nominating committee to nominate another person for the position. Upon receipt of any such request for the nomination of another person, the nominating committee shall nominate another person for the position in the same manner.

(f) (1) An administrative law judge appointed under this section shall be paid an annual salary equal to 80% of the annual salary prescribed by law for a district court judge. The secretary of labor shall establish standards for the work performance of administrative law judges. The workers compensation advisory council shall conduct every four years a review of the work performance of each administrative law judge appointed under this section. If the workers compensation advisory council finds that the work performance of an administrative law judge meets the standards for administrative law judges established by the secretary of labor, the workers compensation advisory council by motion adopted by the affirmative vote in open meeting of three of the five voting members who are appointed as representatives of employers and three of the five voting members who are appointed as representatives of employees shall continue the administrative law judge in employment as an administrative law judge. If the workers compensation advisory council does not vote to continue an administrative law judge in employment as an administrative law judge, the administrative law judge shall be dismissed from such position. A dismissal under this subsection shall be final and shall not be subject to appeal under the Kansas civil service act.

(2) If a member of the workers compensation advisory council because of ethical considerations requests to be replaced on the advisory council on a temporary basis for the consideration of the work performance of an administrative law judge in employment as an administrative law judge, the appointing authority for that person shall appoint a qualified person to serve as a member pro tem of the council for purposes of participating in the review of the work performance of the administrative law judge.

(d)

44-596

3

Sec. 1. K.S.A. 2004 Supp. 44-596 is hereby amended to read as follows: 44-596. (a) There is hereby established the workers compensation advisory council. The advisory council shall be composed of the director of workers compensation, or the director's designee from the division of workers compensation, a representative of the insurance industry appointed by the commissioner of insurance, and 10 members who shall be appointed by the secretary of labor in accordance with this section. Five members of the advisory council shall be broadly representative of employers throughout Kansas that are under the workers compensation act and shall be appointed as follows: One member shall be appointed from a list of nominees submitted to the secretary of labor by the Kansas chamber of commerce and industry and four members shall be appointed from nominees submitted to the secretary of labor by employers or other representatives of employers or other employer organizations. Five members of the advisory council shall be broadly representative of employees throughout Kansas that are under the workers compensation act and shall be appointed as follows: One member shall be appointed from a list of nominees submitted to the secretary of labor by the Kansas A.F.L.-C.I.O. and four members shall be appointed from nominees submitted to the secretary of labor by employees or other representatives of employees or other employee organizations. The representative of the insurance industry shall be knowledgeable of insurance underwriting practices. The director of workers compensation and the representative of the insurance industry shall be nonvoting members of the advisory council.

(b) Each member of the advisory council shall serve at the pleasure of the secretary of labor. Any vacancy on the advisory council shall be filled by nomination and appointment in the same manner as the original appointment

PROPOSED AMENDMENT
SB 259
SENATOR BROWNLEE
February 21, 2005

Insert as Section 3.

Senate Commerce Committee

Attachment 3-1

of the member creating the vacancy.

(c) The advisory council shall study the workers compensation act, proposed amendments to the act and such other matters relating thereto that may be recommended by the secretary of labor or the director of workers compensation and shall advise the secretary and the director thereon. The advisory council shall also review and report its recommendations on any legislative bill amending, supplementing or affecting the workers compensation act or rules and regulations adopted thereunder or affecting the administration of such act or rules and regulations, which is introduced in the legislature and which is requested to be reviewed and reported on to a standing committee of either house of the legislature to which the bill is currently referred, upon the request of the chairperson of such committee.

(d) The advisory council shall organize annually by electing a chairperson and a vice-chairperson and shall meet upon the call of the chairperson. All actions of the advisory council adopting recommendations regarding the workers compensation act or any other matter referred to the advisory committee under subsection (c) shall be by motion adopted by the affirmative vote in open meeting of four of the five voting members who are appointed as representative of employers and four of the five voting members who are appointed as representative of employees. All other actions of the advisory council shall be by motion adopted by the affirmative vote of at least six voting members in open meeting.

(e) The advisory council, in accordance with K.S.A. 74-4319, and amendments thereto, may recess for a closed or executive meeting of the members representing employers or of the members representing employees, or of both such



Senate Commerce Committee

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Attachment B-d

groups of members meeting separately, to separately discuss the matters being studied by the advisory council, except that no binding action shall be taken during any such closed or executive meeting.

(f) The members of the advisory council shall serve without compensation, but, when attending meetings of the advisory commission, or subcommittee meetings thereof authorized by the advisory commission, shall be paid subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto.

(g) In addition to other matters for study prescribed pursuant to this section, the advisory council shall review the following:

(1) Competitive state workers compensation funds, including small business competitive funds;

(2) effectiveness and cost of safety programs;

(3) safety-based insurance premium rate discounts;

(4) fees for attorneys representing all parties in workers compensation claims; and

(5) group-funded self-insurance pools for small businesses.

Each of the studies prescribed by this subsection shall be reviewed and reported to the standing committees of the senate and house of representatives having workers compensation subject matter jurisdiction, ~~except that the study of competitive state workers compensation funds shall be completed and reported to the legislative coordinating council not later than December 15, 1993.~~

Session of 2003

SENATE BILL No. 33

By Committee on Commerce

1-13

SENATE PROPOS Feb

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AN ACT concerning private construction contracts, enacting the Kansas fairness in private construction contract act.

Be it enacted by the Legislature of the State of Kansas

Section 1. (a) Section 1 through 8, and amendments thereto, shall be known and may be cited as the Kansas fairness in private construction contract act.

(b) The rights and duties prescribed by this act shall not be waivable or varied under the terms of a contract. The terms of any contract waiving the rights and duties prescribed by this act shall be unenforceable.

Sec. 2. As used in this act:

(a) ~~“Bank” means an institution, the deposits of which are insured by the federal deposit insurance corporation and which is legally doing business in the state of Kansas.~~

(b) ~~“Construction” means furnishing labor, equipment, material or supplies used or consumed for the design, construction, alteration, renovation, repair or maintenance of a building, structure, highway, road, bridge, water line, sewer line, oil line, gas line, appurtenance or other improvement to real property, including any moving, demolition or excavation.~~

(c) ~~“Contract” means a contract or agreement made and entered into by an owner, contractor or subcontractor concerning construction.~~

(d) ~~“Contractor” means a person performing construction and having a contract with an owner of the real property or with a trustee, agent or spouse of an owner.~~

(e) ~~“Owner” means a person who holds an ownership interest in real property.~~

(f) ~~“Person” means an individual, corporation, estate, trust, partnership, limited liability company, association, joint venture or any other legal entity.~~

(g) ~~“Retainage” means money earned by a contractor or subcontractor but withheld to ensure proper performance by the contractor or subcontractor.~~

(h) ~~“Subcontractor” means any person performing construction covered by a contract between an owner and a contractor but not having a~~

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(a)

(b)

(c)

(d)

(e)

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(g)

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1 contract with the owner.

2 Sec. 3. (a) All contracts for private construction shall provide that
3 payment of amounts due a contractor from an owner, except retainage,
4 shall be made within 30 days after the owner receives a timely, properly
5 completed, undisputed request for payment.

6 (b) If the owner fails to pay a contractor within 30 days following
7 receipt of a timely, properly completed, undisputed request for payment,
8 the owner shall pay interest to the contractor beginning on the thirty-first
9 day after receipt of the request for payment, computed at 1.5% of the
10 undisputed amount per month or fraction of a month until the payment
11 is made.

12 (c) If the owner receives an improperly completed request for pay-
13 ment or in good faith disputes a request for payment, the owner shall
14 notify the contractor within five days of receipt of the improperly com-
15 pleted or disputed request for payment. No payment shall become due
16 on such a request until such request is properly completed or the dispute
17 is resolved. If the owner fails to notify the contractor within the five-day
18 period of any improper completion or dispute, the request for payment
19 shall be considered proper and the owner shall make payment thereon
20 in accordance with subsection (a). Any undisputed portion of any request
21 shall be paid in accordance with subsection (a).

22 (d) Within five days after the owner makes a payment, including pay-
23 ment of retainage, to the contractor, the owner shall give notice of the
24 date and amount of the payment to any subcontractor that makes a writ-
25 ten request to the owner for such notice.

26 (e) A contractor shall pay its subcontractors any amounts due within
27 five days of receipt of payment, including payment of retainage, from the
28 owner, if the subcontractor has provided a timely, properly completed,
29 undisputed request for payment to the contractor.

30 (f) If the contractor fails to pay a subcontractor within the five-day
31 period, the contractor shall pay interest to the subcontractor beginning
32 on the sixth day after receipt of payment by the contractor, computed at
33 1.5% of the undisputed amount per month or fraction of a month until
34 the payment is made.

35 (g) If the contractor receives an improperly completed request for
36 payment or in good faith disputes a request for payment from a subcon-
37 tractor, the contractor shall notify the subcontractor within five days of
38 receipt of the improperly completed or disputed request for payment.
39 No payment shall become due on such a request until such request is
40 properly completed or the dispute is resolved. If the contractor fails to
41 notify the subcontractor within the five-day period of any improper com-
42 pletion or dispute, the request for payment shall be considered proper
43 and the contractor shall make payment thereon in accordance with sub-

All persons who enter into a contract for private construction work after the effective date of this act, shall make all scheduled payments pursuant to th terms of the contract.

(b) The following contract provisions shall be void and unenforceable in Kansas:

- (1) Conditional payment;
- (2) waiver of damage for delay;
- (3) waiver of right to future litigation;
- (4) waiver of right to file mechanics liens;
- (5) condition precedent to payment;
- (6) waiver of right to subrogation;
- (7) liability for delays not under the control of the subcontractor; and
- (8) cancellation of pay by date.

(c)

1 section (c). Any undisputed portion of any request shall be paid in ac-
2 cordance with subsection (c).

3 (h) The provisions of subsections (e), (f) and (g) shall apply to all [g] [and]
4 payments from subcontractors to their subcontractors.

5 Sec. 4. (a) ~~An owner may retain no more than 10% of the amount of~~
6 ~~any payment due a contractor.~~

An owner, contractor or subcontractor may withhold no more than 10% retainage from the amount of any uncontested payment due

7 (b) ~~A contractor shall not withhold from a subcontractor, and a sub-~~
8 ~~contractor from a lower-tier subcontractor, more retainage than the~~
9 ~~owner withholds from the contractor, or the contractor from the subcon-~~
10 ~~tractor, for that party's work.~~

Retainage may be held only until completion of each specification section.

11 ~~(c) Retainage may be withheld only until completion of each separate~~
12 ~~division of the contract for which a price is stated separately in the con-~~
13 ~~tract or for which a separate price can be ascertained from the contractor's~~
14 ~~schedule of values. Upon completion of each such division, any retainage~~
15 ~~withheld on such division shall be paid by the owner to the contractor in~~
16 ~~the manner and within the time specified in section 3, and amendments~~
17 ~~thereto. Upon completion of the entire contract, any remaining retainage~~
18 ~~shall be paid by the owner to the contractor in the manner and within~~
19 ~~the time specified in section 3, and amendments thereto.~~

20 (d) (1) A contractor may tender to an owner acceptable substitute
21 security with a written request for release of retainage in the amount of
22 the substitute security. To the extent of the security tendered, and pro-
23 vided the contractor is not in default of any of its obligations under the
24 contract, the contractor shall be entitled to receive cash payment of re-
25 tainage already withheld and shall not be subject to the withholding of
26 further retainage.

27 (2) A subcontractor may tender to a contractor or subcontractor ac-
28 ceptable substitute security with a written request for release of retainage
29 in the amount of the substitute security. To the extent of the security
30 tendered, and provided the subcontractor is not in default of any of its
31 obligations under the contract, the subcontractor shall be entitled to re-
32 ceive cash payment of retainage already withheld and shall not be subject
33 to the withholding of further retainage.

34 (e) If the tender described in subsection (d) is made after retainage
35 has been withheld, the party holding the retainage, within five days after
36 receipt of the tender, shall pay over to the tendering party the withheld
37 retainage to the extent of the substitute security. If the tender of substi-
38 tute security is made before retainage has been withheld, the party en-
39 titled to hold retainage, to the extent of the substitute security, shall re-
40 frain from withholding retainage from future payments.

41 (f) The following shall constitute acceptable substitute security for
42 purposes of this section:

43 (1) ~~Negotiable securities with a market value equal to or greater than~~

1 ~~The amount of retainage, which are:~~

- 2 (A) Obligations of the United States government;
 - 3 (B) obligations of the state of Kansas; or
 - 4 (C) certificates of deposit issued by banks.
- 5 (2) A retainage bond naming the owner as obligee, issued by a surety
6 company authorized to issue surety bonds in the state of Kansas, in the
7 amount of the retainage to be released and conditioned upon completion
8 of the work of the party tendering the bond.

9 (3) An irrevocable and unconditional letter of credit in favor of the
10 owner, issued by a bank, in the amount of the retainage to be released.

11 (g) The party depositing the substitute security shall be entitled to all
12 interest or other income earned on any such substitute security deposited
13 by such party.

14 (h) Upon completion of the work of the party tendering the substitute
15 security, ~~such substitute security shall be returned to such party.~~

16 (f) If an owner, contractor or subcontractor fails to pay retainage as
17 required by this act, the owner, contractor or subcontractor shall pay an
18 additional 1.5% of the amount not paid for each month or fraction of a
19 month until such retainage is paid.

20 (j) In no event shall any retainage be withheld from a contractor or
21 subcontractor that has provided payment and performance bonds at the
22 request of the owner or contractor.

23 Sec. 5 ~~If any payment properly due, including payment of retainage,~~
24 is not made in accordance with the provisions of this act, the contractor
25 and any subcontractors, regardless of tier, shall be entitled to suspend
26 further performance under any contract for construction until payment,
27 including applicable interest, is made. Any party to whom payment is due
28 shall be entitled to recover from the party obligated to make payment any
29 costs incurred on account of the suspension.

30 Sec. 6. No provision in a contract or subcontract for construction in
31 the state of Kansas that purports to waive, release or extinguish the right
32 of a contractor or subcontractor to recover costs or damages, or obtain
33 an equitable adjustment, for delay in performing the contract or subcon-
34 tract, if the delay is caused in whole or in part by acts or omissions within
35 the control of the other party to the contract or subcontract or persons
36 acting on behalf of the other party, is against public policy and void and
37 unenforceable. This section shall not affect the validity or enforceability
38 of any contract or subcontract provision that (a) precludes a contractor
39 or subcontractor from recovering the portion of any delay costs that are
40 caused by acts or omissions within the control of the contractor or dam-
41 ages of subcontractor or persons acting on behalf of the contractor or
42 subcontractor or (b) requires the contractor or subcontractor to give no-
43 tice of any delay.

(a) If the owner does not pay the contractor the undisputed amount within seven days after the date established in the contract, then the contractor may, upon seven additional days' written notice to the owner, stop work until payment of the amount owed has been received. The contract time shall be extended appropriately and the contract sum shall be increased by the amount of the contractor's reasonable costs of shut-down, delay and stat-up, plus interest as provided for in the contract documents.

(b) 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 owed 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.

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1 Sec. 7. In any action to enforce sections 3, 4 and 5, and amendments
 2 thereto, including arbitration, the court or arbitrator shall award costs and
 3 reasonable attorney fees to the prevailing party. Venue of such an action
 4 shall be in the state or federal court for the district or county where the
 5 real property is located. The hearing in such an arbitration shall be held
 6 in the county where the real property is located. 6.

7 Sec. 8. The provisions of this act shall not apply to single family residential
 8 housing and multifamily residential housing of four units or less. 7.

9 Sec. 9. This act shall take effect and be in force from and after its
 10 publication in the statute book. 8.

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