

## MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairman Karin Brownlee at 8:30 A.M. on February 2, 2005 in Room 123-S of the Capitol.

Committee members were in attendance

Committee staff present:      Kathie Sparks, Legislative Research  
Susan Kannarr, Legislative Research  
Helen Pedigo, Revisor of Statutes  
Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

Dean Ferrell-Ferrell Construction  
Mark Hutton-Hutton Construction  
Corey Peterson-AGC  
Phil Sewell-Central Mechanical  
Trudy Aron-American Institute of Architects  
Rick Dodds-Legal Counsel for Boeing  
Wayne Hardy-Westar Energy-Mgr. Contract Administration  
Sandy Jocquot-League of Municipalities

Others attending:

See attached list.

Chairperson Brownlee opened the meeting by calling the committee's attention to written testimony from proponents for SB 33: Jim DeHoff, Executive Secretary Kansas AFL-CIO (Attachment 1), Kathy Damron, Kansas City Kansas Area Chamber of Commerce (Attachment 2), and Robert L. Switzer, Jr., A. T. Switzer Company (Attachment 3). Chairperson Brownlee announced today's hearing was for opponents of SB 33 and introduced Dean Ferrell, President of Farrell Construction of Topeka, Inc. as the first conferee.

Mr. Ferrell testified in opposition of SB 33 (Attachment 4). Mr. Ferrell feels that this legislation would impose restrictions on private owners which would be a deterrent to future investment in capital projects in the State of Kansas. Mr. Farrell also has concerns on the 5 day limit to dispute subcontractors' billings and the release of retainage by line item on General Contractors' schedule of Values.

Chairperson Brownlee introduced Mark Hutton, Hutton Construction. Mr. Hutton expressed his opposition to SB 33. (Attachment 5) Mr. Hutton feels the bill fails to recognize the freedom of private industry and individuals to negotiate between themselves mutually beneficial terms and conditions upon which they freely choose to do business. He also feel it singles out the construction industry.

Chairperson Brownlee introduced Corey Peterson with AGC of Kansas. Mr. Peterson testified in opposition to SB 33. (Attachment 6) Mr. Peterson stated negotiations had been ongoing with the subcontractors and believed significant progress had been made. He was disappointed when they could not reach an agreement and the subcontractors chose to go forward with SB 33. He agreed that there are issues that need to be resolved but believes SB 33 would protect poor subcontractors, while putting owners and quality general contractors at unnecessary risk. Therefore, he offered an amendment (balloon) which deletes a large portion of the bill's text. (Attachment 6) The primary focus of the proposed amendment is to make contracts more enforceable, while not prohibiting the ability of private parties to negotiate contract terms.

Chairperson Brownlee asked Mr. Peterson if the Proponents to this bill had been offered copies of this balloon before today. Mr. Peterson stated "no".

Chairperson Brownlee introduced Phil Sewell with Central Mechanical Wichita, Inc. Mr. Sewell stated he did not oppose the intent of SB 33 which he believes is to insure all private party construction contracts are promptly paid in accordance with their respective contracts, but stated the balloon to SB 33 satisfies the intent of SB 33, prompt payment of monies rightfully due and does so without the mandating of prescriptive contract terms. Mr. Sewell urged the committee to amend SB 33 per the balloon. (Attachment 7)

## CONTINUATION SHEET

MINUTES OF THE Senate Commerce at 8:30 A.M. on February 2, 2005 in Room 123-S of the Capitol.

Chairman Brownlee introduced Trudy Aron, Executive Director of the American Institute of Architects. Ms. Aron stated AIA is opposed to the language in SB 33, they believe that the Associated General Contractors of Kansas have amendments that make it possible to address the problems without wholesale changes that are not in the best interest of the owner. In closing she stated that AIA Kansas supports these amendments. (Attachment 8).

Chairperson Brownlee introduced Rick Dodds, Legal Counsel for the Boeing Company. Mr. Dodds stated that the Boeing Company could not support SB 33 and believe the bill would result in a significant restriction on the legal rights of citizens of Kansas. The negotiation of private contract issues should remain outside of the legislative process. (Attachment 9)

Chairperson Brownlee introduced Wayne Hardy, Manager Contract Administration of Westar Energy. Mr. Hardy stated that Westar Energy is in opposition to SB 33 due to the fact it disrupts normal contract negotiations. Matters addressed by SB 33 are better dealt with in the negotiation process. If either a firm or its contractor breaches a contract, both have adequate recourse. Weststar Energy encourages the committee to oppose SB 33. (Attachment 10)

Chairperson Brownlee introduced Sandy Jocquot the Director of Law/General Counsel of the League of Kansas Municipalities. Ms. Jocquot stated the League of Kansas Municipalities opposes the language in SB 33. (Attachment 11) stated the League of Kansas Municipalities opposition is primarily based upon the public policy of allowing municipalities the flexibility to contract for public improvement projects to the benefit of the public. Most cities only have meetings once a month at which time they pay bills and may not be able to meet a strict 30 day payment requirement as set forth in SB 33. This bill could be amended to make it clear that only private construction projects are covered by the language in SB 33. If SB 33 is clarified to exclude construction projects undertaken by municipalities, the League of Kansas Municipalities would withdraw its opposition to the bill.

Chairperson Brownlee referred the committee to written testimony from Bob Totten, Kansas Contractors Assoc., Inc. (Attachment 12), Joe Levens, Vice President of the Martin K. Eby Construction Company, Inc. (Attachment 13), and Marlee Carpenter, Vice President of Government Affairs for the Kansas Chamber. (Attachment 14)

During questions and answers the committee asked if the balloon had been shared with the other opponents such as Boeing and Westar before this meeting. With the answer being no, the committee suggested that possibly the Opponents and Proponents should get together and address the issue of the balloon.

Senator Barone asked for a report showing the number of lawsuits filed by subcontractors to collect their monies. It was stated that a report was not available and if this information was compiled it would not be factual. Most subcontractors do not file lawsuits because it would cost more to process than what was owed.

Chairperson Brownlee asked for a meeting of the minds between the Opponents and Proponents to work on the issues of the number of days and early retainage.

Chairperson Brownlee recognized Chris Wilson a representative from the Kansas Building Industry. Ms. Wilson stated the Kansas Building Industry was in opposition to SB 33 and she would provide written testimony to the committee.

Chairperson Brownlee closed the hearing and adjourned the meeting at 9:30 a.m. The next meeting to be held on Thursday, February 3, 2005 at 8:30 a.m. in room 123S.