

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman William Mason at 1:30 p.m. on March 9, 2004 in Room 313-S of the Capitol.

All members were present except:

Representative Candy Ruff- excused  
Representative Joann Freeborn- excused

Committee staff present:

Russell Mills, Legislative Research Department  
Mary Torrence, Revisor of Statutes Office  
Dennis Hodgins, Legislative Research Department  
Rose Marie Glatt, Secretary

Conferees appearing before the committee:

**PROPONENTS:**

Ken Keller, Controller, Western Extralight Co.  
Bill Miller, President, Building Erection Service Co & Midwest Crane  
Dan Haake, President, Haake Foundations  
Kathy Tolle, Vice President, National Association Credit Manager  
Ken Daniel, Chairman/CEO, Midway Wholesale

**OPPONENTS:**

Rick Dodds, The Boeing Company  
Wayne Hardy, Manager Contract Administration, Westar Energy  
L.J. Leatherman, KS Trial Lawyers Assn.  
Dean Ferrell, President/Owner, Ferrell Construction  
Trudy Aron, Executive Director, AIA  
Martha Neu Smith, Executive Director, KS Manufactured Housing Assn.  
\*written testimony only  
Cory Peterson, Exec. VP, Association of General Contractors of Kansas  
Phil Sewell, President, Central Mechanical, Wichita  
Marlee Carpenter, VP, Governmental Affairs, KS Chamber of Commerce  
Michael R. Murray, Director, Governmental & Public Affairs, SPRINT

**Others attending: See Attached List.**

Without objection, Representative Edmonds requested a bill be introduced that would create a felons registry specific to felons that have committed felonies with the use of firearms

**HB 2853- Kansas fairness in private construction contract act**

Ms. Torrence explained the bill provided that payment of the amount due a contractor, under a private construction contract, would have to be paid within 30 days, after the owner receives a timely, properly completed, undisputed request for payment. She explained definitions in the bill, penalties for non-payment, payment processes and escrow arrangements.

**PROPONENTS:**

Ken Keller, Controller, Western Extralight Company, stated the purpose of the legislation was to ensure that all parties involved in construction projects were treated fairly, and paid timely when work is properly performed (Attachment 1). He referred to a construction organization chart and AIA standard contract related documents A201-1997 and A401-1997 (copy on file at American Institute of Architects). He concluded by saying the fiscal note was zero and he urged passage of the bill.

## CONTINUATION SHEET

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Bill Miller, President, Building Erection Services Company, testified that the bill addressed the following issues: payment schedule requirement for all business tiers starting with owners to the suppliers of sub-contractors, penalties for non-payment, alternative securities, anti-immunity provision and issues relating to dispute resolution ([Attachment 2](#)). His testimony included: many testimonial support letters from members of the American Subcontractors Association, Greater Kansas City Chapter- a sample included, list of AGC Members, supporters of the Kansas Fairness in Private Construction Act, AIA Document G702 & G703 (Application and Certificate for Payment Form), Prompt Payment Laws in effect by state, Missouri prompt payment act and the ASA Members needs survey.

Dan Haake, President, Haake Foundations, testified in support of **HB 2853**, specifically the portion of the act that would set minimum standards for payment of invoices on construction projects. He stated that the bill would help small businessmen meet the financial demands of their businesses ([Attachment 3](#)).

Kathy Tolle, VP Operations, NACM Credit Services, Inc. rose in support of the bill and stated that their goal was to protect the typically smaller and more volatile Kansas companies who may or may not be able to financially fight for due payment and whose livelihood depends on prompt payment for work performed ([Attachment 4](#)).

Ken Daniel, Chairman/CEO, Midway Wholesale, appeared to advocate for measures that would guarantee payment for their products and services on a timely basis. Small business owners believed that the unfairness has reached an unbearable level and they see no way for the situation to correct itself ([Attachment 5](#)).

### OPPONENTS:

Rick Dodds, The Boeing Company, opposed the bill stating that **HB 2853** results in a significant restriction on the legal rights of the citizens of Kansas. Boeing would prefer to resolve the negotiation of private construction issues outside of the legislative process ([Attachment 6](#)).

Wayne Hardy, Westar Energy, stated they oppose **HB 2853** because it disrupts normal negotiation between contractors and Westar Energy. Matters addressed by the bill are better dealt with in contract negotiations, if either a firm or its contractor breaches a contract ([Attachment 7](#)).

L J Leatherman, Kansas Trial Lawyers Association, offered comments in opposition to the bill. He identified areas of concern which included: loser pay provisions, confusion over whether the bill covers improvements only or construction of single family dwellings, period of time for dispute of bill, contract provision for remedies, and the question of responsible parties for attorney fees ([Attachment 8](#)).

Dean Ferrell, Ferrell Construction, opposed the bill stating that private investors are struggling to rationalize funding construction projects in Kansas, and the bill imposes restrictions on private owners that will be a deterrent to future investment in capital projects ([Attachment 9](#)). The additional rules would be impossible to enforce.

Trudy Aron, American Institute of Architects, stated that the bill would only provide more animosity between owners, architects, contractors, subcontractors and lower tiered subcontractors ([Attachment 10](#)). If passed it nearly guarantees that there will be litigation at the end of every building project. She stated that withholding of funds, in many cases, becomes the owner's only leverage to get the contractor to finish the work. Likewise, the contractor should have the same rights regarding their subcontractors.

Martha Neu Smith, Executive Director, KS Manufactured Housing Assn, stated they oppose the bill due to a concern over wording in Section 8. They interpreted that section to be an act that would apply to the original construction of single-family residential housing...it would not apply to any improvement made later to the structure ([Attachment 11](#)). If the intent was to not include single-family residential construction, they request that the word "improvement" be deleted.

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### WRITTEN TESTIMONY

Cory Peterson, Exec. VP, Association of General Contractors of Kansas, stated that **HB 2853** would unnecessarily restrict how private entities conduct business and would drive up owners' cost of construction (Attachment 12). They believe that there are two existing safeguards in place, contracts and mechanic's liens. Contract terms should be governed by contract law, not state statute.

Phil Sewell, President, Central Mechanical, Wichita stated that when the Specialty Contractors Council of the AGC of Kansas met at its recent annual convention, they determined their position to be the state should not set laws dictating payment terms between private entities (Attachment 13).

Marlee Carpenter, VP, Governmental Affairs, KS Chamber of Commerce, stated that the provisions in **HB 2853** would affect Kansas' competitive position, by increasing the cost of doing business in the state (Attachment 14).

Michael R. Murray, Director, Governmental & Public Affairs, SPRINT, believed that the bill is an unnecessary infringement on a company's ability to manage its operation (Attachment 15).

The hearing was closed on HB 2853. The meeting adjourned at 3:10 p.m. and the next meeting is March 10, 2004.