

Approved: 3/21/07
Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:05 A.M. on March 08, 2007 in Room 231-N of the Capitol.

All members were present except:
Brenda Landwehr- excused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research Department
Duston Slinkard, Office of Revisor of Statutes
Stephen Bainum, Committee Assistant

Conferees appearing before the committee:
Chris Wilson, Executive Director, Kansas Building Industry Association (Written Only)
Dan Morgan, Director of Government Affairs, The Builders Association
Corey D. Peterson, Executive Vice President, Associated General Contractors of Kansas, Inc.
Martha Neu Smith, Executive Director, Kansas Manufactured Housing Association (Written Only)
Wayne Maichel, Director of Employment Insurance, Department of Labor
Mike Gee, Field Operations Supervisor, Department of Labor

Others attending:
See attached list.

The Chairman opened the hearing on **SB 292 - Employment security law contractor liability for subcontractor payments.**

Written only testimony as a proponent of **SB 292** was received from Chris Wilson, Executive Director, Kansas Building Industry Association (Attachment 1).

Dan Morgan, Director of Government Affairs, The Builders Association testified as a proponent of **SB 292** (Attachment 2). Dan stressed the unfairness of holding one party liable for the obligations of another party. All parties to a construction project should be responsible for their own liabilities. There is a way for the General Contractor to avoid the liabilities of the Sub Contractor. The Sub Contractor can provide a bond but that only adds costs to the project. Another way is for the General Contractor to submit a Prime Contractors Release of Liability for each Sub Contractor. Then the Department would certify that the Sub Contractor had met their obligations. That produces additional administrative responsibility for the General Contractor.

Corey D. Peterson, Executive Vice President, Associated General Contractors of Kansas, Inc. testified as a proponent of **SB 292** (Attachment 3). This law was actually enacted in 1961 and it has not been a critical issue for the industry. We are concerned with the amount of liability that it places on the General Contractor. In the 60's the General Contractor performed most of the work on the project but now the majority of the work is done by Sub Contractors. We feel that each company should be responsible for their own actions.

Representative Ruiz asked how big a problem it was. Corey said it was rare.

Representative Grant asked if we are just correcting potential trouble. Corey said it is to protect from potential problems.

Representative Huntington asked why Sub Contractors would have difficulty getting bonds. Corey said the industry relies on a lot of small companies and like insurance there are requirements they have to meet to obtain them.

Representative Roth asked if those Sub Contractors who have trouble getting a bond would be most likely to not pay their unemployment tax. Theoretically yes, they might be more likely to, but just because you cannot receive bonding does not mean you are on the brink of going under. A solid company could have one law suit which might make it difficult to obtain a bond.

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Representative Metzker asked what the effect would be to a small Sub Contractor. Really none.

Representative Huntington asked about a contractor placing a lien on the project if the sub does not pay his employees. Corey did not think that was the case with this bill. The only thing this bill effects is the payment of unemployment insurance.

The Chairman introduced written only testimony from Martha Neu Smith, Executive Director, Kansas Manufactured Housing Association in support of **SB 292 (Attachment 4)**.

There being no more proponents or neutral conferees the Chairman introduced Wayne Maichel, Director of Employment Insurance, Department of Labor who testified as an opponent of **SB 292 (Attachment 5)**. He emphasized that the item stricken from the law by this bill had been a part of the statute since 1961. It has been a very effective tool to ensure that Sub Contractors pay their unemployment taxes. The Agency very rarely uses the provision but it is helpful in convincing the Sub Contractor to pay the taxes. The Employment Advisory Council recommended that we not change this law. Wayne displayed the notice that he had sent to all Contractors which had been the cause of the controversy. (Attachment 6).

Mike Gee, Assistant Chief of Contributions, Department of Labor appeared to explain the K-CNS form (Attachment 7) and answer any questions the committee might have.

The Chairman asked if the General Contractor was an employer of the Sub Contractor. Mike answered that he was not an employer but in hiring in the Sub Contractor he had verified some information about the Sub.

Representative Grant asked if the Sub was delinquent do you notify the Sub first before you send this information to the General. Mike says that they do deal with the Sub first.

Representative Grange asked how the Department knew he was a Sub Contractor to begin with. Mike says they normally would get an unemployment claim. A lot of them are found thru the use of hotlines which have been established. Competing companies will report a Sub that is paying cash. Many times a General Contractor will submit a list of their subs and ask the Department to verify their status.

The Chairman asked why should a General Contractor be responsible for the debts of the Sub. It is an issue of fairness, why is it their responsibility? Mike said it is because they are the overseer of the project and for general compliance of the industry. Normally the General is holding funds back for the Sub. It is rarely used and when it was used the General Contractors were not mad at the Department but instead appreciated the power they held over the Sub.

Representative Grant asked if the bill is passed will you still inform the General Contractor that the Sub is delinquent or will it only be the responsibility of the Sub. Mike said that if this law passes the Department will not be able to provide any information to the General Contractor about the Sub.

Representative Grange asked if a General Contractor had suspicions he could still report it to the Department and the Department would investigate. Mike said yes and that they would continue to do that.

Representative Huntington asked if the Department could fire the Sub. Mike said that the Department could still meet with the General Contractor to get information and could still investigate, but this bill would prevent us from reporting a delinquency to the General Contractor.

There being no further questions the hearing was closed on **SB 292**.

The Chairman called the committee attention to **SB 235 - Employment security law exclusions from definition of employment**. He reminded the committee that they had asked the Advisory Council to provide us with some information. They had a problem with some wording about a lessee relationship. He asked Tom Whitiker, Executive Director, Kansas Motor Carriers Association

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to give us an update on that. He indicated that the Council met on Monday and asked them to work out the language. He asked the committee to pass the bill out without their amendment. That was the recommendation of the Council and the Kansas Motor Carriers Association.

Representative Grant made a motion to pass the bill out favorably, seconded by Representative Sharp. There was no discussion and the committee passed the bill out favorably by voice vote.

The Chairman called for action on **SB 288 - Reports on workforce development activities.**

Representative Gordon made a motion to pass the bill favorably for passage, seconded by Representative Roth.

Representative Pauls ask why the bill went to the Economic Development Committee rather than Commerce and Labor. Representative Gordon said that it applied to both committees in some ways.

The Chairman said that on the Senate side they are one committee instead of two.

Representative Pauls said she was OK with it.

The Chairman called for the question and **SB 288** passed by voice vote.

The Chairman adjourned the meeting at 9:50 A.M.