

Approved: SRB 3/22/07
Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:08 A.M. on March 21, 2007 in Room 231-N of the Capitol.

All members were present except:
Charles Roth- 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:

Others attending:
See attached list.

Testimony from Representative Grange was passed out to the committee (Attachment 1).

The Chairman asked for a motion to approve minutes for 3/8, 3/13, 14 & 15. The motion was made by Representative Humerickhouse and seconded by Representative Huntington and passed by voice vote.

The Chairman resumed the call for action on **SB 333 - Fairness in public building construction contract act.**

Representative Grant made a motion to adopt the Kansas Contractors Association amendment, seconded by Representative Humerickhouse.

Representative Grange said that an exclusion for a particular industry was a problem. It was an issue of fair play. Undisputed work should be paid and not overcome with statutes. He indicated that he was not in favor of the amendment.

Representative Goico asked if all the conferees were in favor of the wording in the amendment. There was no audible answer from the conferees in attendance.

Representative Kiegerl said that the bill was important and the underlying bill is good. He felt that the three amendments that had been offered were meant to emasculate the bill and was opposed to the amendment.

Representative Humerickhouse said that the amendment does not hurt the base bill and requested comments from the conferees in attendance. Eric Sartorius, City of Overland Park, said that the amendment would not affect the underlying bill.

The Chairman asked if there were any consistent exclusions in the private bill. Duston said no, there were no similar exclusions. Eric Sartorius said there were none because the private bill was dealing with private contractors instead of public work. Bob Totten, The Kansas Contractors Association said that there was a very minor amount of work done by the private sector in public work.

There being no further discussion the question was called and the motion passed. We are back on the base bill as amended.

Representative Sharp made a motion to pass SB 333 favorably as amended, seconded by Representative Humerickhouse. The motion passed on voice vote.

The Chairman called for committee action on **SB 360 - State certified and licensed real property appraisers act; conforming amendments to FIRREA.**

Representative Grant made a motion to pass SB 360 favorably, seconded by Representative Ruiz.

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:08 A.M. on March 21, 2007 in Room 231-N of the Capitol.

Their was no discussion and the motion passed.

The Chairman said that this was probably our last meeting and congratulated the committee on their work. He mentioned the ongoing Conference Committee process on **HB 2314** and possibly **HB 2295**. The Conference Committee will meet tomorrow at 9:15 A.M. to discuss these bills.

The Chairman adjourned the meeting at 9:28 A.M.

TESTIMONY TO THE COMMERCE AND LABOR COMMITTEE
Senate Bill 333, MARCH 21ST 2007
Representative John C. Grange, 75th District, Room 411-S, 6-7655

I am an owner and CEO of a mechanical contracting company in El Dorado, Kansas. My company employs 10 field craftsman that are qualified and licensed in various fields to include Heating & Cooling & Refrigeration, Electrical, and Plumbing. Since 1978 we have worked predominately in the residential and light commercial industry.

I have been a contractor on many construction projects both in the private industry and while working for municipal governments as well as Butler County. I comply with the contracts prepared by the General Contractor as well as the governing body. Literally; "I have been there and done that" so I admit to first hand knowledge of these issues.

SB 333 is important to me and others in my field and similar construction crafts to include, tile laying, carpet installation, window glazing, concrete finishing, roofing, steel erection, landscaping, security systems installation, and the list goes on.

The last couple of years this committee worked SB 33 a bill pertaining to private construction contracts. I was a member of this committee then and feel compelled to provide my expertise and experience to assist this committee in determining the merits of SB 333.

What we have here is basically a fairness issue that is between two entities, one being the contractors and sub subcontractors who build the buildings and other structures for the second party; that being the public entities who contract for these projects. Simply put you build it and we will pay you for your services, according to the contract we (the owners have prepared).

I will be succinct in offering of my analysis of this legislation and the individual balloon amendments offered by; KCA, Board of Commissioners of Johnson County, and Blue Valley School District.

#1' Board of Commissioners Johnson County

"Statutory Judgement". Since I did not know what this was, I found it unusual that I could not receive a definitive answer from among those in the room when we received our staff briefing. This is an attempt to cut the industry standard of 1 ½% per month on the unpaid balance, to some other number that would lessen the amount due to a contractor and lessen the penalty for non payment. This is not a good thing and strikes out current legislation.

Line 22 Balloon, "unless the owner and the architect or the engineer determine that a higher rate of retainage is required to ensure performance of the contract".

This is too ambiguous, when is the determination made? Halfway through the project? What is the criteria for determination? Retainage payment should always be determined at the beginning of contract negotiations.

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(Attach 1)

Line 16, “Nothing in this section shall affect the contract time or cost between the owner and the contractor unless the contractor is the suspending party”.

Delete line 17-23, by removing arbitration requirement and the venue determination we are setting our selves up for the unthinkable. That being; the project is in Greensburg, and the General Contractor is from Kansas City, are the disputes resolved where the work is performed or where the GC is headquartered? Resolution should always be in the jurisdiction of the project

I do not agree with the majority of this balloon except where I have offered a positive comment.

2d, Blue Valley School District

Page 3 line 17, “unless otherwise provided in the contract, an” This is where those with the bigger hammer (most influence or power) have the advantage. Do not be confused that this is a two party agreement, the preparer of the contract makes the rules. This is a fairness issue that allows the parties to know the standard 10% retainage is withheld.

I do not agree with this balloon as it acts like the previous one that acts to gut major provisions of the bill.

3d, KCA and the City of Overland Park and Water One.

Page 4 Line omit 30-33 and insert “the design, construction, alteration, modification, improvement or repair of water or sewer lines or related structures, public highways, roads, streets, ridges, dams, turnpikes or stand-alone parking lots”.

I can not support any attempt to exempt a specific industry from the rules of this statute. Why they wish to be exempt escapes me. I again remind you this is a fairness in payment issue and when the work is performed properly and in a timely manner why would we restrict the payment to the contractor?

I want you to understand that during the construction bid process all contractors have access to the same bid documents and site inspections. Typically in the public sector construction projects are given to the lowest bidder. We all should be aware that cash flow is critical and fairness between all parties must be maintained.

Contractors and owners alike, all want the project completed in a timely and a workmanlike manner. Contractors need to make money and remain profitable to stay in business. Public entities must be confident they are receiving the best value for the taxpayers money. If the contractors cash flow is interrupted for any reason he/she may have to access more money which comes from profits or additional capital investments just to continue his operations..

In a nutshell when you want something built you go to the best qualified for the work and negotiate the best price. If you have a project that takes several months for completion you would expect to make partial payments for the properly completed work. If an entity pays its obligations on time and has no unresolved conflicts, why are they here?

This statute only addresses the undisputed requests for payment. There remains provisions for payments withheld for unsatisfactory work.

This SB 333 has received a lot of attention during the last interim when the industry and owner representatives met to work out the issues and we thought most were addressed. I would recommend we move this bill out favorably without the amendments as it is good legislation that needs enacted.

Respectively Submitted Rep. John C. Grange.