

MINUTES OF THE SENATE TRANSPORTATION COMMITTEE.

The meeting was called to order by Chairperson Senator Les Donovan at 8:30 a.m. on March 19, 2002 in Room 245-N of the Capitol.

All members were present except: Senator Lyon
Senator Pugh

Committee staff present: Hank Avila, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Marian F. Holeman, Committee Secretary

Conferees appearing before the committee: Dean Carlson, Secretary, KDOT
George Barbee, KS Consulting Engineers
Bob Totten, KS Contractors Assn.
Don Beuerlain, Koss Construction
Jamie Green, Heavy Constructors of KC
Corky Beachner, Beachner Construction

Others attending: See attached list

SB 646: Re highways; demonstration projects

Chairman Donovan announced that questions would be held until after all conferees had been heard. Dean Carlson, Secretary, Kansas Department of Transportation, testified regarding this legislation which would allow for possible utilization of two demonstration projects per year for the remaining seven year duration of the current Comprehensive Transportation Program (CTP). All they are asking for is a little flexibility to deal with special/limited projects. By doing some design and construction work concurrently rather than sequentially, much time can be saved so there is less traveler inconvenience and increased safety because highway work zones are not in place for such long periods of time. He also pointed out that because, the projects to which KDOT is committed in the CTP do not lend themselves to the Design/Build/Warrant technique, it would not impact the many smaller Kansas contractors (Attachment 1).

George Barbee, Kansas Consulting Engineers, last week spoke in opposition to amending the provisions of this bill into a House bill under consideration. They had some questions regarding procedural matters related to such projects. Their questions were answered by Secretary Carlson and they now support **SB 646** (Attachment 2).

Bob Totten, Public Affairs Director, Kansas Contractors Association presented the policy of this Association which is the same as the National organization. This policy opposes **SB 646**. They seek to maintain a level playing field and believe this legislation is too broad and could cause serious problems (Attachment 3).

Don Beuerlein, President, Koss Construction Company, does not believe there is sufficient information available regarding several aspects of this bill. He is especially concerned about the possible large public financing aspect as well as the lack of limitation on contract amounts (Attachment 4). Jamie Green, Assistant Executive Director, Heavy Constructors Association of the Greater Kansas City Area, expressed his organization's opposition to allowing KDOT to do two "demonstration projects" per year. It is their belief that the Design-Build project delivery method would work to the detriment of smaller to medium-sized construction companies (Attachment 5). Corky Beachner, Chairman, Kansas Contractors Association's Legislative Committee and President, Beachner Construction Company, St. Paul, Kansas, testified regarding their concerns with this bill, especially the part authorizing the Secretary of Transportation to avoid the competitive bid process on demonstration projects. They also fear the Design-Build Program would eliminate most

CONTINUATION SHEET

MINUTES OF THE SENATE TRANSPORTATION COMMITTEE at 8:30 a.m. on March 19, 2002 in Room 245-N of the Capitol.

Kansas contractors. They wish to continue the present system without change (Attachment 6).

Members raised several questions. Secretary Carlson explained that the one "demonstration project" authorized by previous legislation was a "test" project and the Department was well satisfied with the results and that is why they have come back requesting permission to do up to two per year. It was explained that the New Mexico and Utah projects, which had been referred to by the Secretary as well as several of the conferees, were both done as the result of situations unique to those to locations. New Mexico was in a panic situation and because of the political climate they were forced to do something in a hurry. Utah had to act quickly because of the Olympics. Discussed Koch's role in the New Mexico project. Koch is a material supplier. They do not build highways. Kansas simply does not lend itself to projects of that magnitude. New Mexico used Garvee bonds to pay for their project, and Secretary Carlson does not advocate this method of financing. Kansas contractors do go out of state to do jobs and out of state contractors come in to do jobs, especially in the border areas.

Chairman Donovan closed the hearing on **SB 646**. He instructed both sides to meet and engage in some meaningful discussion in order to work out a compromise with which both sides can live. Whether this can or cannot be done, the Committee will work the bill Thursday. There is no discernible fiscal note attached to this bill.

Approval of minutes

Senator Salmans moved to approve minutes of the March 13 and 14, 2002 meeting.
Senator Gooch seconded the motion. Motion carried.

Meeting adjourned at 9:30 a.m.

The next meeting is scheduled for Thursday, March 21, 2002



**KANSAS DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY OF TRANSPORTATION**

Docking State Office Building
915 SW Harrison Street, Rm. 730
Topeka, Kansas 66612-1568
Ph. (785) 296-3461 FAX (785) 296-1095
TTY (785) 296-3585

E. Dean Carlson
Secretary of Transportation

Bill Graves
Governor

TESTIMONY BEFORE THE
SENATE TRANSPORTATION COMMITTEE

REGARDING SENATE BILL 646
RELATING TO HIGHWAY DEMONSTRATION PROJECTS

March 19, 2002

Mr. Chairman and Members of the Committee:

I am E. Dean Carlson, Secretary of the Kansas Department of Transportation (KDOT). On behalf of the Department, I am here to testify on Senate Bill 646.

KDOT believes that having the flexibility of adding up to two demonstration projects for possible use of the Design/Build/Warrant technique is important to the future of the Comprehensive Transportation Program. The technique is being used successfully across the nation. While the jury is out on whether the technique saves money, the verdict is much clearer that the technique saves time in opening a project to traffic. This savings of time translates into less traveler inconvenience and, even more importantly, increased safety because highway work zones are in place for shorter duration. The technique accomplishes this saving of time by doing some of the design and construction work concurrently rather than sequentially.

In our deliberations on suggesting legislative approval for this technique, we agreed that we would use the methods existing in KSA 75-5801 et seq. This would essentially leave consulting engineering firms in the position where they could partner with contractors under the same terms as they contract with KDOT. We also decided that we had no specific project in mind. Limiting the regulation to not more than two projects per year has the advantage of allowing us flexibility while still requiring further statutory change to allow increased use of the technique.

We are aware that many Kansas contractors are smaller operations and that this technique is more suitable to larger businesses. Those smaller operations have nothing to fear from KDOT having the flexibility of the Design/Build/Warrant technique. This is because of the nature of the projects on the "red map" to which KDOT is committed in the Comprehensive Transportation

SENATE TRANSPORTATION

COMMITTEE -DATE: 3-19-02

ATTACHMENT: 1

Program. These projects are generally quite limited in length and the right-of-way and environmental clearances are done by project. Therefore, the projects do not lend themselves to the Design/Build/Warrant technique. This technique is most beneficial on projects of very large scope, such as the one recently completed on New Mexico 44.

The one project that we have mentioned as a possible candidate for this technique is the Amelia Earhart Bridge over the Missouri River at Atchison. This bridge is old and is exhibiting deterioration in its serviceability, has increasing maintenance costs, and may have to be replaced quickly. The Design/Build/Warrant technique would give KDOT the flexibility to respond to such a situation much more rapidly than the traditional process. I need to emphasize that I mention this project only as a possible example of the value of having the Design / Build/ Warrant option.

I would like to reiterate: at this time KDOT has no specific project planned for this technique and we are only asking to have the flexibility of using the technique on a limit of two projects a year.

In summary, I strongly support Senate Bill 646.



Affiliated with:

American Consulting Engineers Council
Kansas Society of Professional Engineers
National Society of Professional Engineers
Professional Engineers in Private Practice

Senate Transportation Committee

SB 646
March 19, 2002

Mr. Chairman and Members of the Committee, my name is George Barbee appearing today on behalf of the Kansas Consulting Engineers in support of Senate Bill 646 which provides for up to two Design/Build demonstration projects to be performed by the Kansas Department of Transportation.

The members of the Kansas Consulting Engineers are the private sector designers of public works projects including a portion of the design of roads, bridges, and highways for KDOT.

You may recall that we had opposed the suggestion to amend the provisions of Senate Bill 646 into a House Bill last week. As previously stated, KCE is not opposed to the concept of Design/Build, but there are many ways to deliver these projects depending on how the team is assembled and how the design and construction team share responsibilities. Our questions have been answered by Secretary Dean Carlson of KDOT and I am pleased to report that KCE supports Senate Bill 646.

You are urged to report this bill favorably for passage.

I would be glad to stand for questions either now or when you deem it appropriate.

2-1

SENATE TRANSPORTATION

COMMITTEE -DATE: 3-19-02

ATTACHMENT: 2

George Barbee, Executive Director

300 SW 8th Ave., Third Floor ♦ Topeka, KS 66603-3912 ♦ 785/357-1824 ♦ Fax 785/233-2206 ♦ www.kce.org ♦ gbarbee@kce.org

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 Senate Transportation
Committee regarding Highway Demonstration Projects---S 646

March 19, 2001

Mr. Chairman and members of the Senate Transportation 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 opposition to Senate Bill 646. Our board of directors met a week ago today and embraced the following policy:

The Kansas Contractors Association strongly supports full and open competition among general and specialty contractors and their suppliers and service providers. The construction industry's health and integrity depend on every qualified firm having an equal opportunity to compete. The KCA recommends that owners select the delivery systems that best fit their particular needs but with due regard for their independent interest in an open and competitive construction industry. The KCA maintains that alternative delivery systems are appropriate for the public sector if the selection process is as open, fair, objective, cost-effective and free of political influence as the competitive bid system.

3-1

SENATE TRANSPORTATION
— COMMITTEE -DATE: 3-19-02 —
ATTACHMENT : 3

This policy is the same as our National organization...the Associated General Contractors of America.

The key to this policy is the concern our organization has over the fairness and Objective manner in which bids are presently received. As long as our members have a level playing field when bidding work, they have no objection. When there is an opportunity that this may change or be influenced politically, they become concerned.... in most cases violently upset over the process.

Our organization is always anxious to try new and different ideas however we believe the legislation under consideration is too broad, allows more than what the Secretary has indicated is needed and could cause serious problems to the Kansas Construction industry.

I stand for questions.

Testimony

**By Don Beuerlein, President of Koss Construction Company, Topeka,
before the Senate Transportation Committee regarding Highway Demonstration
Projects—SB 646
March 19, 2002**

Mr. Chairman and members of the Senate Transportation Committee, I am Don Beuerlein, President of Koss Construction Company in Topeka. Our company is involved in the concrete paving industry and has been in business since 1912. We have been working in cooperation with the Kansas Department of Transportation since 1922.

Today, I want to thank you for allowing me to testify in regards to SB 646. This bill concerns our industry and my company very much. We are always interested to hear new and innovative ideas, but quite honestly, we have found the open bid process as currently used by KDOT to be very competitive and fair. This system has helped produce a road system that is the envy of the Midwest.

I am reserving my opinion on Design Build until I hear more facts about this proposal. I am very concerned about what limitations on contract amounts would be part of the proposal.

Last year, Koss Construction was the largest Federal Highway Works Administration contractor in the immediate four-state region. That means we did the most highway construction work in Kansas, Nebraska, Missouri and Iowa. Still, depending on the size of the project and what is involved, we might not even be able to qualify or bid for the project KDOT wants to do. Recently, a Design Build project was completed in Utah just prior to the Olympics. The price tag for this project was in excess of one billion dollars.

SENATE TRANSPORTATION

COMMITTEE -DATE: 3-19-02

ATTACHMENT: 4

4-1

Our company is a fourth generation company and in this competitive arena we are trying to do everything that is possible to make it a fifth generation business. I began working for this company while going to college in 1958 and believe me I have seen many companies come and go in that time frame.

I have looked at similar design build proposals before and we have rejected bidding on the work because of the large private financing needed to do the job. We may have been in business for 90 years, but our bonding companies just aren't able to give us that much latitude in bidding for work.

We suggest that Kansas consider limiting such innovative plans to only one project. In addition, we suggest it be kept small. In some states like Louisiana, there is a limit on one project per year with a ceiling of the project to be 5 million dollars a year. Maybe that would work here.

So, until I can be reassured by KDOT that my concerns will be addressed, I have no choice but to reserve my favorable opinion at this time.



The Heavy Constructors Association of The Greater Kansas City Area



TESTIMONY OF JAMIE GREEN BEFORE THE SENATE TRANSPORTATION COMMITTEE ON SENATE BILL 646

OFFICERS

JIM KISSICK
President

KEVIN FAHEY
Vice President

JOHN O'DONNELL
Treasurer

EDWARD R. DeSOIGNIE
Executive Director

JAMIE GREEN
Assistant Executive Director

DIRECTORS

JOHN O'DONNELL
W. E. CLARKSON, JR.
Asphalt Paving Division

GEORGE HORNUNG
ROBERT BARTLEY
Bridge-River Division

HOWIE SNYDER
KEVIN FAHEY
Concrete Paving Division

GREG KAAZ
MICHAEL PURSELL
Excavation Division

DAVID BEEMER
JERRY WIEDENMANN
Utility Division

THANK YOU MR. CHAIRMAN. MY NAME IS JAMIE GREEN. I

AM THE ASSISTANT EXECUTIVE DIRECTOR OF THE HEAVY
CONSTRUCTORS ASSOCIATION OF THE GREATER KANSAS CITY
AREA. THE HEAVY CONSTRUCTORS REPRESENT OVER 150
HEAVY, HIGHWAY AND UTILITY CONSTRUCTION COMPANIES AND
AFFILIATED MEMBER COMPANIES IN THE KANSAS AND MISSOURI
CONSTRUCTION INDUSTRIES.

WE THANK YOU FOR THE OPPORTUNITY TO APPEAR TO
TESTIFY IN OPPOSITION TO SENATE BILL 646. OUR OPPOSITION
TO THE LEGISLATION IS LIES IN THE PROVISIONS OF SECTION (4)
OF THE BILL THAT WOULD AUTHORIZE THE SECRETARY OF
TRANSPORTATION TO UNDERTAKE TWO "DEMONSTRATION
PROJECTS" PER YEAR THAT WOULD BE SELECTED USING
A REVIEW AND PRICE NEGOTIATION PROCESS SIMILAR TO THAT
USED IN SELECTING AND AWARDING ENGINEERING CONTRACTS.
OUR READING OF SECTION (4) IS THAT IT WOULD AUTHORIZE THE
USE OF DESIGN-BUILD AS A PROJECT DELIVERY METHOD ON TWO
PROJECTS PER YEAR.

SENATE TRANSPORTATION
COMMITTEE -DATE: 3-19-02
ATTACHMENT: 5

5-1

PAGE 2.

THE POSITION OF THE HEAVY CONSTRUCTORS ASSOCIATION IS THAT WE ARE OPPOSED TO THE USE OF DESIGN-BUILD ON PUBLIC PROJECTS. WE BELIEVE THE EXISTING BID-BUILD PROCESS UTILIZED ENSURES PUBLIC WORKS PROJECTS ARE DELIVERED EFFICIENTLY AND ECONOMICALLY. ADDITIONALLY, THE CURRENT BID SYSTEM PROVIDES FOR MAXIMUM PARTICIPATION ENSURING COMPETITION AND THE LOWEST AND BEST PRICE. WE HAVE CONCERNS THAT SMALLER TO MEDIUM-SIZED CONSTRUCTION COMPANIES THAT WOULD BE UNABLE TO ESTABLISH A RELATIONSHIP WITH AN ENGINEERING DESIGN FIRM, WOULD FIND THEMSELVES CUT OFF FROM A PART OF THE MARKET REPRESENTED BY THESE PROJECTS.

WE FURTHER BELIEVE THAT WHILE THERE MAY BE PROJECTS ON THE COMMERCIAL SIDE OF THE CONSTRUCTION INDUSTRY THAT MAY BENEFIT FROM USE OF THE DESIGN-BUILD PROJECT DELIVERY METHOD, PUBLIC PROJECTS WOULD NOT. THE CONSTRUCTION OF HIGHWAYS AND BRIDGES IS MUCH DIFFERENT THAN CONSTRUCTING A BUILDING AND THE METHODS EMPLOYED ALSO DIFFER.

WE RESPECTFULLY ASK THAT THE SENATE TRANSPORTATION COMMITTEE NOT RECOMMEND SENATE BILL 646 FAVORABLY. THANK YOU AGAIN FOR THE OPPORTUNITY TO PRESENT OUR ASSOCIATION'S POSITION.



BEACHNER CONSTRUCTION COMPANY INC.

Highway and Heavy Contracting

BOX 128 • ST. PAUL, KANSAS 66771 • PHONE 620-449-2286
• FAX #620-449-8550 •



Testimony

By the Kansas Contractors Association before the Senate Transportation Committee regarding Highway Demonstration Projects – Senate Bill 646

March 19, 2002

Mr. Chairman and members of the Senate Transportation Committee, I am Corky Beachner, President of Beachner Construction Company in St. Paul, Kansas. Our company is a road and bridge construction company that has been in business in Kansas for over 40 years. In addition to being President of Beachner Construction, I am also the chairman of the Kansas Contractors Association's Legislative Committee.

Today, I want to thank you for allowing me to testify in regard to Senate Bill 646. This bill concerns our industry very much. We are always anxious to hear of new and innovative ideas, but the proposal which would allow the Secretary of Transportation to procure demonstration projects without competitive bids goes against the philosophy of the Kansas Contractors Association.

The competitive bid process allows all of our members an equal opportunity to secure the lowest bid on a project. There is no favoritism toward one contractor over

6-1

SENATE TRANSPORTATION
— COMMITTEE — DATE: 3-19-02 —
ATTACHMENT: 6

another because of his political affiliation, color or creed. In addition, the state gets the lowest price for the work involved and the taxpayers get the best deal.

The bill outlined before you would allow the Secretary of Transportation to negotiate work with whomever he or she wanted to. There would not be the scrutiny of the public to see what the negotiated bid was, what it required, or how it compared with other competing companies' bids. Whether or not there would be anything wrong with such negotiations, when things are done behind closed doors, there is always a concern that they are not done properly.

We are concerned that the proposed Design and Build Program would eliminate most Kansas contractors from participating in the process. For example, in New Mexico, a project similar to what would be allowed in this bill was recently completed. It was a large Design/Build project and most New Mexico companies were unable to compete in the negotiations. Basically, because it took so much money out of the state's transportation program in one year, the project devastated the New Mexico construction industry.

In Kansas, we have small construction companies and traditionally KDOT likes to keep the jobs small so that many Kansas companies can compete for the work. That way Kansas contractors have a good opportunity to get the jobs and hire Kansans to do the work. If KDOT began bidding work in larger size projects, much of the work might be secured by out-of-state contractors who would only come in to bid the larger jobs and may avoid paying the taxes that a Kansas-based contractor would have to pay.

6-2

Before closing, I want to say I believe the competitive bid process currently used by the KDOT not only is highly respected in the industry but also is the best system there is for procuring highway construction projects for the State of Kansas.

For these reasons, we are opposed to Senate Bill 646. I would be glad to answer your questions on this matter and I thank you for the opportunity to speak to you this morning.

6-3

Attachment to Testimony on Senate Bill 646 - March 19, 2002

Bill B. Armstrong, Jr., CEO of Armstrong Construction Company, Inc., Roswell, New Mexico and Treasurer of the AGC of America made the following comments on March 18, 2002.

" In New Mexico we failed miserably, we don't have a good relationship with the highway commissioner. All of our funds are going to pay the Garvee bonds. "

"When you do these big design/build projects, the large companies have a vested interest in the process and you can't tell me that they are doing these jobs because they are cheaper. They bring in their own crews and their equipment and the money goes out of state. Local people are pushed aside and the equipment that is brought in is on the tax rolls in another state."

"The complexity of a project is what drives it but really it is the state highway department abdicating their responsibility."