

Approved: SRB 3/12/07
Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:05 A.M. on March 08, 2007 in Room 231-N of the Capitol.

All members were present except:
Brenda Landwehr- excused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research Department
Duston Slinkard, Office of Revisor of Statutes
Stephen Bainum, Committee Assistant

Conferees appearing before the committee:
Chris Wilson, Executive Director, Kansas Building Industry Association (Written Only)
Dan Morgan, Director of Government Affairs, The Builders Association
Corey D. Peterson, Executive Vice President, Associated General Contractors of Kansas, Inc.
Martha Neu Smith, Executive Director, Kansas Manufactured Housing Association (Written Only)
Wayne Maichel, Director of Employment Insurance, Department of Labor
Mike Gee, Field Operations Supervisor, Department of Labor

Others attending:
See attached list.

The Chairman opened the hearing on **SB 292 - Employment security law contractor liability for subcontractor payments.**

Written only testimony as a proponent of **SB 292** was received from Chris Wilson, Executive Director, Kansas Building Industry Association (Attachment 1).

Dan Morgan, Director of Government Affairs, The Builders Association testified as a proponent of **SB 292** (Attachment 2). Dan stressed the unfairness of holding one party liable for the obligations of another party. All parties to a construction project should be responsible for their own liabilities. There is a way for the General Contractor to avoid the liabilities of the Sub Contractor. The Sub Contractor can provide a bond but that only adds costs to the project. Another way is for the General Contractor to submit a Prime Contractors Release of Liability for each Sub Contractor. Then the Department would certify that the Sub Contractor had met their obligations. That produces additional administrative responsibility for the General Contractor.

Corey D. Peterson, Executive Vice President, Associated General Contractors of Kansas, Inc. testified as a proponent of **SB 292** (Attachment 3). This law was actually enacted in 1961 and it has not been a critical issue for the industry. We are concerned with the amount of liability that it places on the General Contractor. In the 60's the General Contractor performed most of the work on the project but now the majority of the work is done by Sub Contractors. We feel that each company should be responsible for their own actions.

Representative Ruiz asked how big a problem it was. Corey said it was rare.

Representative Grant asked if we are just correcting potential trouble. Corey said it is to protect from potential problems.

Representative Huntington asked why Sub Contractors would have difficulty getting bonds. Corey said the industry relies on a lot of small companies and like insurance there are requirements they have to meet to obtain them.

Representative Roth asked if those Sub Contractors who have trouble getting a bond would be most likely to not pay their unemployment tax. Theoretically yes, they might be more likely to, but just because you cannot receive bonding does not mean you are on the brink of going under. A solid company could have one law suit which might make it difficult to obtain a bond.

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:05 A.M. on March 08, 2007 in Room 231-N of the Capitol.

Representative Metzker asked what the effect would be to a small Sub Contractor. Really none.

Representative Huntington asked about a contractor placing a lien on the project if the sub does not pay his employees. Corey did not think that was the case with this bill. The only thing this bill effects is the payment of unemployment insurance.

The Chairman introduced written only testimony from Martha Neu Smith, Executive Director, Kansas Manufactured Housing Association in support of **SB 292 (Attachment 4)**.

There being no more proponents or neutral conferees the Chairman introduced Wayne Maichel, Director of Employment Insurance, Department of Labor who testified as an opponent of **SB 292 (Attachment 5)**. He emphasized that the item stricken from the law by this bill had been a part of the statute since 1961. It has been a very effective tool to ensure that Sub Contractors pay their unemployment taxes. The Agency very rarely uses the provision but it is helpful in convincing the Sub Contractor to pay the taxes. The Employment Advisory Council recommended that we not change this law. Wayne displayed the notice that he had sent to all Contractors which had been the cause of the controversy. (Attachment 6).

Mike Gee, Assistant Chief of Contributions, Department of Labor appeared to explain the K-CNS form (Attachment 7) and answer any questions the committee might have.

The Chairman asked if the General Contractor was an employer of the Sub Contractor. Mike answered that he was not an employer but in hiring in the Sub Contractor he had verified some information about the Sub.

Representative Grant asked if the Sub was delinquent do you notify the Sub first before you send this information to the General. Mike says that they do deal with the Sub first.

Representative Grange asked how the Department knew he was a Sub Contractor to begin with. Mike says they normally would get an unemployment claim. A lot of them are found thru the use of hotlines which have been established. Competing companies will report a Sub that is paying cash. Many times a General Contractor will submit a list of their subs and ask the Department to verify their status.

The Chairman asked why should a General Contractor be responsible for the debts of the Sub. It is an issue of fairness, why is it their responsibility? Mike said it is because they are the overseer of the project and for general compliance of the industry. Normally the General is holding funds back for the Sub. It is rarely used and when it was used the General Contractors were not mad at the Department but instead appreciated the power they held over the Sub.

Representative Grant asked if the bill is passed will you still inform the General Contractor that the Sub is delinquent or will it only be the responsibility of the Sub. Mike said that if this law passes the Department will not be able to provide any information to the General Contractor about the Sub.

Representative Grange asked if a General Contractor had suspicions he could still report it to the Department and the Department would investigate. Mike said yes and that they would continue to do that.

Representative Huntington asked if the Department could fire the Sub. Mike said that the Department could still meet with the General Contractor to get information and could still investigate, but this bill would prevent us from reporting a delinquency to the General Contractor.

There being no further questions the hearing was closed on **SB 292**.

The Chairman called the committee attention to **SB 235 - Employment security law exclusions from definition of employment**. He reminded the committee that they had asked the Advisory Council to provide us with some information. They had a problem with some wording about a lessee relationship. He asked Tom Whitiker, Executive Director, Kansas Motor Carriers

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:05 A.M. on March 08, 2007 in Room 231-N of the Capitol.

Association to give us an update on that. He indicated that the Council met on Monday and asked them to work out the language. He asked the committee to pass the bill out without their amendment. That was the recommendation of the Council and the Kansas Motor Carriers Association.

Representative Grant made a motion to pass the bill out favorably, seconded by Representative Sharp. There was no discussion and the committee passed the bill out favorably by voice vote.

The Chairman called for action on **SB 288 - Reports on workforce development activities.**

Representative Gordon made a motion to pass the bill favorably for passage, seconded by Representative Roth.

Representative Pauls ask why the bill went to the Economic Development Committee rather than Commerce and Labor. Representative Gordon said that it applied to both committees in some ways.

The Chairman said that on the Senate side they are one committee instead of two.

Representative Pauls said she was OK with it.

The Chairman called for the question and **SB 288** passed by voice vote.

The Chairman adjourned the meeting at 9:50 A.M.

COMMERCE & LABOR COMMITTEE

DATE: 3-8-07

NAME	REPRESENTING
Beth Martino	Ks. Dept. of Labor
Wayne Mauch	" " " "
Michael W. Lee	" " " "
Tom Whizaker	Ks Motor Carriers Assn
Martha Lee Smith	KIMHA
John Peterson	Capital Strategies
Dan Murray	Federico Consulting
Phil PERRY	Home Builders of KS
Core Peterson	AGC of Kansas
Chris Wilson	KBIA



OFFICERS

President
GARY PASHMAN
6354 S.W. 10th Avenue
Topeka, KS 66615
785-273-1294
gpashman@cox.net

Vice-President
FARROL BROWN
16514 S. Old Stage Road
Pretty Prairie, KS 67570
620-459-6629
fbrown@btsskynet.net

Treasurer
TONY ZIMBLEMAN
1344 N. Pine Grove Court
Wichita, KS 67212
316-721-8989
zimbleman1344@cox.net

Secretary
BRET LYNXWILER
P.O. Box 7712
Wichita, KS 67277-7712
316-946-1577
blynxwiler@starlumber.com

H.B.A. ASSOCIATIONS
IN KANSAS
Dodge City
Garden City
Hutchinson
Lawrence
McPherson
Manhattan
Salina
Topeka
Wichita

PAST PRESIDENTS
Mike Flory 2005
Ron Hageman 2004
Richard Standrich 2003
Jeff Schrock 2002
David Reynolds 2001
John Young 2000
Michael Stibal 1999
John Samples 1998
Roger Schultz 1997
R. Neil Carlson 1996
Tom Ahlf 1995
James D. Peterson 1994
Gilbert Bristow 1993
Vernon L. Weis 1992
Elton Parsons 1991
Jim Miner 1990
Robert Hogue 1989
M.S. Mitchell 1988
Richard Hill 1987
Jay Schrock 1986
Joe Pashman 1985
Harold Warner, Jr. 1984
Frank A. Stuckey 1983
Donald L. Tasker 1982
John W. McKay 1981
Richard H. Bassett 1980

**STATEMENT OF KANSAS BUILDING INDUSTRY ASSOCIATION
TO THE HOUSE COMMERCE COMMITTEE
REPRESENTATIVE STEVE BRUNK, CHAIR
REGARDING S.B. 292**

MARCH 8, 2007

Chairman Brunk and Members of the Committee, I am Chris Wilson,
Executive Director of the Kansas Building Industry Association (KBIA). KBIA
is the statewide trade association of the home building industry, with
approximately 2500 member companies.

Thank you for the opportunity to support S.B. 292, deleting the liability of
general contractors for subcontractors' unemployment contributions. While we
have learned that this law has been in the statutes for the better part of a half
century, our membership was unaware of it until the Department of Labor issued
a notice regarding it a few months ago. We philosophically do not believe this
provision should remain in the statutes. A company should be liable for their own
unemployment contributions, and another company should not be liable for them.

It would be impossible for a general contractor to be knowledgeable about
what employees a subcontractor had on his job, what hours they had worked,
what the liability for unemployment taxes were for that company. The

H Commerce + Labor 3-8-07 (Attach 1)



Department of Labor would be buried in paper if each general contractor contacted them to determine if all the subs on all their jobs were current on their unemployment contributions. And they would have to do this on a monthly basis.

In the residential construction industry, the subcontractors are often larger than the general contractor. Also, the subcontractors are often doing a majority of the work. This is different than when the law was originally passed.

The Legislature has passed legislation which states that it is against public policy to require another party to indemnify the first party against his/her own negligence. We believe that this is another case where the customer may be held liable, regardless of his own actions.

We ask that you report S.B. 292 favorable for passage.

**TESTIMONY BEFORE THE
HOUSE COMMERCE AND LABOR COMMITTEE
REGARDING SENATE BILL 292
BY DAN MORGAN
BUILDERS' ASSOCIATION AND KANSAS CITY CHAPTER, AGC
MARCH 8, 2007**

Thank you, Mister Chairman and members of the committee. I appreciate the opportunity to appear before you this morning and make some very brief comments in support of Senate Bill 292. My name is Dan Morgan and I am the director of governmental affairs for the Builders' Association and the Kansas City Chapter of Associated General Contractors of America. Our membership is made up of more than 1,050 general contractors, subcontractors and suppliers engaged in the commercial and industrial building construction industry throughout central and western Missouri and portions of northeast Kansas. Over half of our members are located in the Kansas City metropolitan area and are either domiciled in Kansas or perform work in the state.

As you know, Senate Bill 292 would strike language from current law that holds a general or prime contractor directly liable for any unpaid unemployment contributions, penalties and interest due from subcontractors. We believe that it is unfair to hold one party liable because another party has failed to meet its own responsibilities. We believe that all parties to a construction contract should be expected to meet their own responsibilities and each should be held liable if they fail to meet those responsibilities.

While provisions of current law provide that a contractor can escape liability for the unpaid unemployment contributions, penalties and interests of subcontractors by requiring subcontractors to provide a bond, that option adds cost to construction projects. The contractor may also escape liability by submitting a "Prime Contractor's Release of Liability Application" for each subcontractor and receiving certifications from the Department of Labor that each subcontractor has paid all contributions, penalty and interest due. That option adds administrative costs to both contractors and the department.

If adopted, as we hope it will be, this bill will return the element of fairness and personal responsibility to this area of Kansas law. We urge your support for Senate Bill 292. Thank you very much. I will be happy to try to answer any questions that you might have.

H Commerce + Labor

*3-8-07
(attach 2)*



Building a Better Kansas Since 1934
200 SW 33rd St. Topeka, KS 66611 785-266-4015

**TESTIMONY OF
ASSOCIATED GENERAL CONTRACTORS OF KANSAS
BEFORE HOUSE COMMITTEE ON COMMERCE**

SB 292

March 8, 2007

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

Mister Chairman and members of the committee, my name is Corey Peterson. I am the 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 general contractors, subcontractors and suppliers throughout Kansas (with the exception of Johnson and Wyandotte counties).

AGC of Kansas supports SB 292 and asks that you recommend this bill favorably for passage.

SB 292 amends K.S.A. Supp. 44-717 to eliminate liability imposed on construction general contractors for subcontractors that fail to pay state unemployment contributions, penalties and interest.

This law was enacted in 1961, when the role of the general contractor was quite different. In the sixties, a general contractor self-performed a large portion of a construction project with its own employees. Only a few subcontractors would be used on a typical job, such as an electrical or mechanical contractor. Today, a general contractor may have up to 40 subcontractors on typical project and will self-perform very little with its own employees. Thus the liability placed on general contractors today is far greater than that in the 1960's.

This law makes one company liable for actions of another company over which it has no control. A payment bond purchased by the subcontractor will relieve the contractor of this liability, but many subcontractors can not obtain such coverage. For those that can, the additional cost of construction will be passed along to the owner. Added enforcement of this law may force general contractors to require a payment bond or self-perform more work, both placing new, small or struggling subcontractors at risk of being removed from the market place.

Also, if this law has indeed proved to be an effective way of collecting unpaid unemployment taxes, AGC of Kansas questions why construction is being singled out and why this law does not apply to every contractor-subcontractor relationship.

SB 292 passed the Senate on a vote of 38 to 2 and the AGC of Kansas **respectfully requests that you recommend this bill for passage.** Thank you for your consideration.

H. Commerce Labor (attach 3) 3-8-07



3521 SW 5th Str.
Topeka, KS 66606
785-357-5256
785-357-5257 fax
kmha1@sbcglobal.net

**TESTIMONY
BEFORE THE
HOUSE COMMITTEE
ON COMMERCE**

TO: Representative Steve Brunk, Chairman
And Members of the Committee

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

DATE: March 8, 2007

RE: SB 292 – Employment Security Law Contractor Liability For
Subcontractor Payments

Chairman Brunk and Members of the Committee, my name is Martha Neu Smith and I am the Executive Director of the Kansas Manufactured Housing Association (KMHA). KMHA is a statewide trade association, which represents all facets of the manufactured housing industry (i.e. manufacturers, retailers, community owners and operators, finance and insurance companies, service and suppliers and transport companies) and I appreciate the opportunity to submit written testimony in support of SB 292.

The current law requires contractors to be responsible for their subcontractors' unemployment contributions. It is unrealistic to expect contractors to continually check with the Department of Labor to make sure all of their subcontractors are current on their contributions. SB 292 strikes the language in K.S.A. 44-717 (b)(3) that makes contractors responsible for subcontractors' unemployment contributions. KMHA feels all contractors and subcontractors should be responsible for their own unemployment contributions.

KMHA respectfully asks for your favorable consideration of SB 292.

H Commerce and Labor
3-8-07
(attach 4)

Testimony in Opposition Senate Bill 292
House Commerce and Labor Committee
Wayne Maichel, Director of Employment Security
Kansas Department of Labor
8 March 2007

Chairman Brunk and Members of the Committee:

Thank you for this opportunity to appear and share the concerns of the Kansas Department of Labor and our opposition to Senate Bill 292. The bill strikes language in the Employment Security Laws that provides that general contractors may be held responsible for the unpaid unemployment taxes of subcontractors. This statutory language has been the policy in Kansas law since 1961, with the passage of 1961 Senate Bill 232.

This statutory language has been a very effective tool of ensuring that subcontractors operating in Kansas pay unemployment taxes owed by them. The agency rarely has to use this provision, but its mere existence provides good insurance that the taxes are paid. This dual responsibility ensures taxes are paid into the UI Trust Fund as required by law. All employers benefit from ensuring taxes are paid since their tax rates are ultimately affected by the Trust Fund balance.

The Employment Security Advisory Council reviewed this legislation at their February 8 meeting. As you know, the Council is comprised of representatives of the business and labor communities and the public and provides advice on policy matters affecting the Employment Security laws. Attached is a list of current members of the Council. The council discussed this proposal and voted to recommend that this change in policy not be pursued. I urge the Committee to consider this advice from the Council.

Last year, the Legislature passed House Bill 2772 to enhance awareness and enforcement of misclassification of workers. HB2772 has resulted in numerous misclassification investigations, ensuring that all employers are playing by the rules and properly classifying their employees.

As part of the education campaign on misclassification of workers, KDOL sent a reminder flyer to contractors in Kansas about the legal requirement that contractors can be held responsible if their subcontractors do not pay their taxes. Attached is a copy of the flyer distributed by the agency.

H Commerce + Labor 3-8-07
(Attach 5)

Removing this language will make it easier for unscrupulous subcontractors to avoid paying their fair share of UI taxes – especially subcontractors that come from outside Kansas. This results in the burden of funding the UI System to fall on other employers. The language in the current law helps ensure a level playing field and that all subcontractors play by the rules.

It is also important to note that KDOL currently provides a means to free prime contractors from potential liability for subcontractors' taxes. The general contractor can file an application to be released from liability. Attached is a copy of the application form. The contractor completes the form and sends it to KDOL and the agency ensures that the taxes are paid by the subcontractor and then forwards a release to the general contractor. This has worked well for those who have used it in the past.

Thank you for the opportunity to share these concerns and comments in opposition to Senate Bill 292.

Notice to Contractors

Kansas employers engaged in the construction trades in Kansas are required to report wages and pay unemployment contributions to the Kansas Department of Labor. Additionally, if any subcontractor in the building trades fails to correctly report wages paid or pay the Kansas unemployment contribution correctly, the prime contractor can be held directly liable for the unemployment contribution, penalty and interest due from the subcontractor.

K.S.A. 44-717(b)(3)

"Any contractor, who is or becomes an employer under the provisions of this act, who contracts with any subcontractor, who also is or becomes an employer under the provisions of this act, shall be directly liable for such contributions, penalties and interest due from the subcontractor and the Secretary of Labor shall have all of the remedies of collection against the contractor under the provisions of this act as though the services in question were performed directly for the contractor, unless the contractor requires the subcontractor to provide a good and sufficient bond guaranteeing payment of all contributions, penalties and

interest due or to become due with respect to wages paid for employment on the contract."

Besides the bond requirement in K.S.A. 44-717(b)(3), a prime contractor may also be relieved from liability by submitting a K-CNS 222, "**Prime Contractor's Release of Liability Application**" and receiving a certification from the Kansas Department of Labor that the subcontractor has paid all contributions, penalty and interest due or that the subcontractor is not liable to Kansas for taxes on wages paid during the referenced subcontract. The K-CNS 222 may be obtained online at **www.uitax.dol.ks.gov** (select Forms).

Worker Misclassification

Intentional misclassification of workers is illegal and constitutes tax and insurance evasion. Misclassifying employment in Kansas harms workers, the business community and Kansas taxpayers. Employers that intentionally classify a worker as an independent contractor to avoid paying these taxes are subject to severe penalties in Kansas.



If you are unsure whether people working for your business should be classified as an employee or an independent contractor, you can contact the Kansas Department of Labor for help:

Call 785-368-8313 or go online at www.uitax.dol.ks.gov

H Commerce + Labor 3-8-07

(Attach 6)

This application, when completed and signed by the prime contractor, is to be returned to the: Delinquent Account Unit
Kansas Department of Labor
401 S.W. Topeka Blvd.
Topeka, Kansas 66603-3182

**PRIME CONTRACTOR'S
RELEASE OF LIABILITY
APPLICATION**

If released, the Department will keep the original application and mail a copy to the prime and subcontractor.

PRIME CONTRACTOR :

SUBCONTRACTOR:

Kansas Unemployment Account Number (Required)

Kansas Unemployment Account Number (Required)

(Name)

(Name)

(Street)

(Street)

(City, State, Zip)

(City, State, Zip)

(Telephone with Area Code)

(Telephone with Area Code)

NAME AND LOCATION OF CONTRACT:

Date subcontract began: _____
(month) (day) (year)

Date subcontract completed: _____
(month) (day) (year)

Date subcontractor paid last wages on this subcontract: _____
(month) (day) (year)

I certify that the subcontract listed above has been completed, and do request a release from liability under K.S.A. 44-717 (b) (3) of the Kansas Employment Security Law.

(Prime Contractor's Signature)

(Printed Name and Title)

(Date)

I certify that the captioned subcontractor

has paid all contributions, payments in lieu of contributions or benefit cost payments, penalty and interest due.

is not liable to the Kansas Department of Labor for taxes on wages paid during the referenced subcontract.

Authorized Signature for the: Kansas Department of Labor
401 S.W. Topeka Blvd.
Topeka, KS 66603-3182
(785) 296-5023

(Date)

H Commerce & Labor
3-8-07
(Attach 7)

Kansas Employment Security Advisory Council

(Revised February 7, 2007)

EMPLOYEE MEMBERS

Andy Sanchez (2010)
Executive Secretary-Treasurer
Kansas AFL-CIO
2131 SW 36th St.
Topeka, KS 66611-2553

Wil Leiker (2008)
Executive Vice-President
Kansas AFL-CIO
2131 SW 36th St.
Topeka, KS 66611-2553

Jim Grunewald, President (2010)
Topeka Federation of Labor
Assistant Bus. Agent, IBEW #226
1620 NW Gage
Topeka, KS 66618

Debbie Snow (2008)
Communications Workers of America Local 6401
Legislative Director
1801 SE 37 St.
Topeka, KS 66605

EMPLOYER MEMBERS

Terry Leatherman (2008)
Executive Director, Kansas Industrial Council
Kansas Chamber of Commerce & Industry
835 SW Topeka Blvd.
Topeka, KS 66612-1671

Roger Morris (2010)
Vice-President of Human Resources
Gill Studios, Inc.
10800 Lackman Rd., PO Box 2909
Shawnee Mission, KS 66201-1309

Dave Huston, President (2010)
Olson Manufacturing and Distribution, Inc.
8310 Hedge Lane Ter
Shawnee, KS 66227-3543

Dick Rader (2008)
Boeing Company
12125 W. Ridgepoint
Wichita, KS 67235

PUBLIC MEMBERS

Russell Smith (2010)
Professor/Associate Dean
Washburn University School of Business
1700 SW College Ave.
Topeka, KS 66621

Michael Oldfather (2008)
Professor of Economics at
Kansas State University
3007 Tumbleweed Terr.
Manhattan, KS 66502

Joseph F. Singer (2010)
Executive Director, HWB Center for
Small Business & Entrepreneurism
11923 Bradshaw Street
Overland Park, KS 66213-2381

Charles Krider, Professor (2008)
School of Business
1300 Sunnyside
The University of Kansas
Lawrence, KS 66045-7885