

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Mark Parkinson at 9:00 a.m. on February 17, 1994, in Room 531-N of the Capitol.

All members were present except:

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

Conferees appearing before the committee:

Cathy Holdeman, Intergovernmental Relations Director, City of Wichita
Douglas J. Moshier, Senior Assistant City Attorney, Wichita

Others attending: See attached list

SB 712--Concerning public works bonds.

Ms. Kiernan explained that the bill amends the statute so that when a contract for public improvement for more than \$10,000.00 is made, cities may waive the current requirement that the contractor have a surety bond. If the city waives the bond requirement, it then would be subject to the liens attached to the city property.

Cathy Holdeman, Intergovernmental Relations Director for the City of Wichita, testified in support of SB 712. (See Attachment 1)

Douglas Moshier, Senior Assistant City Attorney for the City of Wichita, followed with further testimony in support of the bill. (See Attachment 2)

The Chairman commented to Mr. Moshier that the bill basically makes the city self-insured for someone who cannot get insurance. Mr. Moshier responded that this is not exactly the case as the city would oversee the payments from subcontractors which has not been the previous practice by the City of Wichita.

Sen. Gooch emphasized that the cost of these bonds is not what prohibits small minority contractors from getting them but rather it is the lack of public history to meet the bonding company's requirement for approval.

Mr. Moshier clarified for Sen. Reynolds that the public works bond requirement will be waived for all bidders on a specific job.

The Chairman said that perhaps a cap is needed on projects where the surety bond is waived. Mr. Moshier said he would rather not have a cap but would be agreeable to a cap if necessary to get the bill passed. He added that the city would not waive bonding on the types of projects involving a large amount of money. Also, the bill gives the minorities the opportunity to bid, however, they would not necessarily have a lower bid than larger contractors, and possibly this would actually benefit larger companies.

The Chairman asked Mr. Moshier if he would be agreeable to a \$200,000.00 cap as was done in the State of Ohio. Mr. Moshier was not certain if this would be the proper amount, but said he could accept it.

Sen. Ranson stated that, if nothing else, the bill would allow minority groups to experience competing in the bidding process which would give them an understanding of the process.

Mr. Heim began a short discussion as to what the impact of a lien on city property would be. Mr. Moshier

CONTINUATION SHEET

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said the risk exists that somebody would foreclose a lien against public property, but it would not be an immediate worry for the city. The city could either negotiate and pay or it could pursue the contractor who was responsible for it. He feels that, more importantly, at least this bill would give the minorities the chance to compete.

Sen. Reynolds asked if the bill could be made to be minority specific. Mr. Moshier answered that the legal process could not be run as minority specific and also he would not want to do it that way. The city accepts the lowest bid with no preference for a particular company.

Mr. Moshier concluded his testimony by reminding the committee that the statutes allow cities to self-insure with regard to automobiles, which involves a risk, but it is managed. Therefore, he feels the same could be applied in consideration of SB 712.

The minutes of February 15 were approved.

The Chairman said SB 712 will be worked next week.

The meeting was adjourned at 9:55 a.m.

The next meeting is scheduled for February 22, 1994.

Date: February 17, 1994

GUEST REGISTER

**SENATE
LOCAL GOVERNMENT**

[illegible]

THE CITY OF WICHITA



OFFICE OF THE CITY MANAGER

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TESTIMONY

RE: SENATE BILL 712

SENATE LOCAL GOVERNMENT

THURSDAY, FEBRUARY 17, 1994

9:00 A.M., ROOM 531-NORTH

GOODMORNING CHAIRMAN PARKINSON AND MEMBERS OF THE SENATE LOCAL GOVERNMENT COMMITTEE. I AM CATHY HOLDEMAN, INTERGOVERNMENTAL RELATIONS DIRECTOR FOR THE CITY OF WICHITA. WITH ME TODAY IS DOUG MOSHIER, SENIOR ASSISTANT CITY ATTORNEY, TO ALSO SPEAK IN SUPPORT OF SENATE BILL 712. BEFORE DOUG PROVIDES YOU WITH MORE DETAILED INFORMATION ABOUT THIS BILL, I WOULD LIKE TO EXPLAIN WHY THE CITY IS REQUESTING THIS LEGISLATION AND HOW IT TIES INTO OUR NEIGHBORHOOD INITIATIVE; A STRATEGY FOR MAKING OUR NEIGHBORHOODS SAFE AND SECURE.

THE WICHITA CITY COUNCIL HAS SET FORTH THE GOAL OF MAKING WICHITA ONE OF THE SAFEST MID-SIZED CITIES IN AMERICA. AS A RESULT OF THIS GOAL, THE COUNCIL ENDORSED THE REDUCTION OF CRIME AS THE CITY'S TOP PRIORITY. THEY RECOGNIZED THAT THIS GOAL COULD NOT BE ACHIEVED UNLESS ADDITIONAL OFFICERS WERE ADDED TO THE POLICE FORCE AND THUS A DECISION WAS MADE TO INCREASE THE CITY'S BUDGET BY ONE MILLION DOLLARS IN 1994. THIS WILL ALLOW TWENTY NEW OFFICERS TO BE HIRED AND MAKE IT POSSIBLE FOR THE CITY TO BEGIN IMPLEMENTATION OF A COMMUNITY POLICING PROGRAM IN FOUR TARGET AREAS.

THE COUNCIL FELT THAT THE BUDGETARY INCREASE WAS NOT ENOUGH AND THE CITY SHOULD ATTEMPT TO OBTAIN ADDITIONAL RESOURCES FROM A ONE-FOURTH-OF-A-CENT SALES TAX. THEY ALSO KNOW THAT IF THERE WAS TO BE A TAX INCREASE, THERE MUST BE A PLAN OF ACTION TO ADDRESS THE CRIME PROBLEM FACING OUR CITY.

THE MAYOR HELD A SERIES OF PUBLIC MEETINGS SEEKING INPUT FOR THIS PLAN. MANY INDIVIDUALS AND ORGANIZATIONS WERE ASKED TO PROVIDE INPUT ON THE CRIME PROBLEM AND WHAT IS NEEDED TO FACILITATE CHANGE. THE CITY SOUGHT THE ADVICE OF THE SCHOOL DISTRICT, COUNTY, SHERIFF, DISTRICT ATTORNEY, JUDGES FROM MUNICIPAL AND DISTRICT COURT, CITIZEN PARTICIPATION ORGANIZATIONS, NEIGHBORHOOD ASSOCIATIONS, LEGISLATORS, ETHNIC GROUPS, NAACP, BOTH LARGE AND SMALL BUSINESSES, AND MANY OTHERS. THE IDEAS THAT STEMMED FROM THESE MEETINGS HELPED TO CRAFT THE "NEIGHBORHOOD INITIATIVE: STRATEGIES FOR BUILDING SAFE, SECURE NEIGHBORHOODS." ALTHOUGH THE SALES TAX DID NOT PASS, THE NEIGHBORHOOD INITIATIVE STILL SERVES AS THE FRAMEWORK FOR CHANGE.

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Attachment 1

WE BELIEVE THAT MANY OF THE THINGS WE LEARNED FROM INDIVIDUALS AND GROUPS CAN HELP US AS WE MOVE FORWARD IN THE IMPLEMENTATION OF THIS PLAN. FROM THESE MEETINGS WE LEARNED THAT ECONOMIC OPPORTUNITIES ARE ESSENTIAL, AS A LACK OF SUCH OPPORTUNITIES IS OFTEN A ROOT CAUSE FOR CRIME. WE WERE TOLD THAT THERE NEEDS TO BE MORE MINORITY BUSINESSES THAT CAN SERVE AS ROLE MODELS TO OUR YOUTH. YOUTH NEED TO SEE THAT BEING A SUCCESSFUL BUSINESS PERSON IS POSSIBLE. THEY ALSO NEED TO NEED EMPLOYMENT OPPORTUNITIES AND THESE BUSINESS CAN PROVIDE NEEDED JOBS AND ALSO PROVIDE THE OPPORTUNITY TO GROW AND MENTOR OUR YOUNG PEOPLE.

AS THE CITY TOOK A LOOK AT WHAT WE COULD DO WITHIN OUR OWN ORGANIZATION TO ADDRESS THIS NEED, IT BECAME EVIDENT THAT MINORITY AND WOMEN OWNED BUSINESS FACE A REAL OBSTACLE IN DOING BUSINESS WITH THE CITY. THE LABOR AND MATERIAL PAYMENT BOND REQUIREMENT SET FORTH IN K.S.A. 60-1111 REQUIRES THAT ANY TIME GOVERNMENT ENTERS INTO A CONTRACT FOR ANY SUM EXCEEDING \$10,000 WITH ANY PERSON OR PERSONS FOR THE PURPOSE OF MAKING PUBLIC IMPROVEMENTS, THE CONTRACTOR OR SUBCONTRACTOR MUST PROVIDE A LABOR AND MATERIALS PAYMENT BOND WHICH IS NOT LESS THAN THE TOTAL CONTRACT. THE PURPOSE OF THIS BOND IS TO GUARANTEE THAT ANY INDEBTEDNESS INCURRED IN CONJUNCTION WITH THE PUBLIC IMPROVEMENT PROJECT WILL BE PAID.

IT HAS BEEN THE CITY'S EXPERIENCE THAT MANY WOMEN AND MINORITY CONTRACTORS ARE UNABLE TO SECURE SUCH BONDS AND ARE, THUS, UNABLE TO BID ON CITY PUBLIC WORKS PROJECTS. THE CITY OF WICHITA WOULD LIKE TO SEE AN AMENDMENT TO THIS LAW WHICH PROVIDES CITIES WITH THE DISCRETION FOR DETERMINING WHEN LABOR AND MATERIAL PAYMENT BONDS ARE NECESSARY.

WITH THIS OVERVIEW, I WOULD NOW LIKE TO ASK DOUG MOSHIER TO ADDRESS THE SPECIFICS OF THIS BILL. MR. MOSHIER IS FAMILIAR WITH THIS LAW AND HOW IT HAS SERVED AS A REAL BARRIER FOR WOMEN AND MINORITY OWNED BUSINESSES.

THANK YOU FOR YOUR TIME AND ATTENTION. AFTER MR. MOSHIER'S PRESENTATION, WE WILL BOTH BE HAPPY TO ENTERTAIN QUESTIONS.

THE CITY OF WICHITA

GARY E. REBENSTORF, Director of Law and City Attorney
DOUGLAS J. MOSHIER, Senior Assistant City Attorney



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February 17, 1994

Chairman Mark Parkinson
Senate Local Government Committee
State Capitol, Room 531-S
Topeka, Kansas 66612

Re: Senate Bill 712

Dear Chairman Parkinson:

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. It is important to note that Senate Bill 712 does not require such a waiver but merely permits a city 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

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Attachment 2*

their willingness to bid for 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 lien-ed because a contractor has not paid its bills. Consequently, the benefit to minority-owned business and the

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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,

A handwritten signature in cursive script, appearing to read "Douglas J. Moshier".

Douglas J. Moshier
Senior Assistant City Attorney

DJM:cdh