

Approved: SRB 3/23/07  
Date

## MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:02 A.M. on March 20, 2007 in Room 231-N of the Capitol.

All members were present except:  
Broderick Henderson- 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:  
Sally Pritchett, Director of the Kansas Real Estate Appraisal Board

Others attending:  
See attached list.

The Chairman opened the hearing on **SB 360 - State certified and licensed real property appraisers act; conforming amendments to FIRREA.**

Sally Pritchett appeared as the only proponent of **SB 360 (Attachment 1)**. Her written testimony consisted of three parts. The first is her written testimony with 5 requested changes to the current statutes. Then Item No. 1 which is about the Federal Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), and third, a printout of SB 360 as amended by the Senate committee. Her written testimony contained five requests. First, the Board is requesting Reinstatement for licensees. Second, the Board is requesting Subpoena Power. Third, the Board requests the deletion of the wall certificate statute. The fourth request had to do with the annual continuing education requirement. Finally the Board wants to be able to recover certain costs associated with hearings that are adverse to an appraiser.

Representative Kiegerl asked how difficult it was to obtain an appraiser's license. Sally mentioned 90 hours of education, pass a State exam, \$150.00 fee and submit experience. It is a 3 or 4 month process. In 2008 the education requirement changes to 150 hours and the exam will be more difficult. She also mentioned three levels of licensure. There is a certified residential and a certified general license. These will require college degrees and up to 350 hours of education.

Representative Humerickhouse asked Sally to explain the education and experience part of the requirements. An appraiser has 5 years to obtain their experience prior to the date of the application. The trainee works under a licensed or certified appraiser who is responsible for their training. It can be difficult to find a licensed or certified appraiser who is willing to take on a trainee. Representative Humerickhouse also asked about the Subpoena Power. Do we have other Agencies who have Subpoena Power? Sally said that their request for Subpoena Power was based on that of the Board of Healing Arts

Camille Nohe, Assistant Attorney General, stepped to the mike and said the Subpoena Power was an investigative Subpoena obtained thru a court.

Representative Goico commented that the requirements were similar to those for a professional engineer. It is a good process.

Representative Ruiz asked how many board members there were. Sally said there were 7, appointed by the Governor. Four must be appraisers, two are bankers or lenders and one at large.

Representative Pauls asked why eliminate wall certificates. Sally said that the wall certificates are not needed any longer.

The Chairman asked if there was any mechanism between the complaint and going to court on a complaint. Sally explained that they can only investigate the appraiser. However the appraiser is not the problem. For the lender, etc we can only request information. The lender can ignore the

## CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:02 A.M. on March 20, 2007 in Room 231-N of the Capitol.

Appraiser's Board.

Representative Humerickhouse said that someone could file a complaint with the Appraiser Board but what happens from there. Does it go before the Board for investigation. Sally said that they have an investigative committee made up of four members of the Board.

The Chairman asked why a person would go inactive. Sally said that it was sometimes family problems or illness. They could be inactive for two years. They would have to take 14 hours continuing education for each year they were inactive. The hours can be taken electronically.

The Chairman called for any questions or conferees. There being none the hearing was closed on **SB 360**.

The Chairman called for committee action on **SB 292 - Employment security law contractor liability for subcontractor payments**.

Duston Slinkard explained the bill and the amendment by the Commerce & Labor Subcommittee on SUTA Error Rate which was passed out to the committee (Attachment 2).

Representative Grant asked if we are creating another problem by passing this amendment. He said we should allow the Department of Labor to do their job without micro-management. Duston said that there was rule and regulation authority in the law so the department could clarify how a person must register for services. Representative Grant asked Representative Kiegerl if the Subcommittee had contacted the Department of Labor and asked what their opinion was. Representative Kiegerl said that they did contact Labor and to take no action was not acceptable to those who see the Error problem. The amendment does not prevent the Secretary from doing his job.

Representative Pauls said that the Department's concern was that they not have anything unrealistic. The Department believes the amendment is workable and the Subcommittee did discuss other options with the Department such as redefining registration.

Representative Goico said that the Subcommittee had input and interest from the Department and they wanted coverage on improvements to the bill.

The Chairman reminded the committee of the public uproar that was stirred up by the Post Audit report and how some were calling for the Secretaries resignation. That was the reason for the Subcommittee's appointment. Two Republicans and two Democrats were appointed to determine how far any Secretary may go to negate the law. After three or four weeks of work this is their recommendation.

Representative Roth made a motion to adopt the Subcommittee amendment, seconded by Representative Grant. The motion passed on voice vote. The Subcommittee amendment is adopted. We are on the base bill as amended.

Representative Grant made a motion that **SB 292** be passed favorably as amended, seconded by Representative Kiegerl. The motion passed on voice vote.

The Chairman called for committee action on **SB 333 - Fairness in public building construction contract act**. Duston passed out three amendments. 1. Proposed by the Kansas Contractors Association and endorsed by The City of Overland Park and WaterOne (Attachment 3). 2. Proposed by the Board of Commissioners of Johnson County (Attachment 4) and 3. Proposed by the Blue Valley School District (Attachment 5). Duston was asked to explain the amendments.

Representative Grant asked about "related structures" that appeared in the first amendment. Duston explained that the phrase appeared to apply to things like valve houses or pump houses.

Representative Pauls asked if there was a comma missing on page 1, lines 24 and 25 of the third

## CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:02 A.M. on March 20, 2007 in Room 231-N of the Capitol.

amendment. Duston said that there should be a comma there.

Duston explained the amendment proposed by the Blue Valley School District. It inserted a phrase "Unless otherwise provided in the contract, an" on page 3, lines 17 and 23 of the bill. This was added to allow the parties to negotiate the amount of the retainage.

Representative Huntington asked if the clarification on page 1 line 18 applied to the retainage or the entire bill. Duston said that it was added to prevent a conflict with the retainage part of the statute. It does not nullify the statute but was necessary to permit the retainage changes requested on page 3.

Duston explained the Johnson County amendment. The change on Page 2, line 9 clarifies that the bill refers to the amounts that all parties to the contract agree are owed. On Page 3, line 3, 14 and 36 the 18% per annum interest penalty is stricken and replaced with the "statutory judgment" rate.

Representative Grange asked what the statutory judgment rate was. Duston did not know what it was today but that it is published and applies to judgments. A conferee said that they were told that it was 9%.

Duston explained that the change on Page 3, line 22 had the same affect as the Blue Valley amendment by allowing a higher rate of retainage.

Representative Grange asked when do they determine the rate of retainage. Duston said that it did allow for some ambiguity.

Representative Sharp asked if Johnson County had looked at the Blue Valley amendment and asked if it would satisfy their concerns. One of the conferees said that the Blue Valley amendment would satisfy their concerns.

Duston said the language on Page 4 clarified that New Section 5 which dealt with the relation between contractors and subcontractors did not affect the relationship between the owner and the contractor. The elimination of New Section 6 eliminates the court or arbitrator fees.

Representative Pauls asked if you strike the venue provisions would you go back to general venue provisions. Duston said he thought that you would, you could have venue provisions in the contract or you could have a dispute where venue was located.

Representative Grange asked a question similar to Representative Pauls. If I am a contractor in Dodge City and have a contract with Kansas City do I have to go to Kansas City for arbitration? Duston said that without this amendment you could have to go to wherever the work was being done. This amendment would allow venue to be set by the contract or if not set by contract it could be either place.

The Chairman asked if there were any other questions on any of the amendments or questions for the conferees.

There being no further questions and the committee's time being short the Chairman said that we would work **SB 333** tomorrow.

The meeting was adjourned at 10:18 A.M.

COMMERCE & LABOR COMMITTEE

DATE: 3-20-07

NAME	REPRESENTING
Kef Mueh	LGR
Mike Reed	Fisher Braden
JEFF GLENZINS	KS CHAMBER
KEN DANIEL	KSSMMLBIZ.COM
Beth Martino	KS Dept of Labor
LARRY R BAER	LKW
Joe Waters	Johnson County Government
Dan Murray	Federico Consulting
DAN MURRAY	Builders Assoc of KC Chapter, AOC
Marka Spivey Smith	KMLA
Chris Wilson	KBTA
ERIK SARTORIUS	City of OVERLAND PARK
Stuart Little	Johnson Co. Government

March 20, 2007

The Honorable Representative Brunk  
300 SW 10<sup>th</sup> Street  
Topeka, KS 66612-1504

Dear Senator Brunk and Committee Members:

My name is Sally Pritchett and I am the Director of the Kansas Real Estate Appraisal Board and am appearing in front of the Committee on behalf of the Board. Thank you for allowing the Board to have SB-360 introduced in this Committee.

I have included a some background information to explain the Federal oversight of the Board by the Appraisal Subcommittee. See Item No. 1.

The Board is requesting several changes to their current statutes this Session and I will address each as it appears in the bill

No. 1 - The Board is requesting Reinstatement for licensees. The licensee could place their license on inactive status for a period not to exceed two years. They would pay a fee in order to place it on inactive and then pay the annual renewal fee each year while on inactive. In order to reactive the licensee must provide evidence to the Board that they have met the continuing education requirements for the timeframe they were inactive.

This is a change requested by licensees. The benefit to the licensee is that if for some reason they decide they want to get out of the profession they will not lose their licensing credentials previously obtained to get the license. An issue currently facing the industry is major changes to education and examination requirements to become effective on January 2008. If the appraiser does not renew the license annually they will lose it and need to completely reapply and meet new licensing criteria. Specifically they would need to take additional education and take and pass the examination. The appraiser must have experience in order to obtain a license, however, this experience must be obtained within a five year period immediately preceding the date of application. If an appraiser has not been doing appraisals this may also present a problem to some in obtaining additional experience.

No.2 Subpoena Power. Since the Board only regulates appraisers it can become very difficult to investigate a complaint involving identity theft or forged appraisal reports. In many cases, if the appraiser denies doing the report or they indicate the information is not what they submitted to the lender the investigation is simply concluded. The information at that time is forwarded to the FBI and County Attorney, however, rarely does any further action result.

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(Attach 1)

If the Board had subpoena power it could at a minimum, subpoena records from lenders, including the initial order requesting the appraisal and a canceled check indicating who was paid to do the report.

No. 3. Since the Board no longer issues wall certificates it simply is requesting the statute be deleted.

No. 4. This is a change the Board is requesting in order to be in compliance with Federal requirements. The Federal requirement is that a licensee who is licensed in excess of 169 day be required to complete the annual continuing education requirement.

No. 5. When a hearing is held in cases where the Board finds that findings are adverse to the appraiser the Board may assess the appraiser certain costs associated with the hearing. Holding a disciplinary hearing can be very costly to the Board. In some cases the person the Board is holding the disciplinary action against doesn't even show up for the hearing or notify the Board that they will not be attending. This would give the Board an opportunity to recover some of the expenses.

**Federal Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA),  
Federal Financial Regulatory Agencies,  
The Appraisal Subcommittee,  
The Appraisal Foundation,  
The Appraisal Standards Board,  
The Appraisal Qualifications Board,  
AND  
The Kansas Real Estate Appraisal Board**

Camille Nohe, Assistant Attorney General, Kansas  
Legal Opinions and Governmental Counsel

**Federal Institutions Reform, Recovery and Enforcement Act of 1989  
(FIRREA)**

Until 1990 real estate appraisers were not licensed in Kansas. The driving force behind Kansas' enactment of the State Certified and Licensed Real Property Appraisers Act<sup>1</sup> was the federal congressional response to the financial failure of America's savings and loan associations and the resulting insolvency of the Federal Savings and Loan Insurance Corporation, the primary insurer of the entire thrift industry:

"Throughout its history, the United States' savings and loan industry was a major provider of funds for residential finance. However, the rapid rise of interest rates during the 1970s and the early 1980s had a devastating effect on thrifts and banks which were dedicated primarily to financing home ownership. These institutions experienced huge losses because they were locked into long-term, fixed-rate mortgages. While many failures were caused by unpredictable economic factors largely beyond the control of even the most prudent financial executive, '[v]irtually every one of the thrifts was operating in an unsafe and unsound manner and was exposed to risks far beyond what was prudent.' In fact, analysts acknowledge that weak underwriting proved 'particularly detrimental' to thrift institutions. Inaccuracies and overstatements in appraisals are an integral part of weak loan underwriting. Many of the failed institutions held mortgages for which the appraisals were grossly inaccurate or insufficiently documented. In fact, eighty-eight percent of failed savings and loan associations violated federal regulations which required current appraisals for loans secured by real estate.

Recognizing the devastating consequences of faulty appraisals, Congress responded with legislation. Through a series of congressional reports, debates, and hearings, Congress constructed the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989. Title XI of the

Act specifically addresses the issue of real estate appraisals through grants of authority to a hierarchy of regulatory agencies. Title XI, entitled Real Estate Appraisal Reform Amendments, encourages the establishment of state agencies to certify and license real estate appraisers. The new law also sets minimum standards in conformance with uniform national standards for most federally-related real estate transactions."<sup>2</sup>

### Title XI of FIRREA in Relation to Federal Financial Regulatory Agencies

Title XI of FIRREA is codified at 12 U.S.C. §§ 3331 *et seq.* as Chapter 34A, Appraisal Subcommittee of the Federal Financial Institutions Examination Council. The explicitly stated purpose of Title XI of FIRREA is:

"to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision."<sup>3</sup>

Congress could have chosen to enact a *federal* real estate appraiser licensing and certification act, thereby placing full responsibility for licensing and certifying real estate appraisers with a federal agency. However, Congress instead chose to place this responsibility on the states. Since Congress did not, and does not, have authority to directly require the states to adopt a real estate appraiser licensing law or to directly require state licensed real estate appraisers to perform appraisals in writing and in accordance with uniform standards<sup>4</sup>, Congress found it necessary to take an indirect route in order to accomplish the purposes stated in Title XI of FIRREA.

In relation to uniform standards of real estate appraisal practice, the congressional purpose was accomplished in part by requiring each federal agency responsible for regulating financial institutions to prescribe appropriate standards for the performance of real estate appraisals in connection with federally related transactions under the jurisdiction of each such agency.<sup>5</sup> The affected federal agencies are the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration.<sup>6</sup> Further, the specified federal agencies were directed to adopt rules which at a minimum required:

"(1) that real estate appraisal be performed in accordance with generally accepted appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation; and



" (2) that such appraisals shall be written appraisals."<sup>7</sup>

In relation to qualified appraisers, the congressional purpose was accomplished by requiring each federal agency responsible for regulating financial institutions to prescribe requirements for using state certified and licensed appraisers.<sup>8</sup> The requirements for certification, but not licensing, were tied to the minimum criteria issued by the Appraisal Qualification Board of the Appraisal Foundation.<sup>9</sup>

### **The Appraisal Foundation**

The Appraisal Foundation is a private nonprofit corporation that was formed in 1987<sup>10</sup>:

"to establish uniform standards for real estate appraisals, as well as educational and experience criteria for appraisers. The newly established Appraisal Foundation developed its own guidelines and issued the *Uniform Standards of Professional Appraisal Practice* (USPAP) in 1987. In addition, the Appraisal Foundation developed requirements for appraisal certification and licensing as well as a proposed legislative model for state-administered appraiser certification programs."<sup>11</sup>

The Appraisal Foundation is funded in part through grants from the federally created Appraisal Subcommittee which collects registry fees derived from state certified and licensed appraisers.<sup>12</sup> The Appraisal Foundation is currently comprised of organizational members from both the appraisal industry and the banking industry.

### **The Appraisal Standards Board: USPAP**

The Appraisal Standards Board, an independent board within the Appraisal Foundation, is the entity which writes, interprets and amends the Uniform Standards of Professional Appraisal Practice (USPAP).

"The most significant aspects of the USPAP include the professional ethics standards, the competency standards, the departure provision and the substantive standards for real estate appraisals. . . . The substantive standards of the USPAP set forth general guidelines for real property appraisals which serve to provide greater uniformity and reliability for appraisals nationwide."<sup>13</sup>

Since the original publication of USPAP in 1987, the Appraisal Standards Board has amended USPAP standards fourteen times. Also, since its inception, the Appraisal Standards Board has issued ten statements on appraisal standards and twenty-three advisory opinions, all of which are contained within the 2002 edition of USPAP published by the Appraisal Foundation.

Each specified federal financial institutions regulatory agency complied with the

congressional mandate of 12 U.S.C.S. § 3339 and adopted a regulation which required appraisals performed in connection with a federally related transaction to conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation.<sup>14</sup> A "federally related transaction" is defined as any real estate-related transaction which a federal financial institutions regulatory agency or the Resolution Trust corporation engages in, contracts for or regulates and which requires the services of an appraiser.<sup>15</sup> However, certain *de minimus* value thresholds actually modify the word "any" as used in the definition of "federally related transaction."<sup>16</sup>

### **The Appraisal Qualifications Board: Appraiser Qualifications/Competency**

In order to ensure that only qualified appraisers performed the requisite appraisals for federally related transactions, Congress required such appraisals to be performed by state licensed or certified appraisers.<sup>17</sup> Each federal financial institutions regulatory agency and the Resolution Trust Corporation was directed to prescribe which categories of federally related transactions should be appraised by a State certified appraiser and which by a State licensed appraiser.<sup>18</sup> Through Title XI of FIRREA, a State certified appraiser was defined as "any individual who has satisfied the requirements for State certification in a State or territory whose criteria for certification as a real estate appraiser meets the minimum criteria for certification issued by the Appraiser Qualifications Board of the Appraisal Foundation."<sup>19</sup> In contrast, a State licensed appraiser is defined by Title XI of FIRREA as "an individual who has satisfied the requirements for State licensing in a State or territory."<sup>20</sup>

Each specified federal financial agency complied with this congressional mandate and adopted a regulation that required appraisals performed in connection with a federally related transaction to be performed by a state certified or licensed appraiser. Further that certified appraisers have met criteria established by the Appraisal Qualifications Board (another independent board within the Appraisal Foundation), and that licensed appraisers have met state established criteria.<sup>21</sup>

### **Title XI of FIRREA in Relation to the States**

With regard to participation by the states, Title XI of FIRREA gave congressional expression to national financial and public policy interests by "sanctioning" states' establishment of real estate appraiser licensing acts:

"To assure the availability of State certified and licensed appraisers for the performance in a State of appraisals in federally related transactions and to assure effective supervision of the activities of certified and licensed appraisers, a State *may* establish a State certifying and licensing agency."<sup>22</sup>

Thus Title XI of FIRREA encouraged each state to establish a state agency to regulate the real estate appraisal profession by developing appraiser certification and licensing

programs. Such state agencies were clearly necessary to ensure the availability of state certified and licensed appraisers to perform appraisals for federally-related transactions in accordance with the requirements of Title XI of FIRREA.

### The Appraisal Subcommittee

This elaborate system, designed to ensure that real estate appraisals utilized in connection with federally related transactions are performed by qualified appraisers in accordance with uniform standards, is monitored by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.<sup>23</sup> The Appraisal Subcommittee is authorized to employ staff "as may be necessary to carry out the functions of [FIRREA]."<sup>24</sup> Congress authorized the Appraisal Subcommittee to perform specified functions and granted it specified powers.<sup>25</sup>

A primary required function of the Appraisal Subcommittee is to *monitor* certification and licensing requirements established by the states.<sup>26</sup> Such monitoring is to assure compliance with the FIRREA purpose that appraisal be performed by "individuals whose competency has been demonstrated." FIRREA specifically prohibits the Appraisal Subcommittee from setting qualifications or experience requirements for the states in licensing real estate appraisers, and provides that recommendations of the Subcommittee "shall be nonbinding on the States."<sup>27</sup>

The Appraisal Subcommittee does, however, have the authority to approve or disapprove a state agency as a certification and licensure agency under Title XI of FIRREA. If the Appraisal Subcommittee finds that a state agency "fails to recognize and enforce the standards, requirements, and procedures" prescribed by Title XI or finds that "decisions concerning appraisal standards, appraiser qualifications and supervision of appraiser practices are not made in a manner that carries out the purposes" of Title XI, the Subcommittee must notify the agency in writing. The Subcommittee must then allow the agency to present information which contests this decision and correct the conditions that prompted the denial. Further, the Appraisal Subcommittee's denial of a state licensing program or agency is subject to judicial review.<sup>28</sup>

What happens should the Appraisal Subcommittee determine that a state agency has failed to recognize and enforce the appraisal standards prescribed pursuant to Title XI of FIRREA or that a state decision concerning appraisal standards is not made in a manner that carries out the purposes of Title XI of FIRREA? In that event, the federal primary mortgage market financial regulatory agencies, *i.e.*, (the Federal Reserve Board, FDIC, OCC, OTS and NCUA, and their regulated institutions, as well as the secondary mortgage market financial institutions, *i.e.* the Federal National Mortgage Association (FNMA, or Fannie Mae) and the Federal Home Loan Mortgage Corporation (FHMC, or Freddie Mac), and the Resolution Trust Corporation would be prohibited from recognizing and accepting certificates and licenses issued by the state certifying and licensing agency.<sup>29</sup>

In the absence of recognition and acceptance of such certificates and licenses, Title XI of

FIRREA prohibits these agencies and institutions from making, insuring, selling or purchasing real estate loans in the state because they would be unable to hire properly certified or licensed appraisers to prepare the necessary appraisals.<sup>30</sup> Consequently, credit secured by real estate would become virtually unavailable in a state which the Appraisal Subcommittee determined was not "in compliance" with Title XI of FIRREA. The effect of such a determination by the Appraisal Subcommittee would be to bring nearly all real estate related financial transactions in that state to a grinding halt.

### **Kansas Real Estate Appraisal Board: Kansas Legislative Response to Title XI of FIRREA**

The 1990 Kansas Legislature responded to the congressional "encouragement" provided by the passage of Title XI of FIRREA by enacting the State Certified and Licensed Real Property Appraisers Act.<sup>31</sup> The Act prohibits persons, other than state certified or licensed appraisers, from engaging in any written appraisal in connection with a federally related transaction for which certification or licensure is required pursuant to federal law.<sup>32</sup> The term "federally related transaction" has the same meaning under Kansas law as it does under Title XI of FIRREA, including the *de minimis* value thresholds.<sup>33</sup>

The Act also prohibits persons other than state licensed or certified appraisers from assuming or using the title of state certified or licensed appraiser and prohibits unlicensed or uncertified appraisers from using any title, designation or abbreviation likely to create the impression of certification as a real estate appraiser.<sup>34</sup> To implement the Act, the Kansas Real Estate Appraisal Board was established<sup>35</sup> and granted specified powers.<sup>36</sup>

Consistent with its authority, the Board has promulgated regulations that annually adopt the most current version of USPAP and that specify education, experience and examination requirements for certified general, certified residential, licensed and provisionally licensed real property appraisers. In response to Appraisal Qualifications Board recommendations, supported by the Appraisal Subcommittee, over the years the Board has increased the original education and experience requirements.

1. L. 1990, Ch. 270, now K.S.A. 58-4101 *et seq.* and amendments thereto.
2. Cherokee W. Wooley, Regulation of Real Estate Appraisers and Appraisals: The Effects of FIRREA, 43 Emory L.J. 357, 358-359 (1994).
3. 12 U.S.C.A. § 3331.
4. See *New York v. United States*, 505 U.S. 144, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992) (federal government may not compel the states to enact or administer a federal regulatory program).
5. 12 U.S.C.A. § 3339.
6. 12 U.S.C.A. § 3350(6).
7. 12 U.S.C.A. § 3339.
8. 12 U.S.C.A. § 3336.

9. 12 U.S.C.A. § 3345.

10. See 12 U.S.C.A. 3350(9).

11. Wooley, *supra* at 373-374.

12. 12 U.S.C.A. § 3338(b)(4).

13. Wooley, *supra* at 378.

14. The chart below summarizes the federal financial institutions regulatory agencies' appraisal standards regulations and the affected entities.

Federal Financial Institutions Regulatory Agency	Appraisal Standards Requirement Found at:	Applicable to appraisals rendered in connection with federally related transaction entered by:
Board of Governors of the Federal Reserve System (Board)	12 CFR §225.64	Board and institutions regulated by the Board, i.e. state member banks and savings and loans. 12 CFR §§ 208.18 and 225.61.
Federal Deposit Insurance Corporation (FDIC)	12 CFR § 323.4	FDIC and institutions regulated by FDIC, i.e. insured depository institutions as defined by 12 U.S.C.S. § 1813. 12 CFR § 323.1(b).
Office of the Comptroller of the Currency (OCC)	12 CFR § 34.44	OCC and institutions regulated by OCC. 12 CFR § 344.41(b).
Office of Thrift Supervision (OTS)	12 CFR § 564.4(b)	OTS and institutions regulated by OTS. 12 CFR § 564.1.
National Credit Union Administration (NCUA)	12 CFR § 722.4,	NCUA and institutions regulated by NCUA, i.e. insured credit unions as defined in 12 U.S.C.S. 1752. 12 CFR § 722.1.

15. 12 U.S.C.A. § 3350(4).

16. The licensed real property appraiser classification applies to the appraisal of non-complex one to four residential units having a transaction value less than \$1,000,000 and complex one to four residential units having a transaction value less than \$250,000. K.A.R. 117-2-4.

The certified residential real property appraiser classification applies to the appraisal of one to four residential units without regard to transaction value or complexity. K.A.R. 117-4-3

The certified general real property appraiser classification applies to the appraisal of all types of real property. K.A.R. 117-3-4.

17. 12 U.S.C.A. § 3343; 12 U.S.C.A. § 3348.

18. 12 U.S.C.A. § 3341(a).

19. 12 U.S.C.A. § 3345(a).

20. 12 U.S.C.A. § 3345(c).

21. 12 C.F.R. § 225.62 (Federal Reserve System); 12 C.F.R. § 323.1 (Federal Deposit Insurance Corporation); 12 C.F.R. § 34.42 (Comptroller of the Currency); 12 C.F.R. § 564.2 (Office of Thrift Supervision); 12 C.F.R. § 722.2 (National Credit Union Administration).
22. 12 U.S.C.A. § 3346.
23. 12 U.S.C.A. § 3310 ("There shall be within the Council a subcommittee to be known as the "Appraisal Subcommittee," which shall consist of the designees of the heads of the Federal financial institutions regulatory agencies.") Also 12 U.S.C.A. § 3350.
24. 12 U.S.C.A. § 3334.
25. The specific powers granted by Congress authorize the Appraisal Subcommittee to establish advisory committees, hold hearings, sit and act at times and places, take testimony, receive evidence, provide information, and perform research. 12 U.S.C.A. § 3335.
26. The other required functions of the Appraisal Subcommittee are to monitor requirements established by the federal financial regulatory institutions regulatory agencies with respect to appraisal standards for federally related transactions under their jurisdiction and determinations as to which transactions require a state certified appraiser and which require a state licensed appraiser, to maintain a national registry of state certified and licensed appraisers, to transmit an annual report to Congress annually, and to monitor the practices, procedures, activities and organizational structure of the Appraisal foundation. 12 U.S.C.A. § 3332.
27. 12 U.S.C.A. § 3345(e).
28. 12 U.S.C.A. § 3347.
29. 12 U.S.C.A. § 3347.
30. 12 U.S.C.A. § 3348; 12 U.S.C.A. § 3349.
31. Now K.S.A. 58-4101 *et seq.*
32. K.S.A. 58-4103(a)(1).
33. K.S.A. 58-4102(e); 12 U.S.C.A. § 3350(4).
34. K.S.A. 58-4103(a)(2).
35. K.S.A. 58-4104.
36. (1) to approve courses of instruction to meet requirements of the Act and monitor approved courses; (2) to adopt rules and regulations prescribing policies and procedures for obtaining board approval of courses, monitoring approved courses and withdrawing board approval of courses; (3) to administer, or designate a testing service to administer examinations required by the Act; (4) to receive and approve or disapprove applications for certification and licensure and renewal of certificates and licenses and issue certificates and licenses after approval of application; (5) to maintain a registry of the names and addresses of persons certified and licensed under the Act and to transmit the registry to the Appraisal Subcommittee annually; (6) to maintain all records submitted to the board; (7) to collect fees; (8) to review from time to time the standards for the development and communication of real estate appraisals and to adopt regulations explaining and interpreting the standards; (9) to perform such other functions and duties as necessary to carry out the provisions of the Act; (10) to define each appraiser classification; (11) to establish education and experience requirements for each classification; (12) to establish examination specifications for each classification; (13) to establish continuing education requirements for renewal of each classification; and (14) to investigate the actions of a state certified or licensed appraiser and, when appropriate, to revoke, condition, limit or suspend the certificate or license of the appraiser, or censure the appraiser, for specified acts or omissions.

9. 12 U.S.C.A. § 3345.

10. See 12 U.S.C.A. 3350(9).

11. Wooley, *supra* at 373-374.

12. 12 U.S.C.A. § 3338(b)(4).

13. Wooley, *supra* at 378.

14. The chart below summarizes the federal financial institutions regulatory agencies' appraisal standards regulations and the affected entities.

Federal Financial Institutions Regulatory Agency	Appraisal Standards Requirement Found at:	Applicable to appraisals rendered in connection with federally related transaction entered by:
Board of Governors of the Federal Reserve System (Board)	12 CFR §225.64	Board and institutions regulated by the Board, i.e. state member banks and savings and loans. 12 CFR §§ 208.18 and 225.61.
Federal Deposit Insurance Corporation (FDIC)	12 CFR § 323.4	FDIC and institutions regulated by FDIC, i.e. insured depository institutions as defined by 12 U.S.C.S. § 1813. 12 CFR § 323.1(b).
Office of the Comptroller of the Currency (OCC)	12 CFR § 34.44	OCC and institutions regulated by OCC. 12 CFR § 344.41(b).
Office of Thrift Supervision (OTS)	12 CFR § 564.4(b)	OTS and institutions regulated by OTS. 12 CFR § 564.1.
National Credit Union Administration (NCUA)	12 CFR § 722.4,	NCUA and institutions regulated by NCUA, i.e. insured credit unions as defined in 12 U.S.C.S. 1752. 12 CFR § 722.1.

15. 12 U.S.C.A. § 3350(4).

16. The licensed real property appraiser classification applies to the appraisal of non-complex one to four residential units having a transaction value less than \$1,000,000 and complex one to four residential units having a transaction value less than \$250,000. K.A.R. 117-2-4.

The certified residential real property appraiser classification applies to the appraisal of one to four residential units without regard to transaction value or complexity. K.A.R. 117-4-3

The certified general real property appraiser classification applies to the appraisal of all types of real property. K.A.R. 117-3-4.

17. 12 U.S.C.A. § 3343; 12 U.S.C.A. § 3348.

18. 12 U.S.C.A. § 3341(a).

19. 12 U.S.C.A. § 3345(a).

20. 12 U.S.C.A. § 3345(c).

21. 12 C.F.R. § 225.62 (Federal Reserve System); 12 C.F.R. § 323.1 (Federal Deposit Insurance Corporation); 12 C.F.R. § 34.42 (Comptroller of the Currency); 12 C.F.R. § 564.2 (Office of Thrift Supervision); 12 C.F.R. § 722.2 (National Credit Union Administration).
22. 12 U.S.C.A. § 3346.
23. 12 U.S.C.A. § 3310 ("There shall be within the Council a subcommittee to be known as the "Appraisal Subcommittee," which shall consist of the designees of the heads of the Federal financial institutions regulatory agencies.") *Also* 12 U.S.C.A. § 3350.
24. 12 U.S.C.A. § 3334.
25. The specific powers granted by Congress authorize the Appraisal Subcommittee to establish advisory committees, hold hearings, sit and act at times and places, take testimony, receive evidence, provide information, and perform research. 12 U.S.C.A. § 3335.
26. The other required functions of the Appraisal Subcommittee are to monitor requirements established by the federal financial regulatory institutions regulatory agencies with respect to appraisal standards for federally related transactions under their jurisdiction and determinations as to which transactions require a state certified appraiser and which require a state licensed appraiser, to maintain a national registry of state certified and licensed appraisers, to transmit an annual report to Congress annually, and to monitor the practices, procedures, activities and organizational structure of the Appraisal foundation. 12 U.S.C.A. § 3332.
27. 12 U.S.C.A. § 3345(e).
28. 12 U.S.C.A. § 3347.
29. 12 U.S.C.A. § 3347.
30. 12 U.S.C.A. § 3348; 12 U.S.C.A. § 3349.
31. Now K.S.A. 58-4101 *et seq.*
32. K.S.A. 58-4103(a)(1).
33. K.S.A. 58-4102(e); 12 U.S.C.A. § 3350(4).
34. K.S.A. 58-4103(a)(2).
35. K.S.A. 58-4104.
36. (1) to approve courses of instruction to meet requirements of the Act and monitor approved courses; (2) to adopt rules and regulations prescribing policies and procedures for obtaining board approval of courses, monitoring approved courses and withdrawing board approval of courses; (3) to administer, or designate a testing service to administer examinations required by the Act; (4) to receive and approve or disapprove applications for certification and licensure and renewal of certificates and licenses and issue certificates and licenses after approval of application; (5) to maintain a registry of the names and addresses of persons certified and licensed under the Act and to transmit the registry to the Appraisal Subcommittee annually; (6) to maintain all records submitted to the board; (7) to collect fees; (8) to review from time to time the standards for the development and communication of real estate appraisals and to adopt regulations explaining and interpreting the standards; (9) to perform such other functions and duties as necessary to carry out the provisions of the Act; (10) to define each appraiser classification; (11) to establish education and experience requirements for each classification; (12) to establish examination specifications for each classification; (13) to establish continuing education requirements for renewal of each classification; and (14) to investigate the actions of a state certified or licensed appraiser and, when appropriate, to revoke, condition, limit or suspend the certificate or license of the appraiser, or censure the appraiser, for specified acts or omissions.



**SENATE BILL No. 360**

By Committee on Federal and State Affairs

2-20

10 AN ACT concerning the state certified and licensed real property ap-  
11 praisers act; amending K.S.A. 58-4105, 58-4107, 58-4112 and 58-4119  
12 and repealing the existing sections.

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

15 New Section 1. (a) Except as provided by subsection (f), the holder  
16 of a certificate or license may request that such certificate or license be  
17 placed on inactive status for a period not to exceed two years. Such re-  
18 quest shall be submitted to the board on an application form prescribed  
19 by the board.

20 (b) The holder of a certificate or license that has been placed on  
21 inactive status shall pay the renewal fee required by K.S.A. 58-4107, and  
22 amendments thereto, while such certificate or license is on inactive status.

23 (c) The holder of a certificate or license which has been placed on  
24 inactive status shall not:

25 (1) Assume or use any title designation or abbreviation likely to create  
26 the impression that such person holds an active certificate or license is-  
27 sued by the board;

28 (2) describe or refer to any appraisal or evaluation of real estate by  
29 the term state certified or state licensed or words of substantially similar  
30 meaning; or

31 (3) prepare real estate appraisals for federally related transactions  
32 which, under title XI of the financial institutions reform, recovery and  
33 enforcement act of 1989 require the services of a state certified or li-  
34 censed appraiser.

35 (d) The holder of a certificate or license that has been placed on  
36 inactive status may request that such certificate or license be reinstated  
37 to active status. The request shall be submitted to the board on an ap-  
38 plication form prescribed by the board and shall be accompanied by the  
39 reinstatement fee required by K.S.A. 58-4107, and amendments thereto,  
40 and the federal registry fee. An applicant for reinstatement shall provide  
41 evidence of completion of continuing education hours required by the  
42 board.

43 (e) The holder of any certificate or license which has been placed on

3-20-07  
(Attach 1)

- 1 inactive status for more than two years shall be required to meet all the  
2 requirements for original issuance of a certificate or license.
- 3 (f) A certificate or license issued to a person as trainee appraiser shall  
4 not be eligible to be placed on inactive status.
- 5 Sec. 2. K.S.A. 58-4105 is hereby amended to read as follows: 58-  
6 4105. (a) The board may adopt such rules and regulations as necessary to  
7 implement, administer and enforce the provisions of this act.
- 8 (b) The board shall:
- 9 (1) Approve courses of instruction to meet requirements of this act  
10 and monitor approved courses;
- 11 (2) adopt rules and regulations prescribing policies and procedures  
12 for obtaining board approval of courses, monitoring approved courses and  
13 withdrawing board approval of courses;
- 14 (3) administer, or designate a testing service to administer, exami-  
15 nations required by this act;
- 16 (4) receive and approve or disapprove applications for certification  
17 and licensure and renewal of certificates and licenses and issue certificates  
18 and licenses after approval of application;
- 19 (5) *receive and approve or disapprove applications to place certifi-*  
20 *cates or licenses on inactive status;*
- 21 (6) *receive and approve or disapprove applications for reinstatement*  
22 *of active status of certificates or licenses;*
- 23 ~~(5)~~ (7) maintain a registry of the names and addresses of persons  
24 certified and licensed under this act and transmit the registry to the ap-  
25 praisal subcommittee of the federal financial institutions examination  
26 council on an annual basis in accordance with federal law;
- 27 ~~(6)~~ (8) maintain all records submitted to the board;
- 28 ~~(7)~~ (9) collect fees prescribed pursuant to K.S.A. 58-4107, and  
29 amendments thereto;
- 30 ~~(8)~~ (10) review from time to time the standards for the development  
31 and communication of real estate appraisals provided for in this act and  
32 to adopt rules and regulations explaining and interpreting the standards;  
33 and
- 34 ~~(9)~~ (11) perform such other functions and duties as necessary to carry  
35 out the provisions of this act.
- 36 (c) The board shall maintain an office in the city of Topeka. The board  
37 shall employ a director, who shall keep a record of all proceedings, hear-  
38 ings, meetings, communications and official acts of the board and perform  
39 such other duties as the board requires. The director shall be in the  
40 unclassified service under the Kansas civil service act and shall receive  
41 compensation fixed by the board. The board may employ such other em-  
42 ployees as necessary, who shall be in the classified service under the  
43 Kansas civil service act. The board may make such other expenditures as

1 necessary to properly carry out the provisions of this act. The board may  
2 enter into such contracts for the services of attorneys and appraisers as  
3 necessary to administer and enforce the provisions of this act.

4 ~~(d) (±)~~ *In connection with any investigation, based upon a written*  
5 *complaint or other reasonably reliable written information received by*  
6 *the board, the board or its duly authorized agents or employees may ~~issue~~*  
7 ***apply to the district court in accordance with the provisions of***  
8 ***K.S.A. 60-245 or 60-245a, and amendments thereto, whichever is***  
9 ***applicable, for the issuance of subpoenas compelling the attendance***  
10 ***and testimony of witnesses or the production for examination or copying***  
11 ***of documents or any other physical evidence if such evidence relates to***  
12 ***practices which may be grounds for disciplinary action.***

13 ~~—(2) Within five days after the service of the subpoena on any person~~  
14 ~~requiring the production of any evidence in the person's possession or~~  
15 ~~under the person's control, such person may petition the board to revoke,~~  
16 ~~limit or modify the subpoena. The board shall revoke, limit or modify such~~  
17 ~~subpoena if in its opinion the evidence required does not relate to practices~~  
18 ~~which may be grounds for disciplinary action, is not relevant to the charge~~  
19 ~~which is the subject matter of the proceeding or investigation or does not~~  
20 ~~describe with sufficient particularity the physical evidence which is re-~~  
21 ~~quired to be produced.~~

22 ~~—(3) The district court, upon application by the board or by the person~~  
23 ~~subpoenaed, shall have jurisdiction to issue an order:~~

24 ~~—(A) Requiring such person to appear before the board or its duly~~  
25 ~~authorized agent to produce evidence relating to the matter under inves-~~  
26 ~~tigation, or~~

27 ~~—(B) revoking, limiting or modifying the subpoena if, in the court's~~  
28 ~~opinion, the evidence demanded does not relate to practices which may~~  
29 ~~be grounds for disciplinary action, is not relevant to the charge which is~~  
30 ~~the subject matter of the hearing or investigation or does not describe~~  
31 ~~with sufficient particularity the evidence which is required to be~~  
32 ~~produced.~~

33 Sec. 3. K.S.A. 58-4107 is hereby amended to read as follows: 58-  
34 4107. (a) The board shall adopt rules and regulations prescribing the fees  
35 provided for by this act in amounts necessary to administer and enforce  
36 this act, subject to the following:

37 (1) For application for certification or licensure, a fee not to exceed  
38 \$50.

39 (2) For any examination required for certification or licensure, a fee  
40 in an amount equal to the actual cost of the examination and administra-  
41 tion thereof.

42 (3) For original or renewal certification or licensure, a fee not to  
43 exceed \$300.

1 (4) For late renewal of a certificate or license, a late fee not to exceed  
2 \$50.

3 (5) For certification to another jurisdiction that an individual is cer-  
4 tified or licensed, an amount not exceeding \$25.

5 (6) For approval of a course of instruction approved pursuant to  
6 K.S.A. 58-4105, and amendments thereto, an amount not to exceed \$100.

7 (7) For renewal of a course of instruction approved pursuant to  
8 K.S.A. 58-4105, and amendments thereto, an amount not to exceed \$25.

9 (8) *For reinstatement of active status of a certificate or license, a fee*  
10 *not to exceed \$50.*

11 If a certificate or license is issued or renewed for a period other than  
12 one year, the fee shall be prorated to the nearest whole month.

13 ~~(b) In addition to the certificate or license issued pursuant to this act,~~  
14 ~~the board may offer to provide a wall certificate, which shall bear no~~  
15 ~~expiration date, and may charge a fee not exceeding \$50 to each appraiser~~  
16 ~~requesting the issuance of a wall certificate.~~

17 ~~(c)~~ (b) The board may prescribe a fee not to exceed \$50 for registra-  
18 tion of an appraiser pursuant to subsection (b) of K.S.A. 58-4103, and  
19 amendments thereto.

20 ~~(d)~~ (c) The board may establish different classes of courses of instruc-  
21 tion for the purpose of establishing fees pursuant to subsections (a)(6)  
22 and (7) and may establish a different fee for each such class.

23 ~~(e)~~ (d) In addition to the fees prescribed above, the board shall collect  
24 any registry fee required pursuant to federal law. Such registry fees shall  
25 be transmitted by the board to the appraisal subcommittee of the federal  
26 financial institutions examination council in accordance with federal law.

27 ~~(f)~~ (e) Except as provided in subsection ~~(g)~~ (f), the board shall collect  
28 all fees provided for by this act. No original or renewed certificate or  
29 license shall be issued unless all appropriate fees, including any federal  
30 registry fee, have been paid.

31 ~~(g)~~ (f) If a testing service has been designated by the board to ad-  
32 minister the examination, each applicant shall pay the examination fee to  
33 the testing service.

34 ~~(h)~~ (g) The director of the board shall remit all moneys, received  
35 pursuant to this act to the state treasurer in accordance with the provisions  
36 of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such  
37 remittance, the state treasurer shall deposit the entire amount in the state  
38 treasury. Twenty percent of each such deposit, other than amounts col-  
39 lected for federal registry fees or for civil fines imposed pursuant to K.S.A.  
40 58-4118, and amendments thereto, shall be credited to the state general  
41 fund and the balance shall be credited to the appraiser fee fund, which  
42 is hereby created in the state treasury. All expenditures from such fund  
43 shall be made in accordance with appropriations acts upon warrants of

1 the director of accounts and reports issued pursuant to vouchers approved  
2 by the chairperson of the board or by a person or persons designated by  
3 the chairperson.

4 ~~(i)~~ (h) All amounts collected for federal registry fees shall be credited  
5 totally to the federal registry clearing fund, which is hereby created in  
6 the state treasury. All disbursements from the federal registry clearing  
7 fund shall be made upon warrants of the director of accounts and reports  
8 issued pursuant to vouchers approved by the chairperson of the board or  
9 by a person or persons designated by the chairperson. Amounts credited  
10 to the federal registry clearing fund under this section shall not be subject  
11 to any limitations imposed by any appropriations act of the legislature.

12 Sec. 4. K.S.A. 58-4112 is hereby amended to read as follows: 58-  
13 4112. (a) To obtain renewal of a certificate or license, the holder of a  
14 current, valid certificate or license shall make application for renewal on  
15 a form provided by the board and pay the fee prescribed pursuant to  
16 K.S.A. 58-4107, and amendments thereto, to the board not earlier than  
17 120 days nor later than 30 days prior to the expiration date of the certifi-  
18 cate or license then held. With the application for renewal, ~~except for~~  
19 ~~the first renewal period following licensure or certification,~~ the applicant  
20 shall present evidence in the form prescribed by the board of having  
21 completed the continuing education requirements for renewal specified  
22 in this act.

23 (b) If a person fails to apply for renewal prior to the date provided  
24 by subsection (a), the person may obtain renewal of a certificate or license  
25 if the person, not later than three months after expiration of the certificate  
26 or license, satisfies all of the requirements for renewal and pays the re-  
27 newal and late fees prescribed pursuant to K.S.A. 58-4107, and amend-  
28 ments thereto.

29 Sec. 5. K.S.A. 58-4119 is hereby amended to read as follows: 58-  
30 4119. (a) ~~The costs of any hearing before the board incurred by the board~~  
31 ~~in conducting any proceeding under the Kansas administrative procedure~~  
32 ~~act may be assessed against the appraiser or applicant if the order of the~~  
33 ~~board is adverse to the appraiser or applicant in such proportion as the~~  
34 ~~board determines upon consideration of all relevant circumstances in-~~  
35 ~~cluding the nature of the proceeding and the level of participation by the~~  
36 ~~parties. The board may reduce any such assessment to judgment by filing~~  
37 ~~a petition in the district court of Shawnee county. No certificate or license~~  
38 ~~shall be reinstated, renewed or issued if an assessment for costs has not~~  
39 ~~been paid by the applicant or appraiser. Costs shall include: If the board~~  
40 ~~is the unsuccessful party, the costs shall be paid from the real estate ap-~~  
41 ~~praisal board fee fund.~~

42 ~~(a) Statutory fees and mileage of witnesses attending a hearing or for~~  
43 ~~the taking of depositions used as evidence;~~

1 ~~—(b) reporter's or stenographic charges for the taking of depositions~~  
2 ~~used as evidence or for transcripts of the hearing, and~~  
3 ~~—(c) such other charges authorized to be taxed as costs, as specified in~~  
4 ~~K.S.A. 60-2003 and amendments thereto.~~

5 *(b) For purposes of this section "costs" means the fees and expenses*  
6 *of the presiding officer, costs of making and preparing the record, witness*  
7 *fees and expenses, mileage, travel allowances and subsistence expenses of*  
8 *board employees and fees and expenses of agents of the board who provide*  
9 *services to the board. "Costs" shall not mean fees and expenses or costs*  
10 *of making and preparing the record unless the board has designated or*  
11 *retained the services of the office of administrative hearings to perform*  
12 *such functions.*

13 *(c) The board shall make any assessment of costs incurred as part of*  
14 *the final order rendered in the proceeding. Such order shall include find-*  
15 *ings and conclusions in support of the assessment of costs.*

16 Sec. 6. K.S.A. 58-4105, 58-4107, 58-4112 and 58-4119 are hereby  
17 repealed.

18 Sec. 7. This act shall take effect and be in force from and after its  
19 publication in the statute book.

SENATE BILL No. 292

By Committee on Commerce

2-5

Proposed Amendments  
Commerce & Labor Subcommittee on SUTA Error Rate  
March 19, 2007

9 AN ACT concerning ~~collection of employer payments under the em-~~  
10 ~~ployment security law; amending K.S.A. 2006 Supp. 44-717 and re-~~  
11 ~~pealing the existing section.~~

44-705 and

sections

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

14 Section 1. ~~√~~ K.S.A. 2006 Supp. 44-717 is hereby amended to read as  
15 follows: 44-717. (a) (1) *Penalties on past-due reports, interest on past-due*  
16 *contributions, payments in lieu of contributions and benefit cost pay-*  
17 *ments.* Any employer or any officer or agent of an employer, who fails to  
18 file any wage report or contribution return by the last day of the month  
19 following the close of each calendar quarter to which they are related  
20 shall pay a penalty as provided by this subsection (a) for each month or  
21 fraction of a month until the report or return is received by the secretary  
22 of labor. The penalty for each month or fraction of a month shall be an  
23 amount equal to .05% of the total wages paid by the employer during the  
24 quarter, except that no penalty shall be less than \$25 nor more than \$200  
25 for each such report or return not timely filed. Contributions and benefit  
26 cost payments unpaid by the last day of the month following the last  
27 calendar quarter to which they are related and payments in lieu of con-  
28 tributions unpaid 30 days after the mailing of the statement of benefit  
29 charges, shall bear interest at the rate of 1% per month or fraction of a  
30 month until payment is received by the secretary of labor except that an  
31 employing unit, which is not theretofore subject to this law and which  
32 becomes an employer and does not refuse to make the reports, returns  
33 and contributions, payments in lieu of contributions and benefit cost pay-  
34 ments required under this law, shall not be liable for such penalty or  
35 interest if the wage reports and contribution returns required are filed  
36 and the contributions, payments in lieu of contributions or benefit cost  
37 payments required are paid within 10 days following notification by the  
38 secretary of labor that a determination has been made fixing its status as  
39 an employer subject to this law. Upon written request and good cause  
40 shown, the secretary of labor may abate any penalty or interest or portion  
41 thereof provided for by this subsection (a). Interest amounting to less  
42 than \$1 shall be waived by the secretary of labor and shall not be collected.  
43 Penalties and interest collected pursuant to this subsection shall be paid

Insert K.S.A. 2006 Supp. 44-705 from attachment.  
Section 2.

House Commerce & Labor  
Date: 3-20-07  
Attachment # 2

3-20-07  
(Attach 2)

2-2

1 thereto, shall be allowed on a contribution or benefit cost payment which  
2 the secretary has determined was erroneously collected pursuant to this  
3 section.

4 (i) (1) *Cash deposit or bond.* If any contributing employer is delin-  
5 quent in making payments under the employment security law during any  
6 two quarters of the most recent four-quarter period, the secretary or the  
7 secretary's authorized representative shall have the discretionary power  
8 to require such contributing employer either to deposit cash or to file a  
9 bond with sufficient sureties to guarantee the payment of contributions,  
10 penalty and interest owed by such employer.

11 (2) The amount of such cash deposit or bond shall be not less than  
12 the largest total amount of contributions, penalty and interest reported  
13 by the employer in two of the four calendar quarters preceding any de-  
14 linquency. Such cash deposit or bond shall be required until the employer  
15 has shown timely filing of reports and payment of contributions for four  
16 consecutive calendar quarters.

17 (3) Failure to file such cash deposit or bond shall subject the em-  
18 ployer to a surcharge of 2.0% which shall be in addition to the rate of  
19 contributions assigned to the employer under K.S.A. 44-710a and amend-  
20 ments thereto. Contributions paid as a result of this surcharge shall not  
21 be credited to the employer's experience rating account. This surcharge  
22 shall be effective during the next full calendar year after its imposition  
23 and during each full calendar year thereafter until the employer has filed  
24 the required cash deposit or bond or has shown timely filing of reports  
25 and payment of contributions for four consecutive calendar quarters.

26 (j) Any officer, major stockholder or other person who has charge of  
27 the affairs of an employer, which is an employing unit described in section  
28 501(c)(3) of the federal internal revenue code of 1954 or which is any  
29 other corporate organization or association, or any member or manager  
30 of a limited liability company, or any public official, who willfully fails to  
31 pay the amount of contributions, payments in lieu of contributions or  
32 benefit cost payments required to be paid under the employment security  
33 law on the date on which such amount becomes delinquent, shall be  
34 personally liable for the total amount of the contributions, payments in  
35 lieu of contributions or benefit cost payments and any penalties and in-  
36 terest due and unpaid by such employing unit. The secretary or the sec-  
37 retary's authorized representative may assess such person for the total  
38 amount of contributions, payments in lieu of contributions or benefit cost  
39 payments and any penalties, and interest computed as due and owing.  
40 With respect to such persons and such amounts assessed, the secretary  
41 shall have available all of the collection remedies authorized or provided  
42 by this section.



4. 1 Sec. ~~3~~ ✓ This act shall take effect and be in force from and after its  
2 publication in the statute book.

2-3

Sec. 1. K.S.A. 2006 Supp. 44-705 is hereby amended to read as follows: 44-705. Except as provided by K.S.A. 44-757 and amendments thereto, an unemployed individual shall be eligible to receive benefits with respect to any week only if the secretary, or a person or persons designated by the secretary, finds that:

(a)  The claimant has registered for work at and thereafter continued to report at an employment office in accordance with rules and regulations adopted by the secretary, ~~except that, subject to the provisions of subsection (a) of K.S.A. 44-704 and amendments thereto, the secretary may adopt rules and regulations which waive or alter either or both of the requirements of this subsection (a).~~

(b) The claimant has made a claim for benefits with respect to such week in accordance with rules and regulations adopted by the secretary.

(c) The claimant is able to perform the duties of such claimant's customary occupation or the duties of other occupations for which the claimant is reasonably fitted by training or experience, and is available for work, as demonstrated by the claimant's pursuit of the full course of action most reasonably calculated to result in the claimant's reemployment except that, notwithstanding any other provisions of this section, an unemployed claimant otherwise eligible for benefits shall not become ineligible for benefits because of the claimant's enrollment in and satisfactory pursuit of approved training, including training approved under section 236(a)(1) of the trade act of 1974.

For the purposes of this subsection, an inmate of a custodial or correctional institution shall be deemed to be unavailable for work and not eligible to receive unemployment compensation while incarcerated.

(1) Prior to June 30, 2010, the claimant, only if such claimant has been identified by the secretary as being likely to exhaust such claimant's benefits, has registered for work at and thereafter continued to report at an employment office in accordance with rules and regulations adopted by the secretary; or  
(2) on and after June 30, 2010, the

(d) The claimant has been unemployed for a waiting period of one week or the claimant is unemployed and has satisfied the requirement for a waiting period of one week under the shared work unemployment compensation program as provided in subsection (k)(4) of K.S.A. 44-757 and amendments thereto, which period of one week, in either case, occurs within the benefit year which includes the week for which the claimant is claiming benefits. No week shall be counted as a week of unemployment for the purposes of this subsection (d):

- (1) If benefits have been paid for such week;
- (2) if the individual fails to meet with the other eligibility requirements of this section; or
- (3) if an individual is seeking unemployment benefits under the unemployment compensation law of any other state or of the United States, except that if the appropriate agency of such state or of the United States finally determines that the claimant is not entitled to unemployment benefits under such other law, this subsection (d)(3) shall not apply.

(e) For benefit years established on and after the effective date of this act, the claimant has been paid total wages for insured work in the claimant's base period of not less than 30 times the claimant's weekly benefit amount and has been paid wages in more than one quarter of the claimant's base period, except that the wage credits of an individual earned during the period commencing with the end of a prior base period and ending on the date on which such individual filed a valid initial claim shall not be available for benefit purposes in a subsequent benefit year unless, in addition thereto, such individual has returned to work and subsequently earned wages for insured work in an amount equal to at least eight times the claimant's current weekly

benefit amount.

(f) The claimant participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and needs reemployment services pursuant to a profiling system established by the secretary, unless the secretary determines that: (1) The individual has completed such services; or (2) there is justifiable cause for the claimant's failure to participate in such services.

(g) The claimant is returning to work after a qualifying injury and has been paid total wages for insured work in the claimant's alternative base period of not less than 30 times the claimant's weekly benefit amount and has been paid wages in more than one quarter of the claimant's alternative base period if:

(1) The claimant has filed for benefits within four weeks of being released to return to work by a licensed and practicing health care provider.

(2) The claimant files for benefits within 24 months of the date the qualifying injury occurred.

(3) The claimant attempted to return to work with the employer where the qualifying injury occurred, but the individual's regular work or comparable and suitable work was not available.

SENATE BILL No. 333

By Committee on Commerce

2-7

Proposed Amendment  
Kansas Contractors Association, Inc.  
(Also endorsed by: The City of Overland Park and WaterOne)  
March 16, 2007

10 AN ACT concerning public building construction contracts; enacting the  
11 Kansas fairness in public building construction contract act; amending  
12 K.S.A. 75-6402 and repealing the existing section.

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

15 New Section 1. (a) Sections 1 through 8, and amendments thereto,  
16 shall be known and may be cited as the Kansas fairness in public building  
17 construction contract act.

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

21 New Sec. 2. As used in this act:

22 (a) "Construction" means furnishing labor, equipment, material or  
23 supplies used or consumed for the design, construction, alteration, ren-  
24 ovation, repair or maintenance of a building **water and waste water**  
25 **treatment facilities**, oil line, gas line, appurtenance or other improve-  
26 ment to real property, including any moving, demolition or excavation of  
27 a building.

28 (b) "Contract" means a contract or agreement concerning construc-  
29 tion made and entered into by and between an owner and a contractor,  
30 a contractor and a subcontractor or a subcontractor and another  
31 subcontractor.

32 (c) "Contractor" means a person performing construction and having  
33 a contract with an owner of the real property or with a trustee or agent  
34 of an owner.

35 (d) "Owner" means a public entity that holds an ownership interest  
36 in real property.

37 (e) "Public entity" means the state of Kansas, political subdivisions,  
38 cities, counties, state universities or colleges, school districts, all special  
39 districts, joint agreement entities, public authorities, public trusts, non-  
40 profit corporations and other organizations which are operated with pub-  
41 lic money for the public good.

42 (f) "Retainage" means money earned by a contractor or subcontractor  
43 but withheld to ensure timely performance by the contractor or

House Commerce & Labor  
Date: 3-20-07  
Attachment # 3

3-20-07  
(Attach 3)

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1 necessary to enable the contractor to pay the subcontractor in full, and  
2 the owner shall, as part of the next contractual payment cycle, release the  
3 subcontractor's retainage to the contractor, who shall, as part of the next  
4 contractual payment cycle, release such retainage as is due to the  
5 subcontractor.

6 New Sec. 5. If any undisputed payment is not made within seven  
7 business days after the payment date established in a contract for public  
8 construction or in this act, the contractor and any subcontractors, regard-  
9 less of tier, upon seven additional business days' written notice to the  
10 owner and, in the case of a subcontractor, written notice to the contractor,  
11 shall, without prejudice to any other available remedy, be entitled to sus-  
12 pend further performance until payment, including applicable interest, is  
13 made. The contract time for each contract affected by the suspension  
14 shall be extended appropriately and the contract sum for each affected  
15 contract shall be increased by the suspending party's reasonable costs of  
16 demobilization, delay and remobilization.

17 New Sec. 6. In any action to enforce sections 3, 4 or 5, and amend-  
18 ments thereto, including arbitration, between a contractor and subcon-  
19 tractors or subcontractors and subcontractors, the court or arbitrator shall  
20 award costs and reasonable attorney fees to the prevailing party. Venue  
21 of such an action shall be in the county where the real property is located  
22 and under Kansas law. The hearing in such an arbitration shall be held  
23 in the county where the real property is located.

24 New Sec. 7. Any provision in a contract that purports to waive the  
25 rights of a party to the contract to collect damages for delays caused by  
26 another party to the contract shall be void, unenforceable and against  
27 public policy. This provision is not intended to create a contract between  
28 parties where a contract did not otherwise exist.

29 New Sec. 8. The provisions of the Kansas fairness in public building  
30 construction act shall not apply to ~~construction projects which are re-~~  
31 ~~quired to comply with section 109 of the Kansas department of trans-~~  
32 ~~portation special provisions to the standard specifications, 1990 edition~~  
33 ~~(90P 205 R6) or any subsequent editions.~~

the design, construction, alteration, modification, improvement or repair of  
water or sewer lines or related structures, public highways, roads, streets,  
bridges, dams, turnpikes or stand-alone parking lots.

34 Sec. 9. K.S.A. 75-6402 is hereby amended to read as follows: 75-  
35 6402. As used in the Kansas prompt payment act, unless the context  
36 clearly requires otherwise, the following words and phrases shall have the  
37 meanings respectively ascribed thereto.

38 (a) "State agency" means the state and any state agency, department,  
39 division or authority thereof.

40 (b) "Government agency" means any state agency, library, commu-  
41 nity college or unified school district.

42 (c) "Vendor" means any person, corporation, association or other  
43 business concern engaged in a trade or business, either on a profit or not-

SENATE BILL No. 333

By Committee on Commerce

2-7

10 AN ACT concerning public building construction contracts; enacting the  
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33 a contract with an owner of the real property or with a trustee or agent  
34 of an owner.

35 (d) "Owner" means a public entity that holds an ownership interest  
36 in real property.

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38 cities, counties, state universities or colleges, school districts, all special  
39 districts, joint agreement entities, public authorities, public trusts, non-  
40 profit corporations and other organizations which are operated with pub-  
41 lic money for the public good.

42 (f) "Retainage" means money earned by a contractor or subcontractor  
43 but withheld to ensure timely performance by the contractor or

✓  
Proposed Amendments  
Board of Commissioners of  
Johnson County  
March 16, 2006

House Commerce & Labor  
Date: 3-20-07  
Attachment # 4

3-20-07  
(Attach 4)

H-2

1 subcontractor.

2 (g) "Subcontractor" means any person performing construction cov-  
3 ered by a contract between an owner and a contractor but not having a  
4 contract with the owner.

5 (h) "Substantial completion" means the stage of a construction pro-  
6 ject where the project, or a designated portion thereof, is sufficiently  
7 complete in accordance with the contract, so that the owner can occupy  
8 or utilize the constructed project for its intended use.

9 (i) "~~Undisputed payment~~<sup>means payments which all parties to</sup>  
10 ~~the contract agree are owed to the contractor.~~

and "undisputed request for payment"

11 New Sec. 3. (a) Subject to the provisions of subsections (b), (c), (d),  
12 (e), (f), (g), (h) and sections 4 and 5, and amendments thereto, all owners,  
13 contractors and subcontractors, who enter into a contract for public con-  
14 struction after the effective date of this act, shall make all payments pur-  
15 suant to the terms of the contract.

16 (b) The following provisions in a contract for public construction shall  
17 be against public policy and shall be void and unenforceable:

18 (1) A provision that purports to waive, release or extinguish the right  
19 to resolve disputes through litigation in court or substantive or procedural  
20 rights in connection with such litigation except that a contract may require  
21 nonbinding alternative dispute resolution as a prerequisite to litigation;

22 (2) a provision that purports to waive, release or extinguish rights to  
23 file a claim against a payment or performance bond, except that a contract  
24 may require a contractor or subcontractor to provide a waiver or release  
25 of such rights as a condition for payment, but only to the extent of the  
26 amount of payment received; and

27 (3) a provision that purports to waive, release or extinguish rights of  
28 subrogation for losses or claims covered or paid by liability or workers  
29 compensation insurance except that a contract may require waiver of sub-  
30 rogation for losses or claims paid by a consolidated or wrap-up insurance  
31 program, owners and contractors protective liability insurance, or project  
32 management protective liability insurance or a builder's risk policy.

33 (c) All contracts for public construction shall provide that payment of  
34 amounts due a contractor from an owner, except retainage, shall be made  
35 within 30 days after the owner receives a timely, properly completed,  
36 undisputed request for payment **according to terms of the contract**,  
37 unless extenuating circumstances exist which would preclude approval of  
38 payment within 30 days. If such extenuating circumstances exist, then  
39 payment shall be made within 45 days after the owner receives such  
40 payment request.

41 (d) The architect or engineer of record **or agent of the owner** shall  
42 review, approve and forward undisputed requests for payment to the  
43 owner within seven business days **of receipt from the contractor**.



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1 (e) If the owner fails to pay a contractor within the time period set  
2 forth in subsection (c), the owner shall pay interest computed at the ~~rate~~  
3 ~~of 18% per annum~~ on the undisputed amount to the contractor beginning  
4 on the day following the end of the time period set forth in subsection  
5 (d).

statutory judgment

6 (f) A contractor shall pay its subcontractors any amounts due within  
7 seven business days of receipt of payment from the owner, including  
8 payment of retainage, if retainage is released by the owner, if the sub-  
9 contractor has provided a timely, properly completed and undisputed  
10 request for payment to the contractor.

11 (g) If the contractor fails to pay a subcontractor within seven business  
12 days, the contractor shall pay interest to the subcontractor beginning on  
13 the eighth business day after receipt of payment by the contractor, com-  
14 puted at the ~~rate of 18% per annum~~ on the undisputed amount.

statutory judgment

15 (h) The provisions of subsection (g) shall also apply to all payments  
16 from subcontractors to their subcontractors.

17 New Sec. 4. (a) An owner, contractor or subcontractor may withhold  
18 no more than ~~5%~~ **10%** retainage from the amount of any undisputed  
19 payment due, ~~unless the owner and the architect or engineer determine~~  
20 ~~that a higher rate of retainage is required to ensure performance of the~~  
21 ~~contract. Retainage, however, shall not exceed 10% of the value of the~~  
22 ~~contract.~~

, unless the owner and the architect or engineer determine that a higher rate of retainage is required to ensure performance of the contract

23 (b) An owner must release the retainage on any undisputed payment  
24 due on a construction project within 30 days after substantial completion  
25 of the project; however, if any subcontractor is still performing work on  
26 the project under its subcontract, an owner may withhold that portion of  
27 the retainage attributable to such subcontract until 30 days after such  
28 work is completed. ~~No more than 150% of the value of work that is not~~  
29 ~~completed due to no fault of the subcontractor may be withheld pending~~  
30 ~~completion.~~

31 (b) (c) If an owner, contractor or subcontractor fails to pay retainage,  
32 if any, pursuant to the terms of a contract for public construction or as  
33 required by this act, the owner, contractor or subcontractor shall pay  
34 interest to the contractor or subcontractor to whom payment was due,  
35 beginning on the first business day after the payment was due, at a ~~rate~~  
36 ~~of 18% per annum.~~

the statutory judgment

37 (e) (d) Nothing in this section shall prevent early release of retainage  
38 if it is determined by the owner, the contractor and the project architect  
39 or engineer, that a subcontractor has completed performance satisfactorily  
40 and that the subcontractor can be released prior to substantial completion  
41 of the entire project without risk to the owner. ~~The~~ **or additional**  
42 **cost to the owner or contractor. Once so determined, the** contractor  
43 shall request such adjustment in retainage, if any, from the owner as

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1 necessary to enable the contractor to pay the subcontractor in full, and  
2 the owner shall, as part of the next contractual payment cycle, release the  
3 subcontractor's retainage to the contractor, who shall, as part of the next  
4 contractual payment cycle, release such retainage as is due to the  
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6 New Sec. 5. If any undisputed payment is not made within seven  
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11 shall, without prejudice to any other available remedy, be entitled to sus-  
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13 made. The contract time for each contract affected by the suspension  
14 shall be extended appropriately and the contract sum for each affected  
15 contract shall be increased by the suspending party's reasonable costs of  
16 demobilization, delay and remobilization.

Nothing in this section shall affect the contract time or cost between the owner and the contractor unless the contractor is the suspending party.

17 ~~New Sec. 6. In any action to enforce sections 3, 4 or 5, and amend-~~  
18 ~~ments thereto, including arbitration, between a contractor and subcon-~~  
19 ~~tractors or subcontractors and subcontractors, the court or arbitrator shall~~  
20 ~~award costs and reasonable attorney fees to the prevailing party. Venue~~  
21 ~~of such an action shall be in the county where the real property is located~~  
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24 **6.** New Sec. 7. Any provision in a contract that purports to waive the  
25 rights of a party to the contract to collect damages for delays caused by  
26 another party to the contract shall be void, unenforceable and against  
27 public policy. This provision is not intended to create a contract between  
28 parties where a contract did not otherwise exist.

29 **7.** New Sec. 8. The provisions of the Kansas fairness in public building  
30 construction act shall not apply to construction projects which are re-  
31 quired to comply with section 109 of the Kansas department of trans-  
32 portation special provisions to the standard specifications, 1990 edition  
33 (90P-205-R6) or any subsequent editions.

34 **8.** Sec. 9. K.S.A. 75-6402 is hereby amended to read as follows: 75-  
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40 (b) "Government agency" means any state agency, library, commu-  
41 nity college or unified school district.

42 (c) "Vendor" means any person, corporation, association or other  
43 business concern engaged in a trade or business, either on a profit or not-

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1 for-profit basis, and providing any goods or services to a government  
2 agency.

3 (d) "Goods" means any goods, supplies, materials, equipment or  
4 other personal property, but does not mean any real property.

5 (e) "Services" means any contractual services including architectural,  
6 engineering, medical, financial, consulting or other professional services,  
7 any construction services and any other personal services, but does not  
8 mean any services performed as an officer or employee of any government  
9 agency. *Services shall not include construction contracts subject to sec-*  
10 *tions 1 through 8, and amendments thereto.*

11 (f) "Bill" means a proper billing which requests payment and which  
12 contains or is accompanied by such substantiating documentation as may  
13 be required for payment for the goods or services.

14 (g) "Community college" means any community college organized  
15 and operating under the laws of this state.

16 (h) "Library" means a library which serves the general public and is  
17 supported in whole or in part with tax money.

9.

18 ~~Sec. 10.~~ ✓ K.S.A. 75-6402 is hereby repealed.

10.

19 ~~Sec. 11.~~ ✓ This act shall take effect and be in force from and after its  
20 publication in the statute book.

Proposed Amendments  
Blue Valley School District  
March 16, 2007

SENATE BILL No. 333

By Committee on Commerce

2-7

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Attachment # 5

3-20-07  
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5-2

1 (e) If the owner fails to pay a contractor within the time period set  
2 forth in subsection (c), the owner shall pay interest computed at the rate  
3 of 18% per annum on the undisputed amount to the contractor beginning  
4 on the day following the end of the time period set forth in subsection  
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