

SESSION OF 2014

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE
BILL NO. 2246**

As Amended by Senate Committee on
Commerce

Brief*

Sub. for HB 2246, as amended, would create new law establishing a peer review committee for the Board of Technical Professions.

The purposes of the peer review committee could include:

- Evaluating and improving the design, drawings specifications or quality of services rendered by a design professional, which would be defined to include the practices of architecture, landscape architecture, land surveying, geology, or engineering;
- Evaluating the design, construction, procedures and results of improvements to real property based upon services rendered by a design professional during or after completion of such improvements:
or
- Preparing an internal lessons learned review of any project or services rendered for the purpose of improving the quality of services rendered by a design professional.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Under the provisions of the bill, the peer review committee or peer reviewer could report to and discuss its activities, information and findings to other peer review committees or peer reviewers or to the design professional who retains, employs, designates or appoints the peer reviewer or peer review committee and to any officer, director or quality control director with a waiver of privilege. Additionally, each peer reviewer and member of a peer review committee would be immune from civil liability. However, this immunity would cover only peer reviews by a third-party design professional who is not an employee, coworker or partner of the design professional and has no other role in the project besides performing peer review.

A peer reviewer or peer review committee would be defined as an individual design professional or a committee of design professionals retained, employed, designated or appointed by the following:

- A state, county or local society of design professionals; or
- The board of directors, chief executive officer, quality control director, or employed design professional of a business entity which is considered a technical profession.

Additionally, any reports, statements, memoranda, proceedings, filings and other records which are submitted or generated by any peer review committee or peer reviewer would be privileged from discovery or subpoena. However, the design professional who uses a peer reviewer or peer review committee would be the holder of the privilege.

The privilege exception would not apply to proceedings by the Board in which a design professional contests the revocation, denial, restriction or termination of the license, registration, certification or other authorization to practice of the design profession. The bill also would require any

disciplinary proceeding conducted by the Board in which admission of any peer review report, record or testimony to be held in closed session.

Background

The bill was introduced by the House Committee on Commerce, Labor and Economic Development. Written testimony in support of the bill was provided by representatives of the American Council of Engineering Companies and the Kansas Chapter of the American Institute of Architects. No opponent or neutral testimony was provided on the bill.

The House Committee recommended a substitute bill that incorporated several amendments along with the provisions contained in the original bill. The changes made by the Committee include:

- Adding geologist to the list of recognized design professionals;
- Defining “lessons learned” as any internal meeting, class, publication in any medium, presentation, lecture or other means of teaching and communicating after substantial completion of the project which are conducted solely and exclusively by and with the employees, partners, and coworkers of the design professional who prepared the project’s design for the purpose of learning best practices and reducing errors and omissions in design documents and procedures;
- Expanding the definition of “peer review” and the standards used to evaluate and improve real property;

- Expanding the definition of those who may serve as a peer reviewer;
- Changing the holder of privilege to “design professional”;
- Prohibiting the discovery, subpoena, distribution, and admissibility of any reports and records furnished by the licensee in any judicial or administrative hearing unless the hearing is for disciplinary purposes; and
- Adding immunity for civil liability for each peer reviewer and member of a peer review committee.

The Senate Committee amended the bill to include a definition for “professional engineer” as that term is defined by KSA 74-7003. The Committee also amended the bill to:

- Clarify that when the Board of Technical Professions conducts disciplinary proceedings, the Board may rely upon information from any source and not solely from the licensee under review; and
- Preclude the work product of a peer review committee received by the Board from discovery or subpoena.

The fiscal note as prepared by the Division of the Budget on the original bill indicates the the bill would not have any fiscal effect on the Board of Technical Professions. A fiscal note on the substitute bill was not available.