

SENATE BILL No. 333

AN ACT concerning contracting; enacting the Kansas fairness in public construction contract act; amending K.S.A. 75-6402 and K.S.A. 2006 Supp. 44-717 and repealing the existing sections.

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

New Section 1. (a) Sections 1 through 8, and amendments thereto, shall be known and may be cited as the Kansas fairness in public construction contract act.

(b) The rights and duties prescribed by this act shall not be waivable or varied under the terms of a contract. The terms of any contract waiving the rights and duties prescribed by this act shall be unenforceable.

New Sec. 2. As used in this act:

(a) "Construction" means furnishing labor, equipment, material or supplies used or consumed for the design, construction, alteration, renovation, repair or maintenance of a building, water or waste water treatment facility, oil line, gas line, appurtenance or other improvement to real property, including any moving, demolition or excavation of a building. "Construction" shall not mean the design, construction, alteration, renovation, repair or maintenance of a road, highway or bridge.

(b) "Contract" means a contract or agreement concerning construction made and entered into by and between an owner and a contractor, a contractor and a subcontractor or a subcontractor and another subcontractor.

(c) "Contractor" means a person performing construction and having a contract with an owner of the real property or with a trustee or agent of an owner.

(d) "Owner" means a public entity that holds an ownership interest in real property.

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

(f) "Retainage" means money earned by a contractor or subcontractor but withheld to ensure timely performance by the contractor or subcontractor.

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

(h) "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.

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

New Sec. 3. (a) Subject to the provisions of subsections (b), (c), (d), (e), (f), (g), (h) and sections 4 and 5, and amendments thereto, all owners, contractors and subcontractors, who enter into a contract for public construction after the effective date of this act, shall make all payments pursuant to the terms of the contract.

(b) The following provisions in a contract for public construction shall be against public policy and shall be void and unenforceable:

(1) A provision that purports to waive, release or extinguish the right to resolve disputes through litigation in court or substantive or procedural rights in connection with such litigation except that a contract may require nonbinding alternative dispute resolution as a prerequisite to litigation;

(2) a provision that purports to waive, release or extinguish 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

(3) a provision that purports to waive, release or extinguish rights of subrogation for losses or claims covered or paid by liability or workers compensation insurance except 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 or a builder's risk policy.

(c) All contracts for public construction shall provide that payment of

amounts due a contractor from an owner, except retainage, shall be made within 30 days after the owner receives a timely, properly completed, undisputed request for payment according to terms of the contract, unless extenuating circumstances exist which would preclude approval of payment within 30 days. If such extenuating circumstances exist, then payment shall be made within 45 days after the owner receives such payment request.

(d) The architect or engineer of record or agent of the owner shall review, approve and forward undisputed requests for payment to the owner within seven business days of receipt from the contractor.

(e) If the owner fails to pay a contractor within the time period set forth in subsection (c), the owner shall pay interest computed at the rate of 18% per annum on the undisputed amount to the contractor beginning on the day following the end of the time period set forth in subsection (d).

(f) A contractor shall pay its subcontractors any amounts due within seven business days of receipt of payment from the owner, including payment of retainage, if retainage is released by the owner, if the subcontractor has provided a timely, properly completed and undisputed request for payment to the contractor.

(g) If the contractor fails to pay a subcontractor within seven business days, the contractor shall pay interest to the subcontractor beginning on the eighth business day after receipt of payment by the contractor, computed at the rate of 18% per annum on the undisputed amount.

(h) The provisions of subsection (g) shall also apply to all payments from subcontractors to their subcontractors.

New Sec. 4. (a) An owner, contractor or subcontractor may withhold no more than 10% retainage from the amount of any undisputed payment due.

(b) An owner must 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.

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

(d) 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 adjustment in retainage, if any, from the owner as necessary to enable the contractor to pay the subcontractor in full, and 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.

New Sec. 5. If any undisputed payment is not made within seven business days after the payment date established in a contract for public construction or in this act, the contractor and any subcontractors, regardless of tier, upon seven additional business days' written notice to the owner and, in the case of a subcontractor, written notice to the contractor, shall, without prejudice to any other available remedy, be entitled to suspend further performance until payment, including applicable interest, is made. The contract time for each contract affected by the suspension shall be extended appropriately and the contract sum for each affected contract shall be increased by the suspending party's reasonable costs of demobilization, delay and remobilization.

New Sec. 6. In any action to enforce sections 3, 4 or 5 and amendments thereto, including arbitration, between a contractor and subcontractors or subcontractors and subcontractors, the court or arbitrator shall award costs and reasonable attorney fees to the prevailing party. Venue

of such an action shall be in the county where the real property is located and under Kansas law. The hearing in such an arbitration shall be held in the county where the real property is located.

New Sec. 7. Any provision in a contract that purports to waive the rights of a party to the contract to collect damages for delays caused by another party to the contract shall be void, unenforceable and against public policy. This provision is not intended to create a contract between parties where a contract did not otherwise exist.

New Sec. 8. The provisions of the Kansas fairness in public construction contract act shall not apply to construction projects which are required to comply with section 109 of the Kansas department of transportation special provisions to the standard specifications, 1990 edition (90P-205-R6) or any subsequent editions.

Sec. 9. K.S.A. 2006 Supp. 44-717 is hereby amended to read as follows: 44-717. (a) (1) *Penalties on past-due reports, interest on past-due contributions, payments in lieu of contributions and benefit cost payments.* Any employer or any officer or agent of an employer, who fails to file any wage report or contribution return by the last day of the month following the close of each calendar quarter to which they are related shall pay a penalty as provided by this subsection (a) for each month or fraction of a month until the report or return is received by the secretary of labor. The penalty for each month or fraction of a month shall be an amount equal to .05% of the total wages paid by the employer during the quarter, except that no penalty shall be less than \$25 nor more than \$200 for each such report or return not timely filed. Contributions and benefit cost payments unpaid by the last day of the month following the last calendar quarter to which they are related and payments in lieu of contributions unpaid 30 days after the mailing of the statement of benefit charges, shall bear interest at the rate of 1% per month or fraction of a month until payment is received by the secretary of labor except that an employing unit, which is not theretofore subject to this law and which becomes an employer and does not refuse to make the reports, returns and contributions, payments in lieu of contributions and benefit cost payments required under this law, shall not be liable for such penalty or interest if the wage reports and contribution returns required are filed and the contributions, payments in lieu of contributions or benefit cost payments required are paid within 10 days following notification by the secretary of labor that a determination has been made fixing its status as an employer subject to this law. Upon written request and good cause shown, the secretary of labor may abate any penalty or interest or portion thereof provided for by this subsection (a). Interest amounting to less than \$1 shall be waived by the secretary of labor and shall not be collected. Penalties and interest collected pursuant to this subsection shall be paid into the special employment security fund. For all purposes under this section, amounts assessed as surcharges under subsection (j) or under K.S.A. 44-710a, and amendments thereto, shall be considered to be contributions and shall be subject to penalties and interest imposed under this section and to collection in the manner provided by this section. For purposes of this subsection, a wage report, a contribution return, a contribution, a payment in lieu of contribution or a benefit cost payment is deemed to be filed or paid as of the date it is placed in the United States mail.

(2) Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information that failure to make full payment within the prescribed time frame:

- (i) will cause the Indian tribe to be liable for taxes under FUTA;
- (ii) will cause the Indian tribe to lose the option to make payments in lieu of contributions;
- (iii) could cause the Indian tribe to be excepted from the definition of “employer,” as provided in paragraph (h)(3) of K.S.A. 44-703, and amendments thereto, and services in the employ of the Indian tribe, as provided in paragraph (i)(3)(E) of K.S.A. 44-703, and amendments thereto, to be excepted from “employment.”

(b) *Collection.* (1) If, after due notice, any employer defaults in payment of any penalty, contributions, payments in lieu of contributions, benefit cost payments, or interest thereon the amount due may be collected by civil action in the name of the secretary of labor and the em-

ployer adjudged in default shall pay the cost of such action. Civil actions brought under this section to collect contributions, payments in lieu of contributions, benefit cost payments, penalties, or interest thereon from an employer shall be heard by the district court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this act and cases arising under the workmen's compensation act. All liability determinations of contributions due, payments in lieu of contributions or benefit cost payments due shall be made within a period of five years from the date such contributions, payments in lieu of contributions or benefit cost payments were due except such determinations may be made for any time when an employer has filed fraudulent reports with intent to evade liability.

(2) Any employing unit which is not a resident of this state and which exercises the privilege of having one or more individuals perform service for it within this state and any resident employing unit which exercises that privilege and thereafter removes from this state, shall be deemed thereby to appoint the secretary of state as its agent and attorney for the acceptance of process in any civil action under this subsection. In instituting such an action against any such employing unit the secretary of labor shall cause such process or notice to be filed with the secretary of state and such service shall be sufficient service upon such employing unit and shall be of the same force and validity as if served upon it personally within this state. The secretary of labor shall send notice immediately of the service of such process or notice, together with a copy thereof, by registered or certified mail, return receipt requested, to such employing unit at its last-known address and such return receipt, the affidavit of compliance of the secretary of labor with the provisions of this section, and a copy of the notice of service, shall be appended to the original of the process filed in the court in which such civil action is pending.

~~(3) Any contractor, who is or becomes an employer under the provisions of this act, who contracts with any subcontractor, who also is or becomes an employer under the provisions of this act, shall be directly liable for such contributions, penalties and interest due from the subcontractor and the secretary of labor shall have all of the remedies of collection against the contractor under the provisions of this act as though the services in question were performed directly for the contractor, unless the contractor requires the subcontractor to provide a good and sufficient bond guaranteeing payment of all contributions, penalties and interest due or to become due with respect to wages paid for employment on the contract. For the purpose of this subsection (b)(3), the words, "contractor" and "subcontractor" mean and include individuals, partnerships, firms or corporations, or other associations of persons engaged in the business of the construction, alteration, repairing, dismantling or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains, streets, disposal plants, water filters, tanks and towers, airports, dams, levees and canals, oil and gas wells, water wells, pipelines, and every other type of structure, project, development or improvement coming within the definition of real property.~~

~~(4) The district courts of this state shall entertain, in the manner provided in subsections (b)(1), (b)(2) and (b)(3) and (b)(2), actions to collect contributions, payments in lieu of contributions, benefit cost payments and other amounts owed including interest thereon for which liability has accrued under the employment security law of any other state or of the federal government.~~

(c) *Priorities under legal dissolutions or distributions.* In the event of any distribution of employer's assets pursuant to an order of any court under the laws of this state, including but not limited to any probate proceeding, interpleader, receivership, assignment for benefit of creditors, adjudicated insolvency, composition or similar proceedings, contributions or payments in lieu of contributions then or thereafter due shall be paid in full from the moneys which shall first come into the estate, prior to all other claims, except claims for wages of not more than \$250 to each claimant, earned within six months of the commencement of the proceedings. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal bankruptcy act of 1898, as amended, contributions then or thereafter due

shall be entitled to such priority as is provided in that act for taxes due any state of the United States.

(d) *Assessments.* If any employer fails to file a report or return required by the secretary of labor for the determination of contributions, or payments in lieu of contributions, or benefit cost payments, the secretary of labor may make such reports or returns or cause the same to be made, on the basis of such information as the secretary may be able to obtain and shall collect the contributions, payments in lieu of contributions or benefit cost payments as determined together with any interest due under this act. The secretary of labor shall immediately forward to the employer a copy of the assessment by registered or certified mail to the employer's address as it appears on the records of the agency, and such assessment shall be final unless the employer protests such assessment and files a corrected report or return for the period covered by the assessment within 15 days after the mailing of the copy of assessment. Failure to receive such notice shall not invalidate the assessment. Notice in writing shall be presumed to have been given when deposited as certified or registered matter in the United States mail, addressed to the person to be charged with notice at such person's address as it appears on the records of the agency.

(e) (1) *Lien.* If any employer or person who is liable to pay contributions, payments in lieu of contributions or benefit cost payments neglects or refuses to pay the same after demand, the amount, including interest and penalty, shall be a lien in favor of the state of Kansas, secretary of labor, upon all property and rights to property, whether real or personal, belonging to such employer or person. Such lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor until notice thereof has been filed by the secretary of labor in the office of register of deeds in any county in the state of Kansas, in which such property is located, and when so filed shall be notice to all persons claiming an interest in the property of the employer or person against whom filed. The register of deeds shall enter such notices in the financing statement record and shall also record the same in full in miscellaneous record and index the same against the name of the delinquent employer. The register of deeds shall accept, file, and record such notice without prepayment of any fee, but lawful fees shall be added to the amount of such lien and collected when satisfaction is presented for entry. Such lien shall be satisfied of record upon the presentation of a certificate of discharge by the state of Kansas, secretary of labor. Nothing contained in this subsection (e) shall be construed as an invalidation of any lien or notice filed in the name of the unemployment compensation division or the employment security division and such liens shall be and remain in full force and effect until satisfied as provided by this subsection (e).

(2) *Authority of secretary or authorized representative.* If any employer or person who is liable to pay any contributions, payments in lieu of contributions or benefit cost payments, including interest and penalty, neglects or refuses to pay the same within 10 days after notice and demand therefor, the secretary or the secretary's authorized representative may collect such contributions, payments in lieu of contributions or benefit cost payments, including interest and penalty, and such further amount as is sufficient to cover the expenses of the levy, by levy upon all property and rights to property which belong to the employer or person or which have a lien created thereon by this subsection (e) for the payment of such contributions, payments in lieu of contributions or benefit cost payments, including interest and penalty. As used in this subsection (e), "property" includes all real property and personal property, whether tangible or intangible, except such property which is exempt under K.S.A. 60-2301 *et seq.* and amendments thereto. Levy may be made upon the accrued salary or wages of any officer, employee or elected official of any state or local governmental entity which is subject to K.S.A. 60-723, and amendments thereto, by serving a notice of levy as provided in subsection (d) of K.S.A. 60-304 and amendments thereto. If the secretary or the secretary's authorized representative makes a finding that the collection of the amount of such contributions, payments in lieu of contributions or benefit cost payments, including interest and penalty, is in jeopardy, notice and demand for immediate payment of such amount may be made by the secretary or the secretary's authorized representative and, upon failure or refusal to pay such amount, immediate collection of such

amount by levy shall be lawful without regard to the 10-day period provided in this subsection (e).

(3) *Seizure and sale of property.* The authority to levy granted under this subsection (e) includes the power of seizure by any means. A levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the secretary or the secretary's authorized representative may levy upon property or rights to property, the secretary or the secretary's authorized representative may seize and sell such property or rights to property.

(4) *Successive seizures.* Whenever any property or right to property upon which levy has been made under this subsection (e) is not sufficient to satisfy the claim of the secretary for which levy is made, the secretary or the secretary's authorized representative may proceed thereafter and as often as may be necessary, to levy in like manner upon any other property or rights to property which belongs to the employer or person against whom such claim exists or upon which a lien is created by this subsection (e) until the amount due from the employer or person, together with all expenses, is fully paid.

(f) *Warrant.* In addition or as an alternative to any other remedy provided by this section and provided that no appeal or other proceeding for review permitted by this law shall then be pending and the time for taking thereof shall have expired, the secretary of labor or an authorized representative of the secretary may issue a warrant certifying the amount of contributions, payments in lieu of contributions, benefit cost payments, interest or penalty, and the name of the employer liable for same after giving 15 days prior notice. Upon request, service of final notices shall be made by the sheriff within the sheriff's county, by the sheriff's deputy or some person specially appointed by the secretary for that purpose, or by the secretary's designee. A person specially appointed by the secretary or the secretary's designee to serve final notices may make service any place in the state. Final notices shall be served as follows:

(1) *Individual.* Service upon an individual, other than a minor or incapacitated person, shall be made by delivering a copy of the final notice to the individual personally or by leaving a copy at such individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, by leaving a copy at the business establishment of the employer with an officer or employee of the establishment, or by delivering a copy to an agent authorized by appointment or by law to receive service of process, but if the agent is one designated by a statute to receive service, such further notice as the statute requires shall be given. If service as prescribed above cannot be made with due diligence, the secretary or the secretary's designee may order service to be made by leaving a copy of the final notice at the employer's dwelling house, usual place of abode or business establishment.

(2) *Corporations and partnerships.* Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association, when by law it may be sued as such, shall be made by delivering a copy of the final notice to an officer, partner or resident managing or general agent thereof by leaving a copy at any business office of the employer with the person having charge thereof or by delivering a copy to any other agent authorized by appointment or required by law to receive service of process, if the agent is one authorized by law to receive service and, if the law so requires, by also mailing a copy to the employer.

(3) *Refusal to accept service.* In all cases when the person to be served, or an agent authorized by such person to accept service of petitions and summonses, shall refuse to receive copies of the final notice, the offer of the duly authorized process server to deliver copies thereof and such refusal shall be sufficient service of such notice.

(4) *Proof of service.* (A) Every officer to whom a final notice or other process shall be delivered for service within or without the state, shall make return thereof in writing stating the time, place and manner of service of such writ, and shall sign such officer's name to such return.

(B) If service of the notice is made by a person appointed by the secretary or the secretary's designee to make service, such person shall make an affidavit as to the time, place and manner of service thereof in a form prescribed by the secretary or the secretary's designee.

(5) *Time for return.* The officer or other person receiving a final notice shall make a return of service promptly and shall send such return

to the secretary or the secretary's designee in any event within 10 days after the service is effected. If the final notice cannot be served it shall be returned to the secretary or the secretary's designee within 30 days after the date of issue with a statement of the reason for the failure to serve the same. The original return shall be attached to and filed with any warrant thereafter filed.

(6) *Service by mail.* (A) Upon direction of the secretary or the secretary's designee, service by mail may be effected by forwarding a copy of the notice to the employer by registered or certified mail to the employer's address as it appears on the records of the agency. A copy of the return receipt shall be attached to and filed with any warrant thereafter filed.

(B) The secretary of labor or an authorized representative of the secretary may file the warrant for record in the office of the clerk of the district court in the county in which the employer owing such contributions, payments in lieu of contributions, benefit cost payments, interest, or penalty has business property. The warrant shall certify the amount of contributions, payments in lieu of contributions, benefit cost payments, interest and penalty due, and the name of the employer liable for such amount. It shall be the duty of the clerk of the district court to file such warrant of record and enter the warrant in the records of the district court for judgment and decrees under the procedure prescribed for filing transcripts of judgment.

(C) The clerk shall enter, on the day the warrant is filed, the case on the appearance docket, together with the amount and the time of filing the warrant. From the time of filing such warrant, the amount of the contributions, payments in lieu of contributions, benefit cost payments, interest, and penalty, certified therein, shall have the force and effect of a judgment of the district court until the same is satisfied by the secretary of labor or an authorized representative or attorney for the secretary. Execution shall be issuable at the request of the secretary of labor, an authorized representative or attorney for the secretary, as is provided in the case of other judgments.

(D) Postjudgment procedures shall be the same as for judgments according to the code of civil procedure.

(E) Warrants shall be satisfied of record by payment to the clerk of the district court of the contributions, payments in lieu of contributions, benefit cost payments, penalty, interest to date, and court costs. Warrants may also be satisfied of record by payment to the clerk of the district court of all court costs accrued in the case and by filing a certificate by the secretary of labor, certifying that the contributions, payments in lieu of contributions, benefit cost payments, interest and penalty have been paid.

(g) *Remedies cumulative.* The foregoing remedies shall be cumulative and no action taken shall be construed as an election on the part of the state or any of its officers to pursue any remedy or action under this section to the exclusion of any other remedy or action for which provision is made.

(h) *Refunds.* If any individual, governmental entity or organization makes application for refund or adjustment of any amount paid as contributions, benefit cost payments or interest under this law and the secretary of labor determines that such amount or any portion thereof was erroneously collected, except for amounts less than \$1, the secretary of labor shall allow such individual or organization to make an adjustment thereof, in connection with subsequent contribution payments, or if such adjustment cannot be made the secretary of labor shall refund the amount, except for amounts less than \$1, from the employment security fund, except that all interest erroneously collected which has been paid into the special employment security fund shall be refunded out of the special employment security fund. No adjustment or refund shall be allowed with respect to a payment as contributions, benefit cost payments or interest unless an application therefor is made on or before whichever of the following dates is later: (1) One year from the date on which such payment was made; or (2) three years from the last day of the period with respect to which such payment was made. For like cause and within the same period adjustment or refund may be so made on the secretary's own initiative. The secretary of labor shall not be required to refund any contributions, payments in lieu of contributions or benefit cost payments

based upon wages paid which have been used as base-period wages in a determination of a claimant's benefit rights when justifiable and correct payments have been made to the claimant as the result of such determination. For all taxable years commencing after December 31, 1997, interest at the rate prescribed in K.S.A. 79-2968, and amendments thereto, shall be allowed on a contribution or benefit cost payment which the secretary has determined was erroneously collected pursuant to this section.

(i) (1) *Cash deposit or bond.* If any contributing employer is delinquent in making payments under the employment security law during any two quarters of the most recent four-quarter period, the secretary or the secretary's authorized representative shall have the discretionary power to require such contributing employer either to deposit cash or to file a bond with sufficient sureties to guarantee the payment of contributions, penalty and interest owed by such employer.

(2) The amount of such cash deposit or bond shall be not less than the largest total amount of contributions, penalty and interest reported by the employer in two of the four calendar quarters preceding any delinquency. Such cash deposit or bond shall be required until the employer has shown timely filing of reports and payment of contributions for four consecutive calendar quarters.

(3) Failure to file such cash deposit or bond shall subject the employer to a surcharge of 2.0% which shall be in addition to the rate of contributions assigned to the employer under K.S.A. 44-710a and amendments thereto. Contributions paid as a result of this surcharge shall not be credited to the employer's experience rating account. This surcharge shall be effective during the next full calendar year after its imposition and during each full calendar year thereafter until the employer has filed the required cash deposit or bond or has shown timely filing of reports and payment of contributions for four consecutive calendar quarters.

(j) Any officer, major stockholder or other person who has charge of the affairs of an employer, which is an employing unit described in section 501(c)(3) of the federal internal revenue code of 1954 or which is any other corporate organization or association, or any member or manager of a limited liability company, or any public official, who willfully fails to pay the amount of contributions, payments in lieu of contributions or benefit cost payments required to be paid under the employment security law on the date on which such amount becomes delinquent, shall be personally liable for the total amount of the contributions, payments in lieu of contributions or benefit cost payments and any penalties and interest due and unpaid by such employing unit. The secretary or the secretary's authorized representative may assess such person for the total amount of contributions, payments in lieu of contributions or benefit cost payments and any penalties, and interest computed as due and owing. With respect to such persons and such amounts assessed, the secretary shall have available all of the collection remedies authorized or provided by this section.

Sec. 10. K.S.A. 75-6402 is hereby amended to read as follows: 75-6402. As used in the Kansas prompt payment act, unless the context clearly requires otherwise, the following words and phrases shall have the meanings respectively ascribed thereto.

(a) "State agency" means the state and any state agency, department, division or authority thereof.

(b) "Government agency" means any state agency, library, community college or unified school district.

(c) "Vendor" means any person, corporation, association or other business concern engaged in a trade or business, either on a profit or not-for-profit basis, and providing any goods or services to a government agency.

(d) "Goods" means any goods, supplies, materials, equipment or other personal property, but does not mean any real property.

(e) "Services" means any contractual services including architectural, engineering, medical, financial, consulting or other professional services, any construction services and any other personal services, but does not mean any services performed as an officer or employee of any government agency. *Services shall not include construction contracts subject to sections 1 through 8, and amendments thereto.*



(f) “Bill” means a proper billing which requests payment and which contains or is accompanied by such substantiating documentation as may be required for payment for the goods or services.

(g) “Community college” means any community college organized and operating under the laws of this state.

(h) “Library” means a library which serves the general public and is supported in whole or in part with tax money.

Sec. 11. K.S.A. 75-6402 and K.S.A. 2006 Supp. 44-717 are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

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SENATE adopted

Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

Passed the HOUSE

as amended \_\_\_\_\_

HOUSE adopted

Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*