

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 A.M. on March 22, 2005 in Room 241-N of the Capitol.

All members were present.

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research Department  
Norm Furse, Office of Revisor of Statutes  
June Evans, Committee Secretary

Conferees appearing before the committee:

Trudy Aron, American Institute of Architects  
John Frederick, Government Relations Manager, The Boeing Company

Others attending:

See attached list.

The Chairman said the hearing on **Sub SB 33 - Fairness in private construction contract act** would be continued.

Trudy Aron, Executive Director, American Institute of Architects in Kansas (AIA Kansas) testified in opposition to **Sub SB 33**. **Sub SB 33** affects those engaged in private construction contracts and hampers individuals by severely limiting issues that are normally covered in contracts. Compromises have been made on the bill and the bill is less onerous than the original proposal.

Private contracts are not cast in stone and can and are modified to meet the needs of owners, contractors, subcontractors, and others. AIA Kansas does not believe the state should dictate the terms in private construction contracts.

Building construction is complex. No building gets completed without the participations of many professions, trades and crafts. With few exceptions, construction of each building project is unique and the requirements for each are different (Attachment 1).

John Frederick, Government Relations Manager for The Boeing Company, an opponent to **Sub SB 33**, testified Kansas law has historically embraced the concept of freedom of parties to contract on mutually agreeable terms and conditions. Contracts are comprised of various provisions that reflect the parties' allocation of risks and liabilities. In Boeing's experience, all these provisions are subject to substantial negotiation by the parties to produce an agreement that reflects the parties' allocation of risk and liability in exchange for an agreed upon purchase price for the building project. Under current Kansas law, the bargain ultimately reached by the parties on all of these points has been enforceable in the courts of Kansas by each party in situations where disputes arise.

Boeing is concerned that if **Sub SB 33** becomes law it would generate undue and expensive litigation as to its applicability because it does not address multi-jurisdictional issues nor does it define "private construction project" (Attachment 2).

The Chairman closed the hearing on **Sub SB 33**.

Representative Grange explained a balloon to **Sub SB 33**. On page 2, line 43, after "owner," add "but in any case retainage shall be paid to a subcontractor not more than 60 days after the subcontractor has completed all the work of the subcontractor under the contract,".

Staff briefed a proposed amendment to **Sub SB 33** (Attachment 3).

**Representative Grant moved and Representative Kiegerl seconded to accept the Revisor's amendments to Sub SB 33**, (everything in the amendment that has "Revisor" behind it). The motion carried.

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:00 A.M. on March 22, 2005 in Room 241-N of the Capitol.

Representative Grange moved and Representative Humerickhouse seconded to accept amendment on page 2, line 43 regarding retainage. The motion carried.

Representative Novascone moved and Representative Ruiz seconded on page 2, line , line 42 and page 3, line 3, change “five” to “seven” and on page 3, line 5, change “sixth” to “eighth”. The motion carried.

Representative Pauls moved and Representative Ruff seconded to amend on page 1, lines 25 - 28 to read: (b) “ ‘Contract’ means a contract or agreement concerning construction made and entered into by and between an owner and a contractor, a contractor and a subcontractor or a subcontractor and another sub contractor.” Strike on page 1, lines 32 - 35 and reletter the remaining subsections. On page 2, line 18, add “, except that a contract may require a contractor or subcontractor to provide a waiver or release of such rights as a condition for payment, but only to the extent of the amount of payment received” after “thereto”. On page 2, line 29, add “or bond to secure payment of claims” after “lien”. The motion carried.

Representative Pauls moved and Representative Jack seconded on page 3, lines 30 and 31, strike “and reasonable attorney fees”. The motion carried.

Representative Sharp voted NO.

Representative Grant moved and Representative Grange seconded on page 2 lines 38, 39 and 40, Page 3, lines 6 and 7, to delete “1.5% of the undisputed amount per month or fraction of a month until the payment is made.” Replace with “the rate of 18% per annum”. On page 3, lines 15 thru 17, delete “an additional 1.5% of the amount not paid for each month or fraction of a month until such retainage is paid” and replace with “interest to the contractor or subcontractor to whom payment was due, beginning on the first business day after the payment was due, at a rate of 18% per annum”. The motion carried.

Representative Pauls moved and Representative Ruff seconded on page 3, line 11, to remove “uncontested” and replace with “undisputed”. The motion carried.

Representative Grant moved and Representative Grange seconded to move **Sub SB 33** as amended out favorably for passage.

A Division was called: 10 Ayes and 5 Nays

**Sub SB 33** was moved out favorably as amended.

The Chairman thanked the committee and staff for their work this year. This will be the last committee meeting this year.