

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairman Karin Brownlee at 8:35 A.M. on February 1, 2005 in Room 123-S of the Capitol.

Committee members absent:

Senator Susan Wagle-excused

Committee staff present:

Kathie Sparks, Legislative Research
Susan Kannarr, Legislative Research
Helen Pedigo, Revisor of Statutes
Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

Ken Keller-Controller-Western Extralite Company
Bill Miller-Vice President American Sub-Contractors, President and Owner of Building Erection Services Co. And Midwest Crane & Rigging
Jeff Rosen-Attorney-Polsinelli, Shalton, Welte
Dan Haake-Sub-Contractor-Mark One Electric
Kathy Tolle-National Assoc of Credit Managers
Kathy Damron-Kansas City Kansas Area Chamber of Commerce
Thomas E. Farrar-Advanced Building Systems, Inc.

Others attending:

See attached list

Chairperson Brownlee opened the meeting by asking Kathie Sparks from Legislative Research to give an explanation of SB 33. Ms. Sparks stated that SB 33 is called the Kansas Fairness in Private Construction Act. Ms. Sparks explained the bill. (Attachment 1) She also referred to a chart comparing SB 33 to SB 445 (SB 445 from the last Legislative session) (Attachment 2), which showed the major difference between SB 33 and SB 445.

Chairperson Brownlee opened the hearing on SB 33 by introducing the first conferee, Ken Keller, Controller for Western Extradite Company. Mr. Keller, after giving a brief introduction of his company, Western Extradite; a wholesale distribution of electrical supplies to contractors, stated his purpose was to introduce the committee to SB 33. He stated that SB 33 deals with fairness, the Golden Rule. This proposed legislation makes sure the General Contractor, the Sub-Contractor and supplier are treated fairly and paid timely for work properly preformed. He referred to his written testimony (Attachment 3). During his testimony regarding SB 33 and also referred to the binder entitled "The Kansas Fairness In Private Construction Contract Act".(Attachment 4). In closing Mr. Keller urged the Committee to pass SB 33.

Chairperson Brownlee introduced Bill Miller, Vice President of the American Subcontractors Association, President and Owner of Building Erection Services Co. And Midwest Crane & Rigging. Mr. Miller presented written testimony (Attachment 5) and stated the American Subcontractors Association, Greater Kansas City Chapter representing 70 subcontractors is in favor of SB 33. Mr. Miller also explained the bill and the advantage to all involved for this bill to pass. He referred to an article from the Construction Contracts Law Report-Volume 28, Number 14, July 9, 2004 (Attachment 5) which listed the 2003 "Billion Dollar Club". This article ranked the Construction Firms and listed their 2003 revenues. Mr. Miller also referred to a study done by Clemson University regarding contractual agreements with contractors and subcontractors.(Attachment 7). Mr. Miller stated that Missouri had a bill in place. There are 41 states with prompt pay requirements for public work, 18 states have requirements for private work and 10 other states have legislation pending in one form or another. In closing Mr. Miller stood for questions.

There was some discussion on the Missouri bill. The consensus is SB 33 is a better bill than what Missouri has in place. There was other discussion on how many states have laws in place with reference made to a chart contained in attachment 4 showing the national summary of states with laws in place. Also, there was some discussion on the number of days to issue a dispute on payment of monies to

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subcontractors. Reference was made to KA 60-206 and it was determined that this statute is in reference to court time and not contract time. Mr. Miller agreed that the 5 days should definitely be defined a little better in SB 33. There was some discussion and questions regarding disputes taken to court in order to receive monies owed. Mr. Miller stated the cost of a lawsuit in most cases is as much or more than the monies owed.

With no further questions, Chairperson Brownlee introduced Jeff Rosen, attorney for Polsinelli, Shalton, Welte. Mr. Rosen did not provide written testimony. He stated he had been an attorney representing contractors and subcontractors for 27 years. He feels his experience and knowledge gives him the expertise he needs to testify that this is a very good bill. His representation of contractors in other states gives him knowledge of bills in other states and he stated that if SB 33 would pass, Kansas would by far have the best laws governing prompt pay of contractors and subcontractors. Mr. Rosen stated during his 27 years representing subcontractors the two most asked questions by subcontractors are: "Can I get my retainage and can I get the attorney fees paid" and his answer is "no" and "no". Mr. Rosen feels that the subcontractors have to wait too long for their money which puts them in compromising positions with employees and suppliers. He stated this is a good and fair bill and urged the committee to vote in favor. In closing he stated passage of this bill would not only benefit the contractors and subcontractors but also their suppliers and their employees.

Chairperson Brownlee introduced Dan Haake representing Haake Foundations, Inc., a cement contractor in the state of Kansas. Mr. Haake stated he was in favor of SB 33(Attachment 8). He also presented a chart entitled "Cost of Money Analysis" from his company.(Attachment 9) In closing Mr. Haake asked the Committee to set minimum standards for Owners, Contractors and their Subcontractors by passing this Fairness in Contracting Act.

Chairman Brownlee introduced Kathy Tole with the National Association of Credit Managers. Ms. Tole urged the committee to pass SB 33. She stated when the subcontractors have to wait for their monies it affects their line of credit and puts their credit rating at risk. (Attachment 10) She stated that the National Association of Credit Managers was in favor of SB 33.

Chairperson Brownlee introduced Kathy Dacron representing the Kansas City Kansas Area Chamber of Commerce. Ms. Dacron spoke in favor of SB 33 making reference to SB 445 from the previous session stating SB 33 is a fair and good bill. (Attachment 11)

Chairperson Brownlee introduced Thomas Farrar representing Advanced Building Systems, Inc. Mr. Farrar spoke in support for SB 33 and stated this type of legislation is long overdue in the state of Kansas. (Attachment 12) He also stated that many times the only way to stay current with his subs and suppliers is to borrow money, and as a small business, it's difficult at best, and not getting any easier with bank and lending institutions regulatory requirements and changes, and the banks expectation of being paid on time, or face the possibility of incurring serious delinquent interest charges. It's a fact that no bank will lend money without charging interest for it and for late payments. SB 33 will eliminate much of this burden, and sometimes a nightmare. He feels that subcontractors should not be in the finance business and feels subcontractors should be a team player and not a catch all.

Meeting Adjourned at 9:33 a.m. with the next meeting scheduled for Wednesday, February 2, 2005 at 8:30 a.m. in room 123S.