

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 a.m. on February 5, 2009, in Room 136-N of the Capitol.

All members were present.

Committee staff present:

Bruce Kinzie, Office of the Revisor of Statutes
Melissa Calderwood, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Beverly Beam, Committee Assistant

Conferees appearing before the committee:

Melissa Calderwood, Principal Analyst, Research Department
Bill Miller, American Subcontractors Association and Midwest Crane and Rigging, LLC
([Attachment 1](#))
Richard Usher, Hill & Usher Insurance & Surety ([Attachment 2](#))
Kenneth R. Keller, Western Extralite Company (retired) ([Attachment 3](#))
Kurt Brack, Attorney, Holbrook & Osborn, P.A. (Written only) ([Attachment 4](#))
Mark E. Gardner, George J. Siebers & Co., Inc. (Written only) ([Attachment 5](#))
Erin Hoestje, Associate General Counsel, Securities Commissioner's Office ([Attachment 6](#))

Others attending:

See attached list.

The Chair welcomed everyone to the meeting.

Hearing on

SB 126 - Controlled insurance program act.

Melissa Calderwood, Principal Analyst, Research Department, gave an overview of the bill. Ms. Calderwood stated that **SB 126** would enact the Controlled Insurance Programs Act. She said this bill defines controlled insurance program as a program of liability insurance coverage that is established by the owner or contractor who contractually requires participation by contractors or subcontractors who are engaged in work required by a construction contract. She said controlled insurance programs would include coverage programs on a single construction site. She said controlled insurance programs would be required to establish a method for quarterly reporting of claim details and loss information to all participants. She noted that programs must allow cancellation of any or all of the coverage provided to permit the participant to terminate the construction contract and receive payment for all work completed through date of cancellation. She said participants could not be charged a deductible for coverage; programs must keep self-insured retention fully funded by the owner or contractor; disclose specific requirements for safety or equipment prior to accepting bids; and allow fines for alleged safety violations to be assessed only by government agencies. She said participant deductions for general liability coverage or workers compensation premiums would not include insurance agent's fees or commissions. Finally, she noted that the bill also outlines requirements for a controlled insurance program that includes general liability coverage or workers compensation liabilities of the participants. The Kansas Insurance Department indicates there would be no fiscal effect associated with the enactment of this bill, she said..

Bill Miller, representing American Subcontractors Association and Midwest Crane and Rigging, LLC, testified in support of **SB 126**. He stated that 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. He said 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. He said participation in these programs is not voluntary. Mr. Miller said these programs have serious deficiencies for the participants and, in many cases, for the owner as well. He said **SB 126** addresses the most serious problems. ([Attachment 1](#))

CONTINUATION SHEET

Minutes of the Senate Financial Institutions And Insurance Committee at 9:30 a.m. on February 5, 2009, in Room 136-N of the Capitol.

Richard Usher, Hill & Usher Insurance & Surety, testified in support of **SB 126**. Mr. Usher stated that 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 most contentious issues within today’s construction industry. He said 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. (Attachment 2)

Ken Keller, retired controller with Western Extralite Company, testified in support of **SB 126**. Mr. Keller said he does not oppose the concept of owner or contractor controlled insurance programs, also known as OCIPs and CCIPs and sometimes as wrap-up insurance programs, but he wants this legislation to make sure the subcontractor has the same protection under this program that he would have under his own insurance coverage. He said currently, that is not the case in some contracts. He said there are contracts that state coverage will end in three years. He said the statute of repose in Kansas is 10 years. That means you have to find coverage for the remaining seven years, or be willing to stand the risk of being self-insured. He said that coverage is not generally available. He said there are 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. Mr. Keller noted that the list of potential problems in the wrap-up programs is lengthy, but they are addressed and will be corrected with the passage of **SB 126**. (Attachment 3)

Kurt Brack, Holbrook & Osborn, PA, submitted written testimony. (Attachment 4)

Mark E. Gardner, George J. Siebers & Co., Inc., submitted written testimony. (Attachment 5)

Senator Barnett suggested this bill go to the Insurance Commissioner for further clarification. The Chair closed the hearing.

Hearing on

SB 137 - Viatical act; exemption for acts and orders of securities commissioner.

The Chair called Erin Hoestje, Associate General Counsel, Office of the Securities Commissioner, who testified in support of **SB 137**. Ms. Hoestje stated that **SB 137** amends K.S.A. 2008 Supp 40-5012a(f), to include National Conference of Insurance Legislatures (NCOIL) Life Settlements Model Act language on page 3, line 36 of the bill which states, “this act shall not preempt, supersede, or limit any provision of any state securities law or any rule, order or notice issued thereunder.” She said the statute already provides for preservation of our authority to investigate, examine and prosecute violations of law. She said there is no clear preservation of the administrative authority of the Securities Commissioner. She noted that failure to include this language will leave the Securities Commissioner in the awkward position of having to either ignore minor violations of the Kansas Uniform Securities Act or engage in criminal prosecution. (Attachment 6)

The Chair closed the hearing on **SB 137**. Senator Kelsey moved to pass SB 137 out favorably. Senator Brownlee seconded. Motion passed. The Chair said **SB 137** will be placed on the Consent Calendar.

The next meeting is scheduled for February 9, 2009.

The meeting was adjourned at 10:20 a.m.