

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 A.M. on March 10, 2006 in Room 123-S of the Capitol.

All members were present except:

Jim Barone- excused  
Roger Reitz- excused  
Susan Wagle- excused

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department  
Helen Pedigo, Revisor of Statutes  
Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

Others attending:

See attached list.

Chairperson Brownlee called the Committee's attention to Senate Commerce Calendar which lists the bills for the rest of the month. (Attachment 1)

**The Chair then called the Committee's attention to the committee minutes for approval. Senator Jordan made a motion to approve the minutes for January 31<sup>st</sup>; with the one correction of Senator Kelley's name being misspelled, February 8th, February 9th, and February 21st, February 22nd, Senator Emler seconded. Motion carried.**

**Next Chairperson Brownlee called the Committee's attention to the next set of committee minutes for approval. Senator Schodorf made a motion to approve the minutes for January 24<sup>th</sup>, February 1<sup>st</sup>, and February 2<sup>nd</sup>. Senator Jordan seconded. Motion carried.**

Chairperson Brownlee called the Committee's attention to the balloon on **HB 2856--Extension of IMPACT program.** (Attachment 2) Chairperson Brownlee explained the balloon on **HB 2856** stating the balloon is adding language to section 2, K.S.A. 46-1601 a new number (6) stating to promote and evaluate workforce development to meet the needs of the economy. **Senator Wysong made a motion to accept the balloon to HB 2856. Senator Emler seconded. Motion carried.**

**Senator Schodorf made a motion to pass the bill out favorably as amended. Senator Wysong seconded. Motion carried.**

Chairperson Brownlee called the attention of the Committee to **SB 516--Fairness in public construction contract act.** The Chair introduced Corey Peterson representing the Association of General Contractors of Kansas, to explain the proposed compromise balloon. Mr. Peterson stated there was a new section (h) added to Page 2 which reads: "Substantial completion" means the stage of a construction project where the project or a designated portion thereof, is sufficiently complete in accordance with the contract, so that the owner can occupy or utilize the constructed project for its intended use. He also stated in section 3, line 11, the language "binding arbitration as a substitute for litigation or require" is being deleted. A new section (e) is being added which reads "The architect/engineer of record shall review, approve and forward undisputed requests for payment to the owner within seven business days." On page 3, line 9, the following language is added: "unless the owner and the architect or engineer determine that a higher rate of retainage is required to ensure performance of the contract. Retainage, however, shall not exceed 10% of the value of the contract." Line 10, delete sentence: "Retainage shall...specification section." Adding: "An owner must release the retainage on any undisputed payment due on a construction project within 30 days after substantial completion of the of the project: provided, however, if any subcontractor is still performing work on the project under its subcontract, an owner may withhold that portion of the retainage attributable to such subcontract until 30 days after such work is completed.

Upon completion of Mr. Peterson's review of the proposed compromise balloon there was discussion with the Committee and Mr. Peterson with their concerns on the balloon. Bill Miller, representing the

## CONTINUATION SHEET

MINUTES OF THE Senate Commerce Committee at 8:30 A.M. on March 10, 2006 in Room 123-S of the Capitol.

Subcontractors of Kansas entered the discussion at the Committee's request. The balloon was discussed in detail. It was stated that the balloon does not address the heavy contractors issues. The higher rate of retainage was also discussed and the determination was made to withhold more than the 5% would only be done under special circumstances. Mr. Miller stated this balloon does not solve all the issues but it does eliminate the biggest problem with retainage.

Chairperson Brownlee recognized Senator Wysong who stated he would like to hear from the representative from Overland Park. Chairperson Brownlee called on Erik Sartorius representing the City of Overland Park. Mr. Sartorius stated they were comfortable with the AGC Compromise balloon and feels it make progress for every side. He stated with the AGC Compromise balloon heavy equipment contractors are not being addressed. There was discussion regarding heavy equipment contractors.

Chairperson Brownlee called the Committee's attention to the Brownlee balloon. (Attachment 4) There was discussion on this amendment which adds on line 33, except that payment shall be made within 45 days after the owner receives such payment request if an owner requires approval prior to payment and meets no more than once per month. All the Committee members entered into the discussion of extending the time from 30 days to 45 days and whether it was needed or not. Mr. Sartorius stated he would be in favor of the 45 days. Mr. Peterson also stated he did not know how much change the 45 days would make. He would like to see the 30 days left in but would not like for this bill not go through because of the 45 days. Mr. Miller states he would not have a problem with it either way.

**Chairperson Brownlee stated she would entertain a motion on the AGC balloon. Senator Emler made a motion to accept the AGC balloon. Senator Jordan seconded the motion.**

Chairperson Brownlee opened the floor for discussion. Senator Wysong stated he has concerns because this makes the process better but still does not address the issues of the first and second contractor on a job and also, it does not address the heavy equipment contractor on roads and highways at all. .

**Chairperson Brownlee called for a vote on the motion to accept the AGC balloon. Motion carried.**

Chairperson Brownlee stated the Committee would hold the bill until Tuesday to give more time to work on amendments to the bill and to address some of Senator Wysong's concerns.

Chairperson Brownlee recognized Senator Kelly regarding the Brownlee balloon changing the days from 30 to 45. She stated to keep the 30 days in and have language stating except under extenuating circumstances. Chairperson Brownlee called on Helen Pedigo, Revisors office. **Senator Kelly moved to accept a conceptual amendment with the wording to be completed by the revisor. Senator Wysong seconded. Motion carried.**

Senator Wysong asked the Chair to give some time on Tuesday morning to finish this bill. Senator Jordan offered language regarding roads and bridges to address Senator Wysong's concerns. Senator Wysong stated he would like to consider the language and do some research before the meeting on Tuesday. The Committee discussed that there could also be a problem with payment to the heavy equipment contractors. Bob Totten representing the Kansas Contractors Association, entered the discussion regarding heavy equipment contractors. Senator Brownlee stated that she feels timely payment is still an issue with the heavy equipment contractors. Senator Jordan entered the discussion and stated he would like to hear the other side from contractors not involved with KDOT or Federal funding, Mr. Totten stated he was hoping the heavy equipment contractors would be excluded from this bill.

Chairperson Brownlee called the Committee's attention to **HB 2658--Gift certificates, restrictions**, and the amendments to this bill. They would be starting with Amendment #1 (Attachment 5) This amendment is to clean up some language. **Senator Emler made a motion to accept the amendment to strike language on lines 19 and 20 on page 2. Seconded by Senator Jordan. Motion carried**

Chairperson Brownlee called the Committee's attention to amendment # 2. (Attachment 6) She stated this amendment adds language on page 2 , (3) which clarifies the issue on gift cards given as a promotion or at

CONTINUATION SHEET

MINUTES OF THE Senate Commerce Committee at 8:30 A.M. on March 10, 2006 in Room 123-S of the Capitol.

a benefit or the like. **Senator Emler made a motion to accept the amendment addressing the issue of gift cards given out at a charity or event where no one paid for the card. Senator Wysong seconded. Motion carried.**

Chairperson Brownlee called the Committee's attention to amendment #3 (Attachment 7). She stated section (g) on page 2 was changed to : "A violation of this act shall be an unclassified misdemeanor punishable by a fine not to exceed \$100.00. Senator Emler stated he was not in favor of making the violation of this act a misdemeanor. The Committee discussed this amendment and decided they would finalize it on Tuesday. Giving the Committee members time to work on the amendment to not make it a misdemeanor.

Chairperson Brownlee called the Committee's attention to amendment #4. (Attachment 8) She stated the amendment is just clean-up renumbering the sections and the inconsistency dormancy fees to be charges. **Senator Elmer made a motion to accept the amendment renumbering the sections. Senator Jordan seconded. Motion carried.**

Chairperson Brownlee stated the Committee would finalize this bill on Tuesday. She also stated some of the Committee members would like to add a rebate clause to this bill but they are not sure how it would fit.

Meeting adjourned at 9:30 a.m. with the next meeting scheduled for Tuesday, March 14, 2006 at 8:30 a.m. in room 123 S.