

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS.

The meeting was called to order by Chairperson David Adkins at 12:10 p.m. on February 24, 2000 in Room 514-S of the Capitol.

All members were present except: Representative Allen - excused
Representative Spangler - excused

Committee staff present: Stuart Little, Kansas Legislative Research Department
Paul West, Kansas Legislative Research Department
Jim Wilson, Revisor of Statutes Office
Mike Corrigan, Revisor of Statutes Office
Mary Shaw, Committee Secretary

Conferees appearing before the committee:

Dale Worley, Administrator of the State Building Energy Conservation Program
Jim Ludwig, Executive Director of Rates and Regulatory, Western Resources
Thaine Hoffman, AIA, Director of the Division of Architectural Services
Jim Reardon, Director, Facilities Management
Marlin Rein, Director of Budget and Governmental Affairs, The University of Kansas

Others attending: See attached list

Chairman Adkins opened the public hearing on:

HB 2603 - Financing energy conservation projects for state and municipal facilities

A briefing was given by Staff.

Proponents:

1. Dale Worley, Administrator of the State Building Energy Conservation Program.
(Attachment 1)

Neutral:

2. Jim Ludwig, Executive Director of Rates and Regulatory, Western Resources.
(Attachment 2)

Written Proponent Testimony Received From:

3. Jim Ploger, Energy Program Manager, Kansas Corporation Commission (Attachment 3)
4. Rodger Oroke, University Director for General Services, The University of Kansas.
(Attachment 4)
5. Warren Corman, University Architect and Special Assistant to the Chancellor, The University of Kansas. (Attachment 5)
6. Letter from Mario A. Medina, Department of Architectural Engineering, The University of Kansas, to the Kansas Corporation. (Attachment 6)
7. Custom Energy, LLC, by Dale Hahs, General Manager. (Attachment 7)

There being no further conferees on the bill, Chairman Adkins closed the public hearing on **HB 2603**.

CONTINUATION SHEET

Representative Kline made a motion, and seconded by Representative Neufeld, to table **HB 2603**. Motion carried. Representative Kline mentioned that it was not his intent to kill the bill by tabling it, but that there are some unanswered questions and he has not had a chance to read the proposed amendments to understand them completely. He also mentioned that this bill was requested by the Joint Building Committee on State Building Construction, so he supports the concept of the bill.

Chairman Adkins opened the public hearing on:

HB 2017 - State building construction, change orders, procedures for review prior to approval

A copy of a memorandum to the Committee from Jim Wilson, Revisor of Statutes Office, was distributed. (Attachment 8)

Proponents:

1. Thaine Hoffman, AIA, Director of the Division of Architectural Services. (Attachment 9)

There being no further conferees on the bill, Chairman Adkins closed the public hearing on **HB 2017**.

Chairman Adkins opened the public hearing on:

HB 2170 - State agencies; sale of surplus real estate

Proponents:

1. Jim Reardon, Director, Facilities Management. (Attachment 10)

Committee questions and discussion followed. There being no further conferees on the bill, Chairman Adkins closed the public hearing on **HB 2170**.

Chairman Adkins opened the public hearing on:

SB 248 - University of Kansas medical center building construction and repair from private monies

The Revisor distributed copies of the proposed amendments in the form of **H Sub for SB 248**.

Proponents:

1. Marlin Rein, Director of Budget and Governmental Affairs, The University of Kansas. (Attachment 11)

Written Testimony Received From:

2. Eric King, Director of Facilities, Kansas Board of Regents. (Attachment 12)

Committee questions and discussion followed. There being no further conferees on the bill, Chairman Adkins closed the public hearing on **SB 248** and the proposed amendments.

Chairman Adkins asked if there were any further comments or questions from the Committee before working this bill or the other bills. Representative Kline responded that he felt **HB 2017** was a much clearer bill and he did not sense any concerns or misunderstandings about it.

CONTINUATION SHEET

HB 2017 - State building construction, change orders, procedures for review prior to approval

Representative Kline made a motion, seconded by Representative Pottorff, to pass HB 2017 favorably for passage. Motion carried.

HB 2170 - State agencies; sale of surplus real estate

Representative Kline made a motion, seconded by Representative Stone, to amend HB 2170 according to the balloon prepared by the Department of Administration. Motion carried.

Committee questions and discussion followed. Chairman Adkins appointed a subcommittee consisting of Representatives Kline, Farmer and McKechnie to study **HB 2170** and report back to the Committee within one week.

H Sub for SB 248 - University of Kansas medical center building construction and repair from private monies

Chairman Adkins referred **SB 248** and the proposed **H Sub for SB 248** to the Education and Legislative Budget Committee chaired by Representative Farmer to advise the Appropriations Committee as to what clarifications or recommendations the Budget Committee might have in consideration of the bill. The Chairman mentioned that it is his intent to work these bills perhaps next week.

Chairman Adkins recognized Representative Reardon who mentioned that Staff informed him that a letter had been received from the Principal of Wyandotte High School in Kansas City, Kansas, regarding their appreciation in the Appropriations Committee visiting them on February 1, 2000.

Bill Introductions

Representative Schwartz made a motion, seconded by Representative Neufeld, to introduce a bill regarding authorization of the Secretary of Agriculture to use fertilizer fee funds to fund plant pesticide activities. Motion carried.

The meeting was adjourned at 1:00 p.m. The next meeting is scheduled for March 1, 2000.

**HOUSE APPROPRIATIONS COMMITTEE
GUEST LIST**

DATE February 24, 2000

NAME	REPRESENTING
DALE WORLEY	DIV of ARCHITECTURAL SERVICES
Danielle Klee	DOFA
Thayne Hoffman	DOAS
Ray Dalton	SRS
BA BARRY GRES	DOAS
Marlin Reed	KU
JAMES LAMMIG	Nestor Resources
Dave Holtzhus	" "
Jon Josseland	KU
Bill Watts	KDOT
Stacy Perre	Smart & Associates
Jim Raddon	Div. of Fac. Mgmt
RODGER OROKE	UNIV. OF KANSAS
JOE FRITTON	DOFA / DFM
Michael Davis	Johnson Controls / SMC
MARK A. MARTINEZ	JOHNSON CONTROLS
Bruce Graham	KEPCO
Kevin Barone	Hem / Weir Child.
ERIC KING	KBOR

**HOUSE APPROPRIATIONS COMMITTEE
GUEST LIST**

DATE February 24, 2000

NAME	REPRESENTING
S. Petersen	K-STATE

Testimony by
Dale Worley – Program Administrator
Facility Conservation Improvement Program
Division of Architectural Services
HB 2603 Financing of Energy Conservation Improvements
24 February, 2000
To The
House Appropriations Committee

Mr. Chairman, members of the committee, there exists a need to improve the efficiency of energy utilization in many of our public buildings. Energy costs continue to escalate, increasing the burden on taxpayers to pay for heating, cooling and lights in public buildings. With the impending deregulation of the electrical industry, consumers from high cost markets across the nation will target suppliers in our area driving our costs even higher. This bill provides a means for state and municipal facilities operators to improve energy utilization efficiency without imposing any additional burden to the citizens of the State of Kansas.

The bill provides authority for State Agencies and Municipalities to enter lease-purchase agreements with Energy Service Companies (ESCOs) for obtaining energy conservation improvements at their facilities. ESCOs are firms that specialize in improving energy efficiency. They audit and analyze facilities, then recommend, plan and implement improvements and guarantee the resulting cost savings.

The bill (with the proposed amendment) requires that the ESCO provide plans prepared by an Engineer licensed to practice in Kansas. The ESCO shall also document the estimated reduction in energy and operating costs.

The use of ESCOs is not a new concept. For many years they have been assisting the U.S. Government as well as private businesses. These organizations focus their personnel and resources on their specific business.

The Facility Conservation Improvement Program will be available to provide low interest, tax-exempt funding for improvements, as well as administrative support.

Support for passage of this bill includes the K.C.C., the Director of Architectural Services, Officials at the Regents Institutions and energy industry members.

I have been requested to propose the attached amendment that modifies this bill to ensure that documents are prepared in accordance with Kansas Statutes.

One concern that you may want to consider is that State Agencies have a review process built into this bill to verify feasibility and economic viability of the improvements. No such safeguards are provided for municipalities.

In closing I would like to say that passage of this bill offers State Agencies and Municipalities a means to replace aging equipment, improve the work space environment, lower utility costs, conserve natural resources and provide work to the private sector. All at no cost to the taxpayer and the end result will be less tax burden.

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2-24-00
Attachment 1

Proposed Amendment to HB2603

Proposed by Thaine Hoffman, Director, Division of Architectural Services
In cooperation with Jim Ploger

February 24, 2000

9 AN ACT concerning energy conservation; relating to improvements to
10 state and municipal facilities; authorizing the financing of such
11 improvements.

12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. (a) As used in this act:

15 (1) "Municipality" shall have the meaning ascribed thereto in K.S.A.
16 75-1117, and amendments thereto, *and also include community colleges, area*
17 *vocational schools, area vocational-technical schools and technical colleges.*

17 (2) "State agency" shall have the meaning ascribed thereto in K.S.A.
18 75-3049, and amendments thereto.

19 (3) "Energy conservation measure" means an energy study, audit,
20 improvement or equipment which is designed to ~~generate~~ *provide* energy and
21 operational cost savings at least equivalent to the amount expended by a
22 participating municipality or state agency for such energy study, audit,
23 improvement or equipment over a period of not more than 20 years after
24 the date such improvement or equipment is installed or becomes oper-
25 ational, as the case may be.

26 (b) Subject to the provisions of subsection (c), a municipality or state
27 agency may enter into a contract or lease-purchase agreement for an
28 energy conservation measure which meets the criteria of this section. In
29 addition to any other authority provided by law a municipality may solicit
30 proposals to contract for an energy conservation measure by advertising
31 for proposals and qualifications in a newspaper of general circulation or
32 the Kansas register, and by sending requests for proposals to at least three
33 vendors and negotiating a lease-purchase agreement with one or more
34 vendors submitting a proposal thereto. Negotiations entered into pursu-
35 ant to this section with individual vendors shall not be subject to the
36 provisions of the open meetings act. After an agreement has been exe-
37 cuted, the agreement and all proposals from vendors shall be open re-
38 cords available for public inspection in accordance with the open records
39 act. A state agency may utilize the procedures prescribed in K.S.A. 75-
40 37,102, and amendments thereto, by the procurement negotiating com-
41 mittee to negotiate and contract for energy conservation measures. Each
42 state agency shall provide copies of plans of the proposed energy conser-
43 vation measure to the secretary of administration, or such secretary's des-

1 ignee, for review. No state agency may enter into a contract for an energy
2 conservation measure unless such measure has been approved by the
3 secretary of administration. Plans submitted under this section shall be
4 retained and maintained by the secretary of administration.

5 (c) Before executing any contract or lease-purchase agreement under
6 this section, the *energy conservation contractor shall provide the* municipality or
state agency ~~shall obtain a certification from~~ *with plans for the proposed*
energy conservation measures prepared by an engineer licensed to practice
in Kansas. ~~attesting that the engineer has reviewed the energy conservation~~
~~measure and financing terms and that the energy conservation measure will~~
~~provide an amount of estimated energy and operational cost savings from~~
~~the proposed energy conservation measure over a period of not more than~~
~~20 years after the date such energy conservation measure is installed, or~~
~~becomes operational, as the case may be.~~ *The energy conservation contractor*
shall also provide calculations showing the estimated energy and operational
cost savings from the proposed energy conservation measures.

Notwithstanding any provision contained in K.S.A. 1999
14 Supp. 72-8225, and amendments thereto, the board of education of any
15 school district may enter into a contract or lease-purchase agreement for
16 an energy conservation measure for a period exceeding 10 years. Munic-
17 ipalities and state agencies may include a provision in the contract with
18 an entity providing the energy conservation measure requiring such entity
19 to guarantee that the actual amount of savings of energy and operational
20 costs attributable to the energy conservation measure be not less than the
21 cost of the energy conservation measure over the time specified including
22 financing costs.

23 (d) Within the limits of appropriations available therefor, the state
24 corporation commission is authorized to provide grants for engineering
25 studies and energy conservation measures for municipalities and state
26 agencies.

27 (e) The secretary of administration ~~shall~~ *may* provide administrative sup-
28 port and resources available under the facility conservation improvement
29 program under K.S.A. 75-37,111 *et seq.*, and amendments thereto, as
30 requested by municipalities and state agencies for purposes of this
31 section. *The Secretary of Administration may set reasonable fees for these services.*

32 (f) The provisions of the cash basis law and K.S.A. 79-2925, and
33 amendments thereto, shall not apply to any contract or lease-purchase
34 agreement entered into pursuant to this section.

35 Sec. 2. This act shall take effect and be in force from and after its
36 publication in the Kansas register.

Testimony
before the
HOUSE APPROPRIATIONS COMMITTEE
by

Jim Ludwig, Senior Director, Regulatory Affairs
Western Resources
February 24, 2000

Chairman Adkins and members of the committee:

Western Resources seeks to amend HB 2603. Together with George Barbee, who represents the Kansas Consulting Engineers, and Dale Worley of the Division of Architectural Services, we have drawn up amendments. Mr Worley's testimony includes a bill markup with our consensus position.

First, at line 20, we would propose changing the word *generate* to *provide*. In the energy business, generate is a word that means much more than bringing something into existence. The intention is to provide savings, not to generate electricity, and the bill should be clear on this point.

Second, section (c) would require **certification** from an engineer that energy conservation measures **shall** produce savings that are sufficient to recoup the measures' costs within 20 years. It is not possible to certify the future for 20 years, and doing so would put an engineer at untenable legal and financial hazard. Our joint amendment instead calls for a contractor's calculations showing estimated savings.

Finally, HB 2603 raises a policy issue Western Resources urges the committee to consider. (Western Resources raises this issue alone; it is not part of the consensus position set out in our joint amendments.) HB 2603 requires competitive bidding for any contract a municipality or state agency enters for energy conservation measures. The federal government allows contracting with established source contractors without a competitive bidding process. A utility would be an example of a potential established source contractor. It may be in a municipality's or agency's interest to have authority to contract with an established source without engaging in a competitive bidding process, especially if the proposed energy conservation measure is closely tied to existing service already being provided to them by an established source.

When the committee takes action on HB 2603, Western Resources urges the committee to adopt the amendments proposed by the Division of Architectural Services and to consider the policy issue Western Resources has raised.

HOUSE APPROPRIATIONS
2-24-00
Attachment 2

**Appropriations Committee
Kansas House of Representatives
Written Testimony of the Kansas Corporation Commission Staff
February 24, 2000**

House Bill 2603

Chairman Adkins, members of the committee, I am Jim Ploger, Energy Program Manager for the Kansas Corporation Commission. I support House Bill 2603 which will enable public entities to engage in energy performance contracting for energy conservation measures.

I apologize for not personally being able to attend the committee hearing on February 24. I will be attending the National Association of State Energy Officials (NASEO) 2000 Energy Outlook Conference.

This bill deals with the use of performance contracting as a financing mechanism for public entities (i.e., state, school districts, hospitals, counties or municipalities) to make energy conservation improvements in buildings.

This is considered "enabling legislation" that removes any questions or doubt whether or not a public entity can enter into a multi-year contract to cover the financing of energy improvements from utility cost savings. This is a generic bill to cover all public entities. There is no fiscal cost to the state for this legislation.

I would recommend two minor changes to HB 2603 as drafted:

Page 1, Line 20 –

Strike the word "generate" and insert "provide operational"

Page 2, Lines 5 thru 13 –

Some concern has been expressed by a few concerning the wording in this section. This will be addressed by Thaine Hoffman, AIA, Director of the Division of Architectural Services, or Dale Worley, Administrator of the State Building Energy Conservation Program, who have worked with the Kansas Contracting Engineers and others to find a consensus of wording.

Forty-two states in our country have implemented some form of enabling legislation—as energy performance contracting has become a very popular tool to make energy improvements without the public entity having to come up with funding sources for capital improvements.

I want to express my appreciation to Rep. Phil Kline and the members of the Joint Committee on State Building Construction for their unanimous support and leadership regarding this legislation and pre-filing HB 2603.

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ATTACHMENT 3*

I would like to acknowledge the assistance of Art Griggs, the Department of Administration's Chief Counsel, and Dale Dennis with the Kansas Board of Education for their assistance in preparation of this legislation.

In addition, our office has coordinated efforts in the preparation of this legislation with Thaine Hoffman, Dale Worley and Dan Carroll of the Division of Architectural Services, John Houlihan of the Division of Purchases, Eric King of the Kansas Board of Regents, Donna Whiteman and Norm Wilks of the Kansas Association of School Boards, Randy Allen of the Kansas Association of Counties, Tom Bell of the Kansas Hospital Association, Rodger Oroke of the University of Kansas, Lee McQueen of Kansas State University, numerous individuals representing unified school districts, cities and public hospitals and representatives of various Energy Service Companies (ESCOs) serving Kansas over the past several months in preparation of this legislation.

Briefly, this is how energy performance contracting works. A building owner can make the energy upgrades needed now—with no up-front capital— and pay for them later through the energy savings that result. Best of all, those savings can be guaranteed. How? Through energy performance contracting.

Many types of building improvements can be funded through performance contracting--new lighting technologies, boilers and chillers, energy management controls, insulation and new windows, to name a few.

A building owner enters into an agreement with a private energy service company or ESCO. The ESCO will identify and evaluate energy-saving opportunities and then recommend a package of improvements to be paid for through utility savings. The ESCO will guarantee that savings meet or exceed annual payments to cover all project costs—usually over a contract term of seven to 20 years. If savings don't materialize, the ESCO pays the difference. To ensure savings, the ESCO offers staff training and long-term maintenance support services to the institution.

I am providing a new publication, *Five Steps to Successful Energy Performance Contracting*, which helps explain how energy performance contracting can assist public entities. This publication was developed by the Western Regional Coalition, of which Kansas is one of 18 states participating in this coalition of State Energy Offices and ESCOs with support from the U.S. Department of Energy's Rebuild America Program. In the back of the *Five Steps* portfolio, there is a list of the states with enabling legislation and references.

I urge your support and passage of HB 2603.

Thank you.

The University of Kansas

Office of General Services

February 18, 2000

The Honorable David Adkins, Chairman
House Appropriations Committee, Room 514-S
STATEHOUSE
Topeka, Kansas

Dear Representative Adkins,

House Bill 2603 is scheduled for Hearing on Thursday, February 24. Through this letter, I am encouraging your support for this bill. It's passage will provide a new mechanism through which the University of Kansas and other state agencies, municipalities and school districts, can make improvements in facilities and systems, which will reduce energy consumption. Under this concept, we will utilize the experience of companies that specialize in energy conservation improvements, to audit our current facilities and identify projects that they, in turn, will guarantee to provide annual savings sufficient to repay the debt incurred for all costs related to the projects. KU would determine which projects would be implemented from a list of feasible projects developed by the energy service company.

The benefits of projects that could be done with the passage of HB2603 extend beyond basic energy conservation. The improved environmental quality in classrooms, offices and other workstations, resulting from improved climatic controls, lighting and indoor air quality would have a positive impact upon the building users and visitors.

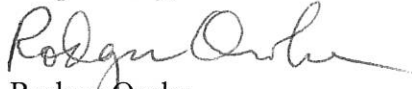
The concept is built upon the fact that we currently expend several million dollars each year for utilities to support our campus operation. With the ability to redirect the verified savings resulting from the energy conservation projects, to fund the debt of the projects, we can implement the retrofits without having to wait for capital funding. This approach won't address all the campus energy equipment upgrade needs, however, it will allow us a mechanism with which to get started on this overdue work. Savings in energy expenditures will be reallocated to repay the multi-year debt, by which the program is financed. The University will continue to request capital improvement funding for projects that exceed the amount capable of being financed by energy savings. For example, the Campus Electrical Distribution System, when replaced, will produce minimal energy savings, and will not be a candidate project for this method of funding.

The key to developing successful energy conservation projects will be the initial energy audit, which would be funded through this mechanism. The benefit of a campus-wide audit is that we would be able to identify cause-effect relationships, which would ultimately result in additional savings. For example, more efficient lighting results in less cooling requirements; less cooling requires less horsepower in motor size or air handling capacity; less air handling capacity reduces filter media consumption, etc. The end result is less expenditure for utilities and supplies.

Lastly, with approval of HB 2603 and our subsequent development of projects, we can build a comprehensive use profile of our energy use for each building. There is much speculation about how we will purchase our energy resources in the future, but one constant in the speculation, is that energy costs will be closely related to time-of-day demand. Thus, the energy use profile will most likely be required data to have available as we purchase energy in the future.

Once again, I appreciate your support along with that of your committee, of House Bill 2603. Its passage will benefit the University of Kansas and the State of Kansas.

Respectfully,



Rodger Oroke

University Director for General Services

Cc: Chancellor Hemenway

The University of Kansas

Office of the Chancellor

Tuesday January 18, 2000

The Honorable David Adkins, Chairman
Appropriations Committee
House of Representatives
STATEHOUSE

Dear Representative Adkins:

This letter is to support the passage of House Bill 2603 concerning the savings of energy and reducing the cost of our utility billings at state institutions in Kansas. I believe that it is a very worthwhile project. Over the years, since the oil embargo in the 70's, we have strived to conserve energy and have done a fair job of it at all state institutions. There are still some large cost projects that need to be done that will be very beneficial to our budgets and to our annual cash outlay.

This House Bill 2603 will enable us to approach these savings in a professional and systematic way that has the potential of saving the state of Kansas millions of dollars in the future.

It looks like a WIN-WIN situation for everyone. I would urge you and your committee to endorse this bill.

Thank you.



Warren Corman, University Architect and
Special Assistant to the Chancellor

The University of Kansas

Energy Research Center

February 23, 2000

Mr. Jim Ploger
Kansas State Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604

Dear Jim:

Thank you for bringing to my attention the opportunity to respond to House Bill 2603, "Act concerning energy conservation; relating to improvements to state and municipal facilities; authorizing the financing of such improvements". From talking to a couple of my colleagues at KU, Dr. Mario Medina and Dr. Brian Rock in Architectural Engineering, such improvements in energy conservation in facilities are typically overlooked, but the potential for energy and cost savings is significant. Dr. Medina is new to the faculty with expertise, practical experience, and interests in energy conservation in buildings. Dr. Rock is also affiliated with the Energy and Diagnostics Center which inventories building energy use.

I quote these gentlemen below when they were asked about the feasibility of employing energy conservation measures in state and municipal facilities. Also listed below is contact information for them, if Chairman Adkins or members of the committee are interested in further information. I am also available if they have questions about other resource people at KU.

"From my experience I can testify that this kind of effort can save the State, and therefore, taxpayers millions of dollars. I was a team member of the LoanSTAR (Loan to Save Taxes and Resources) program in Texas for three years. This program was, in a sense, a performance contracting of government buildings. At one point, I was in charge of monitoring the energy performance of about 50 buildings including the Capitol building, the Secretary of State's building, 13 buildings at the University of Texas campus, several other university buildings, Austin Police Department, Mental Health and Mental Retardation Hospital in San Antonio and others."

Mario A. Medina, Ph.D., P.E.
Department of Architectural Engineering
The University of Kansas
Marvin Hall
Lawrence, Kansas 66045-2222
(785) 864-3604
(785) 864-5099 FAX
<http://www.arch.ukans.edu/arce/faculty/medina/mario.htm>

1930 Constant Avenue • Campus West • Lawrence, KS 66047-3724 • (785) 864-4445 • Fax: (785) 864-5053

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"Government-owned institutional buildings seem quite neglected in much of the country." Brian went on to mention that KU ARCE has capabilities and experience in use of DOE2 energy modeling, HVAC design & analysis, engineering economics, etc.

Brian A. Rock, Ph.D., P.E.
Associate Professor and Graduate Adviser
E mailto:barock@ukans.edu
Voice: (785) 864-3603
Fax: (785) 864-5099
Homepages: <http://hvac.arce.ukans.edu/>

Mailing & USPS Shipping Address:
The University of Kansas
Architectural Engineering Department
Marvin Hall
Lawrence, Kansas 66045-2222
USA

Please contact me if there are any questions.

Sincerely,



W. Lynn Watney
Executive Director

House Bill 2603

Testimony



Presented by Custom Energy, L.L.C. on February 24, 2000

Attendee's: Dale Hahs, General Manager

Lee Overvold, Market Development – Schools Specialist

Koby Kampschroeder, Market Development – Schools Specialist

We urge the support of House Bill 2603 as an excellent way to accomplish the public policy objectives of environmental improvement and fiscal responsibility. This enabling legislation will allow public agencies to implement energy-related facility improvements that will reduce energy consumption lowering utility costs, reduce operating expenses and redirect these dollars to pay for facilities modernization.

Current Situation

Presently, public agencies have a growing backlog of aging facilities. As facilities age, the operating costs typically increase. In addition, aging facilities can pose health and safety problems. Agencies are faced with the choices of emergency repair, planned renovation or total replacement of the building infrastructure. In Kansas, as well as nationwide, funding to modernize continues to fall behind the backlog of need. Annual operating budgets of public agencies do not have the funding level or mechanism to provide needed capital improvements. Bond issues are more difficult to pass when the proceeds are needed to “fix the existing” rather than fund a new building, new school buses, new police cars, new computers for students etc.

Performance Contracting as a tool

Over 40 States and the Federal government have adopted enabling legislation to permit performance contracting as an additional financial and implementation tool to modernize facilities. The results over the last ten years have been dramatic. Agencies have avoided through conservation the consumption of millions of gallons of oil, millions of tons of coal and millions of gallons of treated water. Air and groundwater quality have been big winners as the levels of carbon dioxide, sulphur, carbon monoxide, and other gases and particulates released from the burning of fossil fuels have been reduced.

From a budgetary standpoint, millions of dollars have been conserved through the planned renovation approach of performance contracting rather than waiting for aging, inefficient equipment to fail and be replaced under emergency conditions.

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Fiscal Impact

The premise of performance contracting is budget neutral. Energy and operational budget expenditures that have and will be spent are reduced through conservation and modernization. The reductions or savings are the basis to pay for the services, equipment or energy-related infrastructure. A simple example is an old boiler that is energy inefficient, requires repairs, causes comfort problems and may pose a safety hazard. The capital for a new boiler is raised from the proceeds of a lease-purchase and the annual reductions in operating costs associated with the old boiler are used as the source of funds to repay the lease.

Summary of Benefits

- Extend the life of a public building through planned renovation
- Conserve energy and reduce pollution
- Create a new source of capital for renovation that is budget neutral
- Reduce comfort and safety problems in public buildings
- Demonstrate environmental and fiscal leadership to the taxpayer
- Improve Indoor air quality
- Modernize and improve the classroom environment to foster improved learning

Memorandum

TO: Committee on Appropriations

FROM: Jim Wilson, First Assistant Revisor

DATE: February 24, 2000

SUBJECT: HB 2017 – State Building Construction, change orders, procedures for review prior to approval

This bill amends K.S.A. 75-1264 which requires a consultation with the Joint Committee on State Building Construction prior to approval of change orders or changes in plans for an approved state building construction capital improvement project involving cost increases of \$25,000 or more and reporting of all other change orders or changes in plans involving cost increases of less than \$25,000. This threshold amount of \$25,000 was first enacted in 1974.

The requirement of prior consultation on any change increasing costs by \$25,000 or more is satisfied by presenting the proposed change to the Joint Committee at a meeting. When the Joint Committee has been unable to meet to be advised and consulted with, a process has been utilized to distribute written summary information about the proposed change to each member of the Joint Committee and to permit the proposed change to be considered to be “advised and consulted” on and then approved. Upon the request to the Chair by two or more members, the proposed change is not deemed “advised and consulted upon” and the Chair calls a meeting for a full presentation of the proposed change. The membership of the Joint Committee was increased from six to 10 members by 1999 HB 2065 [L. 1999, Ch. 139].

The policy changes are to:

(1) Change the threshold amount at which a change order or change in plans increases costs from \$25,000 to \$75,000 or a greater amount fixed by the Joint Committee upon a determination that “cost increases for state building construction capital improvement projects that are caused by economic inflation or other economic or construction industry factors require that a higher cost increase threshold be established” [Subsection (e), pg 2, line 33] ; and

(2) codify the existing practice that the Joint Committee employs to permit a timely response to the requirement of prior consultation when no meeting is scheduled within 10 business days and it is in the best interest of the state to approve the proposed change before the Joint Committee is scheduled to meet, with the requirement of a meeting being called upon request of two or more members fo the Joint Committee.

*House Appropriations
2-24-00
Attachment 8*

Testimony by
Thaine Hoffman, Director, Division of Architectural Services
HB 2017 \$25,000 Change Orders
February 24, 2000
House Appropriation Committee

Mr. Chairman, members of the committee.

I testify in support of this bill. KSA 75-1264 requires that we advise and consult with the Joint Committee on State Building Construction on change order of over \$25,000. The \$25,000 figure has not changed since 1974. Construction inflation since that time would have increased that figure to over \$70,000. We have had 33 such change orders in the last year. When the Joint Committee is not scheduled to meet within the next few weeks, the procedure is to send the change orders to the homes of the Joint Committee for their review. This is an unnecessary inconvenience for joint committee members as well as a delay for the projects. These change orders also require additional forms to be filled out by the agencies and require time and attention by DOAS.

The proposed legislation would increase the threshold to \$75,000 to bring it in line with the original intent of the statute. Only 15 of the above referenced 33 change orders were over the \$75,000 threshold. Thus it would reduce the work to less than half for the Joint Committee members, for DOAS and for the agencies. Even more important, it would avoid delaying those projects.

The bill would also allow the Joint Committee to raise the threshold later to adjust for inflation. This would avoid the present situation where smaller and smaller change orders must be brought to the joint committee before the limit is updated.

The other provision is the process by which DOAS can request approval of a change order by mail if the joint committee is not scheduled to meet. This is tremendously important in that it lessens the delay for approval, allowing construction to proceed.

This bill is a step in avoiding construction delays and making State Government more efficient. It is supported by the Joint Committee on State Building Construction as well as the State Building Advisory Commission. I would appreciate your approval. Thank you.

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HOUSE APPROPRIATIONS
2-24-00
ATTACHMENT 9

**Testimony in Support of HB 2170
House Appropriations Committee
February 24, 2000**

By Jim Reardon, Director of Facilities Management
Kansas Department of Administration

Mr. Chairman, Members of the Committee:

HB 2170 reveals and addresses major problems in the disposition of state-owned real estate.

History

K.S.A. 75-3351 & K.S.A. 75-3352 were passed by the legislature in 1979. These statutes declare certain property located near or adjacent to the Beloit Juvenile Correctional Facility to be surplus property. One 27-acre parcel sits amid several attractive commercial and residential developments inside the northeastern edge of the Beloit City limits. It is located at the strategic junction of two important commercial highways. Attempts by SRS to sell this property have been unsuccessful *for the past 21 years*.

This case is a text book example of how the following bureaucratic complexities and antiquated processes hamper or prevent citizens from purchasing valuable surplus and underutilized real property from the State of Kansas:

- **Currently there is no State agency fully empowered to oversee the State's Real Estate holdings or to offer them for sale.**

In recognition of this fact, the Secretary of Administration created the unclassified position of State Real Estate Officer to market the Topeka State Hospital property, supervise the statewide office leasing program, develop a data base of State owned and leased real estate, and provide real estate related services to state agencies on a fee for service basis.

Under **HB 2170** the Secretary of Administration would be authorized to develop new guidelines for the sale of surplus real estate. The Department of Administration would be empowered to offer surplus property for sale, with the written consent of the head of the controlling state agency and with the approval of the state finance council.

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- **Currently there is no incentive for a State agency to dispose of underutilized or non-productive real property.**

HB 2170 Authorizes the proceeds of surplus real property sales to be deposited in a surplus real estate special revenue fund or any other available special revenue fund *of the controlling agency*. It directs that a 15% administrative fee be paid to the Secretary of Administration from the special revenue fund for services rendered. The administrative fee is to be deposited in the property contingency fund and may be used for any operations of the department of administration. It also directs that any other costs of the sale of property be paid from the special revenue fund.

- **Current law requires the Beloit property to be sold only at or above appraised value.**

Appraisals do not necessarily determine or set the sale price for real estate. They simply provide a gauge of fair market value. Market conditions determine the ultimate sale price for real estate. The sealed bid method of sale has not yielded an appraised value bid.

- **Current law requires the Beloit property to be sold only by the sealed bid method.**

This method has failed to provide a successful buyer for 21 years. Residents of rural areas know that prime multi acre real estate is usually sold at a competitive public auction or by listing the property with one or more brokers. Current law excludes these important sales avenues and limits buyer participation.

- **Proposed Amendments**

- A. The Department of Transportation has asked that the attached amendment be made to the bill. The amendment excludes disposition of property interests by the Secretary of Transportation under K.S.A. 68-413. (See new subsection (h) on page 2 of the balloon handout).
- B. Our Department also proposes an amendment to the general state agency real estate appraisal statute. (See Section 2 on page 2 of the balloon handout). The statute currently requires three appraisers be appointed before a state agency buys or sells real estate. The purpose of the change is to avoid unnecessary expenditures. Appraisal fees can be substantial, as reflected on the attached chart. Use of three appraisals is not a common practice in the private sector for real estate loan purposes or in usual corporate practices. While it is recognized that appraisals are helpful in determining the fair market value, it is felt the requirement of three of them cannot be justified when you review the potential cost savings.

Summary

The State's method for the disposition of surplus real estate is antiquated and often unworkable. **HB 2170** would improve the process by which surplus real estate is sold and it would add important agency incentives. The sale of surplus real estate would generate needed funds for state agency services and return property to the tax rolls. It would enhance state, city and county revenues. *We urge your support.*

**APPRAISAL FEES:
HISTORICAL DATA**

PROPERTY	THREE APPRAISALS: TOTAL FEE	HIGHEST APPRAISAL FEE	POTENTIAL SAVINGS
Marymount College	\$ 21,000.00	\$ 7,000.00	\$ 14,000.00
Insurance Department Building	\$ 5,500.00	\$ 2,500.00	\$ 3,000.00
KBI Building	\$ 7,500.00	\$ 4,500.00	\$ 3,000.00
KPL Steam Plant (now a parking lot at 7th & Van Buren	\$ 4,000.00	\$ 2,000.00	\$ 2,000.00
Victory Life Insurance Building	\$ 4,500.00	\$ 2,500.00	\$ 2,000.00
Olathe Travel Information Center (unimproved land)	\$ 3,000.00	\$ 1,000.00	\$ 2,000.00
Surplus Property - Youth Center at Topeka	\$ 2,250.00	\$ 750.00	\$ 1,500.00
Parking Lot - Emporia Human Resources Office	\$ 375.00	\$ 125.00	\$ 250.00
Kansas City, Kansas Human Resources Office (Sale)	\$ 8,250.00	\$ 2,750.00	\$ 5,500.00
Topeka, Human Resources Building; 1430 Topeka Blvd.	\$ 4,500.00	\$ 2,000.00	\$ 2,500.00
Topeka State Hospital	\$ 39,000.00	\$ 15,000.00	\$ 24,000.00
<u>Security Benefit Group Building</u>	<u>\$ 32,000.00</u>	<u>\$ 14,400.00</u>	<u>\$ 17,600.00</u>
TOTAL:	\$ 131,875.00	\$ 54,525.00	\$ 77,350.00

NOTE: This chart represents only a partial listing of appraisals conducted over the past few years.

Session of 1999

HOUSE BILL No. 2170

By Joint Committee on State Building Construction

1-28

9 AN ACT concerning certain real estate owned by state agencies; relating
10 to the sale thereof; amending K.S.A. 75-3352 and repealing the existing
11 section.

75-3043a and

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. (a) When used in this section, "surplus real estate"
15 means real estate which is no longer needed by the state agency which
16 owns such real estate.

17 (b) The secretary of administration shall develop criteria for the iden-
18 tification of surplus real estate. In accordance with such criteria, the sec-
19 retary shall assist state agencies in the identification of surplus real estate.

20 The secretary of administration shall develop guidelines for the sale of
21 surplus real estate. In accordance with such guidelines and upon the writ-
22 ten consent of the head of the state agency which owns such surplus real
23 estate, the secretary may offer such property for sale. Subject to the ap-
24 proval of the state finance council as required by subsection (c), the sec-
25 retary of administration may sell surplus real estate and any improvements
26 thereon on behalf of the state agency which owns such property.

27 (c) Prior to the sale of any surplus real estate under subsection (b),
28 the state finance council shall approve the sale, which is hereby charac-
29 terized as a matter of legislative delegation and subject to the guidelines
30 prescribed in subsection (c) of K.S.A. 75-3711, and amendments thereto.
31 The matter may be submitted to the state finance council for approval at
32 any time, including periods of time during which the legislature is in
33 session.

34 (d) Prior to offering any real estate for sale, such property shall be
35 appraised pursuant to K.S.A. 75-3043a, and amendments thereto. The
36 costs of such appraisal may be paid from the proceeds of the sale.

37 (e) Conveyance of title in surplus real estate offered for sale by the
38 secretary of administration shall be executed on behalf of the state agency
39 by the secretary of administration. The deed for the conveyance may be
40 by warranty deed or by quitclaim deed as determined to be in the best
41 interests of the state by the secretary of administration in consultation
42 with the head of the state agency which owns the surplus real estate.

43 (f) Any proceeds from the sale of surplus real estate and any improve-

1 shall be executed by the secretary, and duly acknowledged by ~~him or her~~
 2 *the secretary* before an officer authorized by law to take acknowledg-
 3 ments. ~~Said~~ *The deed* shall contain a recital of all proceedings in compli-
 4 ance with this act; ~~and said~~ *Such* recital shall be prima facie evidence
 5 that ~~said the~~ *the* proceedings were ~~had~~ *conducted* in the manner and form
 6 recited. Such deed shall be approved as to form by the attorney general.
 7 When such real estate ~~shall be so~~ *is* sold, the proceeds thereof, after
 8 deduction of the expenses of such sale and the cost of the ~~appraisement~~
 9 *appraisal* of the real estate, shall be paid into the state treasury.

10 (b) *The provisions of subsection (a) shall not apply to any portion of*
 11 *the real estate described in K.S.A. 75-3351, and amendments thereto,*
 12 *which is identified as surplus real estate as provided in section 1, and*
 13 *amendments thereto. Any portion of the real estate which is identified as*
 14 *surplus real estate may be sold in accordance with section 1, and amend-*
 15 *ments thereto.*

16 Sec. ~~[3]~~ *[3]* K.S.A. 75-3352 ~~[3]~~ *[3]* hereby repealed.

17 Sec. ~~[4]~~ *[4]* This act shall take effect and be in force from and after its
 18 publication in the statute book.

4.

75-3043a and

are

5.

1 ments thereon, shall be credited to a surplus real estate special revenue
 2 fund of the state agency established under subsection (g) or any other
 3 special revenue fund that is available to the state agency. The costs of
 4 appraisal as provided under subsection (d), other costs of the sale and the
 5 administrative fee charged by the secretary pursuant to this subsection
 6 shall be paid from the special revenue fund to which the proceeds of the
 7 sale are credited.

8 The secretary of administration shall direct the director of accounts
 9 and reports to transfer from the special revenue fund to which the pro-
 10 ceeds of the sale of surplus property is credited an administrative fee in
 11 an amount equal to 15% of the gross proceeds of the sale. The adminis-
 12 trative fee shall be transferred and credited to the property contingency
 13 fund created under K.S.A. 75-3652, and amendments thereto, and may
 14 be expended for any operations of the department administration.

15 (g) Any state agency may apply to the director of accounts and reports
 16 for authority to establish a surplus real estate special revenue fund in the
 17 state treasury. State agencies may deposit in a surplus real estate special
 18 revenue fund the proceeds from the sale of surplus real estate. Subject
 19 to the provisions of appropriations acts, moneys in a surplus real estate
 20 special revenue fund may be expended for operations of the agency.

21 Sec. ~~62~~ K.S.A. 75-3352 is hereby amended to read as follows: 75-
 22 3352. (a) Before any property ~~shall be~~ is sold under the provisions of this
 23 act, the real estate described in K.S.A. 75-3351 shall be appraised ~~by three~~
 24 ~~(3) disinterested appraisers acquainted with land values in the county in~~
 25 ~~which such land is located and appointed] as provided in K.S.A. 75-3043a.~~
 26 Such appraisement, and amendments thereto. The appraisal shall be in
 27 writing and filed with the secretary, and the cost of the appraisement
 28 appraisal shall be paid from the proceeds of the sale.

29 Upon the filing of such appraisement appraisal, the secretary of social
 30 and rehabilitation services shall advertise for sealed bids on the real estate
 31 described in K.S.A. 75-3351, and amendments thereto, for not less than
 32 three consecutive weeks by publications in a newspaper of general cir-
 33 culation in Mitchell county, Kansas, and authorized by law to publish legal
 34 notices. Such sale shall be made to the highest responsible bidder whose
 35 bid is submitted within ~~thirty (30)~~ 30 days after the last publication of
 36 such notice, ~~except that said.~~ The secretary may reject any and all bids,
 37 ~~and in case.~~ If all bids are rejected, bids may be called for again as in the
 38 first instance. Each bid shall be accompanied by a certified check in the
 39 amount of ~~five percent (5%)~~ 5% of such bid which ~~sum~~ shall be forfeited
 .0 in case of default by any bidder whose bid is accepted. ~~In no event shall~~
 41 ~~such~~ Real estate shall not be sold for less than the appraisement thereof
 42 appraisal value.

43 Upon acceptance of any such bid, a deed conveying such real estate

(h) The provisions of this act do not apply to the disposition of property interests by the secretary of transportation under K.S.A. 68-413.

Sec. 2. K.S.A. 75-3043a is hereby amended to read as follows: Except as otherwise specifically provided by statute or regulation, prior to the state of Kansas or any agency thereof purchasing or disposing of any real property, by deed, mortgage, gift or other means of conveyance, transfer or exchange, such property shall be appraised by at least one appraiser ~~three (3) disinterested appraisers~~, to be appointed by the judicial administrator, to determine the market-value appraisal of such property; but nothing in this section shall be construed as establishing or limiting the consideration for the acquisition or disposition of any such property. Any appraiser selected pursuant to this section shall receive reasonable fees or compensation from legislative appropriations made available therefor.

3.

SENATE BILL 248
TESTIMONY TO SENATE WAYS AND MEANS COMMITTEE
February 24, 2000

My name is Marlin Rein and I appear on behalf of the University of Kansas Medical Center in support of House Substitute for Senate Bill 248.

The original Senate Bill 248 amends K.S.A. 76-833 pertaining to construction projects at the University of Kansas Medical Center financed from private monies. This statute was initially enacted in 1993 and revived in the 1996 session. The original intent of the legislation was to provide the institution a degree of freedom from typical State processes in construction and remodeling projects financed from private monies.

Senate Bill 248 amends the current law in two respects--1) it removes the cap of \$500,000 on the cost of a project subject to this act, and 2) strikes the sunset clause which would cause this authority to expire on June 30, 2001.

The original legislative authority was sought to remove delays that were often associated with these small projects financed from private monies. Contributors of the funds are not understanding of the bureaucratic controls that tend to delay these projects.

The second change is the removal of the \$500,000 cap. Most projects for which this authority is utilized are small remodeling and renovation projects. Even though the cap would be removed, we wouldn't envision that this authority be used for major new construction in that the Endowment Association has separate authority to do these projects. While the source of money for the projects with which this bill is concerned are also often funded from the Endowment Association, the scope of the projects are generally so small that the Endowment Association does not wish to undertake managing them.

Projects would have to be approved by the Board of Regents and the plans and specifications reviewed and approved by the Secretary of Administration. Further, the Board of Regents approval is contingent on the University advising and consulting with the Joint Committee on State Building Construction.

The proposed revision to Substitute for Senate Bill 248 is to enable research foundations at Regents institutions to also initiate and complete capital projects on State-owned property. Here again, approvals are required by the Board of Regents and the Secretary of Administration as well as the advising with the Joint Committee on State Building Construction. This amendment is not specific to the University of Kansas or the University of Kansas Medical Center but would be applicable to any Regents institution which had a separately established research foundation for the primary purpose of encouraging, fostering and conducting scholarly investigation for the benefit of the educational institution. Use of this additional authority is again not unlike the private money provisions at the Medical Center. In order to expedite research projects funded typically with federal monies, often times a lab renovation or upgrade is needed. This provision would again apply principally to projects of modest size but for which expediting completion is imperative to facilitating the conduct of the research.

With those comments, I would be pleased to stand for questions.

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ATTACHMENT 11



KANSAS BOARD OF REGENTS

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February 23, 2000

Honorable David Adkins, Chairman
House Appropriations Committee
Capitol Building
300 SW 10th Street
Topeka, Kansas 66612

Subj: House Substitute for Senate Bill 248

Dear Representative Adkins,

The Kansas Board of Regents approved this legislative initiative at their meeting on November 18, 1999. The initiative would treat non-state funded projects at the University of Kansas Medical Center and Research Foundations, in the same manner as Endowment Associations for the state universities under KSA 76-756.

As with current endowment projects, procedures are proposed to safeguard the State's interests. The projects may only be approved by the Board of Regents after the Joint Committee on State Building Construction has been advised and consulted. Further, plans and specifications must receive approval by the Secretary of Administration, and the Secretary must accept the project before it becomes the property of the State of Kansas.

The primary benefit of this bill is the flexibility afforded as explained by the following examples. There have been instances where a major donor has wanted to be an active participant in the selection of the architect. Current statutes pertaining to the architectural selection process would preclude this participation. Gifts-in-kind can be negotiated with relative ease as opposed to the change order process under state procurement regulations. Projects are not charged a 1% fee for the Department of Administration's administrative oversight. The projects are typically completed more quickly, particularly during the planning stages, due to a fewer number of participants and reviews.

The universities have completed dozens of endowment projects over the years, and there is no indication that there is a higher incidence of construction related problems on those projects than on state supported projects.

I would support House Substitute for Senate Bill 248 and would be pleased to answer questions or provide additional information should you have the need.

Sincerely,


Eric King
Director of Facilities

cc: Kim Wilcox
Mike Matson
Legislative Liaisons

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