

# KANSAS LEGISLATIVE RESEARCH DEPARTMENT

545N-Statehouse, 300 SW 10<sup>th</sup> Ave.  
Topeka, Kansas 66612-1504  
(785) 296-3181 ♦ FAX (785) 296-3824

kslegres@klrd.state.ks.us

<http://www.kslegislature.org/klrd>

February 19, 2007

**To:** Senate Committee on Commerce  
**From:** Kathie Sparks, Principal Analyst  
**Re:** SB 333—Kansas Fairness in Public Building Construction Contract Act

SB 333 would create the Kansas Fairness in Public Building Construction Contract Act. The bill would require that all persons who enter into a contract for public construction after the Act is published would be required to make all payments pursuant to the terms of the contract; however, the following provisions would be void and unenforceable in a contract:

- A provision that waives, releases, or extinguishes the right to resolve disputes through litigation in court; however, the contract may require binding arbitration as a substitute for litigation or require non-binding alternative dispute resolution as a prerequisite to litigation.
- A provision that waives, releases, or extinguishes rights to file a claim against a payment or performance bond, except that a contract may require a contractor or subcontractor to provide a waiver or release of such rights as a condition for payment, but only to the extent of the amount of payment received; and
- A provision that waives, releases, or extinguishes rights to subrogation for losses or claims covered or paid by liability or workers compensation insurance; provided however, that a contract may require waiver of subrogation for losses or claims paid by a consolidated or wrap-up insurance program, owners' and contractors' protective liability insurance, or project management protective liability insurance.

Contract is defined to mean a contract or agreement concerning construction by and between an owner and a contractor, a contractor and a subcontractor, or a subcontractor and another subcontractor. The payment schedule would be as follows:

- The owner would be required to make payment to a contractor within 30 days after the owner receives an undisputed request for payment. If the owner fails to pay the contractor within the 30 days, of an undisputed request for payment, the owner would be required to pay interest at the rate of 18 percent per annum. However, when extenuating circumstances exist, then payment would be made within 45 days prior to the interest payment requirement.
- The contractor is required to pay the subcontractors within seven business days of receipt of payment from the owner, including retainage, if the retainage is released by the owner. If the contractor fails to pay a subcontractor within the