

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT.

The meeting was called to order by Chairman Senator Janice Hardenburger at 1:30 p.m. on February 21, 2000, in Room 529-S of the Capitol.

All members were present:

Committee staff present: Dennis Hodgins, Legislative Research Department
Mike Heim, Legislative Research Department
Ken Wilke, Revisor of Statutes
Graceanna Wood, Committee Secretary

Conferees appearing before the committee: Randy Allen, Kansas Association of Counties
Robert Abel, Jefferson County Auxiliary Services
Dan Harden, Riley County Public Works Division
Bob Totten, Kansas Contractors Association
Ted Dankert, Contractor, Towanda
Stan Scudder, Contractor, Newton
Mike Brown, Contractor, Salina
Edward R. Moses, Kansas Aggregate Producers Association
Dennis Rackers, Ash Grove Aggregate

Others attending: See attached list

Chairman Hardenburger opened the hearings on **SB-561 concerning counties; relating to public bids, and repealing the existing section.** The bill would change the threshold on all contracts for the expenditure of county moneys for the construction of any courthouse, jail or other county buildings, or the construction of any bridge in excess of \$100,000, to be awarded on a public letting to the lowest and best bid. In other words, everything below that \$100,000 would not have to be competitively bid.

Randy Allen, Kansas Association of Counties gave testimony in support of **SB 561**, requesting that the \$10,000 threshold be increased to \$100,000, as a way to modernize the statute for small projects while ensuring that more significant and more costly projects continue to be subject to a public bidding process and that performance bonds are required to be filed by the contractor. (Attachment #1)

Robert Abel, Jr., Auxiliary Services Director of Jefferson County also presented testimony in favor of **SB 561**. He said that the increased construction costs have made the \$10,000 threshold in the statute very restrictive. He said small local businesses will not even bid projects because of the bond requirement and the requirement for engineering and architectural plans. (Attachment #2)

Don Harden, Riley County public works engineer presented testimony in favor of the bill. He said there is a "project overhead problem", which consists of the costs associated with developing plans and specifications and the contractor cost associated with bid bonds, performance bonds and statutory bonds. (Attachment #3)

Bob Totten, Public Affairs Director for the Kansas Contractors Association gave testimony in opposition to **SB 561**. Mr. Totten told the Committee that his Association believes all construction contracts should be let on an open, competitive basis with awards being made to the lowest and most responsible bidder. (Attachment #4)

Ted Dankert, owner of Dustrol, Inc., Towanda, specializing in highway construction work, opposed **SB 561**. Mr Dankert gave testimony informing the Committee that he does not think that expanding the role of a government agency such as a public works or road and highway department is a good idea. (Attachment #5)

The Committee discussed the threshold being raised to \$100,000.

CONTINUATION SHEET

Stan Scudder, Contractor from Newton, opposed the bill. He said the action would put local governments in the construction business. This would not only take work away from the private sector and the competitive bid process, it would be a very inefficient use of tax dollars. (Attachment #6)

Michael D. Brown, Secretary-Treasurer Brown & Brown, Inc. of Salina, in opposition of **SB 561**, stated to the Committee that they do not consider projects between \$10,000 and \$100,000 to be small. Increasing the threshold would eliminate the opportunity for small companies to be competitive in the construction industry. (Attachment #7)

Edward R. Moses, Managing Director of the Kansas Aggregate Producers' Association, opposing **SB 561**, said that government should only perform those services that are not normally or customarily provided in the private sector. Mr. Moses said if this bill would become law it would only give county governments greater ability to compete against the private sector. (Attachment #8)

Dennis Rackers, Ash Grove Aggregate, Overland Park, gave comments in opposition to **SB 561**, stating to the Committee that by passage of the bill, would create more government. (No written testimony)

The Committee discussed further the threshold being raised to \$50,000, instead of the \$100,000.

Chairman Hardenburger closed the hearing of **SB 561**.

Meeting was adjourned at 2:30 p.m. Next meeting is scheduled for February 22, 2000.



KANSAS
ASSOCIATION OF
COUNTIES

TESTIMONY

concerning SB 561

Presented by Randy Allen, Executive Director, Kansas Association of Counties

February 21, 2000

Madam Chairman and members of the committee, I am Randy Allen, Executive Director of the Kansas Association of Counties. In behalf of our 105 member counties, I want to express support for SB 561. The bill would amend K.S.A. 19-214, concerning construction of county facilities. Currently, all contracts for the expenditure of county moneys to construct a courthouse, jail, or other county building or county bridge in excess of \$10,000 must be awarded to the lowest and best bid after a public letting, and the person or corporation to whom the contract is awarded must provide a surety bond in the amount of the contract for the performance of the contract. Counties, on the advice of counsel, have literally interpreted the term "construct" in the statute to include even the remodeling and rehabilitation of county facilities. Over time, and with inflation in remodeling costs, the \$10,000 threshold has become extremely restrictive --- often to the financial disadvantage of the county and its taxpayers.

As part of our legislative platform discussions this past year, our members requested that the \$10,000 threshold be increased to \$100,000, as a way to modernize the statute for small projects while ensuring that more significant and more costly projects continue to be subject to a public bidding process and that performance bonds are required to be filed by the contractor.

As we understand it, there is a statute for first class cities which provides a similar \$10,000 threshold. For cities of the second and third class, there is no threshold in statute. Because the statute is not uniform in application to all cities, we understand that several cities have chartered out from under the \$10,000 limitation and set their own threshold by charter ordinance.

Representatives from two of our counties (i.e. Jefferson and Riley) are present today to offer specific examples of the problems with the current \$10,000 threshold.

I thank the committee for this opportunity to present information in support of SB 561 and will stand for questions.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randy Allen or Judy Moler by calling (785) 272-2585.

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Senate Elections & Local Government
Date: 2-21-00
Attachment # /

Jefferson County Auxiliary Services

Noxious Weed Control
Solid Waste Management/HHW

Facilities Maintenance
Park Maintenance

Robert Abel Jr. Director
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2-18-00

Testimony to the Senate Committee on Elections and Local Government on SB 561

Good afternoon Senator Hardenburger and members of the Elections and Local Government Committee. My name is Robert Abel, Jr. I am currently the Auxiliary Services Director of Jefferson County. I am here to represent Jefferson County's support of Senate Bill 561. Since I am responsible for the condition of the Facilities and Grounds owned and operated by Jefferson County I am very familiar with K. S. A. 19-214. Language in this Statute is referenced any time a construction project is undertaken. Please consider the following points as you discuss this bill.

Rising construction costs have made the \$10,000.00 figure that is used as a benchmark in this statute very restrictive.

Small local businesses will not even bid projects because of the bond requirement, and the requirement for engineering and architectural plans.

Many small projects that would be beneficial to the upkeep of public facilities are not undertaken because of added costs for professional services. These added costs generally run from 7-12% of the total construction costs.

It is our opinion that an upward change in this figure would allow local officials greater flexibility in awarding contracts for small projects and promote the ability of small business to obtain those contracts. Please look favorably on passage of this bill. Thank you and I would welcome the opportunity to answer any questions that you may have.

Senate Elections & Local Government

Date: 2-21-00

Attachment # 2

Testimony of Dan Harden
Before the Senate Elections and Local Government
Committee

Regarding Senate Bill 561

21 February 2000

Janice Hardenburger
Chair

Senator Hardenburger, and members of the Senate Elections and Local Government Committee; my name is Dan Harden. I am a professional engineer. I have been employed for the past 25 years as the Riley County engineer. It is a pleasure today to address the committee regarding some of my experience in bidding local government construction work.

My experience has taught me competitive bidding is generally the best process to get the best price for public construction work. The only problems I have ever experienced are with the small projects. There are two problems.

First, there is the "project overhead problem." Project overhead consists of the costs associated with developing plans and specifications, and the contractor cost associated with bid bonds, performance bonds and statutory bonds. In order to bid a construction project, a county must develop plans and specifications so bidders

are all bidding on the same thing. Bid bonds are usually set at 5 percent of the bid and are forfeited to the bidding agency in the event the bidder refuses to enter into a bid if awarded the bid. The performance and statutory bonds are set at 100 percent of the bid amount and are required by Kansas law. Contractors pass these bonding overhead costs directly to the owner. On small projects the sum of the planning and bonding overhead costs can exceed the cost of the construction.

If a small project is negotiated with a contractor, the plans and specifications can be simplified thus reducing the plan preparation cost considerably and all of the bonding costs can be avoided. On small construction projects this can reduce the project cost by as much as 50 percent.

Secondly, the bonding requirements acts as a market place restraint that limits competition on small construction projects. Small local contractors often do not have the assets or experience needed to secure the various bonds so they are eliminated from the market and the bidding process. Only large contractors can secure the bonds and these contractors are generally not interested in bidding on small projects because more money can be made on larger projects. This dilution of competition in the marketplace drives up the cost the public must pay for the construction of small projects.

It is for these reasons I urge the committee favorable
pass out of committee Senate Bill 561.

Senate Elections & Local Government
Date: 2-21-00
Attachment # 3-3

THE KANSAS CONTRACTORS ASSOCIATION, INC.

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Testimony

By the Kansas Contractors Association before the Senate
Elections and Local Government Committee regarding SB 561

February 21, 2000

Chairman and members of the Senate Elections and Local Government Committee,
I am Bob Totten, Public Affairs Director for the Kansas Contractors Association. Our organization represents over 400 companies who are involved in the construction of highways and water treatment facilities in Kansas and the Midwest.

Today, I want to voice our opposition to Senate Bill 561 and relay some of our concerns over this issue.

The Kansas Contractors Association believes the first tenet of government procurement must be the reliance on free and open competition. Our association believes all construction contracts should be let in an open, competitive basis with awards being made to the lowest and most responsible bidder.

Senate Elections & Local Government
Date: 2-21-00
Attachment # 4-1

The bill before you today would severely hinder this process which has worked well in the past and doesn't need to be fixed. Allowing competition for public projects ensures the best price for road projects in our state. If this bill were passed, it would allow more and more construction work to be done by government forces and it would increase the size of government.

Presently, many counties in Kansas use their own forces for construction projects. And that is fine for the small jobs; those that are under \$10,000 in cost. We believe county employees are needed to handle certain duties however for the larger jobs, it is best for those most qualified to do the work.. In many cases, county employees may be mowing grass one day, filling potholes the next, or maintaining a county building the next. In contrast when you contract with one of our members, you get a contractor who is qualified to do the job he/she bid on. Their only job is constructing a bridge or paving a road. By being focused on the job they have the expertise that is necessary to do a quality job.

In addition under the present system, our contractors have to get the job done on time and in a correct manner. If they do not do an adequate job, the county may require them to do it over until they get it done right. The price of the project stays the same until the job is completed satisfactorily.

However, in contrast if county forces do the work and under this measure; it appears they would be doing more and more and larger and larger projects; they would not face the same criteria. For instance, county forces can take a longer time to do a project. They face no deadline since they are the builder, designer and the inspector all rolled up into one. In this procedure, there is no guarantee or warranty about the workmanship.

Senate Elections & Local Government
Date: 2-21-00
Attachment # 4-2

Along this same train of thought, if the county makes a wrong decision due to the unfamiliarity they have of the work, the costs would just go up. However, under the competitive bid process, if the contractor makes a mistake, he / she is the one who suffers for the mistake, the county still gets the job at the agreed to price.

Allowing the threshold for bids to go up to \$100,000 would create even more opportunities for counties to buy more equipment. In many instances, the equipment is not fully utilized and in our opinion another waste of the taxpayer's dollar. As one former county commissioner who is now in the legislature told me, he remembers his county engineer bought a large piece of equipment and it just sat in the yard. His contention and ours is many counties buy equipment that is rarely used and so the return on the investment is not economical.

And that leads me to another point. When the counties have equipment, the taxes on that equipment are exempt. However if the equipment were owned by a private contractor, taxes would be paid and those funds could be used for other purposes to operate the county.

The private sector pays taxes, creates jobs, and improves the economy of a county by bringing more, qualified people to do the job.

The KCA supports the competitive bid process where the public obtains the services of competent contractors, the quality of the work is bonded and the final costs of the work is known and guaranteed.

We believe this bill, if passed, would increase costs, lower the quality of work and increase the size of government.

**TESTIMONY PRESENTED TO SENATE COMMITTEE ON
ELECTIONS AND LOCAL GOVERNMENT**

Re: Senate Bill M. 561

My name is Ted Dankert. I am the owner of Dustrol, Inc., a company in Towanda that specializes in highway construction work. Specifically, we recycle asphalt in Kansas, as well as in other states here in the Midwest.

The issue of construction by contract is one that has been discussed here before and I probably can't offer many new thoughts to the issue. I can, however, re-enforce what I consider to be the most significant subject within the scope of the problem. That subject deals with the role of government in affairs presently offered by contractors.

I do not feel that expanding the role of a government agency such as a public works or road and highway department so that they can create more levels of management and labor is a good idea. Since this also necessitates the use of more and better equipment, shops, support services, and administration, the spiral is without end, ever upward in taxes and tax based support. The mention of taxes must include the effect of allowing government agencies to dilute available construction projects away from private industry removing the tax which would have been created.

This may be justified if the basis for the proposal was well founded. Again, I cannot accept the premise that a well conceived, planned, estimated, coordinated, advertised, bid and accepted bid proposal will not be fully embraced and considered by our construction industry. Even with the newly enacted Comprehensive Transportation Program, there are contractors ready and willing to perform work at all levels at any location in the state as long as notice and planning is given. In this regard, I would suggest that private industry employees specialize in construction projects on a daily basis. I feel that the level of expertise demanded by modern construction design may not be the same for government employees primarily because they are asked to do many other duties beside construction related projects.

Finally, I see the end result of a change to this issue only resulting in the tax payer paying more for less effective services. I don't think anyone can prove that the

government can do better or cheaper what private enterprise has historically and traditionally done in this state.

I encourage you to continue to allow the private construction industry to build the infrastructure of this state.

Senate Elections & Local Government
Date: 2-21-00
Attachment #5-2

Testimony of, Stan Scudder, Newton, Kansas on SB561

Thank you for the opportunity to speak today regarding SB561 which raises the limit to \$100,000.00 before a local government must put work out for bid. This action would put local governments in the construction business where we don't believe they should be. Not only would it take work away from the private sector and the competitive bid process, we believe it is a very inefficient use of tax dollars. To demonstrate this, I would like to cite two areas that contribute to this inefficiency. They are, loss of tax revenue thru government purchased construction equipment and higher costs caused by lower volumes of work.

For this exercise, let's say Harvey County buys an asphalt plant this year for \$250,000.00. There is an immediate loss of sales tax revenue of \$14,750.00. There is no property tax the first year but next year, if the plant were privately owned, it would be assessed at 80% of it's purchase value and taxes due would be \$19,290.00. Using the standard tax formula which reduces the value by 20% per year, the first 5 years of ownership would result in a loss of \$48,225.00 of property tax revenue. Adding the lost sales tax would bring the total lost revenue to \$62,975.00. Not only must the mill levy increase to buy the equipment, it must also be increased to cover the loss of the \$62,975.00 Multiply this by 105

Senate Elections & Local Government
Date: 2-21-00
Attachment #6-1

counties purchasing \$250,000.00 in construction equipment and we have some serious money.

The second area I would like to address is production costs. If a contractor were to buy this same plant he would expect, and need to run about 150,000 tons per year in order to own the plant. Setting the life expectancy of the plant at 10 years, the original cost of the plant would be charged at about \$.17 per ton. The average county such as Harvey would run about 25,000 tons per year over that ten year period, which would be a cost of \$1.00 per ton to the taxpayers.

I have not included the cost of trucks, loaders and other support equipment needed to run the plant. In fact there are many other costs involved with ownership and production but these basics show the economies gained thru private ownership and higher volume production.

**Testimony before the Committee on Elections and Local Government
Concerning Senate Bill No. 561
By Michael D. Brown
Secretary-Treasurer
Brown & Brown, Inc.
Salina, Kansas**

Madam Chairman and members of the committee, I want to thank you for letting me speak before you today.

My name is Mike Brown and I am Secretary-Treasurer of Brown & Brown, Inc. of Salina. Brown & Brown is a 54 year old highway construction company. We do highway repair and maintenance work for federal, state and local governments including a sizeable amount of work for counties. We do not consider projects between \$10,000 and \$100,000 to be small. In fact, last year we completed 89 such projects, which amounted to about 20 per cent of our business for the year.

I come before you in opposition to the proposed increase to \$100,000 from \$10,000 in the threshold allowing counties to do work for themselves rather than holding a public letting. I want to make two points which I think are compelling reasons for rejecting this bill.

Increasing the threshold would eliminate the opportunity for small companies to enter the construction industry and damage the competitiveness of the industry.

As I mentioned, my company has been in business for 54 years. We work in 10 states and employ about 200 at the peak of our season. We would consider ourselves a medium sized company in our industry. However, it has taken many years to grow to our existing size. In fact, I was looking at our first financial statement the other day when my father first started the company. The company had \$7,500 in total assets. Its equipment fleet amounted to a pickup truck and two wheelbarrows.

Obviously, in the beginning, the company was not able to take on large projects. It was very satisfied to bid small sidewalk and curb and gutter repair jobs. The company was efficient at its work and has grown steadily to its size today. If these small projects had not been available, I seriously doubt if the company would have been started or have survived for very long.

Small construction projects that are publicly let are the nourishment for startup companies. Without them few companies could be formed, grow and become the next generation of construction companies.

Senate Elections & Local Government
Date: 2-21-00
Attachment # 7-1

Counties do not have a method of comparing their costs to private sector bid prices resulting in no fair way of determining their "real" costs.

This is a subject that has been of interest to me in my almost 30 years in the construction industry. In fact, in the mid-1990's I chaired a joint committee of the Kansas Contractors Association (KCA) and the Kansas Association of Counties (KAC) studying privatization issues. The objective of the committee was to determine accounting methods to compare the costs of work done by county forces to low bids received by contractors.

At first work on the committee seemed to be productive. The KCA even agreed to fund an independent study of overhead costs that should be included in order to make "apples to apples" comparisons between contractor bids and county costs. However, when it came to decision time, the KAC decided not to participate in any resolution to the problem.

As Stan Scudder has mentioned, issues such as contractor paid taxes, depreciation and contractor guarantees and warranties remain not comparable. In addition, cost allocations such as administrative overhead, vacation pay, sick pay, fringe benefits, idle time and many other costs go unaccounted for in determining the costs of projects accomplished by county forces. Giving county officials a blank check, with no accountability, for projects up to \$100,000 seems to be irresponsible and ripe for abuse.

For these reasons, I ask you to reject this bill.

KAPA

Kansas Aggregate
Producers' Association

Edward R. Moses
Managing Director

Testimony

By The

Kansas Aggregate Producers Association

Before the

Senate Elections & Local Government Committee

Regarding SB 561

February 21, 2000

Good afternoon, Madame Chairman and members of the committee. My name is Edward R. Moses, Managing Director of the Kansas Aggregate Producers' Association.

The Kansas Aggregate Producers' Association (KAPA) is an industry-wide trade association comprised of over two hundred fifty (250) members located in all one hundred and sixty five (165) legislative districts in this state, providing basic building materials to all Kansans.

We thank you for the opportunity to come before you today with our comments in opposition to SB 561. Our opposition to SB 561 is rooted in the Jeffersonian philosophy of limited government. In other words that government should only perform those services that are not normally or customarily provided in the private sector. If SB 561 were to become law it would only give county governments greater ability to compete against the private sector.

Currently, the capability of counties to obligate their taxpayers with little or no consideration for the expenses involved is lamentable. For example, we cite the recent action taken in Bourbon County where its citizens were obligated to \$2.2 million in debt over the next ten years in order to finance and operate a rock crushing and asphalt production operation. This was done under our current laws without the benefit of a public hearing or the completion of a professionally rendered cost-benefit analysis to determine if Bourbon County taxpayers would actually save money. In many ways a county's ability to obligate their citizens to higher mill levies is even easier than this legislature's. At least in this arena affected parties have the ability to present our

Senate Elections & Local Government

Date: 2-21-00

Attachment # 8-1

viewpoint through testimony and the benefit of public debate prior to action being taken. While K.S.A. 19-214 did not prevent Bourbon County from displacing four local rock crushers and royalty owners in this instance. We believe any law that would preserve competitive bidding and open contracting should be maintained and strengthened.

In its current form SB 561 would only serve to weaken current law; which in our opinion is already too weak. If however this committee should chose to address the weaknesses in law by providing for a public hearing on all purchases or projects that might compete with the public sector we stand ready to work with you in this area. Toward this goal we are pleased to offer the attached balloon for your consideration.

Once again, thank you for the opportunity to come before you today. I will be happy to respond to any questions you may have.

Senate Elections & Local Government

Date: 2-21-00

Attachment # 8-2

SENATE BILL No. 561

By Committee on Elections and Local Government

10 AN ACT concerning counties; relating to public bids; amending K.S.A.
11 19-214 and repealing the existing section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 19-214 is hereby amended to read as follows: 19-
15 214. (a) Except as provided in subsection (b) and in K.S.A. 19-216a, *and*
16 *amendments thereto*, all contracts for the expenditure of county moneys
17 for the construction of any courthouse, jail or other county building, or
18 the construction of any bridge in excess of \$10,000 ~~\$100,000~~, shall be
19 awarded, on a public letting, to the lowest and best bid. The person, firm
20 or corporation to whom the contract may be awarded shall give and file
21 with the board of county commissioners a good and sufficient surety bond
22 by a surety company authorized to do business in the state of Kansas, to
23 be approved by the county attorney or county counselor, in the amount
24 of the contract, and conditioned for the faithful performance of the
25 contract.

26 (b) The provisions of subsection (a) shall not apply: (1) To the ex-
27 penditure of county funds for professional services; (2) to the provisions
28 of K.S.A. 68-521, and amendments thereto; or (3) to the purchase of
29 contracts of insurance.

30 Sec. 2. K.S.A. 19-214 is hereby repealed.

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

\$ 10,000

(c) All contracts or lease-purchase agreements for the expenditure of county moneys for goods or services customarily provided by county residents or taxpayers and in excess \$100,000 shall be awarded subject to the following provisions:

1. Prior to an award the board of county commissioners shall convene a public hearing to consider the merits of the proposed expenditure. Notice of such hearing shall be published, at least 10 days prior to the hearing in the local newspaper and the Kansas Register. Any county resident or taxpayer customarily providing goods or services under this section shall be notified of such hearing by mail at least 10 days prior to the hearing.
2. Prior to the hearing required in (c) (1) the board of county commissioners shall cause to have an independent professional cost/benefit analysis prepared on the proposed expenditure for consideration at the hearing.