

Approved 3-17-86
Date

MINUTES OF THE House COMMITTEE ON Ways and Means

The meeting was called to order by Bill Buntten at
Chairperson

12:00 Noon a.m./p.m. on Monday, March 10, 1986 in room 514-S of the Capitol.

All members were present except: Representative Helgerson (excused)

Committee staff present: Jim Wilson, Revisors Office
Gloria Timmer, Research Office
Laura Howard, Research Office
Sharon Schwartz, Administrative Aide
Nadine Young, Committee Secretary

Conferees appearing before the committee:

Representative Love
Billy McCray, Director-Office of Minority Business-KDED
Alonzo Harrison, Minority Business Enterprise
Glen Coulter, Kansas Contractors Association
Tom Slattery, Associated General Contractors
Others Present (Attachment A)

Chairman Buntten called the meeting to order at 12:00 Noon and turned to final action on the following bills that have been previously heard:

HB 3027 -- An act relating to state moneys; concerning fee agency accounts; amending K.S.A. 75-4214 and 75-4215 and repealing the existing sections.

This bill deals with fee agency accounts of \$10,000 or more outside of Topeka and would streamline management of the accounts. A proposed amendment was presented that would strike language starting with "Fee agency accounts....." on Line 31 (see Attachment B). Representative Teagarden moved for adoption of the amendment and Representative Chronister seconded. Motion carried.

Representative Chronister moved and Representative Wisdom seconded that HB 3027 be recommended favorable for passage. Motion carried.

HB 3047 -- An act declaring Lecompton constitutional hall to possess unusual historical interest and authorizing the state historical society to acquire such property in the name of the state for the purpose of establishing and maintaining the property as a historical landmark and museum.

Representative Solbach moved that HB 3047 be recommended favorable for passage. Seconded by Representative Luzzati. On a hand vote, the motion carried.

HCR 5040 - A concurrent resolution directing the Kansas Department of Economic Development to implement a Kansas Product Promotion Program that identifies Kansas products for consumers.

Representative Teagarden moved that HCR 5040 be adopted. Seconded by Representative Rolfs. Motion carried.

HCR 5041 - A Concurrent Resolution directing state institutions and the Department of Administration, through its Division of Purchases, to purchase Kansas-grown and processed foods for state institutions whenever possible.

Representative Wisdom moved that HCR 5041 be adopted. Seconded by Representative Mainey. Motion carried.

Chairman turned to SB 560 - an act concerning the governor's residence advisory commission; amending K.S.A. 75-129 and repealing the existing section.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Ways and Means,
 room 514-S, Statehouse, at 12:00 Noon a.m./p.m. on Monday, March 10, 1986

Chairman Bunten explained the provisions of SB 560. It would add an eighth member to the Governor's Residence Advisory Commission and would allow either the president of the Friends of Cedar Crest Association, or an officer of the association designated by the president to serve on the commission.

Representative Rolfs moved that SB 560 be recommended favorable for passage. Seconded by Representative Luzzati. Motion carried.

HB 2736 -- an act concerning the Kansas public employees retirement system; relating to persons in training at or employed, or both, by sheltered workshops for the blind operated by the secretary of social and rehabilitation services; amending K.S.A. 74-4902 and 74-4927 and repealing the existing sections.

Marshall Crowther, Executive Secretary of KPERS addressed the committee and explained the bill. The bill was introduced at the request of SRS and the organization for visually handicapped employees. Passage of the bill would bring in about 87 individuals who presently work at the two workshops. The fiscal impact would be about \$16,000.

Representative Louis moved that HB 2736 be recommended favorably for passage. Seconded by Representative Heinemann. Motion carried.

Chairman moved to HB 2910 -- an act relating to minority businesses; authorizing a set-aside program for certain state agency purchases and contracts for letting to minority small businesses; prescribing powers, duties and functions for the departments of administration, transportation and economic development.

Representative Love presented the bill (see Attachment C). The bill is aimed at encouraging and developing minority businesses to realize their full capacity and potential in the private enterprise system. His testimony proposes that the state ensure at least 50% of the total dollar amount of purchases and contracts for property and services for the state, which is within the small business set-aside program to be placed with minority small businesses.

Billy McCray, Director of Office of Minority Business for the KDED testified in support of the legislation (see Attachment D). Some kind of a legislative set aside or executive order by the Governor is imperative if minority vendors are to be given an open opportunity to participate in the state procurement process.

Mr. McCray said his group has talked with the Governor and staff, with the Board of Regents, and K-DOT in an effort to achieve their request, without results. That is why they are now appearing before the Legislature with their plea.

Alonzo Harrison appeared in support of the HB 2910 and provided written testimony (Attachment E). His firm is a family developed general contracting firm that has been in business since 1959. In discussion, he was asked if he had bid on state contracts and the reason why he was not awarded more contracts. He did say that his firm is too small to bid on many of the state jobs and that most of work done by minority businesses is through the sub-contract process, i.e. work that is awarded through a prime contractor. He also said that another problem is not being able to obtain bonding to cover the bigger jobs and without the experience, insurance companies are unwilling to issue those bonds.

Opponents to HB 2910

Glen Coulter, Kansas Contractors Association appeared in opposition to the bill. His remarks were confined to Kansas Department of Transportation. He said that passage of this legislation would do extreme harm to small to medium sized contractors. He said the goal of 10% K-DOT awarded jobs has been met in recent years and that last year it was 11.3%. Also, K-DOT has awarded a few contracts where the only people eligible to bid are the minority businesses.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Ways and Means,
room 514-S Statehouse, at 12:00 Noon p.m. on Monday, March 10, 1986

Tom Slattery, representing Associated General Contractors, testified in opposition to HB 2910 and his remarks were confined to only the building construction industry and as it applies to them. In the past several years many general contractors have been forced out of business because of current depressed economic conditions. Mr. Slattery stated, "we do not believe mandatory set-asides are in the best interest - we believe set-asides restrict the competition side and the end result, it costs the state money."

Chairman turned to HB 2911 -- an act creating the surety bond guarantee program for minority small contractors; providing guidelines and limitations; authorizing certain fees; creating the small contractors' surety bond guarantee fund; prescribing powers, duties and functions for the secretary of the department of economic development.

Representative Love submitted written testimony (Attachment F) and introduced Henry Boaten, a Topeka attorney who addressed the committee in support of HB 2911. He explained the definition of a surety bond and performance bond as they relate to bidding a construction job. He did say that even though the word, "minority" appears in the heading of the bill, that the contents of the bill would apply to anyone, not just a minority. He also said he could see no objection to a three or four year sunset provision on the bill.

Tom Slattery made a brief comment relating to HB 2911. He said that the area of performance bonds for contractors is one of the biggest problems facing the industry today - many insurance companies will not even quote on a new company. Premiums for many of the large contractors has more than doubled in the past few years. Mr. Slattery asked not be recorded as an opponent on HB 2911.

Meeting adjourned at 1:50 p.m.

Note: See Attachment G for testimony of Marc Marcano, Executive Director of Kansas Advisory Committee on Mexican American Affairs.

See Attachment H for testimony of Jeannie Chavez-Martinez, Kansas Association of Hispanic Organizations and Entrepreneur

Date 3-10-86

Name	Address	Representing
John H. Binn TD	807 New Jersey St.	A+B Const. Co. Int'l
Margaret Johnson	1445 Crestview	SELF
John August	503 Kansas	KDOT Off. of Highways
Bike Reed	3021 Stevens Dr, Lawrence, KS	SELF
James L Bolden	830 E. 37 St.	Topex Shaver Design Council
Eldon R. Fastrop	Topex, KS	KS State Board of Agriculture
Ken Coulter	Topex	KS Contractors Assoc
Kath G. Mannie	Topex	MCAK
Jane Elliott	5891 SW 29th Topeka	Met. Elect. Contrac. Assoc
Almond Harrison	729 Wood Ave	ADBE
Arthur Anderson	4088 9th Lawrence	ADBE
Gene Brooks	Emporia	Senate
Sabrina Wells	Budget Division	Topex
Harold McNeil	SRS	Topex
Dan Raulow	Topex	KS Contractors Assn
Dick Mah	Topex	KDOT

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HOUSE BILL No. 3027

By Committee on Ways and Means

2-20

0017 AN ACT relating to state moneys; concerning fee agency ac-
0018 counts; amending K.S.A. 75-4214 and 75-4215 and repealing
0019 the existing sections.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. K.S.A. 75-4214 is hereby amended to read as fol-
0022 lows: 75-4214. (a) The board shall designate one or more banks
0023 in each county in which a state agency making collection of any
0024 fee, tuition, or charge is located to have a fee agency account for
0025 the deposit of accounts of such agency having an average daily
0026 balance of ~~ten thousand dollars (\$10,000)~~ \$10,000 or more; ~~except~~
0027 ~~that in the designation of banks for agencies located in a county~~
0028 ~~having a population of more than one hundred eighty thousand~~
0029 ~~(180,000) and not more than two hundred thousand (200,000);~~
0030 ~~such board shall designate two or more banks in such county to~~
0031 ~~have a fee agency account for such agency. [Fee agency accounts~~
0032 ~~deposited under the provisions of this subsection shall be rotated~~
0033 ~~at least every two (2) years among banks located in the county~~
0034 ~~securing such deposits in the manner prescribed by K.S.A. 75-~~
0035 ~~4218, and amendments thereto, and which are conveniently~~
0036 ~~located with respect to the agency having such account.]~~

0037 (b) Any state agency making collection of fees, tuition or
0038 charges may, with the approval of the board, select a bank in the
0039 county in which the agency is located to have a fee agency
0040 account for the deposit of accounts of such agency having an
0041 average daily balance of less than ~~ten thousand dollars (\$10,000)~~
0042 \$10,000.

0043 (c) At the end of each month any bank having a fee agency
0044 account shall forward to *the board and* the director of accounts
0045 and reports a detailed statement of such account on forms ap-

} Strike additional material

H. Williams
3/10/86

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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER COMMUNICATION COMPUTERS
AND TECHNOLOGY
GOVERNMENTAL ORGANIZATION
INTERSTATE COOPERATION

RE: **H.B. 2910** -- THE KANSAS MINORITY SMALL BUSINESS PROCUREMENT ACT

H.B. 2910 would enact new legislation aimed at encouraging and developing minority businesses to realize their full capacity and potential in the private enterprise system which is brought about through free competition. State policy, in this regard, would be to aid, assist, and protect, as much as possible, the interests of minority small businesses by ensuring at least 50 percent of the total dollar amount of purchases and contracts for property and services for the state which is within the small business set-aside program to be placed with minority small businesses.

Definitions under this Act include the following:

1. A small business is one which is independently owned and operated, not dominant in its field of operation and not an affiliate or division of a larger business.
2. Minority small business is one which is 51 percent owned and operated by one or more minority persons.
3. Business means a for profit entity which can include but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative.
4. Dominant in its field of operation means exercising a controlling or major influence in a business activity in which a number of businesses are engaged. In the determination of whether a business is dominant, the following criteria will be considered:
 - a. number of employees;
 - b. volume of business;
 - c. financial resources;
 - d. competitive status;
 - e. ownership or control of materials, processes, patents, license agreements, and facilities;

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- f. sales territory; and
- g. nature of business activity.

The following businesses shall be deemed dominant in their field of operation:

- a. manufacturing businesses with more than 50 employees and more than \$1,000,000 annual gross income for the preceding three fiscal years;
 - b. general construction businesses with more than \$2,000,000 annual gross income for the preceding three fiscal years; and
 - c. all other nonmanufacturing businesses with more than 25 employees and more than \$1,500,000 gross annual income for the preceding three fiscal years.
5. Affiliate or division of a larger business is one which is a subsidiary of or owned in part by a business which is dominant in its field of operation or which is owned in excess of 20 percent by the partners, officers, directors, majority shareholders, or their equivalent of a dominant larger business.
 6. Small business set-aside means a purchase request reserved for an offer to and response from only small businesses.
 7. Minority small business set aside means a purchase request reserved for an offer to and response from only minority small businesses.
 8. Minority person means a citizen of the United States who is a Black, Hispanic, Oriental, American Indian, Eskimo, or Aleut.
 9. Highway contract means one that is subject to the duties and authority of the Secretary of Transportation.

For purposes of this Act, the director of purchases shall divide those proposed state agency purchases of and contracts for supplies, materials, equipment, maintenance, contractual services, repair services, and construction under the small business set aside program under the Small Business Procurement Act into quantities which facilitate bidding by minority small businesses. The director of purchases will have the authority to place nonconstruction contracts up to \$50,000 and construction contracts up to \$500,000 in the state minority small business set aside program. The Secretary of Transportation shall place 15 percent of each highway contract into the state minority small business set-aside program.

Set aside provisions, outlined above, shall be made prior to bid advertisements provided by law. Published advertisements shall indicate those purchases which have been designated as minority small business set-asides.

Emergency state agency requests shall be placed in the state minority small business set-aside program only if the director of purchases determines the request can be expeditiously processed by a minority small business.

The director of purchases or the Secretary of Transportation shall award set-aside purchases and contracts based on the following criteria:

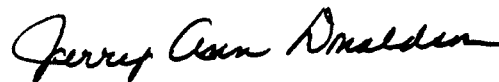
1. All contracts under the state minority small business set aside program, described above, shall be bid. Surety guarantees shall be required for highway contracts and construction contracts as determined by the director of purchases.
2. Bid contract prices for goods and services and in construction contracts shall not exceed estimated contract prices by more than 10 percent. Review provisions are included in the instance of significant variance between different estimates. Written estimates are required prior to receipt of bids.

Minority small business set-asides may be cancelled in situations in which there is no match up of a qualified or eligible minority small business at an acceptable price.

Determination of the qualification and eligibility of a minority small business to perform the set-aside contracts shall be made by the director of purchases or the Secretary of Transportation, in cases of highway contracts. In making such a determination consideration shall be given to, but not limited to, such items as technical competence, production, and financial ability to perform the set-aside contract. Preference shall be given to minority small businesses that have their principal place of business in Kansas.

In the case of conflict with laws and rules and regulations pertaining to competitive bids, the award of contracts and purchases and other purchasing matters, the provision of this Act, and rules and regulations adopted thereunder shall govern.

The Secretary of Administration and the Secretary of Economic Development are charged with the duty of publicizing the provisions of this Act, attempting to identify qualified minority small businesses and encouraging participation under this Act. Resolution of any noted deficiencies regarding qualification and eligibility shall be made by identifying and encouraging the use of management or financial assistance programs that are available through the Department of Administration or the Department of Economic Development or any other state agency or private sources.



Jerry Ann Donaldson
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JOHN CARLIN
Governor

CHARLES J. "Jamie" SCHWARTZ
Secretary

COMMITTEE TESTIMONY

TO: House Ways & Means Committee
Representative William Buntent -
Chairperson

FROM: Billy Q. McCray - Director
Office of Minority Business

RE: HB 2910 - An Act Relating to Minority
Business Procurement

DATE: March 10, 1986

Mr. Chairman and Committee Members:

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

Our Office supports the concept embodied in HB 2910, 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 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 nineteen (19) month effort by our Office 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 300, 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 vendors are to be given an open opportunity to participate in the state procurement process.

HB 2910 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 minority contractors can save the public money because of lower overhead and often family labor involved in delivering the services or products.

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HOUSE BILL 2910
TESTIMONY ALONZO HARRISON
MARCH 10, 1986

LADIES AND GENTLEMEN, I COME BEFORE YOU TODAY AS A MINORITY BUSINESS ENTERPRISE AND AS A STRUGGLING ENTREPRENEUR TRYING TO REDEEM A CHECK THAT HAS COME BACK TO ME MARKED "INSUFFICIENT FUNDS". AS A BUSINESS MAN HERE IN KANSAS, I SEEK NOTHING MORE THAN AN EQUAL, OPEN, HONEST OPPORTUNITY TO PARTICPATE IN FREE MARKET ENTERPRISE. FOR A NUMBER OF REASONS THAT HAS NOT BEEN POSSIBLE.

THEREFORE, I AM HERE FOR THE PURPOSE OF ENGAGEING IN MEANINGFUL DIALOGUE AROUND THE ISSUES ESTABLISHED IN HOUSE BILL 2910. ONE MIGHT ASK THE QUESTION, WHY IS SUCH A BILL NEEDED? WHO WILL BENEFIT? AND DO WE NOT HAVE A SMALL BUSINESS SET ASIDE PROGRAM ALREADY? THE ANSWER TO THESE QUESTIONS REALLY REQUIRE THAT WE LOOK AT SOME EXISTING CONDITIONS THAT PRECIPITATED THE DRAFTING OF THIS BILL.

WHY IS SUCH A BILL NEEDED?

FIRST, THE STATE OF KANSAS DOES NEARLY \$350 MILLION DOLLARS WORTH OF PROCUREMENT EACH YEAR, (THIS DOES NOT INCLUDE ANY WORK DONE BY KDOT WHICH DOES ANOTHER 200 MILLION DOLLARS PER YEAR), OF THE 300 MILLION SPENT IN 1982 THE LAST YEAR IN WHICH RECORDS WERE KEPT, LESS THAN ONE HALF OF ONE PERCENT OR 900,000. DOLLARS WAS SPENT WITH MINORITIES AND OR WORMEN. IT IS "SPECULATED" THAT IN 1985 THAT A TOTAL OF "ONE PERCENT" OR THREE AND ONE HALF MILLION WAS \$PENT WITH MINORITIES AND WOMEN. DISADVANTAGED BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES, NEED THIS BILL SO THAT WE CAN TRULY BE A PART OF OUR STATES PRESENT AND FUTURE GROWTH.

WHO WILL BENEFIT?

ALL OF KANSAS. CONSIDER, KDOT WHO BOAST OF MINORITY BUSINESS ENTERPRISE PARTICIPATION, BUT WHOM MUST DO SO UNDER SOMETHING OF A DARK CLOUD, DUE MAINLY TO THE FACT THAT DBE/WBE PARTICPATE ONLY IN THOSE PROJECTS THAT ARE FUNDED BY FEDERAL FUNDS. UNDER THE FEDERAL HIGHWAY RESURFAING ACT KANSAS RECIVES FUNDS BASED ON THE FACT, THAT SHE WILL INSURE THAT NOT LESS THAN TEN PERCENT OF ALL HIGHWAY WORK WILL BE DONE BY DBEs. ON ALL PROJECTS FUNDED BY STATE FUNDS MINORITY PARTICIPATION IS ALL BUT NON EXISTANT. AGAIN ALL OF KANSAS BENEFITS WHEN ALL OF HER PEOPLE PARTICIPATE IN HER GROWTH AND DEVELOPMENT.

DO WE NOT HAVE A SMALL BUSINESS SET ASIDE PROGRAM ALREADY?

AS 2910 SUGGEST, THE ANSWER TO THAT QUESTION IS YES. FURTHER, IT SEEMS TO BE WORKING BASED ON THE FACT THAT A SMALL BUSINESS IS CONSIDERED TO BE ANY BUSINESS THAT DOES FIFTEEN MILLION DOLLARS OR LESS OF BUSINESS EACH YEAR. AS THIS IS TRUE, IT IS ALSO TRUE, THAT NEARLY THIRTY PERCENT OF ALL PROCUREMENT IS BEING

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DONE BY BUSINESS IN THIS DEFINITION. HOWEVER , AS HAS BEEN POINTED OUT IT DOES NOT WORK FOR MINORITIES.

YOU MIGHT WELL ASK THE QUESTION CAN YOU NOT WAIT AND PERHAPS SHOULD YOU NOT WAIT FOR THE NATURAL EVOLUTIONARY PROCESS TO TAKE PLACE? MY RESPONSE MUST BE NO. NO, BECAUSE THE NOTION OF "WAIT", RINGS WITH AN EVER PIERCING FAMILIARITY TO MINORITIES. THIS "WAIT" HAS ALMOST ALWAYS MEANT "NEVER". CLEARLY THE POINT TO BE GAINED HERE IS QUITE SIMPLE, HOUSE BILL 2910 RECOGNIZES, THAT MINORITIES ARE NOT PARTICIPATING FULLY AND OR RESPONSIBLY IN THE PROCUREMENT ACTIVITIES OF THE STATE. FURTHER, AS MINORITIES REPRESENT NEARLY 10 PERCENT OF THE STATES POPULATION AND AS THEIR ARE NEARLY 650 MINORITY OWNED AND OPERATED BUSINESS ENTERPRISES HERE IN KANSAS IT IS NEITHER TRUE NOR PLAUSABLE THAT THERE IS EITHER A SHORTAGE OF MINORITIES OR BUSINESS ENTERPRISES AVAILABLE OR WANTING TO DO BUSINESS HERE IN OUR STATE. THEREFORE, IT IS FAIRLY OBVIOUS, THAT THE UNDERLING PROBLEM REST IN A NON RECEPTIVE MARKET PLACE AND NOT WITH A NON AVAILABLE MINORITY PROVIDER. CLEARLY, THE KANSAS MINORITY BUSINESS ENTERPRISE IS STILL LANGUISHING IN THE CORNERS OF OUR SOCIETY, AND EFFECTIVELY FINDS HIMSELF IN EXILE IN HIS PURSUIT OF ENTREPRENEURIAL OPPORTUNITIES HERE IN KANSAS. HOUSE BILL 2910 BEGINS TO SPEAK TO THE PROBLEM AND OFFERS UP SOME SOLUTIONS. SOLUTIONS THAT WARRANT MY BEING HERE TO CONVEY MY CONCERNS AND THE CONCERNS OF DBEs THROUGHOUT KANSAS.

IN A SENSE MY PRESENT HERE, IS INTENDED TO DRAMATIZE AN APPALLING CONDITION OF BENIGN NEGLECT AND OR INDIFFERENCE. I TRULY BELEIVE, THAT THE ARCHITECTS OF OUR STATE CONSITUION AND CERTAINLY THIS WAS TRUE WHEN THOSE MAGNIFICENT WORDS OF THE CONSITUION AND DECLARATION OF INDEPENDENCE, WERE PENNDE TO PARCHMENT, THAT EVERY CITIZEN WOULD FALL HEIR TO A PROMISSORY NOTE. THIS NOTE WAS A PROMISE THAT ALL CITIZENS WOULD BE ABLE TO PURSUE AND HAVE EQUAL ACCESS TO OPPORTUNITY. OBVIOUSLY, THIS IS NOT THE CASE, OBVIOUSLY DBE ARE NOT PARTICIPATING FULLY AND OR AS RESPONSIBLY AS THEY WOULD LIKE TO AND OR HAVE THE ABILITY TO. IT IS EQUALLY OBVIOUS THAT KANSAS HAS DEFAULTED ON THIS PROMISSORY NOTE INSOFAR AS HER DBEs ARE CONCERNED. INSTEAD OF HONORING THIS SACRED OBLIGATION KANSAS HAS GIVEN HER DBEs A BAD CHECK; A CHECK WHICH HAS COME BACK MARKED "INSUFFICIENT FUNDS". BUT WE ARE HERE IN SUPPORT OF HOUSE BILL 2910, BECAUSE WE REFUSE TO BELIEVE, THAT THE BANK OF JUSTICE IS BANKRUPT. WE REFUSE TO BELIEVE, THAT THERE ARE INSUFFICIENT FUNDS IN THE GREAT VAULTS OF OPPORTUNITY IN THIS STATE. SO WE HAVE COME THIS DAY, TO PETTION YOU TO CASH THIS CHECK - A CHECK THAT ONCE HONORED, WILL REUSULT IN THE RICHES OF RESPONSIBLE AND PRODUCTIVE PARTICIPATION IN THE PROCUREMENT OPPORTUNITIES HERE IN KANSAS.

WE ARE NOT HERE ASKING THAT YOU CHANGE THE SPECIFICATIONS OR ACCEPT INFERIOR PRODUCTS OR SERVICE. RATHER WE ARE HERE ASKING THAT THOSE LEFT OUT FOR WHAT EVER REASONS, BE ALLOWED TO COME INTO THE MAINSTREAM OF OPPORTUNITY TO WORK WITH AND FOR THE STATE OF KANSAS.

THANK YOU

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HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER, COMMUNICATION, COMPUTERS
AND TECHNOLOGY
GOVERNMENTAL ORGANIZATION
INTERSTATE COOPERATION

RE: BRIEF OF H.B. 2911

House Bill 2911 would enact the small contractors' surety bond guarantee act which creates the surety bond guarantee program for minority small contractors which is to be implemented by the secretary of the Department of Economic Development.

Under the definition section a surety means the person who under the terms of a bid bond, undertakes to pay a sum of money to the obligee in the event the principal breaches the conditions of the bond or under the terms of a performance bond undertakes to bear the cost of fulfilling the terms of a contract when a principal breaches the conditions of the contract. A bid bond is one whereby a bidder who receives a contract award enters into the contract and furnishes the prescribed payment bond and performance bond. A performance bond is a bond which requires the principal to complete the terms of the contract. The definition of an obligee, in the case of a bid bond is a person who requests bids for the performance of a contract. In the case of a performance bond, an obligee is the person who enters into an agreement with a principal to complete the contract and to whom the surety obligation is owed when there is a breach by the principal on the conditions of a performance bond. A principal, either a prime or a subcontractor, is, in the case of a bid bond, the individual who bids for the award of a contract. In the performance bond situation, the principal is the person primarily liable to complete a contract for the obligee and whose performance is guaranteed by the surety under the terms of a performance bond.

The secretary may proceed to back up any surety against losses brought about by a breach of either a bid bond or a performance bond by a principal, subject to certain conditions as follows:

1. The principal, a prime or subcontractor, has maintained a principal plan of business in Kansas for at least one year.
2. The principal's gross revenues for the most recently completed fiscal year were not more than \$2,000,000.
3. The principal can demonstrate independent ownership and operation.
4. The bond is required so that the principal can bid on a contract or serve as a prime contractor or subcontractor.
5. The principal is not able to obtain a bond on reasonable terms and conditions without a guarantee under this Act.

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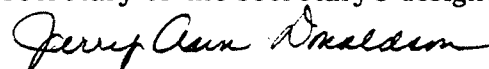
6. The secretary determines that there is a reasonable likelihood that the principal will fulfill the terms of the contract for which a bond is required.
7. The contract meets the secretary's requirements regarding successful completion and reasonable costs.
8. The terms and conditions of any bond guaranteed under this act are reasonable in terms of risk involved and the extent of the surety's participation.
9. The principal is not already the principal under any existing bond guaranteed by the Act.

Under this Act, the secretary's obligation, on behalf of the state, to the surety would be an amount not more than the lesser of (a) 90 percent of the surety's loss in making good on the terms of the bond; or (b) in the case of a bid bond the sum of \$10,000 or in the case of a performance bond, \$25,000.

If the secretary has provided a working capital loan to a principal with a bond, the working capital loan shall be subordinated to any claims which are related to the guaranteed transaction and which the surety may have against the principal.

Uniform fees which are reasonable and necessary shall be fixed by the secretary for any guarantee issued under this Act. Conditions for payment of the uniform fee will be determined by the secretary. The fee will be reviewed periodically in order to provide the lowest fee, based on experience. Other fees would be allowable for the processing of applications.

Creation of the small contractors' surety bond guarantee fund in the state treasury is provided. Moneys from fees, penalties or charges will be remitted by the secretary to the state treasurer at least monthly to be credited to the fund. Expenditures from the fund shall be by the secretary or the secretary's designee.



Jerry Ann Donaldson
Research Analyst

JAD/pk

DBE Briefs

BONDING

Disadvantaged Business Enterprises Programs

Number 2, July 1984

Surmounting Bonding Barriers

Problems in obtaining the necessary bonds can be a major impediment to increasing the participation of disadvantaged business enterprises in Federally-funded local highway and transit projects. Local responses to bonding problems have ranged from newsletters to direct assistance. Each approach is potentially useful to other localities wishing to increase minority participation in contracts.

Bonding is an important element in the bidding process of most publicly financed construction projects. However, bonding can be a barrier to participation in such projects by disadvantaged and women owned business enterprises (DBE/WBE). Many DBE/WBE firms have encountered considerable difficulty in obtaining bonding.

Bonding requirements vary among jurisdictions based upon state laws and local ordinances. Some jurisdictions require bonding on some types of contractual activities while others do not. Bonding may be required on contracts valued above a predetermined dollar amount with no bonding required on projects below that amount. In general, however, bonding is required on major construction projects such as, bus garages, rapid transit stations and road construction among others. Other types of contract activities, non-professional services, parts and supplies, for example, usually do not require bonding subject to local variations.

WHAT ARE BONDS?

A Contract Surety bond is a form of insurance that guarantees a contractor will comply with the terms of a contract, thereby protecting the investment of the contracting party or entity. The three basic types of bonds are:

- Bid Bond

Given by a bidder for a supply or construction contract to guarantee that the bidder, if awarded the contract within the time stipulated, will enter into the contract and furnish the

prescribed performance bond. Default will ordinarily result in liability for the difference between the amount of the principal's bid and the bid of the next low bidder who can qualify for the contract. In any event, however, the liability of surety is limited to the bid bond penalty.

- Performance Bond A bond which guarantees faithful performance of terms of a written contract for furnishing supplies or for construction of all kinds. Performance bonds frequently incorporate payment bond (labor and materials) and maintenance bond liability.
- Payment Bond A bond given by a contractor to guarantee payment for the labor and material used in the work which he is obligated to perform under the contract. This liability may be contained in the performance bond, in which case a separate labor and material bond (payment bond) is not given.

PROBLEMS

Small businesses in general and DBE/WBEs in particular encounter a variety of barriers that prevent them from obtaining bonding. One barrier is the amount of risk perceived by a bonding company when approached by a DBE/WBE. Many DBE/WBEs are relatively new firms with little or no established track record of past successful performance. Bonding problems are a result of one or more of the following factors:

- DBE/WBEs lack of a track record.
- Inadequate financial record of the DBE/WBEs.
- Lack of knowledge by DBE/WBEs of the requirements for bonding.
- Lack of experience by bonding companies with DBE/WBEs.
- Fear of rejection on the part of some DBE/WBEs.

To be bonded, a firm must satisfy a bonding company that it has access to sufficient working capital, a management team with demonstrated experience, and a corporate track record of performance at or near the level of effort required by the proposed contract. However capable the firm may be, DBE/WBEs often find that no track record means no bonding, while without bonding they cannot build a track record.

In addition to past job performance, the bonding company must review the DBE/WBE's past financial performance in order to determine the firm's stability and hence, the degree of risk involved in issuing a bond to the firm.

An additional complication is ignorance of what is required for bonding on the part of some DBE/WBEs who apparently have not taken time to find out what will be required of them to be considered for bonding.

Due to lack of experience in working with such firms some bonding companies are reluctant to issue bonds to DBE/WBEs which represent an unknown

level of risk. This reluctance, in turn, has generated fear among some DBE/WBEs that they will be automatically rejected when they apply for bonding. A result is that neither party acquires the necessary and valuable experience of working with each other, thereby perpetuating the problem.

BONDING ASSISTANCE PROGRAMS

Local governments and organizations have developed a variety of approaches to help DBE/WBEs obtain bonding, ranging from simple information sharing to multimillion dollar bond guarantee programs. Although specific aspects of these programs may not be directly transferable from one locality to another, their basic concepts can be readily adapted to help solve the bonding problems facing DBE/WBEs in many communities. Major approaches currently used include technical assistance, direct assistance, and local assistance.

- Technical Assistance

The main objective of technical assistance is to help DBE/WBEs "do their homework" before applying for a bond. This includes help in preparing financial statements, compiling job experience records and references, completing the bond applications, matching DBE/WBEs with bonding companies, providing information, and negotiating with bonding companies. Assistance also involves helping a firm to implement an appropriate corporate structure that will include management information systems to collect and analyze this type of information.

- Direct Assistance

Financial aid by the contracting agency including providing bond guarantees or bonding coverage through internal resources (self-insurance).

- Local Assistance

Local agencies, through a system of individual evaluations of the elements to be bid and the prospective DBE/WBE bidders, modify bonding requirements in order to permit greater DBE/WBE participation.

TECHNICAL ASSISTANCE

The technical assistance approach is exemplified by Baltimore's Bonding Assistance Project, a privately-sponsored, year-long program. Seed money of \$30,000 was provided by the nonprofit Council for Equal Business Opportunity (CEBO), a local organization with the broader mission of stimulating minority business development, and two bonding companies.

The program staff helps DBEs prepare bonding applications. Applications with which the project has helped then receive special attention from the two bonding companies. During its first two months, the project assisted six DBE/WBE firms. If it proves successful, other bonding companies will be approached for support for future years.

Testimony Prepared for the House
Ways and Means Committee
Concerning House Bill 2910

Marc Marcano
Executive Director
Kansas Advisory Committee on Mexican American Affairs

Mr. Chairman and Committee Members:

A function of the Kansas Advisory Committee on Mexican American Affairs (KACMAA) is to serve as liaison between the Kansas Hispanic Community and Kansas State Government. It is in this capacity that I have prepared this testimony to provide the committee with a perspective from the Hispanic Business Community.

Obstacles faced by Hispanic business persons have not changed significantly over the years. The United States Hispanic Chamber of Commerce (USHCC) asserts that the primary problems of Hispanic businesses remain the lack of capitalization, access to the business market, business and management training, and resources to develop business opportunities. Several of these obstacles are being removed by the efforts of the Kansas Office of Minority Business. Others will remain until Kansas State Government takes an active role and supports legislative initiatives favoring the Kansas Hispanic and minority business person.

The Kansas Small Business Procurement Act was passed with the goal of insuring that at least ten percent (10%) of state purchases be placed with small business. Since it was passed, the act has met with much success. The mean percent of business conducted with small business between fiscal years 1980-1983 was 31.41 percent, well above the set-aside proportion. In that same time period, however, the mean percent of business conducted with minority contractors was .31 percent, or less than 1/2 of 1 percent. Because of the existing low percentage of state business with minority business persons, KACMAA sees a need to foster the development of small minority business in the state through the passage of H.B. 2910.

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Testimony Prepared for the House
Ways and Means Committee
Concerning House Bill 2910

Jeannie Chavez-Martinez
President
Kansas Association of Hispanic Organizations
and Entrepreneur

Mr. Chairperson William Bunten and Committee Members:

I would first like to recommend that we amend House Bill 2910 to read Kansas minority and women's small business procurement act.

Women make up a majority of the population yet continue to encounter serious problems that hinder the development of women-owned business. Three major problems continue to bar the development of minority and women-owned business: (1) lack of verifiable information, thus lack of accountability; (2) lack of marketing opportunities; and (3) lack of capital formation.

Passage of the Kansas minority and women's small business procurement act would foster the development of minority and women-owned business in the state.

It is in the state's best interest to ensure that minorities and women will have an opportunity to compete in the state's market since a successful business will strengthen the economy and result in more jobs.

A key to the success of this program, however, will be accountability. The need for current verifiable information is a component that cannot be overlooked.

The mechanism is in place under H.B. 2959 requiring the Department of Administration to report on the number of small business contracts entered into by the state with minority and women-owned business. To date, the Division of Purchases has been unable to carry out this mandate because of, I trust, an oversight by the Legislature to fund the computer time and staff necessary to collect this pertinent data.

Reminds me of a game I used to play as a child called "Picking cotton out of the sky." Can't be done!

I believe Kansas has legislators with enough foresight to plan for our economic security and can only give support to a bill that has at its core the foundation for successful enterprise - for all.

Thanks for your consideration and support!

Jeannie Chavez-Martinez

REPORTS OF STANDING COMMITTEES

Your committee on Ways and Means

Recommends that HCR 5040

"AN ACT A Concurrent Resolution directing the Kansas Department of Economic Development to implement a Kansas Product Promotion Program that identifies Kansas products for consumers.

be adopted.



Chairman.


REPORTS OF STANDING COMMITTEES

Your committee on Ways and Means

Recommends that HCR 5041

"AN ACT A Concurrent Resolution directing state institutions and the Department of Administration, through its Division of Purchases, to purchase Kansas -grown and processed foods for state institutions whenever possible.

be adopted.


Will Benton Chairman.

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

Your Committee on Ways and Means

Recommends that House Bill No. 3027

"AN ACT relating to state moneys; concerning fee agency accounts; amending K.S.A. 75-4214 and 75-4215 and repealing the existing sections."

Be amended:

On page 1, in line 31, by striking all after the period; by striking all in lines 32 to 36, inclusive;

And the bill be passed as amended.

Will Austin Chairperson

REPORTS OF STANDING COMMITTEES

Your committee on Ways and Means

Recommends that HB 3047

"AN ACT declaring Lecompton constitutional hall to possess unusual historical interest and authorizing the state historical society to acquire such property in the name of the state for the purpose of establishing and maintaining the property as a historical landmark and museum.

be passed.

W. A. ... Chairman.

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

Your Committee on Ways and Means

Recommends that House Bill No. 2736, As Amended by House
Committee

"AN ACT concerning the Kansas public employees retirement system; relating to persons in training at or employed, or both, by sheltered workshops for the blind operated by the secretary of social and rehabilitation services; amending K.S.A. 74-4902 and 74-4927 and repealing the existing sections."

Be amended by adoption of the amendments recommended by the House Committee on Pensions, Investments and Benefits and the bill be passed as amended.

Bill Austin

Chairperson