

TO: Kansas Senate Commerce Committee

FROM: Nathan Buhrmester – Board Member of the Kansas City Chapter of the American Subcontractors Association and Surety Manager at Haas & Wilkerson Insurance in Fairway, KS

RE: Senate Bill 55 – Public Construction Contracts and Performance and Payment Bonds

DATE: Testimony Given on Tuesday, February 7, 2017 at 8:30 a.m.

Good morning:

I am Nathan Buhrmester and I am speaking on behalf of the Kansas City Chapter of the American Subcontractors Association in support of SB 55.

Throughout my career in the surety bond industry both as an underwriter and a broker, I have worked with various general contractors and subcontractors. I have been blessed to work with small subcontractors with revenues in the hundreds of thousands which might repave convenience store parking lots to large general contractors with revenues in the billions which build complex, multi-year projects across the country. Regardless of their size and sophistication, it was their need for surety bonds which served as the catalyst for our relationship.

In their most basic sense, surety bonds are a tool to help protect the owner of a project from delays, unacceptable performance, and to keep the completed work free of mechanics liens. When the owner is a private entity, the surety bonds would protect their investment as well as that of the lender which is financing the construction. When the owner is a public entity – federal, state, county, or local municipality – it protects taxpayer money by ensuring the public entity will not be forced to pay for the mistakes of the contractor awarded the project.

But surety bonds also serve a second purpose, which is why I have come to speak in support of SB 55. While performance bonds guarantee that the contract/project will be completed per the specifications and on time, payment bonds guarantee that subcontractors and suppliers will be paid according to the terms of their contract with the prime contractor. Under current Kansas law, all general contractors which are awarded projects that are publicly funded must provide a performance bond in order to protect taxpayer money. Payment bonds are also required under current Kansas law for publicly funded projects due to the difficulties – and sometimes inability – of placing a mechanic's lien on public property.

Because Public-Private Partnerships (or P3s) fall into a gray area due to the project being funded privately, there is currently no requirement for performance and payment bonds for these projects. The lack of this protection/guarantee for subcontractors leaves them vulnerable to non-payment or slow payment which can have an extreme adverse effect on their ability to perform on this and other projects, creating a domino effect on other projects and on their internal operations, threatening their ability to pay their employees and pursue other work. Additionally, without this guarantee, many

smaller subcontractors may forego pursuing this work or surcharging their bid to account for the added risk. This could result in fewer and less qualified subcontractors bidding the project and at a higher cost.

Coincidentally, cost is one of the main objections some opponents will likely bring up. The cost of payment and performance bonds are based on the contract price, and those rates are tiered. That is, while a \$500,000 contract may come at a cost of 1.5% of the contract price. The next tier starts at \$2.5MM with a lower cost (say 1.0%), and continues to decrease. The lowest tier is anything over \$7.5MM and that cost could be as low as 0.2% of the contract price. Because most of the P3 projects are hundreds of millions or billions of dollars, this requirement could add as little as 0.5% to the cost of the project. However, if it is not required, smaller subcontractors and suppliers could add much more to their bids (5%-15%) to account for the additional risk, as stated above. So I would purport that requiring these bonds will actually help to keep costs down as well as ensure the most qualified contractors are performing the work.

This bill will be a benefit not only to the State of Kansas through guaranteeing the performance of the contract and the quality of the work performed, but also guaranteeing that the companies performing the work will be paid in accordance with the contract terms, encouraging more competition and lower overall costs for the project.

I am happy to answer any questions you may have regarding surety bonds in general, the process underwriters go through to review and approve bonds, as well as what happens in the event of a claim on a surety bond.

Thank you for your time, and I encourage you to vote yes on SB 55.

Respectfully submitted,

Nathan Buhrmester