

SESSION OF 2010

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE SUBSTITUTE FOR SENATE BILL NO. 377**

As Agreed to March 30, 2010

**Brief\***

House Sub. for SB 377 would amend the Kansas Fairness in Private Construction Act and the Kansas Fairness in Public Construction Act dealing with retainage and alternate security.

Under current law, the statute defines "retainage" as money earned by a contractor or subcontractor, but withheld to ensure proper performance by the contractor or subcontractor.

The bill would amend the Kansas Fairness in Private Construction Act and the Kansas Fairness in Public Construction Act to require that an owner, contractor or subcontractor:

- Shall not withhold more than a five percent limit of the value of the contract or subcontract as retainage unless the owner or contractor determines that a higher rate of up to ten percent of the contract as retainage is required to ensure performance of the contract. The bill would cap the retainage at 10 percent; and
- Shall be required to release all remaining retainage on any undisputed payment due to the contractor on a construction project within 30 days after substantial completion of the project. If the contractor or subcontractor has not completed the project, an owner may withhold that portion of the retainage attributable to the work until 30 days after the work is completed. Substantial completion would mean the stage of a construction project, or a

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designated portion thereof, where the project is sufficiently complete, in accordance with the contract, so that the owner can use the completed portion for its intended use.

Under the bill, an owner may withhold not more than 150 percent of the value of incomplete work, provided that the incomplete work is due to the fault of a contractor. A contractor may withhold not more than 150 percent of the value of incomplete work, provided that the incomplete work is due to the fault of a subcontractor. Any amounts retained for incomplete work shall be paid within 45 days after completion of the work as part of the regular payment cycle. A subcontractor may withhold not more than 150 percent of the value of incomplete work that is the responsibility of another subcontractor, provided that the incomplete work is due to the fault of such other subcontractor. Any amounts retained for incomplete work shall be paid within 45 days after completion of the work as a part of the regular payment cycle.

Under the bill, a general contractor or subcontractor may request an alternate security in lieu of retainage. The bill would define "alternate security" as an irrevocable bank letter of credit, certificate of deposit, cash bond, or other type of asset or security of value equal to or exceeding the amount of the retained funds. Alternate security would not include a performance bond or a payment bond. If the owner or general contractor or subcontractor accepts an alternate security, they have the right to determine which type of alternate security shall be accepted.

The bill would reconcile the language of the Kansas Fairness in Public Construction Act and the Kansas Fairness in Private Construction Act so that the acts dealing with retainage would be similar.

### **Conference Committee Action**

The Conference Committee agreed to the House version of the bill. The Conference Committee further agreed to

clarifying language and technical changes and the deletion of the State Construction Registry provisions in the bill.

## **Background**

The provisions of SB 377 were deleted, and the provisions of Sub. HB 2238 were inserted.

Proponents of Sub. HB 2238 included representatives of the Associated General Contractors of Kansas, the American Sub-Contractors Association, and the Western Extralite Company.

Opponents of the bill included representatives of the Johnson County Government, the Unified Government of Wyandotte County, the Blue Valley School District, the Kansas Association of School Districts, the City of Lenexa, the Wichita Public Schools, Water District No. 1 of Johnson County, the American Institute of Architects, the Kansas Association of Counties, the City of Wichita, the League of Kansas Municipalities, the City of Overland Park, the Kansas Association of Counties, and Westar Energy.

The House Committee removed the contents of SB 377 and inserted the contents of Sub. for HB 2238 as a House substitute bill for SB 377.

The House Committee of the Whole amended the bill to include the contents of SB 469 into SB 377. The amendment would establish the State Construction Registry and would amend language relating to remote claim liens on commercial property.

The Division of Budget's fiscal note was unavailable on the House Sub. for SB 377 when it passed out of the House Committee on Commerce and Labor. Further, the fiscal note for the amended contents of SB 469 would increase the Secretary of State's expenditures by approximately \$83,700 in FY 2011 to build a new filing system for notifications by

contractors, subcontractors, and remote claimants. The agency indicates that the costs could be absorbed within existing resources. The Secretary of State indicates that the increase in fee revenue cannot be estimated.

Kansas Fairness in Private Construction Act; Kansas Fairness in Public Construction Act