

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS

The meeting was called to order by Senator Merrill Werts at
Chairperson

10:00 a.m./p/m/on April 10, 1985 in room 123-S of the Capitol.

All members were present except:

Committee staff present:

Research Department: Robin Hunn, Carolyn Rampey
Revisor's Office: Norman Furse
Committee Office: Judy Bromich, Doris Fager

Conferees appearing before the committee:

Billy McCray, Minority Business Division, KDED
Alonzo Harrison, Disadvantaged Business Enterprise
Jaime Apodaca, Mexican-American Affairs Committee
Dan Ramlow, Kansas Contractors' Association
Dan Morgan, Associated General Contractors
Robert West, National Electrical Contractors Association
Bill Kauffman, Board of Regents
David Monical, Vice-President for Planning and Governmental Relations,
Washburn University
Senator Jeanne Hoferer
Merle Hill, Kansas Association of Community Colleges
Connie Hubbell, State Board of Education

SB 353 - Relating to minority and women small businesses

Senator Feleciano explained SB 353 to members of the committee, and expressed his interest in its passage.

Mr. Apodaca distributed his written testimony (Attachment A), and presented it to the committee. Following his presentation, Senator Werts asked for a definition of a "minority" person. He asked, for instance, about the definition of an American Indian. Mr. Apodaca said it is his understanding that the Bureau of Indian Affairs considers a person an Indian if his blood-line is one-fourth Indian. Definitions of the other minorities mentioned in the bill are identified through community participation and how each person sees himself as an individual.

When asked by Senator Kerr about the percentage of minorities in Kansas, Mr. Apodaca said it is approximately 12%.

Mr. Harrison read from his printed testimony (Attachment B), and committee members were given an opportunity to question him.

Mr. McCray distributed his printed testimony (Attachment C). He explained that his Division serves as an advocate for minority business people. Senator Gannon referred to Mr. McCray's testimony, and asked about the Department of Transportation and what more minority businesses could offer in that area. He suggested that highway contracts are often very large contracts, demanding the use of heavy equipment. Mr. McCray answered that minority businesses usually come in as subcontractors.

During subsequent discussion, Senator Gaines asked if there should be "set-asides" for minorities in spite of the fact that the cost to the state could increase. Mr. McCray suggested it should be public policy, regardless of cost. He further suggested that it is possible to save money, and that there is nothing to fear if SB 353 should become law.

According to Mr. McCray, some progress has been made in the number of minority bidders on state contracts. The number has increased from 120 to 264 since the first small business bill was passed.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS

room 123-S, Statehouse, at 10:00 a.m./p.m. on April 10, 1985

SB 353 - Continued

Mr. Ramlow read from his prepared testimony (Attachment D). Following presentation of the testimony, he read from some KDOT contracts which he had obtained before the meeting. Several of the contracts were for work in Western Kansas. Senator Gannon asked if it is easy to meet the goal for disadvantaged business enterprises. Mr. Ramsey replied that it is more difficult in some areas of Kansas than in others, as far as KDOT work is concerned. He added, however, that apparently the goal has been met.

Mr. Morgan distributed his written testimony (Attachment E) and presented his remarks to the committee. In answer to questions from Senator Gaines Mr. Morgan reiterated that his group consists of small businesses, but they are not in favor of set-asides. He added that it would be in the best interests of all to ensure that there is competition in all industries, including the construction industry.

Mr. West presented his written testimony (Attachment F). Following his testimony, Senator Feleciano said he had not seen any abuses of the present act in Kansas by small businesses. Mr. West explained that the abuses he referred to are those by large businesses who use smaller organizations as "fronts.", and he feels the small businesses may be cheated as a result of these abuses.

The completed the hearing on SB 353.

HB 2563 - Concerning allowances for official travel

Mr. Furse explained that HB 2563 changes private vehicle mileage reimbursement from 22 cents per mile to 20.5 cents per mile to bring it into compliance with the federal rate. He stated that this has been carried out by rules and regulations; therefore, it is already in effect. HB 2563 also changes the present law by including parking charges and bridge tolls to reimbursements to be made by the state. There followed a brief discussion concerning the provisions of the measure.

HB 2568 - Issuance of revenue bonds

Mr. Kauffman appeared in support of HB 2568. He explained that in November, 1984 and March, 1985, the Board of Regents issued refunding revenue bonds for two outstanding issues at Wichita State University. He said the net savings will be \$250,000 on those two issues alone. Mr. Kauffman noted that, as the Board of Regents looked at these questions with the assistance of bond counsel, it was suggested we might seek amendments to make this refunding possible for other outstanding bond issues for the Board of Regents.

Following a brief review of the bill, Mr. Kauffman explained that all the privileges granted to the Regents in HB 2568 are currently available to municipalities by statutory provision in 1978. He added that it appears the Regents' omission was an oversight.

HB 2165 - Increase in aid for Washburn University and Community Colleges

Senator Hoferer gave a brief review of the work done by the Shawnee County delegation in cooperation with the City of Topeka, Shawnee County and the Washburn regents. In response to committee questions, Senator Hoferer said she feels this is not an unreasonable request.

There was discussion concerning Attachment G, prepared by the Kansas Legislative Research Department.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS

room 123-S, Statehouse, at 10:00 a.m./p.m. on April 10, 1985

HB 2165 - Continued

Mr. Monical distributed Attachments H and I, his written testimony and a schedule of appropriations and revenues for Washburn University. He explained that Washburn University wants to reduce the size of the law school; but this is difficult to accomplish, since most of the university's income is from credit hour production.

There was discussion concerning Washburn taking students from Emporia State University; and the fact that all small universities are having problems with budgets. Mr. Monical said the package presented by Washburn is based on no increase in enrollment for the next fiscal year. He said the university administration realizes that present growth will not continue, because others are beginning to recruit as Washburn has done the past few years.

There were comments about Washburn professors receiving more salary than those at State Regents Institutions. Mr. Monical said that the reason the average is high is because of the law school, where there is not one assistant professor. He said the law school is in the lower third of law schools in the midwest. He added that it depends upon the information in hand whether Washburn is higher or lower than other universities in the state.

There was a question from Senator Johnston concerning the possibility of removing the levy limit for Washburn. Mr. Monical replied that is an option, and is one of the reasons the Washburn Board of Regents is requesting an interim study on Washburn funding. He said this is one of the items that needs to be studied.

Mr. Monical indicated that the Washburn Board is considering a resolution requesting the State Board of Regents to look at Washburn long term funding, including as one option, state affiliation.

Senator Winter expressed concern about the increased funding request from Washburn. He then asked about the status of the Masters program in Education at Leavenworth and Kansas City, which Washburn University is considering. Mr. Monical said Washburn was asked to enter into discussions by members of school boards in those areas. When asked by Senator Winter if he could assure the committee that Washburn is not going to that metropolitan area within the next fiscal year, Mr. Monical said if it is a concern of the Legislature, he feels sure that no definite plans to deliver those courses will be made within the next fiscal year.

Senator Harder requested information concerning the number of students in advanced degree programs at Washburn University. Mr. Monical said he would provide that information to members of the committee.

Mr. Hill said that state aid, as a percentage of operating revenues for community colleges has been dropping continually. It was 33% seven years ago, and is now 26%. Income from local sources has increased in that time from 47% to 59%. In order to regain to the 33% level of state funding, an increase in credit hour state aid has been discussed. He said community colleges are supportive of HB 2165 as amended.

There were several questions from committee members concerning mill levies for community colleges. Mr. Hill said that three colleges are at the top limit of their levies, and none are at the minimum.

Ms. Hubbell presented her written statement (Attachment J). There were questions concerning her opinion about cooperation between Regents and community colleges regarding the issue of higher education. She said the State Board of Regents and State Board of Education are working at more communication. She said those involved are aware that coordination is the ultimate goal.

Following a brief discussion concerning problems of funding at Washburn, the hearing on HB 2165 was concluded.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS

room 123-S Statehouse, at 10:00 a.m./p.m. on April 10, 1985

HB 2563 - Allowances for official travel

Motion was made by Senator Johnston and seconded by Senator Feleciano that HB 2563 be reported favorably for passage. The motion carried by roll call vote.

HB 2568 - Issuance of revenue bonds

Motion was made by Senator Johnston and seconded by Senator Feleciano to report HB 2568 favorably for passage. The motion carried by roll call vote.

SB 362 - Malpractice insurance for residents at KUMC

AKS
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A balloon of SB 362 containing suggested amendments was distributed, and Senator Winter explained the amendments.

Motion was made by Senator Gaines and seconded by Senator Gannon to include the suggested amendments in SB 362.

Senator Kerr asked if there might be a possibility the insurance company will refuse to write insurance if SB 362 is passed. Senator Winter said he could not answer that. Senator Kerr reminded the committee that the premium collected by the insurance company will be much reduced for the same liability, and he predicted a problem in the future.

Senator Feleciano expressed his opposition to SB 362, indicating that it is bad public policy to exempt any particular group from insurance.

The above motion carried by voice vote, with Senator Feleciano voting "No."

Motion was made by Senator Gaines and seconded by Senator Harder to report SB 362 as amended favorably for passage. The motion carried by roll call vote.

HB 2159 - Income Tax Credit for Inventory Property Taxes

HB 2512 - Cigarette Rate Tax Increase

The Chairman explained that these two bills had been referred to the Ways and Means Committee in order to keep them in the legislative calendar, and a request had been made to report them without recommendation.

Motion was made by Senator Gaines and seconded by Senator Harder to report HB 2159 and HB 2512 without recommendation. The motion carried by roll call vote.

INTRODUCTION OF BILL

Motion was made by Senator Gaines and seconded by Senator Kerr to introduce a bill requested by Senator Vidrickson relating to unclaimed property. The motion carried by voice vote.

The meeting was adjourned by the Chairman.

TESTIMONY PREPARED FOR THE SENATE WAYS AND MEANS COMMITTEE
CONCERNING S.B. 353

James M. Apodaca
Executive Director

Kansas Advisory Committee on Mexican American Affairs

Mr. Chairman and Committee Members:

One of the functions of the Kansas Advisory Committee on Mexican American Affairs (KACMAA) is to serve as liaison between the Kansas Hispanic Community and Kansas State Government. Included in this mandate, as established by the 1974 Legislative Session, is that we advocate the area of economic development for the Hispanic Community in the state of Kansas. It is in this capacity that I have prepared this written testimony which will provide the Committee with a perspective from the Hispanic Community which the agency represents.

The preservation and expansion of the American economic system of private enterprise is through free competition. The security and well-being brought about by such competition cannot be realized unless the actual and potential capacity of minority business is encouraged and developed. In the state of Kansas there is a tremendous opportunity for participation by minority and other economic and socially disadvantaged contractors. This, in our opinion, can be accomplished by the state and its abled leadership coming to grips with the question of Hispanic, minority, and women participation in state conducted commercial and contractual transactions. This, we believe, can be accomplished through S.B. 353 and its guidelines.

Senate Bill 766 (The Kansas Small Business Procurement Act) was passed with the goal of insuring at least, but not limited to, ten percent (10%) of the total dollar amount of state purchases be placed with small businesses. The bill also required reporting of businesses with identifications broken down to large, small, or minority businesses and that the state's total purchases placed with small and/or minority contractors be identified. Since it was passed, Senate Bill 766 and its extension, S.B. 624, have met with great success. The mean percent of business contracted to small business between the years of 1980 to 1984 was 31.41% In that same time period, however, the mean percent of business conducted with minority contractors was .3075%, or less than $\frac{1}{2}$ of 1 percent. Because of this the Advisory Committee on Mexican American Affairs sees a need to foster the development of small-minority business in our state.

The future of small business is a matter of increasing concern to Federal and State Government officials. The realization of the vital role of small businesses in a healthy economy is accompanied by an uneasy knowledge that government actions often place an unduly heavy burden on them. In addition to alleviating these government imposed burdens, policy-makers are also concerned in some instances with alleviating the market-imposed difficulties of small businesses. The question of how to best do this is one which is being asked with increasing frequency in the states.

Small businesses are important to states for a number of reasons. Perhaps the most significant benefit is the role which they play in job creation. Although state economic development efforts have often concentrated on attracting large firms to relocate in the state, recent research indicates that over half of all new employment comes from the creation of new businesses and the expansion of existing ones. Thus, providing an economic climate in which small businesses can thrive may be the most important step in a state economic development strategy. Small businesses are also very important for their ability to serve specialized markets, including those which are geographically remote. Small businesses play a major role in the introduction of new products, in stimulating competition and innovation, and in providing citizens with an opportunity for ownership and economic self-determination.

The area of economic self-determination and employment are probably the most pronounced needs of Hispanic, minority, and women contractors in the state of Kansas.

In closing, I would like to say that it is small business which is at the heart of the American economic system; it is small business which hires most of our workers, pays most of our taxes, and visibly demonstrates the strength of a free enterprise system. Let us in the spirit of a great nation and the greatest of states allow the full participation of the Hispanic, minority, and women community by accepting S.B. 353.

We would also like to thank the Ways and Means Committee for allowing us to address the issue. It is through this spirit of cooperation which this committee is demonstrating that individuals such as yourselves make our great state a better place for all Kansans to live and grow.

4-10-85

ASSOCIATION OF DISADVANTAGED
BUSINESS ENTERPRISES



A.D. B.E.

The standard of Excellence

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President
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Vice President
A. Harrison
Secretary/Treasurer

STATEMENT OF MR. ALONZO HARRISON
ON SENATE BILL 353 PRESENTED TO
COMMITTEE ON WAYS AND MEANS

First and foremost I want to thank you all for affording me this time.

A.D.B.E. the Association of Disadvantaged Business Enterprises, Conceptually and Philosophically support Senate Bill 353. However, in the same vain we eagerly and enthusiastically, recognize, embrace and support the concept and philosophy of the "Free Enterprise System". Further, we believe that the market place should be unencumbered by influences that are not conducive and responsive to the concept of "Capitalism".

However, when the market place has the effect of excluding and or eliminating responsible productive participants in the free flow and or exchange of goods and services, then the market place is no longer "Free" and "Free Enterprise" no longer existit.

A.D.B.E., is here in support of Senate Bill 353, because it and we are suggesting that quite possibly and most proably the "Open Market" and or "Free Enterprise System" in our Great State, is not "Free and Open" to all. This point is clearly and painfully illustrated by the fact that during fiscal year 1984, less than one half (1/2) of one (1) percent of Three Hundred Million dollars (\$300,000,000.00) worth of **procurement** in the State of Kansas was spent with Disadvantaged Business Enterprises. Further, the state has "NO" stated position on correcting this obvious and significant imbalance of opportunity. As a result, A.D.B.E. seeks your favorable consideration of Senate Bill 353.

YOURS IN COOPERATION


ALONZO HARRISON

A.D.B.E. Sec/Treas.

KANSAS DEPARTMENT OF ECONOMIC DEVELOPMENT

Minority Business Division
503 Kansas Avenue, Sixth Floor, Topeka, Kansas 66603
Phone (913) 296-3805



JOHN CARLIN
Governor

CHARLES J. "Jamie" SCHWARTZ
Secretary

C O M M I T T E E T E S T I M O N Y

TO: Senate Ways & Means Committee
Senator August "Gus" Bogina - Chairman

RE: SB 353 - An Act Relating to Minority
and Women Small Businesses

Mr. Chairman and Committee Members:

My name is Billy Q. McCray and I am Director of Kansas Department of Economic Development's Minority Business Division.

Our Division supports the concept embodied in Senate Bill 353, and although a few people would argue that there is little need for "set asides" today, statistics and progressive economic facts dispute this argument.

The Chairman of the Congressional House Small Business Committee recently stated in a constituency newsletter; "I maintain that set asides are necessary as a means of stemming the blatantly inequitable pattern of shutting out disadvantaged small businesses from lucrative Federal Highway Improvement Projects and overlooking them as suppliers of goods and services under public works contracts". Unless state agencies are required to set aside a specific achievable amount to award women and minority suppliers of services and contractors, our state will never reap the benefits of procuring from this particular business sector.

An example, closer to home, is the nine (9) month effort by our Division to increase their participation in state procurement. We have increased the number of minority bidders on the Division of Purchasing Bidder Application List from approximately 125 to 264, yet there is no appreciable difference in the number of awards or dollar increase to minority vendors.

I believe, therefore, that some kind of a legislative set aside or executive order by the Governor is imperative if minority and women vendors are to be given an open opportunity to participate in the state procurement process.

Senate Bill 353 will give KDOT an opportunity to better meet its state and federal commitments in the Surface Transportation Assistance Act. It will also establish a legislative policy which encourages all departments to utilize the broadest scope of responsible vendors in their bidding process.

We have found that in most cases small contractors can save the public money because of lower overhead and often family labor involved in delivering the services or products.

BQM:bjc

C 4-10

SENATE WAYS AND MEANS COMMITTEE
SENATE BILL 353 -- APRIL 10, 1985

Mr. Chairman and members of the committee. Thank you for the opportunity to speak with you for a very few minutes about Senate Bill 353.

My name is Dan Ramlow and I am Assistant Manager of the Kansas Contractors Association. Our members build more than 90% of the highways, roads, streets and bridges in Kansas.

First, may I please explain that all of my remarks are directed to the Kansas Department of Transportation portions of the bill. I am not qualified to address any of the provisions that relate to the Departments of Administration or Economic Development.

Our association during its entire 62 years of existence has opposed all set asides or special bidding preference programs because we do not believe they are in the best interests of the citizens of our state or our nation.

The federal Surface Transportation Act of 1982, however, mandated a 10% set aside for Disadvantaged Business Enterprises in each state unless the state asked for and received a waiver to a lower percent. Kansas has met its 10% quota and I feel certain they will continue to do so. Disadvantaged Business Enterprises may bid as prime contractors or may sub work from the prime contractor.

I think it is very important that you gentlemen know that in 1985 this will assure Minority Business Enterprises in Kansas at least \$17 million in KDOT contracts.

There is also a set-aside bill - House Bill 2462 - which has passed the House and is now in the Senate which permits the KDOT to set aside selected projects for bidding only by Disadvantaged Business Enterprises.

We sincerely believe that Senate Bill 353 is not needed as it relates to contracts awarded by the Kansas Department of Transportation.

Thank you, this concludes my testimony, and I would be happy to answer questions from the committee.

TESTIMONY BEFORE THE
SENATE WAYS AND MEANS COMMITTEE
REGARDING SENATE BILL 353

By

THE ASSOCIATED GENERAL CONTRACTORS OF KANSAS
APRIL 10, 1985

THANK YOU MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. I AM DAN MORGAN AND I AM APPEARING TODAY IN OPPOSITION TO SENATE BILL 353 ON BEHALF OF THE ASSOCIATED GENERAL CONTRACTORS OF KANSAS. AGC OF KANSAS REPRESENTS OVER 200 GENERAL CONTRACTORS AND ASSOCIATE SUBCONTRACTOR AND SUPPLIER MEMBERS THROUGHOUT THE STATE WHO ARE DIRECTLY ENGAGED IN OR PROVIDE SERVICES FOR THE COMMERCIAL AND INDUSTRIAL BUILDING CONSTRUCTION INDUSTRY IN THE STATE.

MR. CHAIRMAN, THROUGHOUT ITS HISTORY AGC OF AMERICA HAS CONSISTANTLY OPPOSED THE APPLICATION OF SPECIAL PREFERENCE PROGRAMS TO THE CONSTRUCTION INDUSTRY, WHETHER THE PREFERENCES ARE BASED ON RACE, ETHNIC ORIGIN, SEX OR SIZE OF FIRM. AGC OF KANSAS ALSO TAKES THAT POSITION. THE BASIC REASONS FOR OPPOSITION TO SET-ASIDES IN OUR INDUSTRY ARE (1) THEY RESTRICT COMPETITION THEREBY INCREASING THE COST OF PUBLIC WORK CONSTRUCTION, AND (2) THEY ARE SIMPLY NOT NEEDED IN THE HIGHLY COMPETITIVE CONSTRUCTION INDUSTRY, THE CHARACTERISTICS OF WHICH ASSURE AMPLE OPPORTUNITY FOR QUALIFIED CONTRACTING FIRMS OF ALL TYPES TO OBTAIN A SHARE OF THE MARKET. OURS IS AN INDUSTRY THAT IS REMARKABLY OPEN TO ENTREPRENEURS OF ALL DESCRIPTION WHO ARE WILLING TO BUILD EXPERTISE, CAPITAL AND HARD WORK INTO A SUCCESSFUL AND COMPETITIVE BUSINESS.

TWO CHARACTERISTICS OF THE CONSTRUCTION INDUSTRY ADD TO THE EASE OF ENTRY INTO THIS LINE OF WORK. FIRST, THE SUBCONTRACTING SYSTEM OFFERS SMALL BUSINESSES A TRAINING GROUND IN WHICH TO DEVELOP THE SKILLS NECESSARY TO BECOME SUCCESSFUL. OPEN COMPETITIVE BIDDING IS THE SECOND MAJOR CHARACTERISTIC WHICH ADDS TO THE EASE OF ENTRY INTO THE INDUSTRY. VIRTUALLY ALL PUBLIC WORKS CONSTRUCTION IS PROCURED THROUGH OPEN COMPETITIVE BIDDING. ALL BIDDERS BID ON THE SAME SPECIFICATIONS AND ALL ARE EXPECTED TO MEET THE SAME STANDARDS OF QUALITY. OPEN COMPETITIVE BIDDING ENSURES THAT THE ONLY FACTOR WHICH WILL BE CONSIDERED IN SELECTING BETWEEN QUALIFIED CONTRACTORS IS THE PRICE OFFERED - REGARDLESS OF RACE, ETHNIC ORIGIN, SEX OR SIZE OF FIRM.

WELL-INTENDED AS THEY MAY BE, ONE ONLY HAS TO LOOK AT THE FEDERAL SMALL BUSINESS ADMINISTRATION'S 8(A) PROGRAM TO SEE THAT SET-ASIDES ARE NOT APPROPRIATE FOR CONSTRUCTION. UNDER THE FEDERAL 8(A) PROGRAM, THE SBA AND A FEDERAL CONTRACT AWARDING AGENCY AGREE TO REMOVE A CONTRACT FROM THE OPEN UNRESTRICTED COMPETITIVE BID SYSTEM AND NEGOTIATE THE CONTRACT WITH A "SOCIALY AND ECONOMICALLY DISADVANTAGED SMALL BUSINESS FIRM". THE THEORY UNDERLYING THE PROGRAM IS THAT A DISADVANTAGED FIRM, ONCE AWARDED ONE OR MORE NEGOTIATED CONTRACTS BY VARIOUS FEDERAL AGENCIES IN COOPERATION WITH THE SBA, AND HAVING TAKEN ADVANTAGE OF SBA MANAGEMENT AND TECHNICAL ASSISTANCE, WOULD EVENTUALLY BE ABLE TO STAND ALONE, COMPETE SUCCESSFULLY, AND SURVIVE IN THE FREE MARKET SYSTEM. EVEN THOUGH THE SBA HAS CHANNELLED BILLIONS OF DOLLARS TO PARTICIPATING SOCIALY AND ECONOMICALLY DISADVANTAGED FIRMS SINCE 1968, JUST THE OPPOSITE HAS HAPPENED.

THE SBA 8(A) PROGRAM, DESIGNED AROUND A "PROTECTED MARKET" FOR SELECTED DISADVANTAGED FIRMS, HAS PROVEN TO BE A DISMAL FAILURE. ACCORDING TO DATA CONTAINED IN A 1981 GOVERNMENT ACCOUNTING OFFICE REPORT (CED-81-55), ONLY 4 PERCENT OR 166 OF THE 4,598 MBE FIRMS PARTICIPATING IN

THE 8(A) PROGRAM BETWEEN 1968 AND 1980 GRADUATED. AN EARLIER GAO REPORT ON THE 166 FIRMS THAT DID GRADUATE FOUND THAT ONLY 33 SHOWED A POSITIVE NET WORTH. ONLY 33 OF THE 4,598 PARTICIPATING FIRMS GRADUATED INTO THE OPEN COMPETITIVE BIDDING SYSTEM WITH A POSITIVE NET WORTH OVER THE TWELVE YEAR PERIOD. THERE HAS BEEN LITTLE, IF ANY, IMPROVEMENT IN THE 8(A) SUCCESS RATE SINCE THIS DATA WAS COMPILED.

THE IDEA WAS TO TEMPORARILY GIVE SMALL APPROVED 8(A) BUSINESSES NON-COMPETITIVE FEDERAL CONTRACTS AND OTHER AID TO HELP THEM EVENTUALLY BECOME SELF-SUFFICIENT. IN FACT, THE PROGRAM HAS BECOME AN UNENDING CONTRACT PIPELINE UPON WHICH MOST 8(A) FIRMS ARE ALMOST TOTALLY DEPENDENT FOR SURVIVAL.

EVEN THOUGH SET-ASIDES ARE NOT THE ANSWER, GOVERNMENT CAN PLAY A CONSTRUCTIVE ROLE IN AIDING SMALL MINORITY AND WOMEN-OWNED FIRMS ESTABLISH THEMSELVES IN THE OPEN AND COMPETITIVE FREE MARKET SYSTEM.

SMALL MINORITY AND WOMEN-OWNED BUSINESS FIRMS COULD BE GREATLY ASSISTED BY THE ELIMINATION OF PUBLIC CONSTRUCTION COMPETITION DONE THROUGH PUBLIC FORCE ACCOUNT CONSTRUCTION. SMALL CONSTRUCTION PROJECTS HAVE PROVED TO BE THE IDEAL TRAINING GROUNDS FOR EMERGING SMALL BUSINESS ENTERPRISES. WE ARE PRESENTED WITH A CONTRADICITION: AS A SOCIAL POLICY THE NATION HAS ATTEMPTED TO ENCOURAGE THE GROWTH AND DEVELOPMENT OF SMALL SOCIALLY AND ECONOMICALLY DISADVANTAGED BUSINESS FIRMS; BUT MANY CITIES, COUNTIES AND OTHER PUBLIC AGENCIES REFUSE TO PUT SMALL CONSTRUCTION PROJECTS OUT FOR BID TO THE PRIVATE SECTOR, INSTEAD HAVING THEM PERFORMED "INHOUSE" WITH TAXPAYER FINANCED CONSTRUCTION OPERATIONS. THIS SYSTEM, COMMONLY REFERRED TO AS PUBLIC FORCE ACCOUNT CONSTRUCTION, REMOVES FROM THE MARKETPLACE HUNDREDS OF THOUSANDS OF CONSTRUCTION OPPORTUNITIES THAT ARE WITHIN THE SCOPE OF SMALL BUSINESS QUALIFICATIONS AND BONDING CAPACITIES,

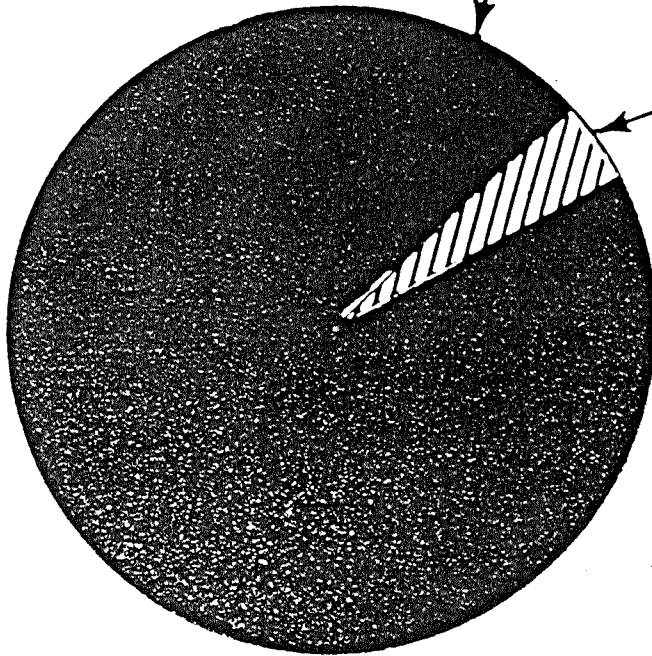
AND DENIES FIRMS AN ENORMOUS MARKET FOR PROJECTS WHICH ARE WITHIN THEIR CURRENT CAPACITIES. WE WOULD SUBMIT THAT MINORITY AND WOMEN OWNED BUSINESSES AND THE OPEN AND COMPETITIVE BIDDING SYSTEM WOULD BE BETTER SERVED BY THE ELIMINATION OF IN-HOUSE FORCE ACCOUNT WORK THAN BY THE IMPOSITION OF WASTEFUL SET-ASIDES.

MR CHAIRMAN, THAT CONCLUDES MY TESTIMONY. I WOULD BE GLAD TO TRY AND ANSWER ANY QUESTIONS THE COMMITTEE MIGHT HAVE.

History of 8(a) Program

4598 8(a) firm participants
over 12 year period

166 (4%) graduated
over 12 year history



Only 33 (20%) of
166 graduates have
a positive net worth

TESTIMONY

BEFORE THE

SENATE WAYS & MEANS COMMITTEE

APRIL 10, 1985

BY

ROBERT A. WEST

NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

Mr. Chairman and Members of the Committee:

My name is Robert West and I represent the members of the Kansas Chapter, National Electrical Contractors Association. There are 85 NECA contractors in the state of Kansas who employ up to 2000 electricians. We appear today in opposition to S.B. 353.

I would like to preface my remarks on S.B. 353 with the statement that NECA does not oppose affirmative action and equal employment opportunity standards. As a matter of fact, we feel we have been one of the leaders of our industry in this area since the passage of the Civil Rights Act in 1964. We do not believe, however, that one can equate equal opportunity and affirmative action activities alongside government mandated set-aside procurement practices. We believe this type of mandate leads to increased construction costs to the taxpayer of Kansas, it creates a breeding ground for corrupt business practices, and it does little if anything to advance the business opportunities for minority and women business enterprises.

Almost all existing contractors and subcontractors earned their way to their present status by investing the savings they and their families accumulated while working for others and while struggling for several years to learn both the technical and general manage-

ment elements of their business. They have worked long and hard to estimate their costs, market their services, collect their bills, and satisfy bankers and sureties of their viability. It is normal for contractors to start their business by only doing smaller jobs, and, as they acquire more financial stability, capital, and know-how, to expand into progressively larger contracts.

Subcontractors are not and should not be selected to do a job on the basis of race, sex, or other non-relevant criteria. In practice, Subcontractors are selected on the basis of their competitive price and ability to perform the work. The arrangements now being proposed through S.B. 353 are non-solutions to non-problems which threaten to eliminate subcontractor competition on Government work.

It is true that minority controlled contracting companies have difficulty getting established in business; however, so do all other subcontractors. They all suffer the same problems of shortages of capital, market recognition, knowledge of available jobs, and technical and management know-how gained only by extensive experience. Virtually all contractors have gone through the same growing pains to get where they are. This assures that the survivors are competent contractors. Minorities' problems in this regard are related only to the time they have been in business and the extent of their capital and personal expertise, not to racist attitudes on the part of those with whom they want to do business. There is not enough work to keep everyone in business who wants to be a subcontractor, and many fail in the process. There is no reason why minority-controlled firms should not have the same right to succeed or fail as non-minority firms, and it does not behoove the Government to use set-asides, quotas, and subsidies as a temporary economic prop for firms which would not otherwise succeed, and

to mislead them into the assumption that they will not ultimately have to compete on equal terms to stay in business.

We cannot bring to your attention a more blatant example of how set-aside programs do not work, than to refer to the Federal Small Business Administration's 8(a) program. It is a terrible thing to see a law, that was meant to assist the disadvantaged be twisted and perverted to the point that it not only harms those it was intended to help, but also those who work in the same field. Unfortunately, that is exactly what has happened under the SBA's 8(a) set-aside program: a program that initially had a well-intended philosophy to assure that minority business enterprises received a certain proportion of public work and thus were brought into the mainstream of commerce.

In our opinion, the program has been an unmitigated disaster. By not competitively bidding work, it has increased costs to all construction-users. It has bred resentment and bitterness in owners of non-MBE business. It is mismanaged and its provisions misinterpreted. It fosters and maintains the existence of a class of business persons who are dependent on "giveaway" contracts as the sole source of their livelihood. It succors incompetence. And, perhaps worst of all, it breeds fraud and corruption through the establishment of so-called minority or women business enterprises, when these enterprises are nothing more than a front for an unscrupulous parent company to use to get contracts handed to it. Our experience has shown us that it is virtually impossible to stop this from happening.

You might be interested to know that the U.S. District Court for the District of Kansas in October of last year held that local small businesses who are not eligible to participate in the SBA 8 (a)

program nevertheless have the legal standing to challenge the award of a set-aside to a firm whose 8(a) qualifications have been questioned. This case involved a \$6 million contract literally given to a firm for work to be done at the Kansas Army Ammunition plant in Parsons. In finding for the plaintiff contractors, the Court said that "a company which makes its living from the performance of contracts is 'injured' if it is deprived of any opportunity to bid." It added that prospective contractors can allege injury even if the contract is never put up for unrestrictive bidding, as was the case here.

It is indeed unfortunate that there are not more viable minority owned and women owned construction businesses at the present time in the state of Kansas. This is not a result, however, of the lack of set-aside programs, and we do not believe that set-asides are going to enhance the creation of these firms. We do believe, however, that you will see more and more of such businesses in a few short years. Please let me explain our rationale behind this.

First, thanks to the Civil Rights Act of 1964, employment opportunities in the traditional construction apprenticeship programs has been opened up for minorities and women like never before. In one of our recent electrical apprenticeship interviews, six out of the top ten applicants were either minorities or women, and most future construction business owners will begin their careers in apprenticeship. Secondly, whereas at one time all future construction business owners began their careers in apprenticeship, now many are coming out of college programs. At Kansas State University's acclaimed Construction Science Department, one of our two NECA scholarships went to a woman. In Kansas University's outstanding Architectural/Engineering Department, to which NECA just contributed \$30,000 to help fund a lighting laboratory, 40% of the upcoming graduates are women. In other words, min-

orities and women are making giant strides to make a big impact upon the construction industry like never before. And, in time, there will be many of them who will establish very successful businesses. Many such businesses have already been established, and though small at the present time, if permitted to compete and grow in an open competitive market many of these businesses will flourish. They will not, however, grow and flourish in a market that does not promote competition, but fosters dependence on a program that will not benefit them, and will surely not benefit the customer that they will be serving.

STATE AID TO COMMUNITY COLLEGES AND WASHBURN UNIVERSITY

Comparison of Present Law* and H.B. 2165, as Amended

	Present Law*	H.B. 2165	Difference (%)	
Washburn University				
Credit Hour State Aid:				
Regular Hours (Graduate & Undergraduate)	@ \$25.00 = \$ 3,089,925	@ \$26.25 = \$ 3,244,421	\$ 154,496	(5.0)%
Law School Hours	@ 26.00 = 391,170	@ 39.38 = 592,472	201,302	(51.5)
Subtotal	\$ 3,481,095	\$ 3,836,893	\$ 355,798	(10.2)%
Out-District State Aid	@ 22.00 = \$ 640,948	@ 23.00 = \$ 670,082	\$ 29,134	(4.5)%
Total Washburn University	\$ 4,122,043	\$ 4,506,975	\$ 384,932	(9.3)%
Community Colleges				
Credit Hour State Aid:				
Regular Hours	@ \$25.00 = \$11,680,675	@ \$26.25 = \$12,264,709	\$ 584,034	(5.0)%
Vocational Hours	@ 37.50 = 8,110,538	@ 39.38 = 8,517,146	406,608	(5.0)
Cowley County & Pratt County Community Colleges	@ 50.00 = 1,262,800	@ 52.50 = 1,325,940	63,140	(5.0)
Subtotal	\$21,054,013	\$22,107,795	\$1,053,782	(5.0)%
Out-District State Aid	@ \$22.00 = \$ 5,601,464	@ \$23.00 = \$ 5,856,076	\$ 254,612	(4.5)%
Total Community Colleges	\$26,655,477	\$27,963,871	\$ 1,308,	(4.9)%
GRAND TOTAL	\$30,777,520	\$32,470,846	\$1,693,326	(5.5)%

Summary by Type of Aid

	Present Law*	H.B. 2165	Difference (%)	
Credit Hour State Aid				
Washburn University	\$ 3,481,095	\$ 3,836,893	\$ 355,798	(10.2)%
Community Colleges	21,054,013	22,107,795	1,053,782	(5.0)
TOTAL	\$24,535,108	\$25,944,688	\$1,409,580	(5.7)%
Out-District State Aid				
Washburn University	\$ 640,948	\$ 670,082	\$ 29,134	(4.5)%
Community Colleges	5,601,464	5,856,076	254,612	(4.5)
TOTAL	\$ 6,242,412	\$ 6,526,158	\$ 283,746	(4.5)%
GRAND TOTAL	\$30,777,520	\$32,470,846	\$1,693,326	(5.5)%

* S.B. 88 contains appropriations for state aid to Washburn University and the community colleges based upon present state aid rates. However, an amount of \$270,000 has been deleted in S.B. 88 from the community college appropriation (\$225,000 in credit hour state aid and \$45,000 in out-district state aid) for anticipated audit adjustments.

TESTIMONY PRESENTED TO THE
SENATE COMMITTEE ON WAYS AND MEANS
APRIL 1985

by

WASHBURN UNIVERSITY

In support of H.B. 2165
and Amendments Thereto, and
H.B. 2597

Washburn University operates under a comparatively complex method of funding. Its main sources of funding are student tuition, state credit-hour aid, local taxation and out-district tuition and out-district state aid. Washburn is the only educational entity in the state which still is under a statutory levy limit. Washburn is at the limit on this levy, 7 mills for general operation, and thus that source of revenue is capped.

Student tuition has risen dramatically over the past few years and is presently \$53.00 per credit-hour. The students pay approximately 37.5 percent of the cost of operation. This compares with 25 percent of the cost at the regents' institutions and 15 percent at the community colleges. Washburn is fast approaching the point where further increases in tuition, at least of any significant amount, might be detrimental to the student's ability to attend and/or finish college.

Washburn collects \$22.00 per credit-hour from counties and townships for out-district students and the same amount per credit-hour from the state in the form of out-district state aid. These charges are limited to only the freshmen and sophomores, (those students who have 64, or in special courses,

72 hours or less on their transcripts). The one dollar increase in H.B. 2165 would provide the University with approximately \$60,000 in additional funding (one-half from the state and one-half from local units).

The one source of funding remaining which can make a significant difference in Washburn's revenues is state aid. Presently, state aid accounts for 17 percent of the University's revenue. State aid rates for 1984-85 are \$25.00 per credit-hour for all students except the law school, which is \$26.00 per credit-hour. This aid is paid only for residents of Kansas. A one dollar increase in these rates, as contained in H.B. 2165, would provide the University with an additional \$124,000.

H.B. 2165 also contains aid for the law school at a rate one-and-one-half times greater than the base state aid rate, which is currently \$26.00 per resident credit-hour. The law school is a statewide resource which is also recognized nationwide -- however, for a variety of demographic and educational reasons, the University feels that the size of the law school classes should be systematically reduced. These plans are underway and additional state support for the law school is important for their success. The law school aid differential in H.B. 2165 will provide the University with approximately \$180,000 in additional resources for FY 1986.

The University's capital needs are not currently addressed in H.B. 2165. At present, the primary source for capital

improvements and major repairs and maintenance is the local 1.25 mill levy supporting the Debt Retirement and Construction Fund. This levy limit has not been increased since 1955, a period in which campus square footage has more than doubled. In addition, many of the buildings constructed in the aftermath of the 1966 Tornado are entering a period where roofs and mechanical systems are in need of replacement and repair. The University has identified over \$4.0 million in such repairs which need to be addressed over the next five years. The current mill levy raises approximately \$400,000 per year. It is hoped that the Legislature will support raising the limit of this thirty-year-old mill levy.

A final comment on Washburn's funding. Sixty percent of Washburn's revenues are directly related to credit-hour enrollments. In the current academic year, enrollments were less than anticipated, resulting in over \$840,000 in operational reductions from this year's originally approved budget. For next year, Washburn originally requested a five percent increase in operations which would result in the addition of \$1.0 million to the University's \$21 million Educational and General budget. The budget reductions in the current year serve as additional justification of the need for additional resources next year.

Last Friday, the Shawnee County Legislative Delegation approved a funding package which included an increase of

\$1.25 in credit-hour aid, a \$1.00 increase in out-district tuition and state aid, and a fifty percent differential for law school credit-hour aid. These recommendations add approximately \$33,000 to the \$334,000 in state funds already contained in H.B. 2165. Therefore, the total state funding is \$367,000, and \$30,000 additional will be provided by local units. What makes this recommendation of great importance to the University is the willingness of the City of Topeka to try and match, on a dollar-for-dollar basis, the increases approved by the state. This partnership between the city and the state is the result of months of hard work by the local delegation and city officials. We hope you endorse this recommendation.

In addition, the delegation also recommends a one mill increase in the statutory limit on the Debt Retirement and Construction Fund. This would result in a total levy of 2.25 mills for next year and would allow the University to improve the maintenance of its physical facilities. This recommendation has also been endorsed by city officials and we hope you will either sponsor a separate bill or amend its provisions into H.B. 2165.

As a result of this funding package, the University has agreed to forego a university-wide tuition increase for next year. In addition, we support the proposal to have a 1985 Legislative Interim Study on Washburn's long-term funding needs. We hope you and your colleagues will endorse these requests through committee amendments to H.B. 2165.

WASHBURN UNIVERSITY
 SCHEDULE OF APPROPRIATIONS & REVENUES: FY 1985 & FY 1986
 ESTIMATES AS OF 4-8-85

EXPENDITURE CATEGORIES	ORIGINAL BUDGET FY 84-85	REVISED BUDGET FY 84-85	DIFFERENCE
ACADEMIC PROGRAMS	\$9,563,144	\$9,428,923	(\$134,221)
ACAD. SUPP./PUB. SER.	\$3,241,175	\$2,994,184	(\$246,991)
STUDENT SERVICES	\$1,842,564	\$1,889,176	\$46,612
GEN. INST. SUPP.	\$1,931,996	\$1,821,857	(\$110,139)
PHYSICAL PLANT	\$2,442,970	\$2,335,140	(\$107,830)
STAFF BENEFITS	\$2,160,000	\$2,153,672	(\$6,328)
SCHOLARSHIPS	\$281,000	\$294,750	\$13,750
MANDATORY TRANS.	\$80,000	\$118,828	\$38,828
INDIRECT COST REV.	(\$107,569)	(\$122,569)	(\$15,000)
NON-MAN. E&G TRANS.	\$300,000	\$37,416	(\$262,584)
OTHER NON-MAN. TRAN.			
ETV COURSES	\$35,000	\$0	(\$35,000)
PARKING	\$30,000	\$0	(\$30,000)
TOTAL EXPENDITURES (EXCL. AUXILIARIES)	\$21,800,280	\$20,951,377	(\$848,903)

FY 1985-86 BUDGET ADDITIONS

FY84-85 UNEXPEN. APPROP.	\$125,000
BOOK TRANS. TO BLDG. CONST.	\$90,000
EST. SALARY INCREASE	\$609,512
TITLE IX SCHOLARSHIPS	\$16,205
ACCREDITATION STUDIES	\$15,000
CONTRACTUAL SALARY ITEMS	\$174,387
OTHER OPERATING EXPENDITURES	\$167,965
PARKING FEE TRANS. TO BLDG. CONST	\$25,000
APP. & CON. EDUC. BUDGET REDUCT.	(\$40,000)
LAW SCHOOL VACANT POSIT.	(\$40,000)

SUB-TOTAL
 ADD. APPROPRIATIONS \$1,143,069

FY 1985-86 ESTIMATED ED. & GEN. APPROPRIATIONS \$22,094,446

- NOTES:
1. TOTAL CREDIT HOURS=144,158; LAW CREDIT HOURS=15,780
 2. STATE AID=\$26.25; OUT-DISTRICT=\$23.00; LAW AID=\$39.38
 3. TUITION AND FEES DECREASE: CON. ED.=\$(31,500); LAW SCH=\$(122,861); OTHER=\$(3,723)

REVENUE CATEGORIES	ORIGINAL REVENUES FY 84-85	REVISED REVENUES FY 84-85	DIFFERENCE
STUDENT FEES	\$8,383,908	\$7,869,412	(\$514,496)
OUT-DIST. TUITION	\$1,359,610	\$1,227,805	(\$131,805)
STATE AID	\$3,666,326	\$3,440,684	(\$225,642)
LOCAL TAXES	\$2,686,860	\$2,774,555	\$87,695
ENDOWMENT INCOME	\$610,000	\$609,720	(\$280)
PARKING FEES	\$30,000	\$25,000	(\$5,000)
KTWU	\$1,167,150	\$1,182,000	\$14,850
IDLE FUND INVEST.	\$650,000	\$660,714	\$10,714
MISCELLANEOUS	\$130,000	\$130,000	\$0
EMPLOYEE BENEFITS	\$2,160,000	\$2,160,000	\$0
ATHLETICS	\$809,714	\$805,353	(\$4,361)
TOTAL REVENUES (EXCL. AUXILIARIES)	\$21,653,568	\$20,885,243	(\$768,325)

FY85-86 REVENUE ADDITIONS

LAW TUITION-\$2X15780sch	\$31,560
OTHER TUITION	(\$150,638)
STATE AID	\$323,173
CITY AID	\$380,000
OUT-DIST. TUITION	\$48,771
LOCAL TAXES	\$0
ENDOWMENT	(\$9,720)
IDLE FUND INVEST.	(\$60,714)

SUB-TOTAL
 ADD. REVENUES \$562,432
 FUND BALANCES \$646,771

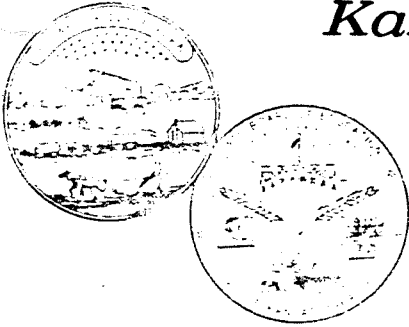
FY 1985-86 ESTIMATED ED. & GEN. RESOURCES \$22,094,446

4-10

Kansas State Board of Education

Kansas State Education Building

120 East 10th Street Topeka, Kansas 66612



Kay M. Groneman
District 1

Connie Hubbell
District 4

Bill Musick
District 6

Evelyn Whitcomb
District 8

Kathleen White
District 2

Ann L. Keener
District 5

Theodore R. Von Fange
District 7

Robert J. Clemons
District 9

Dale Louis Carey
District 3

April 10, 1985

Marion (Mick) Stevens
District 10

TO: Senate Ways and Means Committee

FROM: Connie Hubbell, State Board of Education

SUBJECT: 1985 House Bill 2165

My name is Connie Hubbell, a member of the State Board of Education from Topeka.

The State Board of Education spent a great deal of time reviewing the financial condition of Kansas community colleges and Washburn University. The Board reviewed the average teacher salaries for community colleges as well as their ranking with other states. Material was presented by the Kansas Association of Community Colleges comparing the community colleges with state university teacher salary increases over the past few years. Many community colleges are beginning to experience additional costs for plant operation and maintenance due to the age of school buildings. Several community college campuses were built during the mid to late 1960's. Another concern expressed during the State Board's discussion was the growth in the property tax and the potential problem of continuing to rely on that source of revenue.

Washburn University serves a very important mission in providing postsecondary education to Kansas students. One of the primary concerns of the State Board is Washburn's continual increase in student tuition and its effect on the students. Washburn University officials presented information which indicated that state aid needs to increase if Washburn University is going to pay competitive salaries and recruit competent teachers. The State Board reviewed the vocational and law school data and the problems they have with funding these programs.

Based upon this information and numerous hearings before the State Board, the following recommendations were approved.

KANSAS COMMUNITY COLLEGES

Increase credit hour state aid by 10% (\$25 to \$27.50)
Estimated state cost \$ 2,105,402

Remove limitation on out-district state aid and out-district tuition for students with over 64/72 credit hours	
Estimated state cost	\$ 456,000
TOTAL	\$ 2,561,402

WASHBURN UNIVERSITY

Increase credit hour state aid for regular credit hours by 10% (\$25.00 to \$27.50)	
Estimated state cost	\$ 309,433
Increase credit hour state aid for Law School by 10% (\$26.00 to \$28.60)	
Estimated state cost	\$ 39,117
Weighing of vocationally approved courses at 1.5	
Estimated state cost (\$13.75 per credit hour)	\$ 123,750
TOTAL	\$ 472,300
GRAND TOTAL	\$ 3,033,702

On behalf of the State Board of Education, I appreciate the opportunity to testify before this committee and hope you will give serious consideration to the State Board's recommendations.

SENATE BILL No. 362

By Committee on Ways and Means

3-20

0017 AN ACT relating to persons engaged in a postgraduate training
 0018 program approved by the state board of healing arts and
 0019 operated by the university of Kansas medical center; provid-
 0020 ing certain exemptions from liability for such persons under
 0021 the Kansas tort claims act; amending K.S.A. [75-6104 and
 0022 K.S.A.] 1984 Supp. 40-3401 and repealing the existing [sections].

Note:

[Material within brackets would be deleted.]

Amend title to reflect changes.

0023 *Be it enacted by the Legislature of the State of Kansas:*

0024 Section 1. K.S.A. 1984 Supp. 40-3401 is hereby amended to
 0025 read as follows: 40-3401. As used in this act the following terms

[section

0026 shall have the meanings respectively ascribed to them herein:

0027 (a) "Applicant" means any health care provider;

0028 (b) "Basic coverage" means a policy of professional liability
 0029 insurance required to be maintained by each health care pro-
 0030 vider pursuant to the provisions of subsection (a) or (b) of K.S.A.
 0031 40-3402 and amendments thereto;

0032 (c) "Commissioner" means the commissioner of insurance;

0033 (d) "Fiscal year" means the year commencing on the effec-
 0034 tive date of this act and each year, commencing on the first day of
 0035 that month, thereafter;

0036 (e) "Fund" means the health care stabilization fund estab-
 0037 lished pursuant to subsection (a) of K.S.A. 40-3403 and amend-
 0038 ments thereto;

0039 (f) "Health care provider" means a person licensed to prac-
 0040 tice any branch of the healing arts by the state board of healing
 0041 arts, a person who holds a temporary permit to practice any
 0042 branch of the healing arts issued by the state board of healing

[other than a person engaged in a postgraduate training program approved by the state board of healing arts and operated by the university of Kansas medical center under the supervision of a clinical faculty member of the university of Kansas school of medicine

0043 arts, a person engaged in a postgraduate training program ap-
 0044 proved by the state board of healing arts *other than a program*
 0045 *operated by the university of Kansas medical center under the*
 0046 *supervision of a clinical faculty member of the university of*

21-4-10

0047 *Kansas school of medicine*, a medical care facility licensed by the
 0048 department of health and environment, a health maintenance
 0049 organization issued a certificate of authority by the commissioner
 0050 of insurance, an optometrist licensed by the board of examiners
 0051 in optometry, a podiatrist registered by the state board of healing
 0052 arts, a pharmacist registered by the state board of pharmacy, a
 0053 licensed professional nurse who is licensed by the board of
 0054 nursing and certified as a nurse anesthetist by the American
 0055 association of nurse anesthetists, a professional corporation or-
 0056 ganized pursuant to the professional corporation law of Kansas
 0057 by persons who are authorized by such law to form such a
 0058 corporation and who are health care providers as defined by this
 0059 subsection, a Kansas not-for-profit corporation organized for the
 0060 purpose of rendering professional services by persons who are
 0061 health care providers as defined by this subsection (f), a dentist
 0062 certified by the state board of healing arts to administer anes-
 0063 thetics under K.S.A. 65-2899 and amendments thereto, a physical
 0064 therapist registered by the state board of healing arts, or a mental
 0065 health center or mental health clinic licensed by the secretary of
 0066 social and rehabilitation services, except that health care pro-
 0067 vider does not include any state institution for the mentally
 0068 retarded.

0069 (g) "Inactive health care provider" means a person or other
 0070 entity who purchased basic coverage or qualified as a self-in-
 0071 surer on or subsequent to the effective date of this act but who, at
 0072 the time a claim is made for personal injury or death arising out
 0073 of the rendering of or the failure to render professional services
 0074 by such health care provider, does not have basic coverage or
 0075 self-insurance in effect solely because such person is no longer
 0076 engaged in rendering professional service as a health care pro-
 0077 vider;

0078 (h) "Insurer" means any corporation, association, reciprocal
 0079 exchange, inter-insurer and any other legal entity authorized to
 0080 write bodily injury or property damage liability insurance in this
 0081 state, including workmen's compensation and automobile liabil-
 0082 ity insurance, pursuant to the provisions of the acts contained in
 0083 article 9, 11, 12 or 16 of chapter 40 of Kansas Statutes Annotated;

: (1) Any

or any officer or employee of such institution while practicing within the scope of their employment at such institution; or (2) any state psychiatric hospital or any officer or employee of such hospital while practicing within the scope of their employment at such hospital

0084 (i) "Plan" means the operating and administrative rules and
0085 procedures developed by insurers and rating organizations or the
0086 commissioner to make professional liability insurance available
0087 to health care providers;

0088 (j) "Professional liability insurance" means insurance pro-
0089 viding coverage for legal liability arising out of the performance
0090 of professional services rendered or which should have been
0091 rendered by a health care provider;

0092 (k) "Rating organization" means a corporation, an unincor-
0093 porated association, a partnership or an individual licensed pur-
0094 suant to K.S.A. 40-930 or 40-1114, or both sections, and amend-
0095 ments to those sections to make rates for professional liability
0096 insurance;

0097 (l) "Self-insurer" means a health care provider who has
0098 qualified as a self-insurer pursuant to K.S.A. 40-3414 and
0099 amendments thereto;

0100 (m) "Medical care facility" means the same when used in the
0101 health care provider insurance availability act as the meaning
0102 ascribed to that term in K.S.A. 65-425 and amendments thereto,
0103 except that as used in the health care provider insurance availa-
0104 bility act such term, as it relates to insurance coverage under the
0105 health care provider insurance availability act, also includes any
0106 director, trustee, officer or administrator of a medical care facil-
0107 ity;

0108 (n) "Mental health center" means a mental health center
0109 licensed by the secretary of social and rehabilitation services
0110 under K.S.A. 75-3307b and amendments thereto, except that as
0111 used in the health care provider insurance availability act such
0112 term, as it relates to insurance coverage under the health care
0113 provider insurance availability act, also includes any director,
0114 trustee, officer or administrator of a mental health center;

0115 (o) "Mental health clinic" means a mental health clinic li-
0116 censed by the secretary of social and rehabilitation services
0117 under K.S.A. 75-3307b and amendments thereto, except that as
0118 used in the health care provider insurance availability act such
0119 term, as it relates to insurance coverage under the health care
0120 provider insurance availability act, also includes any director,

0121 trustee, officer or administrator of a mental health clinic;
 0122 (p) "State institution for the mentally retarded" means Nor-
 0123 ton state hospital, Winfield state hospital and training center,
 0124 Parsons state hospital and training center and the Kansas neuro-
 0125 logical institute.

0126 Sec. 2. K.S.A. 75-6104 is hereby amended to read as follows:
 0127 75-6104. A governmental entity or an employee acting within the
 0128 scope of the employee's employment shall not be liable for
 0129 damages resulting from:

0130 (a) Legislative functions, including, but not limited to, the
 0131 adoption or failure to adopt any statute, regulation, ordinance or
 0132 resolution;

0133 (b) judicial function;

0134 (c) enforcement of or failure to enforce a law, whether valid
 0135 or invalid, including but not limited to, any statute, regulation,
 0136 ordinance or resolution;

0137 (d) any claim based upon the exercise or performance or the
 0138 failure to exercise or perform a discretionary function or duty on
 0139 the part of a governmental entity or employee, whether or not the
 0140 discretion ~~be~~ is abused;

0141 (e) the assessment or collection of taxes or special assess-
 0142 ments;

0143 (f) any claim by an employee of a governmental entity arising
 0144 from the tortious conduct of another employee of the same
 0145 governmental entity, if such claim is (1) compensable pursuant to
 0146 the Kansas workmen's compensation act or (2) not compensable
 0147 pursuant to the Kansas workmen's compensation act because the
 0148 injured employee was a firemen's relief association member who
 0149 was exempt from such act pursuant to K.S.A. 44-505d *and*
 0150 *amendments thereto* at the time the claim arose;

0151 (g) the malfunction, destruction or unauthorized removal of
 0152 any traffic or road sign, signal or warning device unless it is not
 0153 corrected by the governmental entity responsible within a rea-
 0154 sonable time after actual or constructive notice of such malfunc-
 0155 tion, destruction or removal. Nothing herein shall give rise to
 0156 liability arising from the act or omission of any governmental
 0157 entity in placing or removing any of the above signs, signals or

(q) "State psychiatric hospital" means Larned
 state hospital, Osawatomie state hospital, Rainbow
 mental health facility and Topeka state hospital.

0158 [w]arning devices when such placement or removal is the result of
0159 a discretionary act of the governmental entity;

0160 (h) any claim which is limited or barred by any other law or
0161 which is for injuries or property damage against an officer,
0162 employee or agent where the individual is immune from suit or
0163 damages;

0164 (i) any claim based upon emergency preparedness activities,
0165 except that governmental entities shall be liable for claims to the
0166 extent provided in article 9 of chapter 48 of the Kansas Statutes
0167 Annotated;

0168 (j) the failure to make an inspection, or making an inadequate
0169 or negligent inspection, of any property other than the property
0170 of the governmental entity, to determine whether the property
0171 complies with or violates any law or regulation or contains a
0172 hazard to public health or safety;

0173 (k) snow or ice conditions or other temporary or natural
0174 conditions on any public way or other public place due to
0175 weather conditions, unless the condition is affirmatively caused
0176 by the negligent act of the governmental entity;

0177 (l) the plan or design for the construction of or an improve-
0178 ment to public property, either in its original construction or any
0179 improvement thereto, if the plan or design is approved in ad-
0180 vance of the construction or improvement by the governing body
0181 of the governmental entity or some other body or employee
0182 exercising discretionary authority to give such approval and if
0183 the plan or design was prepared in conformity with the generally
0184 recognized and prevailing standards in existence at the time
0185 such plan or design was prepared;

0186 (m) failure to provide, or the method of providing, police or
0187 fire protection;

0188 (n) any claim for injuries resulting from the use of any public
0189 property intended or permitted to be used as a park, playground
0190 or open area for recreational purposes, unless the governmental
0191 entity or an employee thereof is guilty of gross and wanton
0192 negligence proximately causing such injury;

0193 (o) the natural condition of any unimproved public property
0194 of the governmental entity.

0195 (p) any claim for injuries resulting from the maintenance of
 0196 an abandoned cemetery, title to which has vested in a govern-
 0197 mental entity pursuant to K.S.A. 17-1366 through 17-1368, and
 0198 amendments thereto, unless the governmental entity or an em-
 0199 ployee thereof is guilty of gross and wanton negligence prox-
 0200 imately causing the injury; or

0201 (q) the existence, in any condition, of a minimum mainte-
 0202 nance road, after being properly so declared and signed as
 0203 provided in K.S.A. 4982 1984 Supp. 68-5,102; or

0204 (r) any claim for damages arising out of the rendering of or
 0205 failure to render health care services by a person who is engaged
 0206 in a postgraduate training program: (1) Approved by the state
 0207 board of healing arts; (2) under the supervision of a clinical
 0208 faculty member of the university of Kansas school of medicine;
 0209 and (3) operated by the university of Kansas medical center.

0210 The enumeration of exceptions to liability in this section shall
 0211 not be construed to be exclusive nor as legislative intent to waive
 0212 immunity from liability in the performance or failure to perform
 0213 any other act or function of a discretionary nature.

0214 Sec. 3. K.S.A. [75-6104 and K.S.A.] 1984 Supp. 40-3401 [are]
 0215 hereby repealed.

0216 Sec. 4. This act shall take effect and be in force from and
 0217 after its publication in the statute book.

New Sec. 2. (a) An employee of a governmental entity who is engaged, under the supervision of a clinical faculty member of the university of Kansas school of medicine, in a postgraduate training program approved by the state board of healing arts and who is acting within the scope of the employee's employment shall not be liable for damages arising out of the rendering of or failure to render health care services by such employee. The provisions of this section shall not effect the liability of a governmental entity or the liability of any person otherwise liable for damages for the acts of such employee while such employee is acting within the scope of employment.

(b) This section shall be part of and supplemental to the Kansas tort claims act.

[is

KANSAS SENATE

ROBERT V. TALKINGTON
SENATE PRESIDENT

P.O. BOX 725
IOLA, KANSAS 66749



OFFICE OF THE PRESIDENT

STATE CAPITOL
TOPEKA, KANSAS 66612
913-296-2419

CHAIRMAN:
LEGISLATIVE COORDINATING COUNCIL

CHAIRMAN:
ORGANIZATION, CALENDAR AND RULES

MEMBER:
INTERSTATE COOPERATION
JUDICIARY
WAYS AND MEANS

May 8, 1985

Senator August Bogina, Jr.
Chairman of the Senate Ways and
Means Committee
9020 Rosehill Road
P.O. Box 14515
Lenexa, Kansas 66215

Dear Gus:

I am returning a bill relating to the time for publication by the state treasurer of lists of abandoned property. Your committee voted to introduce this bill thinking that the original bill was dead. By the time the replacement bill was ready for introduction, however, the original bill had been re-referred to the Government Organization Committee and will still be alive for next year. The replacement bill was not introduced.

Sincerely,

A handwritten signature in cursive script that reads "Sue".

Sue Bauman
Executive Assistant

SB:na
Enc.

4-10-85

SENATE BILL NO. ~~398~~

By Committee on Ways and Means

AN ACT concerning the disposition of unclaimed property act; relating to the time for publication by the state treasurer of lists of abandoned property; providing time limitations for filing claims; amending K.S.A. 58-3913 and 58-3920 and repealing the existing sections.

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

Section 1. K.S.A. 58-3913 is hereby amended to read as follows: 58-3913. (a) ~~Within one hundred twenty (120) days from the~~ After filing of the ~~report~~ reports required by K.S.A. 58-3912, and amendments thereto, the state treasurer shall cause notice to be published in each calendar year during the months of February and August at least once each week for two ~~(2)~~ successive weeks in a newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has ~~his or her~~ a principal place of business within this state.

(b) The published notice shall be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property," and shall contain:

(1) The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the state treasurer.

(3) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within ~~sixty-five-(65)~~ 65 days from the date of the second published notice, the abandoned property will be placed not later than ~~eighty-five-(85)~~ 85 days after such publication date in the custody of the state treasurer to whom all further claims must thereafter be directed.

(c) The state treasurer is not required to publish in such notice any item of less than ~~twenty-five-dollars-(\$25)~~ \$25 unless he-or-she the state treasurer deems such publication to be in the public interest.

(d) Within ~~one--hundred-twenty-(120)-days-from-the-receipt-of-the-report~~ the same month in which the notice required by ~~K.S.A.--58-3912~~ subsection (a) is published, the state treasurer shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of ~~twenty-five-dollars-(\$25)~~ \$25 or more presumed abandoned under this act.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the state treasurer, property is being held to which the addressee appears entitled.

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the state treasurer to whom all further claims must be directed.

(f) This section is not applicable to sums payable on traveler's checks or money orders presumed abandoned under K.S.A. 58-3902, and amendments thereto.

Sec. 2. K.S.A. 58-3920 is hereby amended to read as follows: 58-3920. Any person claiming an interest in any

property delivered to the state under this act ~~may~~ shall file a claim thereto or to the proceeds from the sale thereof as follows:

(a) For items less than \$25, within one year from the date the property is delivered to the state;

(b) for items of \$25 but less than \$50, within two years from the date the property is delivered to the state;

(c) for items of \$50 but less than \$250, within four years from the date the property is delivered to the state;

(d) for items of \$250 but less than \$1,000, within six years from the date the property is delivered to the state;

(e) for items of \$1,000 and above, within 11 years from the date the property is delivered to the state.

If such claim is not filed within the time period provided in subsections (a) through (e), the property delivered to the state under this act or the proceeds from the sale thereof shall escheat to the state. Such claim shall be filed on the a form prescribed by the state treasurer.

Sec. 2. K.S.A. 58-3913 and 58-3920 are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.