

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Nancy Brown at 1:30 p.m. on March 15, 1994 in Room 521-S of the Capitol.

All members were present except: Representative William Bryant (excused)
Representative Carl Holmes (excused)

Committee staff present: Michael Heim, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Lois Hedrick, Committee Secretary

Conferees appearing before the committee:

Douglas J. Moshier, Senior Assistant City Attorney, Wichita
Whitney Damron, of Pete McGill & Associates, on behalf of the
City of Kansas City
Hal Walker, City Attorney, Kansas City

Others attending: See Attachment 1.

Chairman Brown opened the hearing on **SB 712**, public works bonds; waiver. Theresa Kiernan explained the provisions of the bill which allows a city to waive the requirement that a state surety bond be obtained from contractors who wish to perform work on a public improvement project. Current law stipulates a bond requirement for any construction, repair, or improvement that does not exceed \$100,000. Under this bill, where the requirement is waived, the property of the city would be subject to attachment of a mechanics lien. The city, in order to utilize this option, must adopt by ordinance a policy concerning city contracts with business, minority, and women contractors.

Douglas Moshier, Senior Assistant City Attorney for Wichita, testified in support of **SB 712** (see Attachment 2). A question was posed by the Chairman asking if there was any protection for taxpayers if the contractor defaults. Mr. Moshier replied that there is always concern for the taxpayer but in this scenario, the city of Wichita envisions careful administration and anticipates that deleting bond requirements for projects of less than \$100,000 will encourage minority-owned contractors to participate in the bid process for city works projects. Questions were raised why the League of Kansas Municipalities and representatives of other cities were not present to testify on the bill. Mr. Moshier stated that the Wichita Chamber of Commerce and minority-owned businesses had recommended relaxing the bond requirement with the belief that it would have general economic benefits to the community by putting people to work. If the policy is adopted by Wichita, the city may need to hire more staff to oversee involved projects.

There being no others present to testify, the hearing on **SB 712** was closed.

The Chairman opened the hearing on **SB 732**, rehabilitation of abandoned property. Theresa Kiernan explained the provisions of the bill. Whitney Damron, on behalf of the City of Kansas City, testified in support of the bill (see Attachment 3).

Hal Walker, City Attorney for Kansas City, stated there is an estimated 6,000 properties to be demolished in the city. It is not feasible for the city to undertake this massive project in view of expensive procedures for asbestos (and probably lead paint) removal mandated by the federal government. Passage of the bill would allow private organizations to acquire these abandoned properties, most of which are in the northeast section of the city, and rehabilitate them for low income housing. The bill does not cover commercial property. Chairman Brown asked about the definition of "low income housing" in this bill and if it agrees with definitions used by the Department of Commerce and Housing, suggesting that an amendment may be required. Mike Heim offered to research the question and report back.

There being no others present to testify, the hearing on **SB 732** was closed.

The Chairman reported that the committee will meet tomorrow, Thursday, possibly Friday, and probably on Monday and Tuesday of next week.

On motion of Representative Ballard, seconded by Representative Donovan, the minutes of the committee meeting held on March 14, 1994 were approved.

The meeting was adjourned at 3:04 p.m. The next meeting of the committee will be on Wednesday, March 16, 1994, at 1:30 p.m., in Room 521-S of the Capitol.

HOUSE OF REPRESENTATIVES
COMMITTEE ON LOCAL GOVERNMENT
CONFEREES AND VISITORS
MARCH 15, 1994

NAME AND ADDRESS (Please print)

REPRESENTING

Whitney Dameron

Topoka

McMillan Assoc. / City of KC, KS

Doug Moshier

Wichita

City of Wichita

Michelle Glum

Topoka

att. Jon Small

HAL WALKER

K.C., KS

City of Kansas City, Kansas

HOUSE LOCAL GOVERNMENT

Attachment # 3 / 15 / 94



DEPARTMENT OF LAW
OFFICE OF CITY ATTORNEY
CITY HALL — THIRTEENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67222-1635
(316) 268-4681

March 15, 1994

Chairperson Nancy Brown
House Local Government Committee
State Capitol, Room 521-S
Topeka, Kansas 66612

Re: Senate Bill 712

Dear Chairperson Brown:

I am here today to speak in support of Senate Bill 712.

Senate Bill 712 amends K.S.A. 60-1111 by providing an option which will allow a city to waive the requirement that a public works bond be furnished by any contractor who enters into a contract with the city to do work for a cost in excess of \$10,000. This option is only available for contracts which do not exceed \$100,000. It is also important to note that Senate Bill 712 does not require such a waiver but merely permits a city the option to decide to waive that requirement.

The public works bond, itself, is an exception to the mechanic lien concept. Ordinarily, property upon which work is done or upon which improvements are made utilizing supplies and materials purchased from others is subject to a lien to the extent that the owner or the owner's contractor fails to pay for such work, supplies or materials. The legislature has determined that public property should not be subject to such a lien. However, in order to provide some alternative protection to those who provide labor, supplies or materials to improve public property, the legislature, in K.S.A. 60-1111, has required that the contractor post a bond guaranteeing payment for such labor, supplies or materials when the improvement will cost more than \$10,000.

In recent years the City of Wichita has identified this required bond as a significant impediment to the ability of small, minority-owned businesses to compete for the City's public works contracts. Several such business owners have recounted their willingness to bid for

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such work and their frustration in finding that they could not qualify for bonding by the existing insurance and surety companies that write such bonds. Many times their complaint is that they are not able to compete for contracting work in the private sector because selection is often based more on past relationships and less on a strict bid process. While the City offers the opportunity to bid and compete on a much more level playing field, the public works bond requirement of K.S.A. 60-1111, more often than not, prevents the small or newly formed minority-owned business from having the chance to bid.

The Wichita Minority Business Development Council, an initiative of the Wichita Chamber of Commerce, has identified bonding requirements as one of the most significant factors preventing minority-owned businesses from participating fully in the City of Wichita's bid process.

This issue is also one of national concern. Both the National Business League and the National Association of Minority Contractors, organizations with local offices in the City of Wichita, have identified bonding requirements and the inability of minority-owned contractors to access the insurance and surety bond market as one of the primary reasons for disparity in the awarding of public works and public procurement contracts.

Disparity studies in Dayton, Ohio and Orange County, California have found that minority-owned contractors have difficulty obtaining bonding, increasing bonding limits over minimal levels and obtaining bonds at competitive prices. Interestingly, the state of Ohio has a law which allows cities to waive bond requirements on public works projects up to \$200,000.

The issue of qualifying for bonding is somewhat of a Catch-22 for minority-owned businesses. Most bonding companies evaluate a contractor's "bondability" using traditional indicia such as the record of past work, audited financial statements and financial references. New, minority-owned business, even those which are adequately capitalized and competently staffed, do not have access to the sort of work in the private sector which would give them the "track record" sufficient for a bonding company to consider them a good risk. Public sector work which is awarded competitively on the basis of the low bid is often times the only opportunity that such a business has to prove itself and to establish the work record it needs to compete across the board. When the inability to obtain a public works bond prevents the business from tapping that opportunity, it is, in the opinion of the governing body of the City of Wichita, time to take a look at the interests that such a bond is designed to protect and to weigh them against the burdens on minority-owned businesses that it represents.


The City of Wichita has done this balancing of competing interests and it believes that if it has the choice of waiving the public works bond it can still provide adequate protection against liens being filed against City property while encouraging participation by minority-owned business in the City's public works bid process. Other cities may not agree or may not have the same problems that Wichita does and, as a consequence, may never take advantage of the option afforded by Senate Bill 712.

Some of the alternatives to public works bonds that the City can foresee utilizing are:

1. The City acting as a paying agent and taking an active role in seeing that contract payments are disbursed to subcontractors, materialmen and suppliers who have provided labor, material and supplies to the improvement.
2. Accepting alternative security for payment such as letters of credit, cashier's checks, cash deposits or certificates of deposit.
3. Taking a payment bond in an amount significantly less than the amount of the contract between the City and the contractor.

The City of Wichita is committed to eliminating barriers to full and fair participation by minority-owned business in the awarding of City contracts. The City of Wichita City Council, staff and minority business community all agree that the public works bond requirements of K.S.A. 60-1111 is such a barrier. The City Council believes that it can administer its bidding, contracting and procuring process without requiring a public works bond in the full amount of the public works contract and still adequately protect City owned property from the risk of being liened because a contractor has not paid its bills. Consequently, the benefit to minority-owned business and the community-at-large in having the ability to waive this bond requirement far outweighs the risk that liens will be filed and the City will have to "pay twice" for public improvements.

Very truly yours,


Douglas J. Moshier
Senior Assistant City Attorney

DJM:cdh

TESTIMONY

OF

WHITNEY DAMRON

OF

PETE MCGILL & ASSOCIATES

ON BEHALF OF

THE CITY OF
KANSAS CITY, KANSAS

PRESENTED BEFORE THE

HOUSE
LOCAL GOVERNMENT COMMITTEE

MARCH 15, 1994

RE: SUBSTITUTE FOR SB 732

Good afternoon Madam Chair Brown and Members of the House Local Government Committee. I am Whitney Damron of Pete McGill & Associates appearing before you today on behalf of the City of Kansas City, Kansas in support of Substitute for SB 732, an act relating to unsafe, dangerous or abandoned structures. With me today is Hal Walker, City Attorney for the City of Kansas City, Kansas.

As originally introduced, SB 732 would have allowed for a mechanics' lien on abandoned property that was rehabilitated for low income housing. The Senate Committee on Local Government made significant modifications to SB 732 and modeled the bill after an Illinois statute on abandoned housing.

The major points of SB 732 are as follows:

- Allow cities to hold hearings pursuant to the Kansas Unsafe or Dangerous Structures Act to determine whether property is abandoned and in need of repair.
- "Abandoned Property" is defined in the bill as any residential real estate for which taxes are delinquent for the preceding two years and which has been unoccupied continuously by persons legally in possession for the previous one year.
- Property owners, the owner's agent, any lienholders of record and any occupant of such structure are accorded due process and proper notice to defend against actions by the city to condemn and order the property repaired, demolished

or rehabilitated in case of abandoned property.

- Under existing statutory authority, a city is presently authorized to order repair or demolition. Substitute for SB 732 would also authorize a city to allow for the rehabilitation of the property by a not-for-profit organization or the city in the event it is determined to be abandoned.
- An organization seeking to rehabilitate a property must file a plan for rehabilitation with the city which must also be approved by the city. The organization must file an annual report on the property.
- The owner of the property may petition the district court in which such property is located for restoration of possession. The court will determine proper compensation to the organization for its rehabilitation of the property.
- If the property is sold for unpaid taxes, the organization in temporary possession may stand in place of the property owner to redeem the property.
- If the owner or the property takes no action to regain the property within a period of five years following the granting of temporary custody, the organization in possession may file a petition for judicial deed and upon due notice to the owners, an order may be entered granting a quit-claim judicial deed to the organization providing that the property shall be used for low and moderate income housing for

a period of ten years after the deed is granted.

That is a summary of Substitute for SB 732. The City of Kansas City, Kansas strongly supports this bill as a tool to help preserve existing neighborhoods, provide affordable housing and make their community a better place to live.

Substitute for SB 732 passed the Senate by a vote of 40-0.

We would be pleased to respond to questions at the appropriate time.