



**Testimony Before the
Senate Commerce Committee**

In Opposition to Senate Bill 333

**Presented on Behalf of
The Board of County Commissioners
of Johnson County, Kansas**

**By Joe Waters
Director of Facilities**

February 19, 2007



Good Morning, my name is Joe Waters. I am the Director of Facilities for Johnson County Government, and I appear here today on behalf of the Board of County Commissioners of Johnson County. I am an Architect with 25 years experience in public and private sector, primarily in the State of Kansas. I appreciate the opportunity to appear before the Committee and to present testimony in opposition to Senate Bill 333.

Johnson County undertakes a wide variety of construction projects; new buildings, renovations, sanitary and storm sewer systems, roads, bridges, airport runways, etc. We utilize several different project delivery methods, all of which are competitively procured and provide for consistent and extensive contractual protections for all parties, all under the oversight of our elected County officials.

We have productive relationships with contractors in the community that are beneficial for the construction industry while ensuring the expectations of the taxpayers are met and their investments protected. SB 333 endeavors to establish terms and conditions between parties in the execution of construction projects. Johnson County believes terms and conditions are best determined between a contractor and the local elected officials responsible for a specific project. SB 333 would also establish obligations between the public owner and the sub-contractors. Johnson County believes those obligations are unnecessary and detrimental to the timely and cost effective completion of public projects.

The standard contract terms and conditions Johnson County utilizes incorporate the myriad of requirements that may exist on a given project. Quite often those requirements are mandated from federal agencies that may be providing funding support, whose rules change from one agency to the next. Our contracts incorporate all of these requirements and the specific needs of a given project to strike the balance of protection and obligation for both parties. Our standard contracts include timely payment provisions, review of payment applications, thorough and detailed provisions for retainage, and prompt payment of sub-contractors. It is crucial to the success of a project that this language be tailored to the specific needs of that project, not artificially imposed. A few examples:

- Retainage amounts for a septic tank neighborhood replacement project are often 30%, significantly different than a standard office building construction project. Johnson County believes the limits on both percentage of retainage and on the value of the work in section 4 (a) will significantly impede project closure..
- Release of retainage to a sub-contractor for rough grading on an office building project is an entirely different matter than reducing retainage to a security electronics sub-contractor on a jail. Johnson County believes the provisions of early release of retainage in section 4 (c) will directly increase administrative costs through additional professional services and additional project close-out steps. It is not unusual for there to be more than 50 subcontractors involved in execution of larger, more complex county construction projects. The costs to the tax payer



to use the services of an outside consultant or County staff to track the large number of punch lists, close out documentation, etc. associated with this many subcontractors would be substantial indeed.

In closing, it is in the best interest of the taxpayers and local Governments to establish and maintain strong and mutually beneficial relationships with the construction industry in our community. We do so with fair and balanced contracts that are thoughtfully prepared to assure the greatest chance of success on a given project, and by administering those contracts equitably. Our contracts and our projects are entered into and managed in the public eye for the public good.

Johnson County believes that current statutory and contract law provide an adequate structure for fair and equitable construction contracts and successful construction projects for the public. We request that you not recommend Senate Bill 333 for favorable passage.

Thank you for your time and I will be happy to answer any questions you may have.
