

Approved: 3/19/10
Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:02 a.m. on February 17, 2010, in Room 784 of the Docking State Office Building.

All members were present.

Committee staff present:

Art Griggs, Office of the Revisor of Statutes
Renaë Jefferies, Office of the Revisor of Statutes
Jerry Donaldson, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Stephen Bainum, Committee Assistant

Others attending:

See attached list.

HB 2596 **Secretary of health and environment; rules and regulations regarding remediation of lead-based paint**

Renaë Jefferies distributed the Revisors Technical Amendment 1 (Attachment 1).

Representative Suellentrop made a motion that we accept the Revisor's Technical Amendment 1. Seconded by Representative Hermanson. The motion carried.

Representative Suellentrop made a motion to move the bill out favorably as amended. Seconded by Representative Hermanson.

Representative Gatewood said that with the \$700,000.00 we would be jeopardizing with this bill that he would be voting against the bill.

Representative Hermanson said we would not be jeopardizing any funds because we would still be following the Federal guidelines for EPA.

Representative Quigley said that there are some negatives that contractors will be looking at. KDHE is willing to work with the contractors to give them a year to get the training. The EPA training date is not flexible. Training is an issue, as well as licensing fees, post testing and insurance.

Representative made a substitute motion to table the bill. Seconded by Representative Gatewood.

The Chairman said we are voting on killing this bill. This is a non-exempt bill so this would kill the bill. The Chairman asked for a hand vote to table the bill. There were 9 to table and 10 not to table. We are back on the motion to pass the bill as amended.

Representative Tietze made a motion to delete on page 2, lines 20 to 24. Seconded by Representative Gatewood. The motion carried. We are back on the bill as amended.

The Chairman called for a vote on the bill as amended. The motion carried. Representatives Gatewood, Grant, Henderson, Ruiz and Tietze requested that their no vote be recorded.

H Sub for HB 2238 Amending the fairness in private construction contract act and the fairness in public construction contract regarding retainage

Representative Grange explained his Balloon Amendment 2 (Attachment 2).

Representatives Grant and Tietze thanked him for putting this together.

Trudy Aaron, American Institute of Architects, said that they still did not support the bill.

CONTINUATION SHEET

Minutes of the House Commerce and Labor Committee at 9:02 a.m. on February 17, 2010, in Room 784 of the Docking State Office Building.

Eric King, Board of Regents, said that they were still opposed to alternate security. We have problems getting projects completed with 10% retainage.

Bill Miller, American Subcontractors Association, said that alternate security is already in law but is very rarely used.

Charles Tryon, Westar Energy, said that they were not opposed to the balloon amendments. They have a concern with alternative securities and limiting retainage to 5%.

Ken Keller, member of ASA, said that 70% of states now use 5% or less retainage. It is a practice that is common and it works.

Cory Peterson, Associated General Contractors, said that the balloon amendment was in line with AGC's position.

Representative Grant made a motion to adopt the Balloon Amendment 2. Seconded by Representative Ruiz.

Representative Jack said that he liked the amendment. The best part was defining alternate securities.

The motioned carried. We are back on the bill as amended.

Representative Grange made a motion to pass **HB 2238** favorably as amended. Seconded by Representative Hermanson.

Representative Schwab made a substitute motion to change the name of the bill to **Sub HB 2238**. Seconded by Representative Grange. The motion carried. We are back on the bill as amended.

The motion carried.

The next meeting is scheduled for March 2, 2010.

The meeting was adjourned at 10:13 a.m.

COMMERCE & LABOR COMMITTEE

DATE: 2-17-10

NAME	REPRESENTING
Bill Miller	AMERICAN SUBCONTRACTORS ASSOC.
Ken Keller	ASA
Tom Burgess	ASA
TED HENRY	CAPITOL STRATEGIES
Wigh Keck	Main Law firm
Chris Gjestad	Federico Consulting
Judy Aaron	Am Inst of Architects
ERIC KING	KS. Bd. of Regents
Neal Angaritano	Johnson County
Larry R. Baer	LKA
Charles P. Tryon	Kiewit Energy
Phyllis fast	st. of K - DEM
Diane Gjerstad	USD 259 - Wichita
DAN MORGAN	Builders' Assn & KC Chapter, ABC
Larry Oppite	JTA
Andrey Sanchez	KS AFL-CIO
Bob Van Curen	Blw Valley USD 229
ERIK SARTORIUS	City of Overland Park

HOUSE BILL No. 2596

By Committee on Commerce and Labor

2-2

Revisor
Technical Amendment 1
February 8, 2010

House Commerce & Labor
Date: 2.17.10
Attachment # 1

9 AN ACT concerning the secretary of health and environment; related to
10 rules and regulations regarding lead-based paint removal, repair and
11 painting; amending K.S.A. 65-1,202 and repealing the existing section.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 65-1,202 is hereby amended to read as follows: 65-
15 1,202. The secretary shall administer the provisions of the residential
16 childhood lead poisoning prevention act. In administering the provisions
17 of the residential childhood lead poisoning prevention act, the secretary
18 shall be authorized to:

19 (a) Develop and implement a childhood lead poisoning prevention
20 program as necessary to protect the health of the children of Kansas,
21 which may include provisions to:

22 (1) Investigate the extent of childhood lead poisoning in Kansas;
23 (2) develop a data management system designed to collect and ana-
24 lyze information on childhood lead poisoning;

25 (3) develop and conduct programs to educate health care providers
26 regarding the magnitude and severity of and the necessary responses to
27 lead poisoning in Kansas;

28 (4) issue recommendations for the methods and intervals for blood
29 lead screening and testing of children, taking into account recommen-
30 dations by the United States centers for disease control and prevention,
31 except that no child shall be screened or tested if the child's parent or
32 guardian objects in writing on the ground that such screening or testing
33 is contrary to the parent's or guardian's religious beliefs and practices;

34 (5) develop and issue health advisories urging health care providers
35 to conduct blood lead screening of children;

36 (6) encourage health care providers to ensure that parents and guard-
37 ians of children are advised of the availability and advisability of screening
38 and testing for lead poisoning;

39 (7) develop a program to assist local health departments in identifi-
40 cation and follow-up of cases of elevated blood lead levels in children and
41 other high-risk individuals; and

42 (8) in consultation with appropriate federal, state and local agencies,
43 develop a comprehensive public education program regarding environ-

1 mental lead exposures and lead poisoning by:

2 (A) Identifying appropriate target groups that are in a position to
3 prevent lead poisoning or reduce the number of children who are exposed
4 to lead;

5 (B) assessing the information needed for each of the target groups
6 and determine the best means of educating the members of each target
7 groups; and

8 (C) disseminating the information to the target groups in an effective
9 manner.

10 (b) adopt rules and regulations necessary for the administration of
11 the residential childhood lead poisoning prevention act *that are not more*
12 *stringent, restrictive or expansive than the rules and regulations adopted*
13 *by the United States environmental protection agency pursuant to the*
14 *federal residential lead-based paint hazard reduction act, and amend-*
15 *ments thereto, (42 U.S.C. 5851 et seq.), including, but not limited to,*
16 licensure of business entities and public agencies, certification of individ-
17 uals, accreditation of training programs, on-site inspections and require-
18 ments, notification and record keeping, procedures and work practice
19 standards relating to lead-based paint activities as are necessary to protect
20 the public health and safety. *The secretary shall have no authority to*
21 *adopt any rules and regulations, standards or guidelines that require any*
22 *person who tests for lead-based paint or performs lead-based paint miti-*
23 *gation in this state to make a report of such testing or mitigation to the*
24 *secretary;*

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25 (c) adopt by rules and regulations a reasonable schedule of fees for
26 the issuance and renewal of certificates and licenses, training program
27 accreditations and on-site inspections. The fees shall be periodically in-
28 creased or decreased consistent with the need to cover the direct and
29 indirect costs to administer the program. At no time shall such fees exceed
30 those charged by the United States environmental protection agency for
31 the same or similar regulatory programs. The fees shall be based upon
32 the amount of revenue determined by the secretary to be required for
33 proper administration of the provisions of the residential childhood lead
34 poisoning prevention act. State and local health department personnel
35 certifying for the purpose of environmental investigation of lead poisoned
36 children shall be exempted from licensure fees;

37 (d) conduct on-site inspections of procedures being utilized by a li-
38 censee during an actual abatement project and conduct inspection of the
39 records pertaining to the residential childhood lead poisoning prevention
40 act;

41 (e) adopt rules and regulations regarding the distribution of lead haz-
42 ard information to owners and occupants of housing prior to conducting
43 renovation activities in housing;



HOUSE BILL No. 2238

By Committee on Commerce and Labor

2-3

Rep. Grange
Balloon Amendment 2
February 8, 2010

House Commerce & Labor
Date: 2.17.10
Attachment # 2

9 AN ACT concerning construction contracts; relating to retention in pub-
10 lic and private construction contracts; amending K.S.A. 16-1802, 16-
11 1804, 16-1902 and 16-1904 and repealing the existing sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 16-1802 is hereby amended to read as follows: 16-
15 1802. As used in this act:

16 (a) "Alternate security" means a retainage bond, bank letter of credit,
17 certificate of deposit, cash bond or other ~~mutually acceptable items~~ of
18 value equal to or exceeding the amount of retained funds.

an irrevocable

type of asset or security

19 (b) "Construction" means furnishing labor, equipment, material
20 or supplies used or consumed for the design, construction, alteration,
21 renovation, repair or maintenance of a building, structure, road, bridge,
22 water line, sewer line, oil line, gas line, appurtenance or other improve-
23 ment to real property, including any moving, demolition or excavation.

Provided however, "alternate security" shall not include performance and
payment bonds.

24 (c) "Contract" means a contract or agreement concerning con-
25 struction made and entered into by and between an owner and a con-
26 tractor, a contractor and a subcontractor or a subcontractor and another
27 subcontractor.

28 (d) "Contractor" means a person performing construction and
29 having a contract with an owner of the real property or with a trustee,
30 agent or spouse of an owner.

31 (e) "Owner" means a person who holds an ownership interest in
32 real property.

33 (f) "Person" means an individual, corporation, estate, trust, part-
34 nership, limited liability company, association, joint venture or any other
35 legal entity.

36 (g) "Retainage" or "retention" means money earned by a contrac-
37 tor or subcontractor but withheld to ensure proper performance by the
38 contractor or subcontractor ~~for the remainder of such contractor's or sub-~~
39 ~~contractor's work on the project.~~

40 (h) "Subcontractor" means any person performing construction
41 covered by a contract between an owner and a contractor but not having
42 a contract with the owner.

43 (i) "Substantial completion" means, for the purpose of release of re-

1 ~~ention, the stage of a construction project where the project, or a design-~~
2 ~~ated portion thereof, is sufficiently complete in accordance with the con-~~
3 ~~tract, so that portion thereof can be used for its intended purpose.~~

4 Sec. 2. K.S.A. 16-1804 is hereby amended to read as follows: 16-
5 1804. (a) ~~An owner, contractor or subcontractor shall not withhold more~~
6 ~~than 5% of the amount of a contract as retainage.~~

7 ~~(b) An owner, contractor or subcontractor may withhold retained~~
8 ~~amounts incrementally from each monthly payment as 10% of the first~~
9 ~~50% of the contract or as 5% of the total contract.~~

10 ~~(c) An owner, contractor or subcontractor shall release retained~~
11 ~~amounts within 45 days after substantial completion of the contract as a~~
12 ~~part of the regular payment cycle.~~

13 (d) An owner, contractor or subcontractor shall not withhold more
14 than 150% of the value of incomplete work provided that the incomplete
15 work is due to no fault of the subcontractor. Any amounts retained for
16 incomplete work shall be paid within 45 days after completion of the work
17 as a part of the regular payment cycle.

18 ~~(e) A contractor or subcontractor may provide an alternate security~~
19 ~~in lieu of retainage at any stage of the contract. If the alternate security~~
20 ~~is provided prior to commencing the work no retainage shall be withheld.~~
21 ~~If the alternate security is provided after the first payment cycle, any~~
22 ~~retained funds shall be paid with the next regular payment.~~

23 ~~(f) An owner, contractor or subcontractor shall not retain any funds~~
24 ~~from any party to the contract who has provided a 100% payment per-~~
25 ~~formance bond for that party's work on the project.~~

26 (g) An owner, contractor or subcontractor may withhold no more
27 than 10% retainage from the amount of any undisputed payment due.

28 (h) If an owner, contractor or subcontractor fails to pay retainage,
29 if any, pursuant to the terms of a contract for private construction or as
30 required by this act, the owner, contractor or subcontractor shall pay
31 interest to the contractor or subcontractor to whom payment was due,
32 beginning on the first business day after the payment was due, at a rate
33 of 18% per annum.

34 Sec. 3. K.S.A. 16-1902 is hereby amended to read as follows: 16-
35 1902. As used in this act:

36 (a) "Alternate security" means a retainage bond, bank letter of credit,
37 certificate of deposit, cash bond or other mutually acceptable items of
38 value equal to or exceeding the amount of retained funds.

39 (b) "Construction" means furnishing labor, equipment, material
40 or supplies used or consumed for the design, construction, alteration,
41 renovation, repair or maintenance of a building, water or waste water
42 treatment facility, oil line, gas line, appurtenance or other improvement
43 to real property, including any moving, demolition or excavation of a

an irrevocable

Retainage shall not exceed 5% of the value of the contract or subcontract
unless the owner, architect or general contractor 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 or
subcontract.

(b) If the general contractor or subcontractor has failed to meet the
terms of the contract, is not performing according to schedule or there is a
problem with workmanship or other issues, the owner and architect may
increase retainage up to 10%.

(c) An owner shall release the retainage on any undisputed payment
due on a construction project within 30 days after substantial completion of
the project; 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.

(e) Prior to commencement of work, a general contractor or
subcontractor may request an alternate security in lieu of retainage.

(f) If a general contractor or subcontractor requests the use of an
alternate security, as defined in subsection (a) of section 1, and
amendments thereto, in lieu of retainage one may be accepted. However,
the owner or general contractor who would otherwise withhold the retainage
shall have the right to determine which type of alternate security, as defined
in subsection (a) of section 1, and amendments thereto, shall be accepted.

(i) Nothing in this section shall prevent early release of retainage if it is
determined by the owner, the contractor and the project architect or
engineer, that a subcontractor has completed performance satisfactorily
and that the subcontractor can be released prior to substantial completion
of the entire project without risk or additional cost to the owner or
contractor. Once so determined, the contractor shall request such early
release of retainage from the owner as necessary to enable the contractor
to pay the subcontractor in full. The owner shall, as part of the next
contractual payment cycle, release the subcontractor's retainage to the
contractor, who shall, as part of the next contractual payment cycle,
release such retainage as is due to the subcontractor.

type of asset or security

Provided however, "alternate security" shall not include performance and
payment bonds.

1 building. "Construction" shall not mean the design, construction, altera-
2 tion, renovation, repair or maintenance of a road, highway or bridge.

3 ~~(b)~~ (c) "Contract" means a contract or agreement concerning con-
4 struction made and entered into by and between an owner and a con-
5 tractor, a contractor and a subcontractor or a subcontractor and another
6 subcontractor.

7 ~~(e)~~ (d) "Contractor" means a person performing construction and
8 having a contract with an owner of the real property or with a trustee or
9 agent of an owner.

10 ~~(d)~~ (e) "Owner" means a public entity that holds an ownership inter-
11 est in real property.

12 ~~(e)~~ (f) "Public entity" means the state of Kansas, political subdivisions,
13 cities, counties, state universities or colleges, school districts, all special
14 districts, joint agreement entities, public authorities, public trusts, non-
15 profit corporations and other organizations which are operated with pub-
16 lic money for the public good.

17 ~~(f)~~ (g) "Retainage" or "retention" means money earned by a contrac-
18 tor or subcontractor but withheld to ensure timely performance by the
19 contractor or subcontractor ~~for the remainder of such contractor's or sub-~~
20 ~~contractor's work on the project.~~

21 ~~(g)~~ (h) "Subcontractor" means any person performing construction
22 covered by a contract between an owner and a contractor but not having
23 a contract with the owner.

24 ~~(h)~~ (i) "Substantial completion" means ~~for the purpose of release of~~
25 ~~retention,~~ the stage of a construction project where the project, or a des-
26 ignated portion thereof, is sufficiently complete in accordance with the
27 contract, so that ~~the owner can occupy or utilize the constructed project~~
28 ~~for its intended use portion thereof can be used for its intended purpose.~~

the owner can occupy or utilize the constructed project for its intended use

29 (i) (j) "Undisputed payment" means payments which all parties to the
30 contract agree are owed to the contractor.

31 Sec. 4. K.S.A. 16-1904 is hereby amended to read as follows: 16-
32 1904. ~~(a) An owner, contractor or subcontractor shall not withhold more~~
33 ~~than 5% of the amount of a contract as retainage.~~

(a) Retainage shall not exceed 5% of the value of the contract or subcontract unless the owner, architect or general contractor 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 or subcontract.

34 ~~(b) An owner, contractor or subcontractor may withhold retained~~
35 ~~amounts incrementally from each monthly payment as 10% of the first~~
36 ~~50% of the contract or as 5% of the total contract.~~

(b) If the general contractor or subcontractor has failed to meet the terms of the contract, is not performing according to schedule, shows poor workmanship or other issues, the owner and architect may increase retainage up to 10%.

37 (c) An owner, contractor or subcontractor shall not withhold more
38 than 150% of the value of incomplete work provided that the incomplete
39 work is due to no fault of the subcontractor. Any amounts retained for
40 incomplete work shall be paid within 45 days after completion of the work
41 as a part of the regular payment cycle.

42 ~~(d) A contractor or subcontractor may provide an alternate security~~
43 ~~in lieu of retainage at any stage of the contract. If the alternate security~~

1 ~~is provided prior to commencing the work no retainage shall be withheld.~~
2 ~~If the alternate security is provided after the first payment cycle, any~~
3 ~~retained funds shall be paid with the next regular payment.~~

4 ~~(e) An owner, contractor or subcontractor shall not retain any funds~~
5 ~~from any party to the contract who has provided a 100% payment per~~
6 ~~formance bond for that party's work on the project.~~

7 ~~(a) (f) An owner, contractor or subcontractor may withhold no more~~
8 ~~than 10% retainage from the amount of any undisputed payment due.~~

9 ~~(b) (g)~~ (f) An owner, contractor or subcontractor must release the re-
10 tainage on any undisputed payment due on a construction project within
11 ~~30 45~~ days after substantial completion of the project ~~as part of the regular~~
12 ~~payment cycle~~; however, if any subcontractor is still performing work on
13 the project under its subcontract, an owner may withhold that portion of
14 the retainage attributable to such subcontract until ~~30 45~~ days after such
15 work is completed.

16 ~~(e) (h)~~ (g) If an owner, contractor or subcontractor fails to pay retainage,
17 if any, pursuant to the terms of a contract for public construction or as
18 required by this act, the owner, contractor or subcontractor shall pay
19 interest to the contractor or subcontractor to whom payment was due,
20 beginning on the first business day after the payment was due, at a rate
21 of 18% per annum.

22 ~~(d) (i)~~ (h) Nothing in this section shall prevent early release of retainage
23 if it is determined by the owner, the contractor and the project architect
24 or engineer, that a subcontractor has completed performance satisfacto-
25 rily and that the subcontractor can be released prior to substantial com-
26 pletion of the entire project without risk or additional cost to the owner
27 or contractor. Once so determined, the contractor shall request such ad-
28 justment in retainage, if any, from the owner as necessary to enable the
29 contractor to pay the subcontractor in full, and the owner shall, as part
30 of the next contractual payment cycle, release the subcontractor's retain-
31 age to the contractor, who shall, as part of the next contractual payment
32 cycle, release such retainage as is due to the subcontractor.

33 Sec. 5. K.S.A. 16-1802, 16-1804, 16-1902 and 16-1904 are hereby
34 repealed.

35 Sec. 6. This act shall take effect and be in force from and after its
36 publication in the statute book.

(d) Prior to commencement of work, a general contractor or subcontractor may request an alternate security in lieu of retainage.
(e) If a general contractor or subcontractor requests the use of an alternate security, as defined in subsection (a) of section 1, and amendments thereto, in lieu of retainage one may be accepted. However, the owner or general contractor who would otherwise withhold the retainage shall have the right to determine which type of alternate security, as defined in subsection (a) of section 1, and amendments thereto, shall be accepted.

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30