

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Senator Brownlee at 8:30 a.m. on March 07, 2002 in Room 123-S of the Capitol.

All members were present except:

Committee staff present:

Norman Furse, Revisor of Statutes
Sherman Parks, Revisor of Statutes
April Holman, Legislative Research
Debra Hollon, Legislative Research
Lea Gerard, Committee Secretary

Conferees appearing before the committee:

Dan Haake, Haake Foundation
Bill Miller, Building Erection, Olathe, KS.
Trudy Aaron, American Institute Architects
Bob Totten, KS Contractors Assoc., Inc.
Gary Hibbs, Dept. Of Admin., Div.
Facilities Management
Don Seifert, City Manager, Olathe, KS.
Dr. Gary George, Olathe School District
Dale Jost, Chief of Bureau Fiscal Services.,
KS Dept. of Transportation
Ron Appletoft, Water Dist. No.1
Johnson County
Kim Gulley, League of Municipalities
Erik Sartorius, City of Overland Park
Matt Goddard, Heartland Community

Bankers

Association

Others attending:

See attached list.

In accordance with KSA 75-3715a, a fiscal note for **SB 616** was submitted to committee members.

Informational Hearings on **SB 616** Prompt Pay Construction.

Dan Haake, Haake Foundations, testified in support of **SB 616** with some proposed amendments (Attachment 1). Prompt payment allows the general contractors and subcontractors time to pay their subcontractors and suppliers before the end of the month. **SB 616** will help the construction industry by establishing a base line for owners, general contractors, and subcontractors to take care of the financial responsibilities on construction projects. The proposed bill would obligate an owner to make payments to their general contractors within 10 business days after receipt of an invoice, and compel general contractors and subcontractors to pay their subcontractors and suppliers within 5 business days from receipt of their payments.

Bill Miller, Building Erection, Olathe, Kansas, testified in support of **SB 616**. Building Erection employees 200 people from Missouri and Kansas and has offices in Olathe, Kansas, Topeka, Kansas and St. Joseph, Missouri. There has to be some criteria to require a person to make prompt payments. As a Union contractor, fringe benefit payments have to be paid to the holding companies on the Missouri side by the 29th or there will be a 10% penalty. Last month the fringe benefit payments for all employees, with overtime included, was \$290,000. If the company does not get paid for a job, money must be borrowed from the bank to make the fringe benefit payments; otherwise, liquidated damages are 10% and the interest rate will be the highest allowed by the State of Missouri.

Matt Goddard, Heartland Community Banks Association, testified as a neutral party for **SB 616** with some amendments (Attachment 2). The bill allows financial institutions to act as escrow agents, but the wording of the bill limits the escrow agents to only commercial banks. The amendment submitted replaces the single reference to “financial institutions” with “banks, savings and loans and savings banks.”

Paul Davis, Kansas Bar Association submitted written testimony as a neutral party for **SB 616** with some

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amendments (Attachment 3).

Trudy Aaron, Executive Director, American Institute of Architects, testified in opposition to **SB 616** (Attachment 4). The bill would limit the ability of owners, architects and general contractors to assure completion of construction projects. The contractor says the project is complete but when the owner and architect walk through the project, many items have not been completed. The withholding of funds becomes the owner's only leverage to get the contractor or subcontractors to finish the work. The bill also requires retainage to be placed in interest-bearing escrow accounts which would create a bookkeeping nightmare for contractors.

Chairperson Brownlee asked Trudy Aaron to comment on the idea of putting the payment schedule in the documents or contract as suggested by Mr. Haake. Trudy Aaron stated that is between the owner, the general contractor and the subcontractor because all of those are different contracts.

Bob Totten, Kansas Contractors Association, Inc., testified in opposition to **SB 616** (Attachment 5) stating members think the bill is unnecessary at least in regards to highway construction. Mr. Totten suggested that the bill be amended so that it would not apply to all contracts for construction in the state which infringes on the private sector.

Gary Hibbs, Design Supervisor, Division of Facilities Management, testified in opposition to **SB 616** (Attachment 6) stating that procedures are in place that recognize not only the construction industry but also the State of Kansas and the requirements the state is mandated to do. The bill addresses payment deadlines for services provided and sets up an escrow system for an owner's holding of retainage for construction projects. Provisions of this bill alter the manner in which the State does business on state funded projects.

Don Seifert, City of Olathe, testified in opposition to **SB 616** (Attachment 7) stating as a public entity, the goal of prompt payment must be balanced with the duty to protect the taxpayer's investment in the construction project.

Gary George, Assistant Superintendent with the Olathe School District, testified in opposition to **SB 616** (Attachment 8).

Dale Jost, Chief of Fiscal Services, Kansas Department of Transportation, testified in opposition to **SB 616** (Attachment 9). The State currently provides relief for late payment to vendors through the Kansas Prompt Payment Act. The 10-day time period for rejecting unsatisfactory work or making payment is too aggressive for validation of the payment request, performance of inspections and acceptance of work.

Ron Appletoft, Governmental Affairs Coordinator, Water District for Johnson County testified in opposition to **SB 616** (Attachment 10) stating the bill would require the retainage payout be done at the point of substantial completion. The water district currently pays the retainage amount at point of final completion.

Kim Gulley, Director of Policy Development & Communications, testified in opposition to **SB 616** (Attachment 11).

Erik Sartorius, City of Overland Park, testified in opposition to **SB 616** (Attachment 12). Section 16 of the bill would require the cities to notify subcontractors when a contractor is paid. The City of Overland Park does not want to be put in the position of notifying others when a contractor has been paid. Senator Brownlee pointed out the responsibility an owner has in this regard because a subcontractor can file a lien on the owner's property.

Ashley Sherard, Government Relations Manager, Johnson County, Kansas, presented written testimony in opposition to **SB 616** (Attachment 13).

Bob Vancrum, Government Affairs Specialist for Blue Valley USD 229 and Johnson County Community College, presented written testimony in opposition to **SB 616** (Attachment 14).

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Gary White, Kansas Trial Lawyers Association, presented written testimony in opposition to **SB 616** (Attachment 15).

Amy Brunner, Governmental Relations Specialist, Kansas Association of School Boards, presented written testimony in opposition to **SB 616** (Attachment 16).

Eric King, Director of Facilities for the Kansas Board of Regents, presented written testimony in opposition to **SB 616** (Attachment 17).

Mike Taylor, Governmental Relations Directory, City of Wichita, presented written testimony in opposition to **SB 616** (Attachment 18).

Corey Peterson, Associated General Contractors of Kansas, Inc., presented written testimony in opposition to **SB 616** (Attachment 19).

There being no further conferees wishing to testify, the hearing for **SB 616** was closed.

Chairperson requested that the Revisor, Sherman Parks meet with Dan Haake on the prompt pay statute that currently exists and that may solve some of the issues the construction firm is facing.

Chairperson Brownlee thanked Dan Haake for providing the statutes from Arizona, Colorado and New Mexico.

Meeting adjourned at 9:30 a.m.

The next meeting is scheduled for March 08, 2002 at 8:30 a.m.