

## MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 A.M. on February 7, 2006 in Room 241-N of the Capitol.

All members were present except:

Joe Humerickhouse- excused

Mike Kiegerl- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research Department

Norm Furse, Office of Revisor of Statutes

Rena Jefferies, Office of Revisor of Statutes

June Evans, Committee Secretary

Conferees appearing before the committee:

Rep. John Grange

Ken Keller, Western Extralite Company

Bill Miller, Building Erection Services Company

Dale Glenn, Co-Chair, Government Affairs, AIA, Kansas

Corey Peterson, Associated General Contractors

Joe Levens, Martin K. Eby Construction, Wichita

Dean Ferrell, Ferrell Construction Company, Topeka

Kevin Kelly, Kelly Construction Company,

Topeka Mark Schreiber, Manager, Government Affairs, Westar Energy

Others attending:

See attached list.

The Chairman opened the hearing on **HB 2655 - Kansas fairness in private construction contract act.**

Representative John C. Grange testified as a proponent to **HB 2655**. Similar legislation was introduced last session under **SB 33** which contained elements of contractor rights for prompt pay for private construction projects. Retainage, normally 10%, is held until completion of the project. Once all conditions of the contract are met, the owner has use of the project, and has accepted the keys so to speak, and final payment is released along with the retainage. Current law requires this payment to be made within 60 days. An amendment to the bill is reducing the 60 days to 30 days. There is room for compromise; therefore, continued work with all concerned parties to bring about additional retainage reform in the future is needed (Attachment 1).

Ken Keller, controller, Western Extralite Company, testified as a proponent to **HB 2655**. Last year the Kansas Legislature took an enormous step forward in leveling the playing field between the owner, the general contractor and sub-contractors when **Sub SB 33** was passed out. A very important part of the payment process was omitted from **Sub SB 33**. The average final retainage payment is made 167 days after completion of the project and only 89.6% is paid in full. That means that a little over 10% aren't paid in full (Attachment 2).

Dale Glenn, Government Affairs Chair, American Institute of Architects in Kansas (AIA Kansas) testified as an opponent to **HB 2655**. The process of designing and constructing buildings involves a myriad of people: the owner, design professionals, general contractors, subcontractors representing a wide variety of trades, and material suppliers. Many remedies are sought by subcontractors and material suppliers regarding prompt payment between the owner, the contractor, subcontractor and the material suppliers for private contracts. It provides penalties if payments are not made without stipulated time frames. AIA agreed to the compromise worked out in the conference committee that deleted the requirements that are now in **HB 2655**. Retainage is often the only tool the owner has to make sure the work is finished in a satisfactory way. Many times returning retainage within 60 days on undisputed work is not reasonable (Attachment 3).

Corey D. Peterson, Associated General Contractors of Kansas, Inc., (AGC) testified in opposition to **HB 2655**. AGC opposes **HB 2655** as written, but would support the bill with the inclusion of two amendments. AGC respectfully requests that the text beginning on page 2, line 43 with “, *but in any...*” and concluding on

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page 3, line 4 “...*under the contract*,” be deleted. AGC also asks that on page 3, line 18, “60 days” be amended to read “30 days.” AGC of Kansas respectfully requests that **HB 2655** be passed out favorably as amended (Attachment 4).

Joseph D. Levens, Jr., Vice President of Eby Construction and President of the Associated General Contractors of Kansas, Inc., testified as an opponent to **HB 2655** as written, but would support the bill with one amendment as presented by AGC of Kansas (Attachment 5).

Dean Ferrell, Ferrell Construction of Topeka, Inc., testified in opposition to **HB 2655**. Concern with **HB 2655** is centered around early release of retainage to subcontractors when they have certified their work is 100% complete. Urge passage of **HB 2655** with AGC of Kansas amendments (Attachment 6).

Kevin Kelley, President of Kelley Construction Co., Inc. and Vice President of the Associated General Contractors of Kansas, testified opposing **HB 2655** as written. With the amendment by AGC, **HB 2655** would be supported (Attachment 7).

Mark Schreiber, Manager, Government Affairs, Westar Energy, testified in opposition of **HB 2655**. Westar’s opposition is based on the new language in section 2(f). If this new language was deleted there would be no opposition to the bill (Attachment 8).

William R. Miller, President, Building Erection Services Company, testified after the opponents as a proponent. Mr. Miller spoke in favor of a balloon to **HB 2655**, striking (h) on page 1, on page 2 deleting “*but in any*” through “*contract*,” on page 3 and adding “Retainage shall be released by the owner upon completion of any portion of work that is described in a specification section. No more than 150% of the value of work that is not completed due to no fault of the subcontractor may be withheld pending completion. In line 15, page 3, change 10% to 5% and delete (b) and reletter (c) to (b) (Attachments 9, 10 and 11).

The Chairman closed the hearing on **HB 2655**.

The meeting adjourned at 10:55. The next meeting will be February 8, 2006.