

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 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

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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.