

Approved February 27, 1992
Date

MINUTES OF THE Senate COMMITTEE ON Labor, Industry and Small Business

The meeting was called to order by Alicia L. Salisbury at
Chairperson

1:30 ~~am~~/p.m. on February 12, 19⁹² in room 254-E of the Capitol.

All members were present except:

Members present: Senators Daniels, Ehrlich, Morris, Oleen, Petty, Salisbury, Sallee, Strick and Thiessen

Committee staff present:

Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Tony Augusto, Director of the Office of Minority Business
Samuel Jordan, Fairness in Budgets for African Americans, Kansas City
Bob Totten, Public Affairs Director, Kansas Contractors Association
Bob Stacks, Director, Employment Security Division, Department of Human Resources

Senator Morris moved and Senator Petty seconded to approve the minutes of January 27, 29 and 30. The motion passed.

HEARING ON SB 438 - State contracts for minority business enterprise and female business enterprise

Tony Augusto, Director of the Office of Minority Business, testified in support of **SB 438**. **SB 438** directs the Secretary of the Department of Administration to chair a minority business council and, with its approval, hire a Director of "the minority and female business enterprise business division with the Department of Administration". He stated the Office of Minority Business in the Department of Commerce is already doing many of the duties outlined by **SB 438**. The concept of a minority business council is not new. One of the goals of his office for FY 92 is to develop a council such as indicated in **SB 438**. In the interest of cost savings and efficiencies the Department of Commerce, Office of Minority Business should be given the responsibility of staffing the proposed council. He said the program will require an additional professional and a half-time clerical position, however, a fee structure can be developed to defray a portion of the costs associated with the program. He also said the definition of a minority business should follow federal guidelines and be placed under the category of "small disadvantaged business", see Attachment 1.

Samuel Jordan, Fairness in Budgets for African Americans, Kansas City, recommended amendments to **SB 438**. New Sec. 3, lines 6-9a should read "Not less than 8% of the total dollar amount of state contracts for African Americans, as defined by the secretary of the council and approved by the council, with the percentage of the total population of other minorities equalled to their percentage of the total dollar amount, shall be awarded African Americans, other minorities and female owned businesses". New Sec. 3, lines 9b-12a should be removed. New Sec. 4, lines 23b-26a should read "Four representatives from the African American business community, three representatives from the female business community and three representatives from other minority business communities shall be appointed by the Governor". "For any and all subcontracts received by an African American owned business, bonding shall either be provided by the prime contractor, waived, guaranteed by the state, or underwritten by a state agency" should be added to New Sec. 6, see Attachment 2.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Labor, Industry and Small Business,
room 254-E Statehouse, at 1:30 ~~am~~/p.m. on February 12, 1992

Bob Totten, Public Affairs Director, Kansas Contractors Association, testified in opposition to **SB 438**. He stated the Kansas Contractors Association supports the competitive bid process and **SB 438** helps destroy this process. He questioned the constitutionality of **SB 438**. Requiring racial balance for its own sake is unconstitutional. He also said there is a federal requirement that seeks Minority and Disadvantaged Business Enterprises to enter the contracting industry. It is set at 10%. Out of \$130 million bid on federal aid state projects, \$15.7 million is being done by DBE or MBE contractors, see Attachment 3.

There being no further conferees, the hearing on **SB 438** was closed.

HEARING ON SB 606 - Amendments to employment security law relating to limited liability companies, disqualifications for benefits and shared work compensation programs

Bob Stacks, Director, Employment Security Division, Department of Human Resources, explained **SB 606** amends the employment security law. The first set of amendments deal with the inclusion of Limited Liability Companies as employers under the Kansas Employment Security Law. The second amendment was precipitated by recodification of the Federal Immigration and Nationality Act which voided 203(a)(7) of that act. The third amendment concerns the Shared Work Unemployment Compensation Program. The amendment is required in order for Kansas law to meet the federal conformity provisions as it relates to equal treatment of governmental entities and non-profit organizations. This classification of employers and employees may elect to have shared work at their place of employment, the same as private for profit employees. The fourth proposed amendment deletes the 35 year limitation of the obligation of Reed Act Funds for administrative purposes. This amendment is needed to bring the Kansas Employment Security Law into agreement with federal law. The fifth proposed amendment concerns disqualification of benefits. Alcohol liquor and cereal malt beverage was inadvertently omitted from the legislation in 1991, see Attachment 4.

The Committee meeting was adjourned at 2:30 p.m.

TESTIMONY PRESENTED TO

**SENATE LABOR, INDUSTRY, AND
SMALL BUSINESS COMMITTEE**

FEBRUARY 11, 1992

by

**Tony Augusto, Director
Office of Minority Business
Kansas Department of Commerce**

*S.L.I. + S.B.
2/12/92*

Attachment 1-1

January 31, 1992

SENATE BILL 438

I want to thank the committee for the opportunity to discuss Senate Bill 438. My name is Tony Augusto, Director of The Office of Minority Business, which is housed in the Kansas Department of Commerce. The Office has the responsibility to serve as advocate for minority and women-owned business development in Kansas.

The Department of Commerce and Office of Minority Business support the concept of this bill, but we have some concerns about the language and administration of the proposed program.

The Authority for the Kansas Department of Commerce to operate the Office of Minority Business is given by statute (K.S.A. 74-5002). The statute mandates the duties of the Office of Minority Business. These duties include: "foster and assist the development of minority businesses in the state, to aid in the educational programs related to aiding such development, to recommend necessary legislation to advance the interest of the state in development of minority businesses, to represent the state in related matters before federal agencies and to cooperate with and assist federal government and the political subdivisions of this state, and other persons in such development. Political sub divisions of the state are hereby authorized to cooperate with the Office of Minority Business in the development of minority businesses in the state". The program as it now operates has been in effect since 1984.

SB 438 directs the Secretary of the Department of Administration to chair a minority business council and with its approval hire a Director of "the minority and female business enterprise business division with

*SLD vs SB
2/12/92*

Attachment 1-2

the Department of Administration". The Office of Minority Business is now doing many of the duties outlined by SB 438. In addition to the educational and advocacy activities mentioned previously, the Office already works closely with the Division of Purchases to assist small, minority, and women-owned business become aware of the contracting opportunities available with the state of Kansas.

The concept of a minority business council is not new. One of our goals for FY 92 is to develop a council such as indicated in SB 438. We support this, but in the interest of cost savings and efficiencies the Department of Commerce, Office of Minority Business should be given the responsibility of staffing the proposed council. The council sets agency goals, provides direction, makes recommendations, and serves in an advisory capacity to assist the Office of Minority Business in keying in on issues in the minority and women-owned business community.

The certification process is time consuming and often requires sophisticated analysis of the individual businesses involved. While the program will require one additional professional and a half-time clerical position, a fee structure can be developed to defray a portion of the costs associated with the program. The program can be creative so that other fees, such broker fees, are collected whenever the Department of Commerce links businesses with contracts. We suggest, as part of the annual report requested by the bill, the council provide the Governor and the legislature a report of program activities and the dollar impact in the minority and women-owned business community.

Kansas Inc., the state's Economic Development research and strategy agency, in 1991 evaluated our program. The research commended the Office for the manner in which services and products are delivered.

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Attachment 1-3

The Office of Minority Business is the coordinator for the state's minority and female business programs. Why start a new program? Services such as workshops, trade shows, and various programs to increase the awareness of these businesses are already provided. In addition, a directory is annually prepared which is recognized by many agencies and buyers as a source for locating minority and women-owned businesses.

Another function of the Office of Minority Business is to cooperate with federal, state, and local governmental agencies to insure an awareness of minority businesses and women-owned businesses in these agencies. Such agencies as: the U.S. Small Business Administration, Department of Energy, General Services Administration, U.S. Department of Commerce, Corp of Engineers, U.S. Department of Defense, U.S. Post Office and N.A.S.A. continually look to the Office of Minority Business for information when trying to locate qualified minority and women-owned businesses in Kansas.

Minority and women-owned vendors want an opportunity to compete for contracts, they are not looking for handouts. Agencies should establish goals and set up sheltered markets to allow these small businesses an opportunity to enter into the system. A 10% participation rate in state contracts would provide \$40 million worth of business in this segment of our economy. Past research estimates that less than 1% of state purchasing is done with minority businesses. Women business ownership, about 30% of the small businesses in the state, is estimated to doing only about 2%.

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Attachment 1-4

Another concern with SB 438 is the language. Certain words and phrases need to be used to be able to stand the scrutiny of possible lawsuits by those alleging that sheltered markets are unconstitutional. This is a result of the U.S. Supreme Court's decision in the case of Richmond vs. Croson in 1989. For example the definition of a minority business should follow federal guidelines and be placed under the category of "small disadvantaged business". The U.S. Department of Commerce uses the definition of "Historically Underutilized Businesses or H.U.B.s". We think that reference should be made to the federal guidelines when considering which businesses will benefit from this bill. I would be pleased to work with the committee to provide suggestions on language changes.

I have enclosed information about our Office. We are involved in many workshops, individual counseling sessions, and working with buyers of federal and state agencies. We also work with buyers from Boeing, Beech, Cessna, Goodyear, Hallmark and many other private firms looking to do business with minority and women owned businesses. The Office already has established many links with the private sector. We estimate that in 1991 between \$15-20,000 in private sector support was provided for our program operation.

Thank you very much for your attention. I'll answer any questions the committee might have.

ALB
2/12/92

Attachment 1-5

OFFICE OF MINORITY BUSINESS



The Office of Minority Business (OMB) within the Kansas Department of Commerce was created to assist minority and women business owners in obtaining material, technical, financial, and procurement assistance as well as to identify entrepreneurial opportunities.

WHAT IS A MINORITY BUSINESS

A sole proprietorship, partnership, corporation, or joint venture that is operated by racial or ethnic minority person(s) with at least 51% ownership and control, is considered a minority business. Racial and ethnic minority groups include African Americans, Hispanics, Asians, Native Americans, and Asian-Indians.

WHAT IS A WOMEN-OWNED BUSINESS?

A business that is at least 51% owned by a woman (or women), controlled and is operated by a woman (or women) is considered to be women-owned.

To "Control" means to exercise the power to make policy decisions, and "to operate" means to be actively involved in day to day management of the business.



WHAT SERVICES ARE AVAILABLE TO MINORITY AND WOMEN OWNED FIRMS?

- **Business Education** — OMB organizes and promotes business education seminars and workshops on business management, financing, procurement, and other pertinent topics. The cooperation of public and private economic development agencies is essential for the success of these workshops.
- **Procurement** — OMB encourages governmental agencies, large private corporations and prime contractors to purchase products, supplies, and services from minority and women owned firms. OMB also disseminates government contracts to minority and women-owned firms. Contracts are matched and forwarded to the appropriate businesses.
- **Advocacy** — As an advocate, OMB assists federal and state agencies by making recommendations concerning policies and activities of agencies affecting minority and

women-owned businesses. OMB assists Legislators in developing proposals for change in policies or activities which may alleviate any unnecessary adverse effects on the minority and women-owned businesses in Kansas. OMB serves as a clearinghouse for information, policies, and issues pertaining to minority and women-owned enterprises.

- **Financing** — OMB provides information and counseling to minority and women-owned firms about financing alternatives which fits the needs and resources of a specific business. The office is well versed on federal, state and private sector financing tools. OMB recommends combinations of public and private sector financing which can make projects more feasible.
- **General Business Assistance** — OMB provides information and initiates activity for technical assistance to start up and expanding firms in the areas of credit analysis, loan packaging, where to obtain permits and licenses, business planning, and other business services.
- **Networking** — OMB has a strong network of supporting agencies and economic development organizations who cooperate to assist in fostering minority and women business entrepreneurship.

These include:

- Federal, state, county, and city governments;
- Minority Business Development Centers;
- U.S. Small Business Administration;
- Chambers of Commerce;
- Certified Development Companies in Kansas;
- Minority Supplier Development Councils;
- Minority Contractor Associations;
- Kansas Department of Transportation;
- National Association of Women Business Owners;
- Women of Color;
- Kansas Department of Human Resources;
- Private Industry (Boeing, Beech, Avon, etc.);
- National Business League, Wichita Chapter;
- Kansas Small Business Development Centers.

For more information, Contact:

**Office of Minority Business
Kansas Department of Commerce
400 SW 8th Street-5th Floor
Topeka, Kansas 66603-3957
(913) 296-3805**



Attachment 1-6

STATE OF KANSAS

**MINORITY BUSINESS GROWTH
1982—1987**

Ethnic Group	Number of Firms			Sales & Receipts (millions)		
	1987	1982	% of Change	1987	1982	% of Change
All Minorities	5230	4349	20	\$299	\$192	5
Blacks	2323	1903	22	154	60	153
Hispanics	1541	1038	88	62	61	1
Asians	1120	804	39	74.	42	74
Native Americans	246	251	-1	8.	13	-39
Women-Owned	53,505	36,770	45	\$2,145	\$1,234	73
Total Small Businesses	169,593	99,838	69	\$17,086	\$6,181	176

**NATIONALLY
1982—1987**

Ethnic Group	Number of Firms			Sales & Receipts (millions)		
	1987	1982	% of Change	1987	1982	% of Change
All Minorities	1,213,750	741,640	63.7	\$77,840	\$34,454	125.9
Blacks	424,165	308,260	37.6	19,763	9,619	105.5
Hispanics	422,373	233,975	80.5	24,732	11,759	110.9
Asians	21,380	13,573	57.5	911	495	84.4
Native Americans	355,331	187,691	89.3	33,124.	12,654	161.8
Women-Owned	4,114,787	2,612,621	57	\$278,138	\$98,291	197
Total Small Businesses	13,695,480	6,856,665	99	\$1,994,808	\$599,841	

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2/12/92

Attachment 1-7

It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal Agency.

DEFINITIONS

1. Small Business Concern: The term "Small Business Concern" shall mean a small business as defined pursuant to Section 3 of the Small Business Act and in relevant regulations promulgated pursuant thereto. Generally, unless your firm is operating in an industry with a specialized standard, it is considered small if:
 - (a) it has fewer than 500 employees for manufacturing industries,
 - (b) has average annual receipts for three preceding fiscal years of less than \$12 million for general construction and
 - (c) has average annual receipts for three preceding fiscal years for less than \$2 million for service industry.

2. Small Disadvantaged Business Concern is a business concern that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals and has its management and daily business controlled by one or more such individuals.
 - (a) "Socially disadvantaged individuals" means individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their qualities as individuals.
 - (b) "Economically disadvantaged individuals" means socially disadvantaged individuals whose ability to compete in the free enterprise system is impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business who are not socially disadvantaged.Individuals who certify that they are members of named groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans) are to be considered socially and economically disadvantaged.
 - (a) "Asian-Indian Americans" means United States citizens whose origins are in India, Pakistan or Bangladesh.
 - (b) "Asian-Pacific Americans" means United States citizens whose origins are in Japan, China, and the Philippines, Viet Nam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands, the Northern Mariana Islands, Laos, Cambodia, or Taiwan.
 - (c) "Native Americans" means American Indians, Eskimos, Aleuts, and native Hawaiians.

3. Women-owned business means a business that is at least 51% owned by a woman or women who also control and operate it. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management.

If you have any questions regarding your business classification, contact your nearest Small Business Administration office.

SYG + SB
2/12/92

Attachment 1-8



PUBLIC RELATIONS, MARKETING & ADVERTISING

CHANGES TO SENATE BILL #438

AS SUBMITTED

BY

THE BOARD OF GOVERNORS OF FIBAA
(FAIRNESS IN BUDGETS FOR AFRICAN AMERICANS)

AND

REVISION COMMITTEE

February 12, 1992

*S.L.G. & S.B.
2/12/92*



PUBLIC RELATIONS, MARKETING & ADVERTISING

CHANGES TO SENATE BILL #438

New Section 3, Lines 6-9a
Contracts to Minorities

These lines should read:

Not less than 8% of the total dollar amount of state contracts for African Americans, as defined by the secretary of the council and approved by the council, with the percentage of the total population of other minorities equalled to their percentage of the total dollar amount, shall be awarded African Americans, other minorities and female owned businesses.

New Section 3, Lines 9b-12a
Contracts to Females

These lines should be COMPLETELY REMOVED from Senate Bill #438. This section protects the female three different ways: as a minority, as a female, getting 10% of the total state contracts, and then a third time as a female getting 50% of whatever the minorities and females are awarded as a group.

New Section 4, Lines 23b-26a
Enterprise Council

These lines should read:

Four representatives from the African American business community, three representatives from the female business community and three representatives from other minority business communities shall be appointed by the governor.

ALG + AB
2/12/92



PUBLIC RELATIONS, MARKETING & ADVERTISING

New Section 6
Bonding

These lines should be ADDED to New Section 6:

For any and all sub-contracts received by an African American owned business, bonding shall either be provided by the prime contractor, waived, guaranteed by the state, or underwritten by a state agency.

LLG+LB
2/12/92

Attachment 2-3

TESTIMONY
BEFORE
THE SENATE LABOR AND INDUSTRY COMMITTEE

Thank you very much for allowing me to testify before the Senate Labor and Industry Committee on Senate Bill 438. I am Bob Totten, Public Affairs Director for the Kansas Contractors Association. I represent over 330 contractors in the state who build and construct highways, roads and bridges throughout the Midwest.

Our association is strongly supportive of the competitive bid process. That process is based on the lowest and best bid being selected for government work. This process has worked very well in the past by keeping prices low and at the same time, allowing our government to get the best work done for the price.

We are concerned that this measure helps destroy this process. In philosophical, legal, and economical matters, this bill is detrimental to our present system.

First the citizens of Kansas and the United States are opposed to discrimination. This measure would cause discrimination in reverse. By requiring contracts to be let on the basis of sex or race, we have gone against the principles which say we are opposed to making selections based on sex or race.

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Attachment 3-1

Page Two

At this time, the idea of legislating for minorities and women may seem politically correct....but let's take it further. What would you say if we had a different political majority and it decided only contractors from Wabaunsee County could bid on government work, would that be correct? What I am saying is we don't need to legislate who is to get work...it is wrong.

On a legal basis, I am not sure this is constitutional. As I understand previous court decisions, requiring racial balance for its own sake is unconstitutional. The only time racial balance requirements are constitutional is if it can be shown there has been prior discrimination. I dare say in the case of competitive bids, which are not based on race, creed or sex..there has not been any prior discrimination.

On a purely economical basis, the costs would go up. Right now, KDOT tracks some of the MBE and DBE programs required on federal aid projects. If we require more contracts in this area, I am sure additional personnel would be needed to handle the program.

On a competitive basis...the costs also would go up. If you once again required only Wabaunsee County contractors to do work in the state, the price would increase:

SLG + SB
2/12/92

Attachment 3-2

Page Three

- 1) The costs would increase because there are few highway contractors in Wabaunsee County and they would have a lock on the process.....and,
- 2) There would be additional set-up costs involved for contractors to charge if they had to move their equipment from Wabaunsee County to a job in Finney County. You can see right away the disparity in this approach.

One other point to make, we already have a federal requirement that seeks Minority and Disadvantaged Business Enterprises to enter the contracting industry. It is set at 10 percent. Right now, out of 130 million dollars bid on federal aid state projects, 15.7 million is being one by DBE or MBE contractors. My point is: The opportunities are already occurring without the need of a state law.

For the reasons mentioned, we oppose Senate Bill 438 on a basis of legal, economic and philosophic reasons. We are supportive of the "free enterprise" system and feel this method is threatened.. a method that has been great for our country.

I thank you for your time and I will try to answer any questions you might have on this issue.

SLG & SB
2/12/92

Attachment 3-3

Senate Bill 606

Madame Chairman and members of the committee:

I want to thank you for the opportunity to appear before this committee to address the proposed amendments contained within S.B. 606. My name is Bob Stacks, I am the Director of the Employment Security Division with the Department of Human Resources. I might begin by saying that the proposed amendments are supported by the agency and have been approved by the agency's Employment Security Advisory Council made up of members from the Labor, Industry, and Public sectors.

The first set of proposed amendments deals with the inclusion of "Limited Liability Companies" as employers under the Kansas Employment Security Law. These proposed changes are a result of the passage of the Kansas "Limited Liability Company Act" which became affective as of July 1, 1990. In essence, a Limited Liability Company (LLC) is a new, very flexible type of business entity authorized by state law in Kansas and seven other states. LLCs have been invented so investors can avoid certain restrictions in the Internal Revenue Code for Subchapter S corporations and limited partnerships.

The proposed changes related to LLC's can be found on page 2, line 36; Where "Limited Liability Company" is added to the definition of "employing unit". K.S.A. 44-703(g). Also on page 5, lines 28, 31, and 32; page 6, line 2; Where any other active member or manager of an LLC is added to the definition of "employment". K.S.A. 44-703(i). And on page 41, lines 23 and 24; This subsection is clarified by including a member or manager who has charge of the affairs of the LLC to be subject to possible personal liability for willfully failing to pay contributions. K.S.A. 44-717(k)

I might point out that until the LLC was created, only partnerships and Subchapter S corporations could pass their income and losses on to investors without taxation. However, partnerships can be dangerous to invest in, because of the unlimited personal liability of general partners and the inability of limited partners to participate in management. Subchapter S corporations have also fallen into disfavor, because they are limited to no more than 30 share-holders, and only individuals can hold shares. LLC are designed to have just enough of the characteristics of a partnership to qualify under the IRS rules for partnership pass-through of income and losses, while at the same time limiting the personal liability of investors for the acts of co-investors or for any losses the business might sustain.

The next proposed amendment was precipitated by recodification of the Federal Immigration and Nationality Act which voided section 203(a)(7) of that act. This can be found on page 27, line 7. This change has no affect on the administration of our law.

JLG + SB
2/12/92

Attachment 4-1

Third on our list of proposed amendments concerns Sec. 5. K.S.A. 1991 supplement 44-757 (Shared Work Unemployment Compensation Program). Changes can be found on page 41, line 42 and page 43, lines 8 - 31. This amendment is required in order for our law to meet the federal conformity provisions as it relates to equal treatment of governmental entities and non-profit organizations. This classification of employers and employees may elect to have shared work at their place of employment, the same as private for profit employers.

Fourth on our list for proposed amendments can be found under K.S.A. 44-712(d) on page 31, lines 32 - 33, line 36, and lines 40 - 43. This proposed amendment deletes the 35 year limitation on the obligation of Reed Act Funds for administrative purposes. This proposed amendment is needed to bring the Kansas Employment Security Law into agreement with federal law.

Reed Act Funds are used by the Department of Human Resources to initially pay for major repair and maintenance work to our owned offices. In the past, we have used Reed Act Funds to replace roofs and air condition and heating systems in our buildings. When we use Reed Act funds for an Agency owned building repair, we are allowed to amortize the Reed Act Funds based on a repayment schedule from our yearly allocation of federal funds. We therefore have a revolving fund from which to handle major repairs to our owned buildings.

The last of the proposed amendments in Senate Bill 606 involves amending Sec. 2. K.S.A. 1991 supplemental 44-706 (disqualification of benefits). The amendments can be found on page 22, lines 28 - 29, 31 - 34, 39 - 40; page 23, lines 1 - 2. This amendment was proposed because it came to our attention that Subsection b of legislation introduced last year was to include the possession of or impairment caused by alcoholic beverage and cereal malt beverage and controlled substances. Upon review, it was found that only the controlled substance language was contained in the legislation. It is our impression that this was simply an oversight. In order to be consistent with federal guidelines of misconduct, we are proposing alcoholic liquor and cereal malt beverage be incorporated into the language as we believe it was intended to be.

This concludes my testimony on Senate Bill 606 today. Again, I want to thank you for the opportunity to appear before this committee. I'd be happy to entertain any questions.

S. L. G. + S. B.
2/12/92

Attachment 4 - 2