

MINUTES OF THE HOUSE ETHICS AND ELECTIONS COMMITTEE.

The meeting was called to order by Chairperson Representative Tony Powell at 3:30 p.m. on February 4, 2002 in Room 521-S of the Capitol.

All members were present except: Representative Gwen Welshimer, Excused
Representative Troy Findley, Excused

Committee staff present: Ken Wilke, Revisor
Dennis Hodgins, Research
Shirley Weideman, Secretary

Conferees appearing before the committee:

HB 2677 Proponents: Bob Totten, Kansas Contractors Association
John Koger, Jr., Koger Agency, Inc.
Tom English, Thomas McGee Company
Kelly Deer, Zurich Surety Company
Jeff Brundrette, Chubb Surety Group
Corey Peterson, Associated General Contractors of Kansas

HCR 5036 Proponent: Representative John Edmonds

Others attending: See attached list

Chairman Powell opened the hearing on **HCR 5036 - Constitutional amendment limiting the number of terms to which a person may be elected to the senate and house of representatives.**

Representative John Edmonds was recognized by the chair as a proponent of the resolution. Representative Edmonds said that limiting the time in office in either the house or the senate to 12 years might eliminate the creation of a "class of semi-professional legislators". He indicated that incumbent legislators have a good deal of advantage over a challenger and he would like to see more Kansans have the opportunity to be a legislator. Representative Edmonds responded to questions by the committee members. He assured them that if a legislator was popular enough and had enough signatures on a petition to be placed on the ballot, that this could provide an extension to the 12 year term limit. (Attachment 1)

There being no other testimony, the hearing was closed on **HCR 5036.**

Chair Powell opened the hearing on **HB 2677 - Public works bond; restrictions on requirements thereof.**

Bob Totten, Public Affairs Director for the Kansas Contractors Association appeared before the committee as a proponent of **HB 2677.** He said that his organization believes in the present system which allows competitive bids to be submitted on public works projects and continues this position when it applies to securing surety bonds for construction projects. He indicated that his organization members compete on construction projects to get the lowest and best bid on projects. If a requirement is ever made where a construction company has to buy it's bonds or insurance from one carrier or agent, the opportunity to get the lowest bid may not be accomplished. Mr. Totten urged the committee to support this measure which allows construction companies to contract for services with whomever they desire. (Attachment 2)

The chair recognized John Koger, Jr., President, Koger Agency, Inc. as a proponent of **HB 2677.** He said that this bill will prohibit public agencies in Kansas from using "directed surety" which occurs when an owner designates a specific producer or surety company from which contractors MUST obtain surety bonds for a specific project or series of projects. Mr. Koger said that a contractor will undergo a rigorous pre-qualification process called underwriting by a surety company to determine if the contractor is capable of performing the project on which the contractor wished to bid to obtain a public works bond. This requires the contractor to provide confidential personal and business financial information to the producer

CONTINUATION SHEET

MINUTES OF THE HOUSE ETHICS AND ELECTIONS COMMITTEE at on February 4, 2002 in Room 521-S of the Capitol.

and surety company. Mr. Koger said that very likely many contractors unwilling to disclose this highly confidential information to an unknown producer or surety company will be discouraged from bidding a project under the condition of directed surety and the lowest bidder may not bid. Mr. Koger answered questions asked by committee members. (Attachment 3)

Thomas English with the Thomas McGee Agency in Kansas City appeared before the committee as a proponent of HB 2677. He indicated that directed surety would place severe restrictions on the surety business transacted in Kansas, interfere with competitive bidding and runs contrary to the existence of a free and open marketplace. The federal government enacted legislation prohibiting directed suretyship on federal projects. He said that directed or owner controlled surety is a violation of freedom of choice. Mr. English answered question asked by members of the committee. (Attachment 4)

John Kelly Deer with Zurich Surety of Overland Park spoke in support of HB 2677. He said that the construction and surety industries in Kansas must continue to operate in a free and competitive marketplace in order to continue to protect the taxpayer dollars that finance public works. A single surety company would rarely accept all bidders and small contractors may thus be eliminated from consideration. It is the surety product that successfully pre-qualifies a contractor to do work for public owners and protects the public property from contractor failure. (Attachment 5)

Also appearing before the committee in support of HB 2677 was Jeff Brundrett with Chubb Group of Insurance Companies. He is in favor of this legislation that would prohibit public agencies from requiring contractors or subcontractors from obtaining surety bonds from a single source, be it a particular bonding company, agent or broker designated by a public owner. Mr. Brundrett said that contractors may refuse to bid projects because they cannot provide bonds from their established agent and surety company and the number of bids would be less, resulting in lesser competition. He also indicated that there is the issue that many contractors would be concerned that an owner directed surety would not be able to handle claims in a fair and unbiased manner. (Attachment 6)

Corey Peterson, Associated General Contractors of Kansas, Inc. appeared before the committee as a proponent for HB 2677. He said that the Associated General Contractors of America is opposed to any departure from the traditional freedom of a prime contractor to secure performance and payment bonds from the bond producer and surety of it's choice. To direct that such bonds be secured from a particular producer or surety reduces competition, invites favoritism and abuse and interferes with the established, confidential relationship between the prime contractor and it's chosen surety and producer. (Attachment 7)

Chairman Powell closed the hearing on HB 2677.

The meeting was adjourned at 4:35 p.m. The next scheduled meeting is February 6 at 3:30 p.m.

HOUSE ETHICS AND ELECTIONS COMMITTEE

GUEST LIST

DATE Feb. 4, 2002

Your Name	Representing
JOHN M. ROGER, JR.	ROGER AGENCY, INC.
JOHN KELLY DEER	ZURICH-NORTH AMERICA SURETY
Jeff Brundrett	Chubb Insurance Company
Thomas M. English	Thomas McGee, L.C.
Nicole Elkins	Lt. Gov. Office
Diana K. Clark	Rep. Cindy Hermes
JOHN EDMONDS	
Gary Zook	
BOB TOTTEN	Ks Conductors Assoc.
COREY PETERSON	AGC of Kansas
Bill Schaefer	D.O.B.

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

STATE CAPITOL
300 S.W. TENTH STREET
ROOM 171-W
TOPEKA, KS 66612
(785) 296-7681



DISTRICT OFFICE
1010 TAFT
P.O. BOX 1816
GREAT BEND, KS 67530
(620) 792-6552

JOHN T. EDMONDS
112TH DISTRICT
CHAIRMAN, TAXATION COMMITTEE

TESTIMONY
before the
House Committee on Ethics and Elections
in support of HCR 5036
February 4, 2002

Chairman Powell, members of the Committee, thank you for the opportunity to appear before you in support of House Concurrent Resolution 5036. HCR 5036 would have the effect of imposing twelve year term limits on members of the Kansas House and Senate.

One of the adages of politics is "Dance with them what brung yah!" The term limits issue was the hot button which motivated my initial run for public office in 1994. Then I believed that limiting the terms of elected officials was a good idea. I still believe it.

There is, as you know, a great deal of institutional friction which works to the advantage of the incumbent legislator. The office holder has access to the public "soapbox" in ways that most challengers lack. We are frequently invited to speak to civic groups, appear on television and radio shows, appear in parades, and so forth. We have access to staff support, postage funds and other public resources which indirectly support our political personas. Public life invariably creates press exposure and resulting name recognition. Finally, let's not forget that most "institutional" campaign money, ie contributions by PACS, unions and corporations, flow to incumbents. Given these advantages, it is not surprising that most challengers to legislative incumbents fail.

The unfortunate result is the creation of a class of semi-professional legislators. We can all recall members past and present for whom "Legislator" was a primary job description. The notion of a citizen legislator who has a real job at home strikes me as a better model than that of the professional politician.

I would not contend for a moment that HCR 5036 would repair every ill that afflicts the body politic. However, I believe that limitation of terms would be a helpful step and would, at minimum, lead to a healthy debate on the issue. I urge your favorable consideration of this resolution.

House Ethics and Elections
2-4-02
Attachment 1

THE KANSAS CONTRACTORS ASSOCIATION, INC.

316 SW 33RD ST PO BOX 5061
TOPEKA KS 66605-0061



TEL (785) 266-4152
FAX (785) 266-6191
kca@ink.org
www.ink.org/public/kca

Testimony

By the Kansas Contractors Association

before the House Ethics and Elections Committee regarding
HB 2677

February 4, 2002

Mr. Chairman and members of the House Ethics and Elections 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 thank you for allowing me to testify in **support** of House Bill 2677. Our organization believes in the present system which allows competitive bids to be submitted on public works projects. The measure before you today continues this position when it applies to securing surety bonds for construction projects.

Our members want to continue to be able to do business in which they can contract with whomever they want to, to provide a surety bond for a construction project. They have developed relationships over the years with various bond companies and it would be

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2-4-02
Attachment 2

counterproductive in many instances to require a construction company to work with someone they are uncomfortable. We liken this to a similar relationship to an attorney. It would be unfortunate if the state required in their bids that only one law firm could be used for legal representation. The same appears to be the case when it comes to surety bonds.

We are only aware of one instance where an owner required a certain bond company to provide the surety bond. That instance occurred in Nebraska and we do not want the idea to come into Kansas. Such a requirement in a bid letting for contractors to use the same surety company may appear to be logical however when it undergoes further scrutiny, there could be a possibility of collusion or other illegal activity.

Our organization members compete on construction projects to get the lowest and best bid on projects. That way the state and our citizens get road construction projects for less money. If a requirement is ever made where a construction company has to buy its bonds or insurance from one carrier or agent, the opportunity to get the lowest bid may not be accomplished.

We urge you to support this measure which allows our construction companies to contract for services with whomever they desire. I will stand for questions.

Koger Agency, Inc.

February 4, 2002

The Honorable Representative Tony Powell, Chairman
Ethics and Elections Committee
300 SW 10th Street, Room 521-S
Topeka, KS 66612-1504

Re: HB 2677 – Public works bond
Restriction on requirements thereof

Dear Representative Powell and Members of the Committee:

My name is John M. Koger, Jr., representing Koger Agency, Inc. I have been providing public works bonds to construction firms since January, 1972. I favor the passage of the above measure.

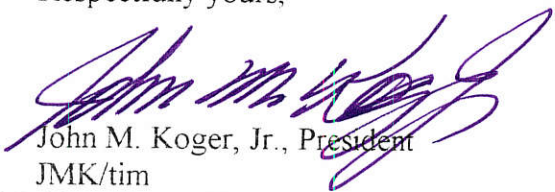
The above measure would prohibit public agencies in Kansas from using "directed surety". Directed surety occurs when an owner designates a specific producer or surety company from which contractors MUST obtain surety bonds for a specific project or series of projects. The federal government prohibits directed surety on federal projects. In 2001, eight (8) States enacted legislation prohibiting directed surety (AR, CT, FL, MN, MS, NE, ND, TX). All passed their legislatures unanimously. At this writing, twenty- nine (29) States prohibit directed surety.

To obtain a public works bond, a contractor will undergo a rigorous pre-qualification process (called underwriting) by a surety company to determine if the contractor is capable of performing the project on which the contractor wishes to bid. This requires the contractor to provide confidential personal and business financial information to the producer and surety company. In addition, the producer and surety company will be fully informed as to the contractor's plans for management succession, ownership succession, etc. The producer and surety company are more intimately familiar with the contractor than the contractor's banker, accountant, or attorney. Directed surety would require the contractor to divulge this highly confidential information to a producer and surety company with whom the contractor has not developed the bond of trust that the exchange of such information demands. Directed surety is similar to the owner choosing the contractor's banker, accountant and attorney.

From the above, it is very likely that many contractors, unwilling to disclose this information to an unknown producer or surety company, will be discouraged from bidding a project under the condition of directed surety. Thus competition is decreased and the lowest bidder may not bid. The taxpayers will likely spend more for the public improvement than they would have had directed surety not been used by the public agency.

Thank you for your time and consideration.

Respectfully yours,


John M. Koger, Jr., President

JMK/tim

P.O. Box 4587 • Topeka, KS 66604-0587

House Ethics and Elections
2-4-02

Attachment 3

7154 SW Wattling Court • Topeka, KS 66614-4649 • Telephone: 785/478-3200 •

HB 2677

KANSAS INITIATIVE TO PROHIBIT DIRECTED SURETYSHIP

Information Included For Review and Consideration:

- Written testimony from the Koger Agency, Inc., Chubb Surety, Thomas McGee, L.C. and Zurich Surety.
- Copy of a recent press release from the Surety Association of America and the National Association of Surety Bond Producers titled: **The Surety Industry – Vital to American Business.**
- Brochure from the National Association of Surety Bond Producers titled: **Laws Prohibiting Directed Surety Are Good Public Policies.**
- **A Vote Against Directed Surety = A Vote For Free Enterprise:** a one-page report summarizing the need for prohibiting directed surety.
- A position statement issued by the Surety Association of Kansas City supporting our initiative.
- A copy of AGC's position statement adopted at its 2000 annual convention reaffirming its stance against the practice of directed surety.

Associations/Groups supporting or expected to support this initiative:

- **National Association of Surety Bond Producers (NASBP)**
- **Surety Association of America**
- **Surety Association of Kansas City**
- **AGC and AGC of Kansas**
- **Kansas Association of Independent Agents**
- **Kansas Insurance Commission**
- **Kansas Contractors Association**
- **Kansas Heavy Contractors Association**
- **The Builder's Association**

For more information contact:

John Koger, Jr.	Tom English	Jeff Brundrett	Kelly Deer
Koger Agency, Inc.	Thomas McGee, L.C.	Chubb Surety	Zurich Surety
785-478-3200	816-842-4800	816-292-4500	913-451-9091

For Immediate Release

For Further Information Please Contact:

Seth Mones, The Surety Association of America,
202-778-3637; smones@surety.org
Connie Lynch, National Association of Surety
Bond Producers, 202-686-3700;
clynch@nasbp.org

**Joint Statement of The Surety Association of America
and the National Association of Surety Bond Producers:**

The Surety Industry – Vital to American Business

January 30, 2002, Washington, D.C.-- Surety bonds have been in the press recently, and many people are wondering just what they are and why they are so important to American business. Surety bonds have been a vital part of business in America for more than 100 years. The role of surety bonds is to reduce or eliminate uncertainty in a variety of business transactions. For example, the majority of surety bonds are written for construction of our nation's infrastructure, which accounts for 10% of the Gross Domestic Product. In 2000, nearly \$175 billion in public works projects were under construction in the United States with surety bonds providing qualified contractors and protection against contractor failure. Surety is vital to public construction, saving taxpayer dollars and spurring economic activity. The capability of the surety industry continues to be there to meet the challenges and needs of American business. But just what are those needs?

Surety bonds assist businesses by securing the performance of obligations, not merely on construction projects, but also on other responsibilities, such as paying compensation benefits to injured workers. As businesses rely on surety bonds, they can be certain that sureties will be there to meet their needs with capital behind the promise.

A surety bond is a three-party agreement - the surety company guarantees to a third party that the principal will perform. To obtain a surety bond, principals undergo a rigorous prequalification process, called underwriting, to determine whether they are capable of performing. Whether backing a construction project or an employer's responsibility to pay injured workers, the surety underwrites these obligations if it is convinced the principal can meet its obligations. Types of bonds include:

- contract surety, which protects owners against contractor default on construction projects; and
- commercial surety, which protects against someone failing to fulfill a contract or obligation, such as worker's compensation self-insurer bonds, license and permit bonds, public official bonds, judicial bonds in civil proceedings, and fiduciary court bonds.

These bonds are vital to the transaction of business in the United States and around the world. "The public can have confidence that surety bonds are issued by companies with financial strength, as reflected in their significant capital base, and

that the surety industry will stand behind its obligations,” stated Ms. Lynn M. Schubert, President of The Surety Association of America (SAA). “In good or bad economic times, surety bonds provide vital protections to consumers, employees, taxpayers, and the public treasury.”

“The surety industry performs and, for more than 100 years, has met its obligations, time after time, year after year,” said David H. Skillings, Skillings-Shaw & Associates, South Freeport, Maine, and President of the National Association of Surety Bond Producers (NASBP). “Professional surety bond producers have been instrumental in helping customers maintain an appropriate level of surety credit.”

Cost and availability of surety products are a function of risk. Therefore, companies with significantly increased prospects of default will find cost and availability more restrictive than those with superior financial standing. Surety is a type of insurance, which is similar to an extension of credit, and losses generally increase in a weakened economy. Therefore, the current economic situation may mean that some commercial surety customers will find it more difficult to obtain bonds or face higher premiums. Ultimately, however, those businesses with surety bonds will represent American businesses capable of fulfilling their obligations. And if they don't? The surety industry will be there to protect the consumers, the taxpayers, and other businesses that rely on the surety bond guaranty.

The surety industry is committed to protecting consumers and the public interest through surety bonds. The industry is well regulated and substantial safeguards are in place to minimize losses. The surety industry will continue to stand behind its product. The public can have confidence that bonds are backed by well-capitalized companies, that bonds will continue to be available to meet the needs of American business, and that the surety industry will stand behind its obligations.

The Surety Association of America is a voluntary, non-profit, unincorporated association of companies engaged in the business of suretyship. It presently has approximately 600 member companies, which collectively underwrite the overwhelming majority of surety and fidelity bonds written in the United States, and seven foreign affiliates. The Surety Association of America is licensed as a rating or advisory organization in all states, as well as in the District of Columbia and Puerto Rico, and it has been designated by all state insurance departments except Texas as a statistical agent for the reporting of fidelity and surety experience. Further information about SAA is available at www.surety.org.

The National Association of Surety Bond Producers is the international organization of professional surety bond producers and brokers. NASBP represents over 5,000 personnel who specialize in surety bonding, provide performance and payments bonds for the construction industry, and issue other types of surety bonds for guaranteeing performance, such as license and permit bonds. NASBP's mission is to strengthen professionalism, expertise, and innovation in surety and to advocate its use worldwide. Further information about NASBP is available at www.nasbp.org.



SURETY BOND PRODUCERS OPPOSE OWNER-DIRECTED SURETY

WHEREAS, forcing a contractor to utilize a designated surety producer and/or surety company unfamiliar with the contractor's needs and service requirement imposes a relationship not voluntarily assumed and subjects the contractor to disclose business information to persons that may not act for the best interest of the contractor, and

WHEREAS, contractors may avoid bidding for contracts on which they would not be able to secure required surety bonds from their own surety producer and/or surety company thereby depriving the project owner with the fullest range of qualified bidders for its projects,...

NOW, THEREFORE, BE IT RESOLVED that it is the policy of the National Association of Surety Bond Producers (NASBP) to oppose the practice of construction project owners specifically designating named surety companies and/or surety producers from which contractors must procure required bonds as a condition of being awarded construction contracts; or, alternately, of reserving the right to purchase required surety bonds for such contractors and pay the premiums thereon, thereby indirectly effecting a designation of the surety and/or the surety producer; a practice commonly known as owner-controlled or owner-directed surety.

Resolution of the Board of Directors

Approved November 12, 1993

National Association of Surety Bond Producers

The National Association of Surety Bond Producers is an organization comprised of over 5,000 personnel nationwide who work in insurance agencies and brokerage firms that specialize in surety bonding.

NASBP

National Association of
Surety Bond Producers

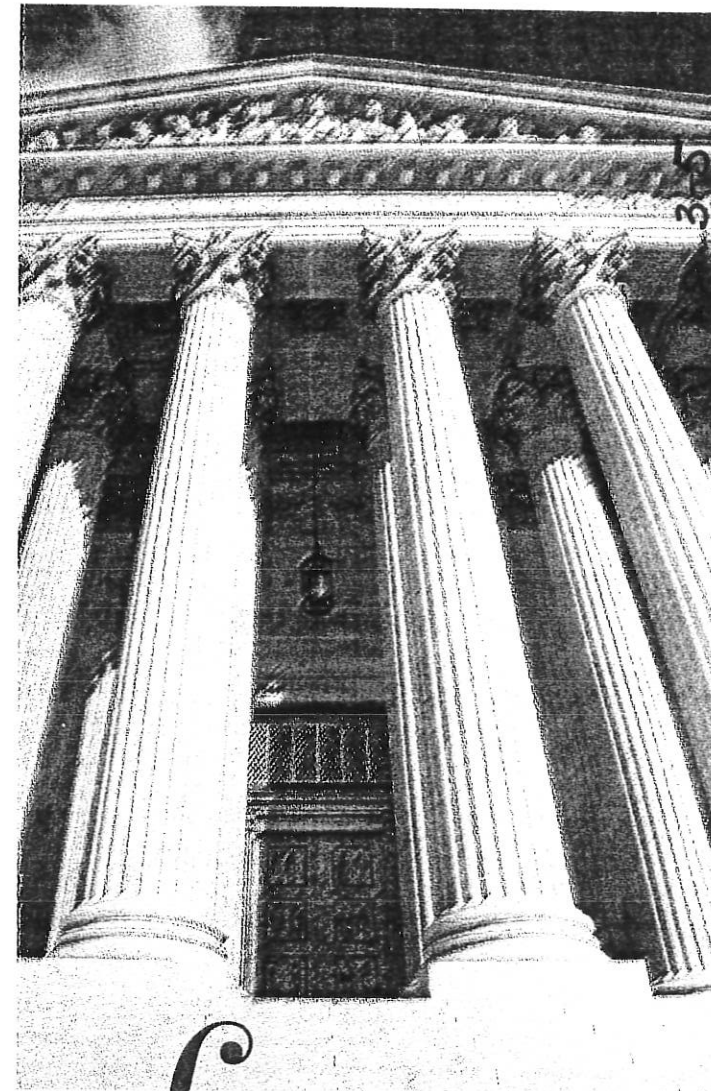
5225 Wisconsin Avenue, NW, Suite 600

Washington, DC 20015

202.686.3700

Fax: 202.686.3656

www.nasbp.org



Laws Prohibiting
Directed Surety Are
Good Public Policies

NASBP

The National Association of Surety Bond Producers (NASBP) is opposed to owner-controlled, owner-directed, or directed surety. This occurs when owners designate a specific producer or surety company from which contractors must obtain surety bonds

With suretyship, a surety stands behind its Principal (contractor) and acts as a silent partner in representing to an owner that, prior to the bid letting, the contractor is qualified to submit a responsible bid. Being deemed qualified by the surety through the prequalification process means that a contractor has the expertise, organization, financial resources, and fixed assets to complete the work according to the plans and specifications at the price bid and within the time allotted.

Prequalification requires a relationship among a contractor, a surety bond producer, and a surety company. In this relationship a contractor provides the surety with confidential information regarding the financial and operational condition of the firm, and, in many cases, personal financial information as well. This relationship is usually a long-standing one that is based on mutual confidence and respect and is often a key factor in a contractor's growth and success. It is comparable to contractors' relationships with their bankers or attorneys.

Requiring contractors to obtain bid, performance, and payment bonds from a particular surety bond producer and surety company presents an untenable situation for contractors. It is unfair to ask contractors to provide such detailed information to a surety other than the contractors' own for the sake of one project. In addition, many contractors would be concerned that a surety selected by and working for an owner would be unable to handle any claims in a fair and unbiased manner.

The federal government and several states agree with NASBP's position. They have enacted legislation expressly prohibiting this practice.

STATUTORY PROHIBITIONS AGAINST DIRECTED SURETY ARE GOOD PUBLIC POLICIES

They are pro-business!

They promote free market competition!

- A long established practice in the construction industry is for contractors to exercise the freedom to choose subcontractors, materials, and services, including surety bonds.
- Project specifications or bidding information that contain the name of a particular producer or bonding company as surety for contractors who are awarded public contracts violate a contractor's freedom to choose a surety. The same is true when public entities reserve the right to purchase surety bonds for contractors and pay the premiums themselves, thereby indirectly designating a particular surety.
- The surety freely selected by a contractor is better able, by virtue of its superior knowledge of a contractor's finances, work experience, and reputation, to render a more complete service to the contractor, the project owner, and the public.
- Restricting contractors to using a designated surety unfamiliar with their qualifications may subject them to delay, inconvenience, imposition of different underwriting procedures, and the possibility of being turned down, thereby impairing their bonding record.
- When a surety is designated, contractors tend to avoid bidding for contracts on which they would be subjected to delay, inconvenience, uncertainty, hardship, and undue risk of loss. In such cases, the project owner is deprived of the complete range of qualified bidders. The public loses the fullest benefit of savings possible through the award of contracts to low bidders operating under a system of free and open competition.
- By allowing the free market system to work, the personal politics of public employees are excluded from the process. Furthermore, tax payer dollars are protected.

FEDERAL LAW PROHIBITS DIRECTED SURETY

Citation: 31 USC Sec. 9304

(b) Each surety bond shall be approved by the official of the Government required to approve or accept the bond. The official may not require that the surety bond be given through a guaranty corporation or through any particular guaranty corporation.

SOURCE: Pub. L. 97-258,
Sept. 13, 1982, 96 Stat. 1047

GENERAL CONTRACTORS OPPOSE DIRECTED SURETY

At its 2000 annual convention, the Board of Directors of the Associated General Contractors of America (AGC) adopted a position statement reaffirming its stance against the practice of directed surety. The AGC policy states:

The Associated General Contractors of America reaffirms its longstanding policy in opposition to any departure from the traditional freedom of a prime contractor to secure performance and payment bonds from the bond producer and surety of its choice. To direct that such bonds be secured from a particular producer or surety reduces competition, invites favoritism and abuse, and interferes with the established, confidential relationship between the prime contractor and its chosen surety and producer.

AGC is comprised of over 33,000 members who include general contractors, specialty contractors as well as suppliers and service providers. This policy addresses the concerns of general contractors over public owners' interference with their business discretion.

This position statement is reprinted with the permission of the AGC.

A VOTE AGAINST DIRECTED SURETY=A VOTE FOR FREE ENTERPRISE

With suretyship, a surety stands behind its principal (either a general contractor or a subcontractor) and acts as a silent partner in representing to an owner that, prior to the bid, the contractor is qualified to submit a responsible bid. Being qualified by the surety through the pre-qualification process means that a contractor has the experience, organization, financial resources, and fixed assets to complete the work according to the plans and specifications at the price bid and within the allotted time.

Pre-qualification requires a relationship among a contractor, a surety bond producer, and a surety company. In this relationship a contractor provides the surety with confidential information regarding the financial and operational condition of the firm, and, in many cases, personal financial information as well. This relationship is based on mutual confidence and respect and is often a key factor in a contractor's growth and success.

Directed surety, also known as owner-controlled or owner-directed surety, drives a wedge into these relationships. Directed surety occurs when owners designate a specific producer or surety company from which contractors **must** obtain surety bonds for a specific project or series of projects. **A law prohibiting directed surety is needed in Kansas.**

Who prohibits directed suretyship?

- The federal government prohibits directed suretyship on federal projects.
- 29 States prohibit directed suretyship. In 2001, 8 States enacted legislation prohibiting directed suretyship (AR, CT, FL, MN, MS, NE, ND, TX). All passed their legislatures unanimously.

Directed suretyship renders crucial business relationships useless.

- Directed surety requires contractors to provide confidential personal and business financial information to a surety agent or company other than their own for the sake of one project.
- Directed surety is akin to the project director choosing the contractor's attorney or banker.

With directed suretyship, an unfortunate and preventable chain of events may occur.

- The director of a public project chooses the surety, then
- Small contractors are eliminated from consideration, as a single surety company would rarely accept all bidders, and
- Other contractors, unwilling to disclose confidential personal and business financial information to an unknown third party, are discouraged from bidding, thereby
- Competition is decreased, and
- The lowest bidder may be lost because of a directed surety program.

National organizations oppose the use of directed suretyship.

Associated General Contractors of America
American Institute of Architects

American Insurance Association
The Surety Association of America

National Association of Surety Bond Producers

Directed surety interferes with competitive bidding and runs contrary to a free and open marketplace. Good public policy prohibits directed suretyship.

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February 4, 2002

Honorable Representative Tony Powell, Chairman
Ethics and Elections Committee
300 SW 10th Street, Room 521-S
Topeka, Kansas 66612-1504

**RE: HB 2677 – PUBLIC WORKS BOND
Restriction on Requirements Thereof**

Dear Representative Powell and Members of the Committee:

Mr. Chairman and members of the committee, My name is Tom English and I am with Thomas McGee, L.C. an insurance agency in Kansas City. I am hear today to ask for your support of House Bill 2677 which is legislation that would prohibit public agencies from requiring contractors or subcontractors to obtain surety bonds from a particular surety company, agent or broker designated by the public owner. Such action on this issue is important not only for the surety industry in Kansas, but also for public owners, contractors, subcontractors and suppliers who work in Kansas.

A significant portion of Thomas McGee's business is generated from the construction industry. Thomas McGee has been managing surety programs for construction companies located in Kansas since 1910. In 2001, Thomas McGee, L.C. facilitated the surety bonding for approximately 75 construction firms performing public work in the state of Kansas. These bonded contracts combined for over \$400,000,000 in public works projects and generated nearly \$4,000,000 of surety premium (total cost is less than 1% of the contract value) underwritten by ten surety companies licensed in Kansas. Directed surety would place severe restrictions on the surety business transacted in Kansas and runs contrary to free enterprise. Directed surety occurs when an owner of a particular project designates a specific producer or surety company from which contractors must obtain surety bonds.

Outlined below are a number of key points to consider:

- **The federal government has enacted legislation prohibiting directed suretyship on federal projects.**
- **Twenty-nine states have legislation in place prohibiting directed suretyship.** Of the 29 states, eight states passed their legislation unanimously in 2001.
- Limiting a contractor's ability to use it's regular surety agent and company **interferes with competitive bidding and runs contrary to the existence of a free and open marketplace.**
- **Directed or owner controlled surety is a violation of Freedom of Choice.** It is the right of public agencies to require that bonds be issued by reputable and financially sound surety companies. Beyond this, contractors should be allowed to furnish bonds from an agent and surety company of its choice.
- **Confidentiality of information is jeopardized.** The relationship between agent, contractor and surety company is established on trust, confidence and respect. Requiring a construction company to supply confidential information to a designated surety and/or agent presents an untenable situation for contractors.

The construction and surety industries in Kansas must continue to operate in a free and competitive marketplace while continuing to protect taxpayer dollars that finance public works projects. Passage of legislation to prohibit directed surety will preserve the integrity of all concerned parties. Thank you for your consideration.

Sincerely,

THOMAS MCGEE, L.C.

Thomas M. English
Account Executive

House Ethics and Elections
2-4-02
Attachment 4

January 24, 2002

Thomas M. English
Thomas McGee, L. C.
600 Broadway, Suite 600
Rivergate Business Center
Kansas City, MO 64105

RE: *NASBP Support of a Directed Surety Prohibition in Kansas*

Dear Tom:

The National Association of Surety Bond Producers (NASBP), a national trade organization comprised of over 5,000 personnel who work in insurance agencies and brokerage firms that specialize in surety bonding, is pleased to support legislation in Kansas that will protect a contractor's right to obtain a bond from a surety, agent, broker, or producer of its choice and encourages other organizations and individuals to support efforts to pass this important legislation.

NASBP members provide performance and payment bonds to contractors for Federal public works projects, as required by the Miller Act at 40 U.S.C. 270(a) et seq. that has been in place for over 100 years. NASBP members also provide bonds to contractors for public works projects of State and local governments under similar bond requirements adopted by most States.

NASBP supports the introduction and passage of legislation being crafted by the Kansas Surety Association to prevent the practice known as directed suretyship or owner-controlled surety bond programs. Passage of such legislation is important not only for the surety industry in this state, but also for public owners and building contractors, subcontractors, and suppliers who work in Kansas.

The legislation would prohibit public agencies from requiring contractors to obtain the necessary surety bonds from a particular surety company, agent, or broker designated by the public owner, commonly known as directed suretyship or owner-controlled surety bond programs. The success of this initiative is dependent on the direct support of those groups directly affected by these practices.

Unlike 29 other states and the federal government, Kansas has no law or regulations prohibiting directed suretyship. Therefore, this legislation is necessary for the following reasons:

- Limiting a contractor's ability to use its regular surety agent and company interferes with competitive bidding and runs contrary to the existence of a free and open marketplace.

January 24, 2002

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- Requiring contractors to obtain bonds from a particular agent and surety presents an untenable situation for contractors because it requires them to provide detailed personal and business financial information to a surety agent or company other than their own for the sake of one project.
- Many contractors refuse to bid on contracts for which they will not be able to furnish bonds obtained from their regular surety agent and company. Because of this, the number of potential bidders on a project is fewer, the competition is less, and the cost is higher. Meanwhile, the bidder lost because of an owner-controlled or directed surety program may have been the lowest or most qualified bidder.
- Many contractors are concerned that a surety selected by and working for the public owner would be unable to handle any claims in a fair and unbiased manner.

NASBP respects the right of public agencies to require that only bonds issued by reputable and financially sound surety companies be provided on its projects. Beyond this, however, NASBP believes that each contractor must be allowed to furnish performance and payment bonds obtained from a surety company of its own choice and an agent or broker with whom the contractor maintains an established relationship.

NASBP encourages other organizations and individuals to join us in supporting the legislation and therefore, ensure that the construction and surety industries in Kansas will operate in a free and competitive marketplace while continuing to protect taxpayer dollars that finance public works projects. We intend to support efforts to pass legislation prohibiting directed suretyship in any way possible to assure its passage during the 2002 Kansas legislative session. NASBP would be happy to discuss the legislation with interested parties and clarify any questions about a statutory directed suretyship prohibition.

Sincerely,



Connie Lynch
Director, Government Relations



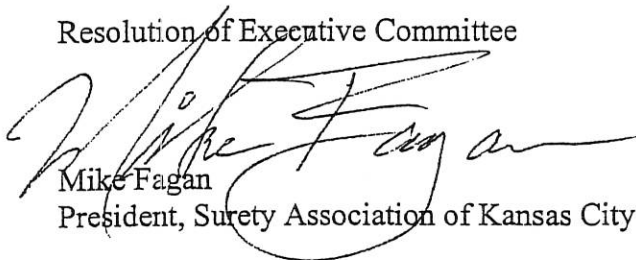
SURETY ASSOCIATION OF KANSAS CITY
2000 Shawnee Mission Parkway
Mission Woods, KS 66206
913.362.5221 (Phone)
913.362.5729 (Fax)

It is the policy of the Surety Association of Kansas City to oppose the practice commonly known as owner-controlled or owner-directed surety.

To direct that such bonds be secured from a particular producer or surety reduces competition, invites favoritism and abuse, and interferes with the established, confidential relationship between a contractor and its chosen surety and producer. This practice could limit competition for specific projects as qualified bidders refuse to bid depriving the project owner with the fullest range of qualified bidders.

Now, therefore, the Surety Association of Kansas City has adopted a position statement reaffirming its stance against the practice of directed surety and fully supports State of Kansas Directed Surety Prohibition Bill; Free Enterprise in Construction Act (Amendment to 60-1111; Chapter 60-Procedure, Civil; Article 11-liens for labor & material).

Resolution of Executive Committee


Mike Fagan
President, Surety Association of Kansas City

DEC 17 AM 9:42

FEDERAL LAW PROHIBITS DIRECTED SURETY

Citation: 31 USC Sec. 9304

(b) Each surety bond shall be approved by the official of the Government required to approve or accept the bond. The official may not require that the surety bond be given through a guaranty corporation or through any particular guaranty corporation.

SOURCE: Pub. L. 97-258,
Sept. 13, 1982, 96 Stat. 1047

GENERAL CONTRACTORS OPPOSE DIRECTED SURETY

At its 2000 annual convention, the Board of Directors of the Associated General Contractors of America (AGC) adopted a position statement reaffirming its stance against the practice of directed surety. The AGC policy states:

The Associated General Contractors of America reaffirms its longstanding policy in opposition to any departure from the traditional freedom of a prime contractor to secure performance and payment bonds from the bond producer and surety of its choice. To direct that such bonds be secured from a particular producer or surety reduces competition, invites favoritism and abuse, and interferes with the established, confidential relationship between the prime contractor and its chosen surety and producer.

AGC is comprised of over 33,000 members who include general contractors, specialty contractors as well as suppliers and service providers. This policy addresses the concerns of general contractors over public owners' interference with their business discretion.

This position statement is reprinted with the permission of the AGC.



04 February 2002

Honorable Representative Tony Powell, Chairman
Ethics and Elections Committee
300 SW 10th St., Room 521-S
Topeka, KS 66612-1504

RE: HB 2677 – Public works bond
Restriction on requirements thereof

Dear Representative Powell and Members of the Committee,

Mr. Chairman and members of the committee, my name is John Kelly Deer, and I am here today to ask for your support of HB 2677, which is legislation that would restrict owner directed surety in the State of Kansas. Specifically this legislation would restrict public owners from requiring contractors or subcontractors to obtain surety bonds from a particular surety company, agent or broker designated by the public owner. Such action on this issue is very important to the surety industry, construction industry and to the taxpaying public.

My family has resided in Kansas for six generations and I currently reside in Overland Park, KS. I am employed with Zurich North America Surety, formerly known as the Fidelity & Deposit Company of MD. Zurich Surety has been in the surety business for well over 100 years and was the first federally registered and accepted corporate surety in the United States. Through our Overland Park office, we service a significant amount of surety to the public owners in and of the state of Kansas.

A large portion of this business is generated from the construction industry. As a surety, we currently represent approximately 125 contractors within the state of Kansas and have in any given year upwards of \$7,000,000 in underwritten surety premium. Each of the contractor/surety relationships mentioned above is accomplished and maintained through many years of close working relationships and effort. Without the basis of the relationship, our product would not have much impact for the public good. It is the surety product that successfully prequalifies a contractor to do work for public owners and protects the public property from contractor failure. It is through this free enterprise system that the public receives the most qualified contractor at the best price to get the job done.

With directed suretyship, an unfortunate and preventable chain of events may occur.

- The director of a public project chooses the surety, then
- Small contractors are eliminated from consideration, as a single surety company would rarely accept all bidders, and
- Other contractors, unwilling to disclose confidential personal and business financial information to an unknown third party, are discouraged from bidding, thereby
- Competition is decreased, and
- The lowest bidder may be lost because of a directed su

House Ethics and Elections
2-4-02
Attachment 5

Zurich North America Surety
9225 Indian Creek Parkway, Ste.
700
Overland Park, KS 66201

Toll Free 800.452.9091
Direct Phone 913.696.3632
Direct Fax 913.451.9050
E-Mail kelly.deer@zurichna.com



ZURICH

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The construction and surety industries in Kansas must continue to operate in a free and competitive marketplace in order to continue to protect the taxpayer dollars that finance public works. Passage of directed surety prohibition legislation would preserve free enterprise within these industries and keep the necessary integrity of all concerned parties. Thank you for your consideration of this legislation.

Best regards,

J. Kelly Deer
Senior Surety Account Executive
Zurich North America Surety
Overland Park Office



CHUBB GROUP OF INSURANCE COMPANIES

Ten Petticoat Lane, 3rd Floor, P.O. Box 13167, Kansas City, Missouri 64199-3167
Phone: (816) 282-4500 • (800) 321-7851 • Facsimile: (816) 252-4600

February 4, 2002

The Honorable Tony Powell, Chairman Ethics & Elections Committee
300 S.W. 10th Street, Room 521-S
Topeka, Kansas 66612-1504

**RE: H.B. 2677 – Public Works Bond
Restriction on Requirements Thereof**

Dear Representative Powell and Members of the Committee:

Mr. Chairman and members of the committee, my name is Jeff Brundrett. I work for Chubb Insurance Company in Kansas City. I am the surety bond manager, employed with Chubb for the past 20 years, the last 14 years in our Kansas City office. I am a Kansas resident, living in Shawnee. I along with my colleagues from the Kansas City Surety Association are here today to ask for your support in passing **H.B. 2677**, legislation that is important not only to the surety industry in Kansas but also important to public owners and contractors, subcontractors and suppliers working in Kansas. This legislation we seek would prohibit public agencies from requiring contractors or subcontractors from obtaining surety bonds from a single source, be it a particular bonding company, agent or broker designated by a public owner.

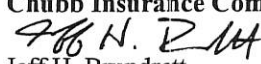
Chubb Insurance is a property and casualty insurance company actively involved in the surety bond industry and among the largest surety bond underwriters in the nation. Our office represents contractors across an 8-state region. We underwrite 15 contractors performing public work in Kansas. Those contractors generated combined annual sales of at least \$450 million and generated some \$1.2 million in surety premiums in 2001. Our group will touch on several key points of interest supporting this proposed legislation. The key points that I will focus upon include the following:

Customer relationships - Our group assembled before you today all maintain a loyal following of customers. These unusually strong relationships are unique to surety. Some relationships span several generations within contracting firms, our office has relationships with customers that span 6 decades. By asking contractors to obtain bonds from a designated agent or surety presents an untenable situation for our customers because it requires them to provide detailed personal and business and financial information to another agent and surety other than their own for the sake of one project.

Force contractors not to bid projects - Contractors may refuse to bid projects because they cannot provide bonds from their established agent and surety company. Because of this the number of interested bidders on a project is less, resulting in lesser competition and ultimately resulting in higher costs. The possibility exists that the contractor choosing not to submit a bid because of owner-controlled or directed surety may have been the lowest or most qualified bidder.

Claims - There is the issue that many contractors would be concerned that an owner directed surety would not be able to handle claims in a fair and unbiased manner.

We urge you to support H.B. 2677 prohibiting directed suretyship in the State of Kansas.

Sincerely,
Chubb Insurance Company

Jeff H. Brundrett
Surety Manager

House Ethics and Elections
2-4-02
Attachment 6

**TESTIMONY OF
ASSOCIATED GENERAL CONTRACTORS OF KANSAS
BEFORE HOUSE COMMITTEE ON ETHICS AND ELECTIONS
ON HB 2677**

February 4, 2002

By Corey D Peterson, Associated General Contractors of Kansas, Inc.

Mr. Chairman and members of the committee, my name is Corey D Peterson, Executive Vice President of the Associated General Contractors of Kansas, Inc. The AGC of Kansas is a trade association representing building general contractors and subcontractors throughout Kansas (with the exception of Johnson and Wyandotte counties).

The Associated General Contractors of Kansas asks that you recommend House Bill 2677 favorable for passage.

The Associated General Contractors of America, of which AGC of Kansas is a chapter, has adopted the following policy on directed surety:

The Associated General Contractors of America reaffirms its longstanding policy in opposition to any departure from the traditional freedom of a prime contractor to secure performance and payment bonds from the bond producer and surety of its choice. To direct that such bonds be secured from a particular producer or surety reduces competition, invites favoritism and abuse and interferes with the established, confidential relationship between the prime contractor and its chosen surety and producer.

Again, for reasons including those outlined in the above policy, AGC of Kansas requests that you recommend HB 2677 favorable for passage.

Thank you for your consideration.