Approved: March 5, 2009
Date

MINUTES OF THE HOUSE INSURANCE COMMITTEE

The meeting was called to order by Chairman Clark Shultz at 3:30 p.m. on March 3, 2009, in Room 784 of the Docking State Office Building.

All members were present except:
Representative Tom Burroughs- excused
Representative Nile Dillmore- excused

Committee staff present:
Bruce Kinzie, Office of the Revisor of Statutes
Sean Ostrow, Office of the Revisor of Statutes
Melissa Calderwood, Kansas Legislative Research Department
Cindy Lash, Kansas Legislative Research Department
Sue Fowler, Committee Assistant

Conferees appearing before the Committee:
John Meetz, Kansas Insurance Department
Richard Usher, Hill and Usher Insurance and Surety
Billl Miller, American Subcontractors Association and Midwest Crane and Rigging, LLC
Ken Keller, American Subcontractors Association
Kurt Brack, Holbrook & Osborn, P.A.
Janet Stubbs, Kansas Building Industry Workers Compensation Fund
Casey Halsey, JE Dunn Construction Company
Brad Smoot, American Insurance Association

Others attending:
See attached list.

Hearings on:

SB 50 **Risk-based capital requirements; establishing a trend test calculation.**

Melissa Calderwood, Kansas Legislative Research Department, gave a brief overview of **SB 50**.

The Chairman opened the hearing on **SB 50**.

Proponent:
John Meetz, Kansas Insurance Department (Attachment 1), appeared before the committee in support of **SB 50**.

Hearing closed on **SB 50**.

SB 126 **Controlled insurance program act.**

Melissa Calderwood, Kansas Legislative Research Department gave a brief overview of **SB 126**.

The Chairman opened the hearing on **SB 126**.

Proponents:
Richard Usher, Hill and Usher Insurance and Surety (Attachment 2), gave testimony in support of **SB 126**.
Bill Miller, American Subcontractors Association and Midwest Crane and Rigging, LLC (Attachment 3), appeared before the committee in support of **SB 126**.
Ken Keller, American Subcontractors Association (Attachment 4), presented testimony in support of **SB 126**.
Kurt Brack, Holbrook & Osborn, P.A. (Attachment 5), gave testimony in support of **SB 126**.
Janet Stubbs, Kansas Building Industry Workers Compensation Fund (Attachment 6), appeared before the committee in support of **SB 126**.

Minutes of the House Insurance Committee at 3:30 p.m. on March 3, 2009, in Room 784 of the Docking State Office Building.

Opponents:
Casey Halsey, JE Dunn Construction Company (Attachment 7), presented testimony in opposition to **SB 126**.
Brad Smoot, American Insurance Association (Attachment 8), gave testimony in opposition to **SB 126**.
Eric Stafford, Associated General Contractors of Kansas, (Attachment 9), presented written testimony in opposition to **SB 126**.

Hearing was closed on **SB 126**.

Representative Grant moved without objection to pass the February 26, 2009 committee minutes as written.

The next meeting is scheduled for March 5, 2009.

The meeting was adjourned at 5:10 p.m.

House Insurance Committee
Guest Sign In Sheet
Tuesday, March 3, 2009

Name	Representing
Bill Sneed	State Farm
Alex Kotoyantz	P. I. A.
Marlee Carpenter	KAHP
KURT BRACK	HOLLADAY & OSBORN
Chris Gigstad	Federico Consulting
Casey Halsey	JE Dunn
Ken Abitz	Kansas Ins. Dept.
John Beck	KID
Dave Ulin	Ulin Law Firm
Matt Casey	GDA
John Wine	KID
Bill Miller	ASA
Ken Keller	ASA
Tom Burgess	ASA
Bill Brady	Capitol Strategies
DAN MORGAN	Builders Assn. / KC, AGC
Kerri Spielman	KAIA
LORI CHURCH	KAPCIC
Brad Smoot	AIA
Chris Wilson	KBIA

Kansas Insurance Department
Sandy Praeger, Commissioner of Insurance

TESTIMONY ON
SB 50

HOUSE INSURANCE COMMITTEE
March 3, 2009

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear in support of SB 50. This bill would add a trend test calculation to the risk-based capital (RBC) requirements for property and casualty insurance companies doing business in the state of Kansas.

First, let me explain what RBC requirements actually do. RBC is a method developed by the NAIC to measure the minimum amount of capital that an insurance company needs to support its overall business operations. The Kansas Insurance Department uses RBC to set capital requirements considering the size and degree of risk taken by the insurer. If a company falls below certain RBC requirements then the Insurance Department will go through a number of steps to determine the financial "health" of the company in question, with the ultimate goal of bringing that company back to a level where it is capable of meeting its contractual obligation to Kansas policy holders.

Currently, the Insurance Department may only use the RBC ratio to determine a company's solvency. SB 50 would add the use of a trend test that is calculated using a combination of the RBC and the losses, loss adjustment expenses and general expenses compared to premiums earned. This additional tool gives the Insurance Department a more accurate representation of a company's financial situation, thus allowing the Insurance Department to potentially take appropriate regulatory action.

The trend test calculation itself does not necessarily mean that companies doing business in Kansas will have to maintain a higher level of capital. It simply means that financial surveillance personnel at the Insurance Department will have another tool to determine a company's solvency and potential trends toward insolvency.

Ultimately, we believe that a trend test calculation is crucial to determining the financial solvency of the insurance companies that so many Kansans rely upon when faced with disaster. Thank you for the opportunity to appear today I would now stand for questions.

John Meetz
Government Affairs Liaison

House Insurance
Date: 3-03-09
Attachment # 1

March 3, 2009

To: The Kansas House of Representatives Insurance Committee

Chairman Clark Shultz, Vice Chairman Virgil Peck, and Committee Members:

Re: SB 126

For the Record: My name is Richard Usher

Thank you for the opportunity to speak to you this morning .I am here to provide technical information about the subject matter of this proposed legislation SB 126. For the past 15 years I have operated an independent insurance agency that is licensed to do business in most states, including Kansas. The name of our business is Hill & Usher Insurance & Surety and our main office is in Phoenix, AZ.

I have a particular interest in the construction industry which has provided for my family all of my adult life. Most of my hundreds of customers are subcontractors and specialty trade contractors. Our agency also provides insurance and risk management services to owners, general contractors, equipment and material suppliers and other businesses associated with construction. I have been in the insurance and surety business for eighteen years and prior to that I owned and operated a specialty construction company. I have been an active member of the American Subcontractors Association for about 25 years. I am not being compensated for my time here today.

Debate over the perceived benefits of consolidated insurance programs (CIPs) also known as controlled insurance programs and more popularly referred to as "wrap-ups" - has evolved over the past several decades into one of the hottest, most contentious issues within today's construction industry. Originally designed to reduce overall insurance costs on very large, single-site projects involving significant labor and considerable workers' compensation premium costs, wrap-ups have changed creatively and are now applied to a variety of project sizes and types of construction. While affecting a high number of contractors and subcontractors, wrap-ups have become widely regarded as perilous for subcontractors and particularly so when used on smaller scale and multi-site projects, aka: "rolling-wraps".

In simple form, a wrap-up is a centralized insurance and loss control program intended to protect the project owner, prime contractor, and subcontractors under a single set of insurance policies. While the wrap-up concept has been around for a while there has recently been a proliferation of variations in plan design making many contemporary programs comparatively new insurance models. It is important to note that all wrap-up programs are a radical departure from the traditional insurance format, where each contractor and subcontractor individually purchases and negotiates its own insurance and risk financing programs to address liability and losses from accidents. Unfortunately, wrap-ups are too often inappropriately marketed as providing the same or better insurance coverage, at the same or less financial risk and cost to subcontractors, as their own individual programs offer. Wrap up design seems to focus on profit for program sponsors rather than the coverage necessary to protect contractors and provide a financial backstop for construction consumers that experience challenges arising from accidental loss.

Ideally, a wrap-up will provide sufficient limits of fully paid commercial general liability, workers' compensation, employer's liability, pollution liability, professional liability, excess liability and even coordinated builder's risk first party property coverage for all enrolled program insureds and for the entire construction process and including the full term of the completed operations hazard period.

Today, many subcontractors that have experienced owner-controlled insurance programs (OCIPs) or contractor-controlled insurance programs (CCIPs) have come to realize all wrap-ups are indeed not created equal. Wrap-ups are rarely as comprehensive and coordinated as the sponsor implies. In fact, many wrap-ups offer inadequate and limited coverage, often

employ burdensome procedures for subcontractors that can significantly amplify exposure to risk, increase administrative costs and paperwork, and generate problematic outcomes. To sum up, as the use of wrap-ups has spread, so has the controversy surrounding them.

This morning, I will speak about four important issues related to Wrap-Up Insurance Programs that left unaddressed can cause significant financial problems for contractors, subcontractors and owners who sponsor or participate in construction wrap-up insurance programs and also put at risk the buyers of construction services and the ultimate users of the finished construction projects, the citizens of our community.

The issues are: Sponsor's Termination for Convenience; Coverage for Completed Operations; Sufficient Limits of Coverage to Fully Protect all Participants; Funding or Security for Large Deductibles and Self-Insured Retentions.

- Termination for the convenience of the sponsor:

If and when a plan sponsor terminates for convenience, subcontractor participants must have the right to terminate their obligations under the construction contract when appropriate replacement coverage is not available to the subcontractor for reasonable and reimbursable premiums.

- Most subcontractors' commercial general liability coverage is completely eliminated when the sub participates or enrolls in a wrap-up?

Many underwriters of commercial general liability (CGL) and excess liability coverage suspend or eliminate their policyholder's right to coverage when the insured chooses to enroll in an OCIP/CCIP. This can be a major risk factor with respect to the subcontractor's available insurance protection. The standard wrap-up exclusion endorsement, CG 21 54 01 96 (Exclusion - Designated Operations Covered by a CIP), [Specimen Copy Provided] stipulates that coverage does not extend to bodily injury or property damage arising out of any project subject to a wrap-up, thus excluding all coverage for ongoing and completed operations and also excluding any following form excess liability coverage. The exclusion of coverage applies whether or not the wrap-up: provides coverage identical to that provided by the subcontractor's existing coverage; has adequate limits to cover all claims; or, remains in effect. The effect of this standard wrap-up exclusion endorsement is to leave the subcontractor bare and without any coverage if and when the wrap-up fails to provide protective coverage or is terminated. <u>If the Wrap Up Program fails or goes away (one way or another) and the contractors have no other insurance coverage, there is no financial backstop protection for the Owner or end user.</u>

You may hear some insurance brokers say that a subcontractor that chooses to participate in a wrap-up may elect to have its own policies provide difference in conditions "DIC" and excess-over coverage so that they have backup coverage in the event the wrap-up fails to provide adequate coverage, exhausts its limits or terminates. Unfortunately, DIC and excess-over coverage terms are not readily available to many or most subcontractors participating in wrap-ups. You may also hear some say that subcontractors should just notify the underwriters of their existing insurance programs to endorse coverage for the project at the time coverage under the wrap-up terminates or fails, however underwriters are generally reluctant to take on the risk of an uncompleted project and the resulting years of completed operations exposure when they have collected no premium, are offered little future premium and are unable to predict their risk results. Its easy to say NO in economic times like these. Some underwriters have reinsurance treaty issues and contractually cannot take on Wrap-Up risk without risking their own coverage. Therefore, it is critical that the provision included in Sec 3 (a) (2) of SB 126 be made public policy.

- Coverage for Completed Operations:

All contractors are generally held liable for defects in construction and any resulting damage to property or persons arising from their negligence and defective work. Liability for defective construction and the resulting damage or injury does not end when a project is complete and put to its intended purpose, <u>contractor liability continues forever</u> or until a statute of limitations or repose runs. Many states, including Kansas, have enacted statutes of repose and statutes of limitations that establish time limits after which claims against contractors for

losses arising from defective construction are barred. Many statutes allow suit for latent defective construction to be filed for 8 to 10 years after construction is completed. Contractors and Subcontractors need coverage for liability arising from completed operations to be provided by the wrap-up that matches or extends through the duration of their respective state's statute of limitations and/or repose because they have no coverage of their own or from any other source. Remember, when subcontractors have no insurance coverage there is no financial backstop for construction buyers or users other than the equity in the subcontractors themselves. Therefore, it is important to subcontractors and the citizens of Kansas that the provisions included in Sec. 4 (a) of SB 126 be made public policy.

- Does the CIP have sufficient limits to protect all insureds?

Consider the fact that wrap-ups are often intended to provide protection for the owner, contractors and all subcontractors with some wrap-ups applying on a rolling basis to many projects over a number of years, and which projects might be located around the globe. How does a subcontractor (or a construction service buyer) determine whether there will be enough insurance limits to take care of its liability and provide an adequate financial backstop? Many risk managers will expect limits of seventy percent or more of the total project costs to be available on a project specific basis during construction and for many years after completion to satisfy their risk assessment for construction operations. Anything less is considered imprudent risk taking. Actually, it is virtually impossible for a subcontractor to determine the sufficiency of wrap-up limits and to guarantee the coverage will be available when needed for protection. The plan sponsor is the only entity in a position to evaluate and procure sufficient limits of coverage and for a sufficient period of time to protect itself and all participants for the ongoing and completed operations risk inherent in construction. The plan sponsor controls the program design decisions and must be held accountable for the protection of the participant subcontractors, the construction buyers and users and the public. Therefore, it is important for the provision included in Sec 4 (d) of SB 126 to become public policy.

Are the plan's self-insured retentions (SIRs) fully funded or collateralized by the sponsor? For how much? For how long?

A self-insured retention (SIR) is commonly defined as an amount of money that an insured must expend in its own defense or by payment of damages for a claim or claims prior to an insurer assuming financial responsibility and/or administrative control over the claim or claims. Prior to the insured paying the SIR amount, there is no financial or administrative benefit available from the insurance contract when coverage is written as excess-over the defined SIR. Many SIRs are very large - $100,000, $250,000, $1,000,000, $3,000,000 and may apply on an occurrence basis with no aggregate stop-loss. These amounts are well beyond the anticipated level which subcontractors (and many construction service buyers including public entities) are generally prepared to fund in the event of loss or claim. When large SIRs are applicable to wrap-up's a subcontractor will be subject to the financial capacity of the plan sponsor to fund the SIR and when there are multiple claims, multiple SIR payments will be required to trigger coverage. Some plan sponsors are single assets entities or shell LLCs that may not retain the financial capability to fund the SIR years after completion. Subcontractors (and others who rely on wrap-up coverage as a financial back-stop like public owners) can be put at considerable financial risk when SIRs go unpaid. In today's global financial crisis is it quite easy to point to businesses and public entities small, large and mega size that could not fund large SIR obligations necessary to trigger coverage. When years have passed after construction work is complete, plan sponsors must continue to possess the financial wherewithal to meet the financial obligations of the wrap-up or the cost will fall upon the subcontractor participants that will generally have no liability coverage which ultimately puts the project owners without recourse. SIRs should be fully disclosed and security or collateral should be provided to guarantee all SIRs are fully funded and secure on behalf of the program participants. Therefore, it is important that the provision included in Sec 3 (a)(4) of SB 126 become public policy and that the commissioner of insurance adopt appropriate rules and provide effective oversight for the financial protection of plan participants, construction service buyers including public entities and the citizens of Kansas..

We must bear in mind that uninsured contractors and subcontractors pose a significant danger to the public when financial resources are not available to pay liabilities to those injured or

damaged from negligent acts and defective construction. In the non-traditional controlled insurance program model, public policy should require proper transparency and financial protection for the public benefit.

Thank you for doing this important work to protect the deserving citizens, contractors and subcontractors of the Great State of Kansas.

I appreciate your time and attention. I am happy to take questions now or through any means of communication.

Richard B Usher, Principal
Hill & Usher Insurance & Surety
Insurance. Bonds. Benefits
3033 North 44th Street, #300
Phoenix, Arizona 85018
(602) 956-4220
rbu@hillusher.com

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 21 54 01 96

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – DESIGNATED OPERATIONS COVERED BY A CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description and Location of Operation(s):

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The following exclusion is added to paragraph **2.**, Exclusions of COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section **I** – Coverages):

This insurance does not apply to "bodily injury" or "property damage" arising out of either your ongoing operations or operations included within the "products-completed operations hazard" at the location described in the Schedule of this endorsement, as a consolidated (wrap-up) insurance program has been provided by the prime contractor/project manager or owner of the construction project in which you are involved.

This exclusion applies whether or not the consolidated (wrap-up) insurance program:

(1) Provides coverage identical to that provided by this Coverage Part;

(2) Has limits adequate to cover all claims; or

(3) Remains in effect.

2-5

MIDWEST CRANE AND RIGGING

15585 S. KEELER • P.O. BOX 970 • OLATHE, KANSAS 66051-0970
(913) 747-5100 • FAX (913) 764-0102

March 3rd, 2009

To: The House Insurance Committee

Re: SB 126 The Controlled Insurance Programs Act

Chairman Clark Shultz, Vice Chairman Virgil Peck, and Committee Members:

My name is Bill Miller. I am here to testify in support of SB-126.

I represent the American Subcontractors Association and my business, Midwest Crane and Rigging, LLC.

Midwest Crane is headquartered in Olathe, Kansas with offices in Topeka, Kansas and St Joseph, Missouri

ASA represents subcontractors and suppliers in Kansas and Western Missouri...

Owner or contractor controlled insurance programs, commonly referred to as wrap-up policies, have become the number one problem for subcontractors according to a survey completed last summer. Wrap-ups are a relatively new insurance program for the general building construction industry that forces all subcontractors on a project to give up their own insurance program for that project and, in exchange for the premium that they would have paid; they are covered under one policy furnished by the owner or the general contractor. Participation in these programs is not voluntary.

This on the surface seems innocent enough. This is not at all the truth. These programs have serious deficiencies for the participants and in many cases, for the owner as well. There are no regulations in place in Kansas to govern the application of these programs to ensure the proper coverage is in place or to require that the coverage is maintained for the liability term required by Kansas law. Workers often are not protected by workers compensation insurance simply because they are injured outside narrowly defined project limits even though their employers have paid their premiums to the controlled insurance program sponsor.

SB-126 addresses these and other serious problems.

House Insurance
Date: 3-03-09
Attachment # 3

Topeka Branch
711 1/2 24 Hwy
785-233-0400

SUBCONTRACTORS
THE HEARTBEAT OF CONSTRUCTION
AMERICAN SUBCONTRACTORS ASSOCIATION

St. Joseph Branch
1804 S. 8th St.
816-279-7878

1. The program sponsor can cancel the wrap-up policy at any stage of the project. When the wrap-up policy is terminated, each subcontractor is required to purchase like coverage at the same rate that was in effect. This cannot be done. Workers compensation rates are set rates based upon loss history and the blended rate that is paid by the program sponsor is not available to the subcontractors. Most general liability policies have a wrap-up exclusion that excludes any coverage if their insured is a participant in a wrap-up. The sub's underwriters will not provide coverage for a part of a project. They would have all of the exposure and a very small premium. This bill prohibits cancellation of the policy unless the subcontractor also has the option of terminating the contract.

2. Completed operations coverage is coverage for resultant damage caused by latent defective work discovered after completion of the project. State law requires 10 years of protection for the owner for this possibility. Many wrap-ups cancel within 2 or 3 years. Since most general liability policies have wrap-up exclusion, and if the subcontractor is no longer is business, the owner is unprotected. This bill requires completed operations coverage to extend for the full term of the statute of repose. Opponents will tell you that it is simply a matter of the subcontractor purchasing completed operations coverage for the years remaining under the Kansas statute. There is no such coverage on the market. The traditional general liability policy that subcontractors purchase has completed operations coverage included. Again, subs are paying for coverage that they are not getting and owners are unprotected.

3. Wrap-up policies do not provide coverage for owned or leased equipment on the site. Many wrap-ups do not provide coverage for the liability that a lessee is required to assume in a rental contract. They unknowingly are self insuring the leasing company. This bill requires severability of interests that treats each participant as if they were individually insured and picks up all liability that is required by a contract, just as their traditional insurance policy would.

4. Most wrap-up program managers require that the participants insure them for any potential liability for off site activities related to the project. Most general liability policies have wrap-up exclusion and therefore there is no coverage to provide. This is a contractual requirement that cannot be met. This bill prohibits this contractual requirement that is beyond the coverage that is included in the wrap-up policy itself.

5. Some wrap-up policies have denied coverage for damage to a subcontractors work caused by another subcontractor who is also covered under the same policy. The severability of interest provision in this bill requires coverage for this type of claim, again, just as their traditional insurance would do.

6. Some wrap-up policies that include builders risk coverage could make a claim against a subcontractor for liability for damage to the building or materials for it. The subcontractor has no coverage of their own to cover this. This bill grants a

waiver of subrogation to each participant to prevent this type of claim for which there is no coverage. Again, their traditional insurance covers this type of claim.

7. Workers compensation claims are chargeable to each participants experience as an employer which is used to establish the rate of premium based upon experience. This bill requires that the general liability portion reimburse the work comp side for the cost of claims that result from one subcontractor injuring another subcontractor's employee. This then is not charged to the experience rating of the injured workers employer. This again is covered under traditional insurance policies.

8. When a subcontractor is forced to enroll in a wrap-up program, they lose their agent representation. With out their agent, they have no one to represent them to ensure that they have the coverage necessary to protect them and others for whom they are liable. This is like being in a legal proceeding with out an attorney. This bill does not allow the deduction for the insurance premium to include the agency fee that would have covered the subcontractor's agent for professional services.

9. Most wrap-ups have an unusually high deductible that is passed on to the subcontractor. This results in cheaper premiums for the sponsor at the expense of the subcontractor. This bill does not allow this deductible to be passed on to the subcontractor.

10. Some wrap-up sponsors have disciplinary monetary fines that are assessed against the subcontractors that range up into the thousands of dollars. These fines are at the sole discretion of the contractor or construction manager and can be for perceived unsafe actions that would not be a violation under ordinary government safety standards. This bill would not allow monetary fines to be assessed unless by a government agency.

11. Wrap-up policies require that if a worker is injured, the subcontractor provide alternate duty and keep the injured worker on the payroll even if there is no alternate duty for the injured worker. The subcontractor is assessed a fine of approximately $1500.00 per week if this is not done. This is to keep the program sponsor from paying the temporary disability payments to the injured worker. Workers compensation insurance premiums include the cost of paying for temporary disability payments to the injured worker until that worker has time to heal. Once again, the subcontractors are paying for coverage that they are not getting.

12. All wrap-up program managers institute extreme safety programs that are far more stringent that Department of Labor standards. Some are so extreme as to make it nearly impossible to accomplish the work. This can be devastating to a subcontractor who is required to maintain a schedule that has severe daily liquated damages for project delay. This bill requires that the bid documents have

detailed safety requirements that will be imposed for work on that site. This will allow the subcontractor to price the job accordingly and to determine if the schedule can realistically be met.

13. Most participants in wrap-up programs can not get claims details and loss history. Subcontractors are responsible for claims monitoring and most want to be involved in case management. This bill requires timely reporting of claims details and loss history to all of the individual participants. This DOES NOT conflict with HIPPA law.

14. Self insured retentions are similar to insurance deductibles with one major difference. This SIR must be paid before the insurance company becomes involved in a claim. Some SIRs are $1,000,000 or more. SB-126 requires that the SIR be fully funded for the duration of the state statute to ensure the funds are in fact available to cover the claim. If this SIR is not funded, there is no coverage for either the owner or the subcontractor for any claim.

Opponents will tell you that controlled insurance programs benefit the owner by providing higher limits and more extensive coverage. The truth is simply that the owner is paying for the coverage no matter how high the limits may be and it has been my experience that the owner is the one that establishes the limits for the project based upon the liability exposure for that project. There is no free lunch.

Please keep in mind that we are not trying to eliminate controlled insurance programs. There are regulations in place for most if not all types of insurance that is sold in Kansas. There are no current regulations that I am aware of to provide the protections that are necessary for the general public and public owners.

Wrap-up programs are necessary in many cases where the required limits are such that it would be cost prohibitive for every contractor and subcontractor to purchase. Unfortunately, these programs have become very lucrative for the very large owners and contractors at the expense of the subcontractors and in some cases at the expense of public owners. It is unusually apparent that on competitive bid projects, wrap-ups are not in use. Every subcontractor that I know adds money to the bid because jobs with controlled insurance programs cost more to do.

I urge your support for SB-126. We are not trying to eliminate wrap-up insurance programs. We want them to be regulated and to provide the coverage that the policies we buy for ourselves provide.

Bill Miller

President
Midwest Crane & Rigging, Inc

WESTERN EXTRALITE COMPANY
DISTRIBUTORS OF QUALITY ELECTRICAL AND VOICE/DATA PRODUCTS
1470 Liberty • Kansas City, MO • 64102

March 3, 2009
To: The House Insurance Committee
Chairman Clark Schultz and Vice Chairman Virgil Peck Jr

Mister Chairman

Thank you for allowing me to address you today in support of SB126 the Controlled Insurance Program Act. I'm Ken Keller, retired Controller of Western Extralite Company. I served in that capacity for 21 years. Western Extralite Company is an electrical supply house with a large portion of its business derived from the construction industry. We have 19 locations, 8 of which are in Kansas. In addition I represent the American Subcontractors Association, National Association of Credit Managers, the Electric League of Greater Kansas City and other interested parties.

First let me say I do not oppose the concept of owner or contractor controlled insurance programs, also known as OCIPs and CCIPs and sometimes as wrap-up insurance programs. What I want from this legislation is to make sure the subcontractor has the same protection under this program that he would have under his own insurance coverage.

Currently, that is not the case in some contracts. There are contracts that state coverage will end in 3 years. The statute of repose in Kansas is 10 years. That means you have to find coverage for the remaining 7 years, or be willing to stand the risk of being self-insured. That coverage is not generally available. We can show you examples where coverage was cancelled before the job was complete, leaving the subcontractors with an enormous exposure self insuring the remainder of the work and subsequent risk.

Some contracts call for coverage to cover "on-site" claims only. What happens when the electrical subcontractor sends an employee to Western Extralite for parts and he has an accident? He is not "on-site" therefore he is not covered and the job has been excluded from the regular coverage so where is the coverage? Who's responsible?

Currently if I'm on a job and another subcontractor damages my equipment or work there is a possibility there isn't any coverage. You can't have a claim against another person who is a named insured on the same policy. This position has been tested and upheld in the New York Supreme Court.

Currently, the premium the subcontractor pays into the wrap-up program includes the fee normally paid to his insurance agent to protect his interest. Now getting a copy of the policy for your agent to review is difficult at best. If you can then you have to ask your agent to review the policy to see that you are adequately protected. This results in another fee which is double dipping. This has to be done. Would you enter into a complicated

WESTERN EXTRALITE COMPANY
DISTRIBUTORS OF QUALITY ELECTRICAL AND VOICE/DATA PRODUCTS
1470 Liberty • Kansas City, MO • 64102

contract without your attorney looking at it? The same should be true of your insurance and your agent.

The current contracts sometime call for monetary fines assessed by the owner or general contractor for safety violations. These are arbitrary and undefendable. These types of fines should only be assessed by the appropriate governmental agency.

The list of potential problems in the wrap-up programs goes on and on. They are addressed and will be corrected by the passage of SB126. I urge your support for this important legislation.

Thank You

Kenneth R. Keller
Retired Controller
Western Extralite Company

HOLBROOK & OSBORN, P.A.

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JUDD L. HERBSTER *
MICHAEL T. JILKA *
BLAKE R. MARKLEY *
JERVIN K. WRAY *

DONALD H. CORSON
(1900-1985)

DONALD H. CORSON, JR.
(1926-2006)

ROBERT L. KENNEDY
(1924-2007)

OUR 28TH YEAR

* ADMITTED IN KANSAS, MISSOURI AND DISTRICT OF COLUMBIA
** ADMITTED IN KANSAS AND MISSOURI
ADMITTED IN KANSAS, MISSOURI AND NEBRASKA

March 2, 2009

The House Insurance Committee
Chairman Clark Shultz
Vice-Chairman Virgil Peck
Docking State Office Building
Room 784
Topeka, KS 66612

Re: Senate Bill 126
The Controlled Insurance Programs Act

Dear Chairman Shultz, Vice-Chair Peck and Members of the Committee:

My name is Kurt Brack, I am in here to offer testimony in support of Senate Bill 126, The Controlled Insurance Programs Act. I represent a number of subcontractors throughout the Kansas City Metropolitan Area, many of which have recently become involved with OCIPs (Owner Controlled Insurance Programs) and CCIPs (Contractor Controlled Insurance Programs), also known as wrap-ups. Simply stated, wrap-ups are an insurance program on a construction project whereby the owner buys insurance for other participants on the project and the owner ultimately requires participants to reduce their prices by the insurance costs. Under previous practice, each contractor or subcontractor purchased their own insurance in the open market typically, for a project that is covered by an OCIP or CCIP, participation in these programs is not voluntary but required. In theory, the owner expects to save money by being able to purchase insurance at a discount and avoiding contractor markup for insurance cost. In addition, the argument goes that if a claim occurs a single insurance carrier can more efficiently handle and process the claim.

House Insurance
Date: 3-03-09
Attachment # 5

In reality, OCIPs and CCIPs raise a number of disturbing questions, particularly for subcontractors. Senate Bill 126 would address the most serious problems facing contractors in Kansas when faced with a project covered by an OCIP or CCIP.

I. CANCELLATION OF POLICY DURING THE PROJECT

In the typical OCIP or CCIP policy, the program sponsor can cancel the policy at any time. When this occurs, each subcontractor is required to purchase coverage at the same rate that was in effect. This is an impossibility. Most commercial CGL policies have a wrap-up exclusion that excluded any coverage if the insured is a participant in a wrap-up or OCIP or CCIP plan. Senate Bill 126 addresses this issue by prohibiting cancellation of the policy, once issued, unless the subcontractor also has the option of terminating the contract.

II. CANCELLATION OF THE POLICY AFTER THE PROJECT IS COMPLETE

This is a particularly nasty problem for subcontractors when coverage is terminated prior to the potential Statute of Limitations or Statute of Repose running. Many wrap-ups tend to be terminated within 2 or 3 years which leaves the subcontractor exposed or an uninsured risk for the remaining period of the Statute of Repose, which could be 7 or 8 additional years. If the subcontractor was out of business, this would also cause an uninsured risk to the owner who would also be unprotected. Senate Bill 126 addresses this concern by requiring completed operations coverage for the full term of the Statute of Repose. Therefore, there are no uninsured periods facing the contractor or owner.

III. NOT ALL WRAP-UPS ARE EQUAL

Many wrap-ups do not provide coverage for liability for owned or leased equipment on the job site. Many wrap-up policies specifically exclude liability for owned or leased equipment used on the job site. However, the subcontractor is required to assume such liability in a rental contract. In the event of loss or damage to the leased equipment, the subcontractor would be stuck with exposure with no coverage. Senate Bill 126 fixes this problem by requiring insurance coverage to match the specific items being performed on the project, including leased equipment.

I recently prepared a presentation of OCIPs and CCIPs to the American Subcontractors Association, Kansas City Chapter. I enclose a copy of this presentation for your review and reference.

Court decisions which construe wrap-ups have not been favorable to contractors. In one case, a contractor's equipment was damaged on a wrap-up project by another contractor. The contractor submitted a claim, which was denied. The Court upheld the denial, finding that the contractor could not be both a named insured and a claimant at the same time. An Appeals Court affirmed the decision.

In another case, an ironworker was injured while working on Lambeau field. The Ironworker collects worker's compensation benefits, then files suit against the General Contractor and Subcontractor for negligence. The general contractor and subcontractor say can't sue us - worker's compensation claim is only remedy. Court held the Ironworker could sue – the wrap-up did not create a unified employer. This leaves the general contractor and subcontractor potentially uninsured for the claim.

Problems such as these can and should be resolved by passage of SB 126. Thank you for your attention and courtesy.

Very truly yours,

HOLBROOK & OSBORN, P.A.

Kurt S. Brack

KSB:ld

kansas builders
workers' compensation fund
KS Building Industry Association

Kansas Building Industry Workers' Compensation Fund

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HOUSE INSURANCE COMMITTEE
SB 126
March 3, 2009

CHAIRMAN SCHULTZ, VICE CHAIRMAN PECK, AND MEMBERS OF THE COMMITTEE:

My name is Janet Stubbs appearing in support of SB 126 as it pertains to Worker's Compensation insurance coverage. I am the Administrator of the Kansas Building Industry Worker's Compensation Fund, a homogeneous fund for the residential & light commercial construction industry formed in 1993 under Chapter 44 of the Kansas Statutes. KBIWCF is the largest pool in Kansas with a 2008 premium of just under $14 million and over 850 companies.

SB 126 addresses an issue which has been of concern to me for over 2 years. My corporate attorney and I have been discussing the problem with the Kansas Insurance Department and Rules & Regs have been drafted and are working their way through the process.

As I am sure you are aware, the premium we receive from a company is based upon the payroll in each of the NCCI class codes which are reported to us by our insured companies. My concern regarding Controlled Insurance Programs is that we usually do not receive premium for the payroll attributed to these projects BUT may be found responsible for some accidents of the employees on these jobs.

Some of our insured companies travel long distances to and from the job site. We have had companies drive from Wichita to Junction City, from Salina to Lawrence, and from Topeka to Salina to name just a few. Although KBIWCF has never had to challenge the liability for a vehicle accident under a CIP type job, I have met with others who have. We feel it is only a matter of time until we find ourselves in this situation and that is the reason for some of our concern.

It is my understanding that expensive penalties are often levied for injuries that occur on a CIP jobsite. Therefore, we fear that it makes it financially attractive for subs to report a claim to us alleging that the individual was working at another job when he was injured. We would then be paying for the injury of an employee on whose payroll we were not paid premium. Strains & sprains are the second most prevalent injury reported and we often see those reports coming in days and weeks after the alleged incident.

CIP's have an effect in several areas.

(1) Payroll volume is a consideration in calculation of premium. Therefore, removal of the payroll of a CIP from the calculation of premium for a contractor has a detrimental effect on the premium for the non-

CIP portion of the business. The premium volume discount would be lowered and the subcontractor's annual insurance costs would be increased.

(2) Calculation of the experience modification factor for a company is based upon the amount of premium vs. the losses incurred. It becomes problematic to determine the EM when there is more than one entity that must be depended upon to provide this information.

(3) Dividends also become an issue. It is my understanding that the dividends the subcontractors participating in a CIP would receive from his carrier are the property of the controlling entity of the CIP. Also, the overall premium is one of the factors used in the calculation of dividends by our Fund. In other words, if the company has a greater than 60% loss ratio for the year, it is not considered for a dividend. Taking that premium of the CIP out of the equation could be very detrimental to the subcontractor if there has been a loss or losses in the non-CIP portion of the company's activities. KBIWCF has paid dividends in excess of $5 million from inception through Fund Year 2000. Additional is at KID waiting for authorization.

(4) At least one of the large contractors that operate CIP's has their own "college". Most subcontractors are required to have their employees who will be on the CIP job complete a 30 hour OSHA course. In the past, this particular company has charged a sizeable per person fee for taking their "college course" while I have a staff person that teaches both the 10 & 30 OSHA courses to the KBIWCF members free of charge. We will still do this for our loyal subcontractors but when we do not get the premium for the job on which they will be working, it isn't as "attractive" for us.

(5) Last but not least is the loss of commission to the subcontractor's agent. CIP's become quite financially rewarding to the large agencies administering these ventures. However, just as the regular carrier loses the premium from a CIP, so does the agent of the subcontractor.

I understand the need for the owner or general contractor to be assured of continuous of workers compensation coverage. KBIWCF does notify a certificate holder of the cancellation of coverage on an insured whereas the voluntary market carriers do not and that leaves a void for the certificate holders.

Thank you for the opportunity to express some of the concerns that W.C. coverage providers of the construction industry have with CIP's.

TESTIMONY BEFORE THE
HOUSE INSURANCE COMMITTEE
REGARDING SENATE BILL 126

By Casey S. Halsey
Executive Vice-President and General Counsel
JE Dunn Construction Group, Inc.
March 3, 2009

Thank you, Mr. Chairman, and members of the Committee.

My name is Casey Halsey. I am Executive Vice-President and General Counsel of JE Dunn Construction Group. I appreciate the opportunity to present testimony in opposition to SB 126.

JE Dunn is a national contractor headquartered in Kansas City. JE Dunn does a great deal of work in Kansas and has hundreds of employees who work or live in Kansas (including myself). JE Dunn has been heavily involved in Controlled Insurance Programs ("CIP's") for the last ten years and has itself enrolled nearly $5 billion of projects in such programs.

CIP's are a centralized process for purchasing insurance for a construction project. The program sponsor buys one policy for all participants, including the Contractor and Subcontractors. The aggregated buying power results in broader coverage and higher limits for all participants on the Project. Subcontractors never have to worry about renewing coverage for that risk, the General Contractor doesn't have to worry about the Sub who goes out of business (whether through retirement or failure), and the Owner knows it has specific limits unique to its project with prepaid long-tail coverage. Additionally, sponsors have used the economic efficiencies of CIP's to fund improved safety programs, such as worker orientation, drug testing, safety seminars and worker incentives.

The Committee may hear testimony from the proponents of this Bill that cast much dispersion on the use of CIP's for construction projects. These might include suggestions that the programs were used primarily for profit, are detrimental to subcontractors, and potentially degrade the protection of workers and Owners. We assert those claims are unsupportable. It may also be mentioned that if used at all, they work best on mega projects, such as power plants. JE Dunn has used these programs effectively on many projects of varying size, including hospitals, schools, office buildings and prisons. Specifically, we have employed CIP's on hospitals in Salina, Lawrence and Leavenworth, among others.

A point of controversy in the proposed Bill is the termination of programs prior to "completion" of the projects. It doesn't make any sense for a Sponsor to terminate a program prior to the work being substantially completed because you lose the major benefits of today's CIP, which is the extended completed operations coverage for that work. However, enrollment for each program has to administratively end sometime, and the Subcontractor has their traditional program to protect them thereafter. Sub's traditional insurance rightfully doesn't apply while other coverage is in place, but should and can apply once that other coverage is terminated.

The Proponents of this bill have taken exception to having any deductibles in a CIP. JE Dunn programs have deductibles, as do almost all insurance policies, including the Subcontractor policies the CIP replaces. However, we limit the Subcontractor's participation to only $2500 per occurrence. CIP's are not intended to be a free pass for participants.

The proponent's bill has other provisions that go to the economic risk of participating in a CIP, such as Self Insured Retentions and aggregated limits. JE Dunn doesn't like those risks either. But let's not forget the right of self help. Subcontractors have the right to do as JE Dunn has on projects with SIR's and aggregated limits; don't bid them. Such action does not require legislation.

The Proponents have also raised the issue of fines for safety violations. OSHA is the federally mandated minimum standard of worker safety. I trust no one would take exception to Contractors or Owners wanting to enforce a higher standard which benefits directly the health and welfare of the workers on site. JE Dunn, for example, enforces a strict tie-off rule which is not required by OSHA. Although JE Dunn has not use fines, some contractors and Owners have to good effect. We do not think this tool should be eliminated when the goal is worker safety.

Most significant, from an economic perspective, is the bill's provision that commissions cannot be part of the credit that sponsors take when providing a CIP. Since commissions can easily be fifteen percent (15%) of the cost of insurance, this provision would make CIP's unfeasible. Proponent's explanation for this is that they still require insurance consulting when having to manage their participation in a CIP. However, I don't know of any insurance agent worth his or her salt that wouldn't render that service as part of their relationship with the Subcontractor. In any event, the agent's service in this regard pales in comparison to that required when a policy is actually purchased by the client, which the subcontractor is not obligated for under a CIP

The proposed legislation also takes exception to the "return to work" provisions of most CIP's. Such programs greatly reduce worker recovery times and reduce the Work Comp history which is attributable to a subcontractor through NCCI reporting, even though benefits are provided through a CIP. It also may have ADA implications.

Two other issues were troubling to us. First, the proponents of this bill, although silent as to their intention, have drawn into the potential breadth of this legislation the coverages provide by Builder's Risk insurance. These coverages have often had large deductibles, especially when provided by Owners. These policies have rarely been part and parcel of a "Controlled Insurance Program". However, the language of this proposed legislation is broad enough to include this type of policy in it's terms. Second, the legislation calls for sharing of claims information with "all participants" which is non-competitive if not illegal under HIPPA.

CIP's have brought organized and unified insurance coverage to traditionally uneven and under protecting construction insurance. Both Subcontractors and Owners, as well as the general public, benefit from higher limits, broader coverage and no additional cost. Remember that subcontractors are at most crediting their contract for what they would have paid anyway for their traditional coverage. In this respect, they get the best bargain of all, more coverage for the same price.

In the supplemental note on the Senate Bill, the proponent proclaims that CIP's have become "the number one problem for subcontractors". That may very well be Mr. Miller's most pressing issue, but I assure you it is not high on the list for the vast majority of Subcontractors we work with. They are far more concerned with payment issues, as are we. In fact, most subs we work with appreciate the coverage provided by CIP's, their ability to, in essence, "walk away" from the insurance issues of any project that employs a CIP, and the extra effort given to safety and quality on a CIP project.

We believe that this SB 126 has many faults and defects, some of which are very technical and not all of which have been addressed in my remarks. The Proponents of this bill have highlighted the faults of a few bad programs to condemn an approach which has brought increased sophistication and enhanced benefits of insurance for many construction projects. We believe such legislation is not required. We urge you to study this Bill. It's enactment would be highly detrimental to the procurement of Controlled Insurance Programs in Kansas, making it stand alone as a state where such programs are unfeasible.

However, if the Committee believes that some form of action is appropriate, we offer the attached amendments for consideration.

I appreciate the opportunity to address this Committee and would be pleased to entertain your questions. Thank you.

Session of 2009

SENATE BILL No. 126

By Committee on Financial Institutions and Insurance

1-27

AN ACT concerning insurance; enacting the controlled insurance programs act.

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

Section 1. The provisions of section 1 through 6, and amendments thereto, shall be known and may be cited as the controlled insurance programs act.

Sec. 2. As used in the controlled insurance programs act:

(a) "Commissioner" means the commissioner of insurance.

(b) "Completed operations liability" has the meaning ascribed thereto in K.S.A. 40-4101, and amendments thereto.

(c) The terms "construction," "contract," "contractor," "owner," "person" and "subcontractor" have the meanings ascribed thereto in K.S.A. 16-1802, and amendments thereto.

(d) "Controlled insurance program" means a program of liability insurance coverage that is established by an owner or contractor who contractually requires participation by contractors or subcontractors who are engaged in work required by a construction contract. Controlled insurance programs shall include, but not be limited to, coverage programs that are for a fixed term of coverage on a single construction site, ~~and~~ a consolidated or wrap-up insurance program as the term is used in subsection (b)(3) of K.S.A. 16-1803, and amendments thereto.

(e) "Participant" means any contractor or subcontractor whose participation in a controlled insurance program is required by a construction contract. Participant shall not include an owner or contractor who establishes a controlled insurance program.

(f) "Substantial completion of a construction project" shall have the meaning ascribed to it in K.S.A. 16-1902 and amendments thereto.

Sec. 3. (a) Controlled insurance programs shall:

(1) Establish a method for ~~quarterly~~ reporting of the participant's respective claims details and loss information to ~~all participants~~;

(2) provide that cancellation of any or all of the coverage provided to a participant ~~shall permit the participant to terminate the construction contract requiring its participation, to receive payment for all work completed through the date of cancellation and for all proven costs of ter-~~

General Liability or Workers Compensation

or

that participant

prior to Substantial Completion shall require the Owner or Contractor who establishes a CIP to either replace the insurance or pay the Subcontractor ~~those~~ costs to do so.

~~mination, including, but not limited to, cancellation of supply orders and costs of demobilization;~~

(3) ~~participants shall not be responsible for a deductible or per claim assessment for coverage~~;

(4) keep self-insured retentions fully funded or collateralized by the owner or contractor establishing the controlled insurance program (this provision shall not apply to deductible programs);

(5) disclose specific requirements for safety or equipment prior to accepting bids from contractors and subcontractors on a construction project; and

(6) allow fines for alleged safety violations ~~to be assessed only by government agencies~~.

(b) ~~Enrolled participant's deductions for premiums for general liability coverage or workers compensation shall not include any insurance agent's fees or commissions~~.

Sec. 4. If a controlled insurance program includes general liability coverage for the participants, then:

(a) Coverage for completed operations liability shall not, after substantial completion of a construction project, be canceled, lapse or expire before ten (10) years ~~the limitation on actions has expired as established by subsection (b) of K.S.A. 60-513, and amendments thereto~~;

(b) general liability coverage shall not be required of project participants except for liabilities not arising on the site of the construction project. Any coverage maintained by the participants shall cover liabilities not arising on the site of the construction project;

(c) the general liability coverage provided to participants shall provide for severability of interest, except with respect to limits of liability so that participants shall be treated as if separately covered under the policy; and

(d) ~~participants shall not be required to provide indemnity against claims for bodily injury and property damage arising out of such participant's work except to the extent and to the limits of contractual liability coverage provided by the controlled insurance program~~.

Sec. 5. If a controlled insurance program includes coverage for the workers' compensation liabilities of the participants, then:

(a) Worker's compensation coverage shall include all workers compensation for which payroll attributable to the contractual agreement has been reported and the premiums collected covering ~~all~~ services performed ~~incidental to or arising~~ on the construction site; which the contractor or owner establishing the CIP chooses to enroll in the CIP

(b) ~~participants shall not be required to waive rights of recovery for claims covered by the controlled insurance program, even if those rights of recovery accrue against another participant in the controlled insurance program covered by general liability insurance provided by the controlled insurance program; and~~

(c) ~~participants shall not be required to provide employment to a~~

~~worker who has been injured on the job unless:~~

~~(1) The worker's treating health care provider certifies that the worker is fit to carry out the pre-injury job or modified work similar to the pre injury job without significant risk of re-injury; and~~

~~(2) the employer has the pre-injury job or modified work available~~.

Sec. 6. The commissioner is hereby authorized to adopt such rules and regulations relating to controlled insurance programs as may be necessary to carry out the provisions of the controlled insurance programs act.

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

7-6

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MARCH 3, 2009
STATEMENT OF BRAD SMOOT, Legislative COUNSEL
AMERICAN INSURANCE ASSOICATION
HOUSE INSURANCE COMMITTEE
REGARDING 2009 SB 126

Mr. Chairman and Members:

On behalf of the American Insurance Association, whose over 300 member companies write property and casualty, general liability, workers compensation, home owners and auto insurance throughout Kansas and across the nation, I am pleased to appear today to express our concerns about 2009 Senate Bill 126. A few of AIA's member companies write controlled insurance programs for large commercial construction projects and our association thinks they have a valuable place in the in the array of insurance products available to property owners and contractors. They have been used in Kansas on numerous large taxpayer-supported projects like hospitals and commercial projects including power plants. SB 126, however, has several provisions of concern which we have detailed and for which we have proposed specific amendments to remedy those concerns. See attached.

First and foremost, this new law deserves more time and detailed discussion than it has been able to receive thus far in the legislative process. SB 126, which creates a whole new body of law, was introduced, heard by the Senate FI&I Committee and passed by that Committee in less than two weeks. Opponents of the measure, including AIA, were not able to analyze and prepare testimony for the hearing which occurred only a week after the bill was introduced. The Committee only heard from proponents during the public hearing.

Second, SB 126 is very complicated and involves the substantial interests of building owners, general contractors, subcontractors, workers, insurers, insurance agents and the Kansas Insurance Department. The Insurance Department, which is charged with enforcing Kansas insurance laws, including SB 126 if enacted, should be given ample time to consider those interests, the complex provisions of the bill and its impact on public.

AIA has shared its specific concerns with the proponents, the Kansas Association of Insurance Agents, the Kansas Insurance Department and other opponents. We encourage the Committee to withhold action on the measure until the Kansas Insurance Department and others have had an opportunity to iron out our differences and discuss the important ramifications of the bill. We would be pleased to meet with all interested parties to improve and clarify the final bill. It is our understanding from testimony of the proponents that SB 126 would be the first law of its kind in the nation and since you are being asked to "invent the wheel," the Legislature ought to take the time to get it right. Thank you.

AIA Attachment

Specific comments, questions and suggested revisions to SB 126:

Section 2(d): since CIPs are not always single sites, "or multiple" needs to be added. There may be times when the same owner and/or contractor has one CIP for multiple locations. These CIPs would most likely be considered a rolling program.

Section 2(e) needs to have the last sentence removed. If owners, contractors, or construction managers that sponsor (the CIP purchaser) are not included in the CIP then they would not be included for the work they self perform.

Section 2(f) uses an already defined term in the Kansas Fairness in Public Construction Contract Act to define substantial completion, which is the same definition used, but written out and did not refer to the current code definition, in the prior bill. Since this definition is currently used in the Kansas law, we don't currently see a reason to change.

Section 3(a)(1) requires quarterly reporting by CIPs. The prior bill specified the reports to be timely, which caused concern as not being specific enough. This language should work, but confirming that it is a reasonable and workable request.

3(a)(3) needs to be reworded by adding "not charge enrolled" in front of participants, and "who are not the CIP purchaser" after participant, and removing "shall not be responsible for" that comes right before "a deductible." The section should read: "not charge enrolled participants who are not the insurance purchaser a deductible or per claim assessment for coverage." The sponsor (CIP purchaser) should be able to make use of deductibles, but at the same time, nonsponsor participants should not have a deductible charged against them as their net insurance has already been considered in their bids.

Section 3(b) should be entirely stricken. Reasonable commission and fees are something that should be shared amongst participants as they are all using the product/service and part of the normal cost.

Section 4(a) most carriers usually cover completed operations for 10 years in CIPs, but that if the policy is cancelled for any reason, then the completed operations coverage is also cancelled. The statute cited is § 60-513(b), which limits statute of repose to 10 years maximum, which is fine, however, situations may occur in which another carrier takes over the completed operations after substantial completion. To dispel any concern that a carrier can't be relieved of its liability if another carrier takes over, add the following language at the end of this section: "but in no case greater than 10 years, and if another carrier takes responsibility for completed operations liability coverage, any and all prior completed operation liability carriers will be released from completed operations liability unless specified otherwise in subsequent policies;"

Section 4(b) needs to clarify that the coverage concerned in this section talks about coverage in addition to that already provided by the CIP. Add "in addition to that provided in the CIP" after "required" in the first sentence, and after "maintained" in the second sentence.

Section 5(a) seems to be fine in that it resolves the concern of situations when a CIP has excluded certain WC liabilities taking place on the site from the scope of the plan's coverage.

Section 5(b) reviewing to make sure there is no concern of an employee going after the general liability policy in situations that should be covered under workers' compensation.

Section 5(c)(1) should delete the words "similar to the pre injury job." Injured workers should be given every opportunity possible to get back to work. If the job opportunity means doing something that is not similar to the pre injury job, but that the worker's treating health care provider certifies that the injury does not keep the worker from the modified work, then there is no reason not to get the worker back to work.

AGC of KANSAS

Building a Better Kansas Since 1934

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TESTIMONY OF
ASSOCIATED GENERAL CONTRACTORS OF KANSAS
BEFORE HOUSE INSURANCE AND FINANCIAL INSTITUTIONS COMMITTEE
SB 126

March 3, 2009

By Eric Stafford, Associated General Contractors of Kansas, Inc.

Mister Chairman and members of the committee, my name is Eric Stafford. I am the Director of Government Affairs for the Associated General Contractors of Kansas, Inc. The AGC of Kansas is a trade association representing the commercial building construction industry, including general contractors, subcontractors and suppliers throughout Kansas (with the exception of Johnson and Wyandotte counties).

The AGC of Kansas opposes SB 126 and respectfully asks that the committee reject this bill at this time.

Some companies and owners in the construction industry offer certain insurance programs where all companies on the project are covered under a single policy. There are still some concerns that the language in SB 126 will have unintended consequences, tying the hands of owners or general contractors who utilize these policies and preventing them to do so.

AGC would prefer this issue be sent to an interim or reviewed by the Insurance Department to determine the impact this legislation would have on OCIP's or CCIP's. If the committee chooses to take further action on the bill, AGC would respectfully ask that the amendment proposed by Mr. Halsey and J.E. Dunn be adopted.

The AGC of Kansas respectfully requests that you do not recommend SB 126 favorably for passage. Thank you for your consideration.