

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 8:30 a.m. on February 14, 2008 in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Kansas Legislative Research Department
Jason Thompson, Revisor of Statutes
Matt Todd, Revisor of Statutes
Adrienne Halpin, Committee Assistant

Conferees appearing before the committee:

Marilyn Jacobson, Secretary of Administration
Trudy Aron, American Institute of Architects
Tom Thompson, Sierra Club
Diane Gjerstad, Wichita Schools
Scott Heidner, Consulting Engineers Association
Corey Peterson, Associated General Contractors
Dr. Gary George, United School Administrators
Ray Hammarlund, Director of Energy Office

Others attending:

See attached list.

Chair McGinn opened the hearing on **SB 452** which prescribes certain energy conservation measures and reporting requirements for state agencies.

Raney Gilliland, Legislative Research Department commenced with a brief explanation of the bill stating that the first section of the bill contains definitions while the second prescribes certain requirements for state agencies including: fuel standards for state-owned motor vehicles; purchase standards for product equipment, such as light bulbs; data collection of energy consumption; and energy efficiency performance standards for newly constructed buildings, including state schools.

Marilyn Jacobson, Director, Division of Finance and Facilities Management, Kansas Department of Administration (KDA), testified in favor of **SB 452** (Attachment 1). Ms. Jacobson stated that the bill would place new responsibilities with the KDA including the oversight of energy requirements in new construction. Results of the legislation would also include the necessity of a salaried, qualified engineer to assess data analysis and provide written reports. Ms. Jacobson stood for questions.

Trudy Aron, Executive Director, American Institute of Architects in Kansas, spoke in favor of the bill (Attachment 2). Ms. Aron stated that the state-wide association is committed to designing facilities that leave a lighter carbon footprint on the environment. The bill, she stated, would be good start in making schools—and other state buildings—more energy efficient. Ms. Aron suggested changes to the bill's wording including: (1.) adding a definition for "new construction" to include mechanical systems, (2.) removing the word "certify" from page two due to liability insurance purposes, and (3.) and removing section "B." from page 3 because of the difficulty in determining variability in performance standards. Ms. Aron stood for questions.

Tom Thompson, Sierra Club, also spoke in favor of the bill (Attachment 3). Mr. Thompson stated that energy conservation would effect long-term savings and that the State should take leadership in this area. Mr. Thompson suggested an alteration to page 1 line 27 so that the bill would be understood to take effect in the year 2010 and continue in subsequent years. Mr. Thompson stood for questions.

Diane Gjerstad of Wichita Schools addressed the Committee in opposition to **SB 452** (Attachment 4). Ms. Gjerstad stated that the Wichita school system voluntarily founded an energy program fifteen years ago. To conserve energy and reduce expenses, the school system began, not with the costly process of updating buildings, but with changing human habits; after a bond issue, they were able to begin replacing outdated systems. They currently lead a natural gas buying group which includes fifty other school districts, allowing

CONTINUATION SHEET

MINUTES OF THE Senate Natural Resources Committee at 8:30 a.m. on February 14, 2008 in Room 423-S of the Capitol.

the schools to make purchases below market price. Since the commencement of the program, energy consumption has been reduced by 35%. The difficulty **SB 452** presents to schools, Ms. Gjerstad stated, is the compliance code requirements for computer modeling of all projects which would require a simulation for the entire year. Ms. Gjerstad contended that schools cannot predict the variability of functions within a single school during the year including auditorium use, gymnasium use, after school programs, students moved from one room—or school—to another, or the effects of weather changes. Ms. Gjerstad objected to section seven of the bill which would place responsibility for regulation on the state instead of on local government entities who may best know particular cases and needs. Ms. Gjerstad stood for questions.

Chair McGinn requested that the Committee note the written testimony of Chris Wilson, Kansas Building Industry Association.

Scott Heidner, Executive Director, American Council of Engineering Companies of Kansas (ACEC) presented neutral testimony stating that ACEC's concerns had already been addressed by others and included removing section "B" and the word "certified" because of insurance liability purposes (Attachment 5). Mr. Heidner stood for questions.

Corey Peterson, Executive Vice President, Associated General Contractors (AGC), provided neutral testimony (Attachment 6). Mr. Peterson stated, however, that section "7B" presents potential problems for the future, possibly initiating a scenario where neither architect, contractor, nor builder would be responsible for non-compliance with the new construction standards. Mr. Peterson stood for questions.

Dr. Gary George, Assistant Superintendent, Olathe USD 233, also presented neutral testimony (Attachment 7). Dr. George requested that school districts be removed from the legislation since many schools have already implemented similar changes without legislation. Olathe, he stated, has had an energy program for the past thirteen years. Dr. George also cited complicating factors including bond issues, time lines, ambiguous standards and definitions, and the unknown future cost of energy. Dr. George stood for questions.

Lastly, Ray Hammarlund, Director, Energy Programs Division, Kansas Corporation Commission (KCC) presented neutral testimony to the committee (Attachment 8). Mr. Hammarlund briefly presented the Facility Conservation Improvement Program (FCIP) and highlighted the program's potential projects, benefits, and process of participation. Mr. Hammarlund stood for questions.

Senator Lee requested further information concerning state and national energy efficiency standards, including those for state buildings.

Senator Francisco motioned to approve the minutes from February 1st with corrections; Senator Ostmeyer seconded the motion. The motion carried.

The meeting adjourned at 9:30.

**SENATE NATURAL RESOURCES COMMITTEE
2008 Session**

Guest Roster—Please Sign and Pass On

2-14-08

(Date)

Judy Gron	Am Inst of Architects
Marilyn Jacobsen	DOA
Sam George	Olathe Schools / USA
Eric Stafford	AGC of KS
Ray Hammarlund	KCC
Sean Miller	CAPITOL STRATEGIES
Berend Koops	KDWP
Tom Thompson	Sierra Club
Scott Heidner	ACEC of Kansas
HARRY BEGG	KACCT
LORI DESCH	Pmca of KS
Austin Harden	Hein Law Firm
Lon Ballard	USD 470 - Ark City Schools
Darwin Reese	BOE USD 470
DAN MORGAN	Builders Assn. / KC Chapter, AGC
Joe Montague	DOA Energy Auditor
Erik Wisner	KDA
Terry Heidner	KDOT
Dodie Weiskopf	USA / Kansas
Katelyn Utgen	KBIA

Please use black ink only!!

**Kansas Department of Administration
Duane A. Goossen, Secretary
Carol L. Foreman, Deputy Secretary
1000 S.W. Jackson, Suite 500
(785) 296-3011**

**Senate Committee on Natural Resources
SB 452**

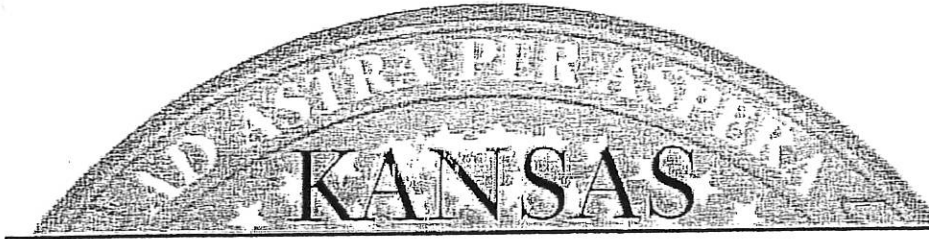
**Marilyn L. Jacobson, Director
Division of Finance and Facilities Management
February 14, 2008**

Thank you for allowing me to discuss the role of the Department of Administration (DOA) in SB 452. SB 452 is a combination of tasks and responsibilities contained in Executive Directive 07-373 (copy attached) and new responsibilities (Sec. 6 and 7). Specifically, the additional tasks require the Department of Administration to set criteria and manage energy consumption and water usage in newly constructed facilities including state buildings and public schools. DOA is responsible to ensure that the project design and construction meets the energy requirements and that project certification is accomplished as required.

The dollar effect on DOA's budget would be the salary of a qualified engineer to review project design and construction and a public service administrator for data collection analysis and reporting. The total direct operating expenses would be \$149,500.

Thank you for this opportunity and I will be glad to stand for questions.

*Senate Natural Resources
February 14, 2008
Attachment 1*



OFFICE OF THE GOVERNOR

KATHLEEN SEBELIUS, GOVERNOR

EXECUTIVE DIRECTIVE NO. 07-373

Energy Conservation And Management

By virtue of the authority vested in the Governor as the head of the Executive Branch of the State of Kansas, the following actions are hereby directed:

There is no more effective or environmentally appropriate way to address energy shortages, increasing costs, air pollution and climate change than using less energy. Therefore, energy efficiency and conservation will be priorities of this administration for the next four years. While some Kansas energy conservation efforts are nationally recognized as best practices, there is much more that must be done. Good leadership requires good stewardship. The following initiatives will provide the foundation of a vigorous efficiency and conservation effort that will place Kansas State Government at the forefront of appropriate and effective energy and environmental practices.

First, I am directing the Department of Administration, in cooperation with the Kansas Energy Office and the Energy Steering Committee, to conduct a survey of all state employees requesting energy saving suggestions specific to their agency, or to the whole of state government. I fully expect to expand the issues outlined in this document based on suggestions from the workforce. My goal is to complete the survey by July 1, 2007.

2. I am directing the Department of Administration to adopt a policy to require an energy audit on any facility being considered as leased space and require the landlord to either make the necessary improvements on the property or make them a condition of the lease before it is executed. Further, I am directing the Department of Administration to collect energy data associated with state-owned and leased space and identify locations appearing to use excessive energy.
3. I am directing the Department of Administration and the Kansas Corporation Commission to immediately initiate an evaluation of the advantages for the State to become a member of the Chicago Climate Exchange (CCX). The CCX membership would require a commitment on the part of the state to reduce carbon dioxide emissions to an agreed upon goal through energy conservation practices and/or the increased use of

clean and renewable sources of energy. Failure to meet agreed upon goals would result in financial penalties.

4. I am directing the Department of Administration to take necessary measures to assure that the average EPA mileage rating for automobiles purchased in 2010 is at least 10% higher than the 2007 average.
5. I am directing the Department of Administration negotiate the next contract with an auto leasing company to assure that the average EPA mileage rating for cars provided under the 2010 lease is at least 10% higher than the average for cars provided under the current lease.
6. I am directing the Department of Administration to review its purchasing practices to assure 100% compliance with existing requirements related to energy conservation and to develop or increase standards for such products as appliances, light bulbs, and computers using Energy Star® as a minimum standard.
7. I am directing that all computers not having a technical or operational need, be turned off at work stations when not in use for a period of four or more hours.
8. I am directing the Department of Administration to establish an Energy Auditor position charged with oversight of the initiatives set out in this order. The Auditor shall submit an annual status report to the Governor and present the report to the Governor's Cabinet at a special meeting focused on energy conservation at least once a year.
9. The Auditor shall be a professional architect or engineer with experience in energy/utility management.

I am pleased that the Department of Health and Environment has initiated a recycling program in state government. Currently only a few buildings are participating and I am directing the KDHE and the Department of Administration to expand that program to every state office by December 2007.

11. I am directing the Department of Revenue to include information on fuel efficiency in the operation of vehicles and include questions on this topic in the examination for all classes of operator licenses.

Kansas is recognized by other states as having one of the best energy savings performance contracting programs in the country, known as the Facilities Conservation Improvement Program (FCIP). The Kansas Corporation Commission's Energy Office has facilitated the implementation of energy efficiency improvements in nearly half of the 40 million square feet of state-owned buildings. These improvements not only pay for themselves with reduced energy bills, but significantly reduce the emission of greenhouse gases. I expect to implement improvements in the remaining state-owned buildings by December of 2010.

- 13: The FCIP is also available to local governments and school districts and some have utilized the program. I am directing the Kansas Energy Office to accelerate efforts to market the FCIP to school districts and local governments. Kansas taxpayers should not be paying the bill for wasted energy in any of our public institutions.

I will request the legislature to require the Kansas Energy Office review all state construction projects, both new and remodeling, that exceed \$100,000 for possible inclusion in the FCIP. This will include Regent's facilities. I will oppose any funding for deferred maintenance that is not subject to this requirement.

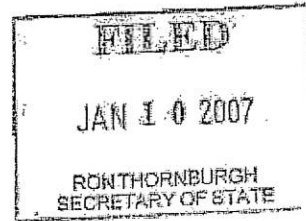
THE GOVERNOR'S OFFICE

By the Governor

William Salsbie

Ron Thornburgh
Secretary of State

Brad Bryant
Assistant Secretary of State



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February 14, 2008

TO: Natural Resources Committee
FROM: Trudy Aron, Executive Director
RE: Support of SB 452



Good Morning Senator McGinn and Members of the Committee, I am Trudy Aron, Executive Director of the American Institute of Architects in Kansas. Thank you for allowing me to testify in support of SB 452.

President
C. Stan Peterson, FAIA
Topeka
President Elect
David S. Heit, AIA
Topeka
Secretary
J. Michael Vieux, AIA
Leavenworth
Treasurer
Nadia Zhiri, AIA
Lawrence
Douglas R. Cook, AIA
Olathe
Corey L. Dehn, AIA
Topeka
Dale R. Duncan, AIA
Olathe
S. L. Ferguson-Bohm, AIA
Wichita
John Gaunt, FAIA
Lawrence
David Livingood, AIA
Lawrence
Peter Magyar, Assoc AIA
Manhattan
Bruce E. McMillan, AIA
Manhattan
Hans Nettelblad, AIA
Overland Park
Gary Nevius, AIA
Overland Park
Wendy Ornelas, FAIA
Manhattan
Daniel Sabatini, AIA
Lawrence
Zach Snethen, Assoc AIA
Topeka
Daniel (Terry) Tevis, AIA
Lenexa
Jerry E. Volesky, AIA
Topeka
Eric Wittman, Assoc AIA
Wichita

AIA Kansas is a statewide association of architects and intern architects. Our 700 members are currently designing the facilities we will all use into the future. That is why our members are designing these facilities to leave a lighter carbon footprint on our environment. The goal of our national organization is to design facilities that reduce the fossil standard for all new facilities 60% by 2010 and reducing the standard by 10% in each subsequent five years to be carbon-neutral in 2030. These targets can be accomplished by implementing innovative sustainable design strategies, generating on-site renewable power and/or purchasing (20% maximum) renewable energy and/or certified renewable energy credits. We are providing our members with the tools to reach these benchmarks.

SB 452 provides energy and water reduction standards for state buildings and schools. AIA Kansas believes this bill is a good start on making our schools and state buildings more energy efficient and will reduce our water usage. We do, however, have several changes we would like you to consider. They are:

Page 1, line 20 add, "d) New construction projects" means new buildings and additions that include mechanical systems and/or envelope." We ask for this addition to include new buildings and additions that will replace or add elements that lend themselves to reductions in energy and/or water consumption. An example of a project that would not need to reach these standards would be a change in the use of rooms in a school to add or divide spaces.

Page 2, line 25: insert "and" between designed and constructed and remove the words "and certify." Scott Heidner has already addressed the need for this removal.

Page 3, pages 15-22: remove section 7 (b). We ask for this removal as being very difficult to determine. An example would be a school that is designed and built to be used 5 days a week from 8 am – 4:00 pm. If that school is then used for extra curricular activities until 9:00 pm each evening, on Saturdays for sporting events, and on Sundays for community activities, the consumption for energy and water would be greater than that for which it was designed.

With these changes, we believe this is a good start to limiting the energy and water our state-funded buildings use. We ask that you amend the bill and pass it out of committee favorably. I'll be glad to stand for questions.

Executive Director
Trudy Aron, Hon. AIA, CAE

700 SW Jackson, Suite 503
Topeka, Kansas 66603-3758
Telephone: 785-357-5308
800-444-9853
Facsimile: 785-357-6450

Senate Natural Resources
February 14, 2008
Attachment 2

Testimony for the Senate Natural Resources Committee
February 14, 2008
Supporting S. B. 452

Chairperson McGinn and Honorable Members of the
Committee:

My name is Tom Thompson and I represent the Kansas
Chapter of the Sierra Club. I am here to support SB 452.

Whether someone is trying to decrease greenhouse gasses
or save money, in the long run, conservation and efficiency
measures are effective. SB 452 provides for vehicles
purchased and buildings purchased or leased by the state to
be more efficient.

We suggest that on page 1, line 27 that it say "...year 2010
and after shall not be less than 10% higher." We would like
to see this happen for more than one year.

Often building construction is looked upon as a short-term
expense. If conservation and efficiency methods are
included in construction there can be long-term savings.

The Sierra Club applauds any attempt by business and
individuals to be more energy efficient. It encourages the
state, with this bill, to take leadership by being more
efficient itself.

The Sierra Club encourages this committee to pass SB 452.

Sincerely
Tom Thompson
Sierra Club

*Senate Natural Resources
February 14, 2008
Attachment 3*



**Senate Natural Resources Committee
Senator McGinn, chair**

S.B. 452 – Energy standards for school construction

*Submitted by: Diane Gjerstad
Wichita Public Schools
February 14, 2008*

Madame Chair, members of the Committee:

Wichita Public Schools fifteen year-old energy conservation program has received national recognition. The district has cost avoided over \$50 million dollars over fifteen years, quite a feat in a district where the average age school is over 60 years old. The district also leads a natural gas buying consortium of over 50 districts that combine volumes to buy transport natural gas. Wichita Public Schools takes the conservation of both taxpayer resources and natural resources seriously.

However we do object to the inclusion new school construction to the provisions contained within SB 452. The issue is not complying with IECC standards; our objections are: IECC section 506; 25% reduction in energy consumption: and section 7 b authorizing an outside person to investigate and recommend corrective action if a new building does not lower consumption by 25%. IECC section 506 has costly and time-consuming computer modeling, measurement & verification and documentation which will increase up-front costs and place a paperwork burden on schools. We have many questions about the requirement to reduce energy and water consumption by 25%. Consumption patterns are driven largely by people – schools are “people intensive” businesses. Moving a program can shift a hundred students from one building to another. SB 452 would place schools in the position of making programmatic decisions, not for educational reasons, but to meet an arbitrary goal in this bill. And finally page 3, section 7 b creates a compliance officer who would ‘investigate’ and recommend corrections for buildings not meeting the goal. We strongly believe in local control and that programmatic decisions should be entrusted to locally elected School Boards without extraordinary restrictions.

Schools are fluid – changes in population, overcrowding, changes in federal rules governing special education, *No Child Left Behind* sanctions are reasons why programs have moved. For example during the 2000 bond issue Washington Elementary and Lynwood Elementary were both re-built. Lynwood quickly exceeded capacity. The District moved a 125 student ESOL program to Washington. That move of 125 students impacted Washington’s consumption – just as summer school, athletic tournaments, rental agreements and teacher training workshops. Another example in Wichita was the completion of Stucky Middle School. We were so happy to have a new middle school with a new auditorium that for the first three years Stucky hosted every special meeting!

Finally school construction is normally financed through bond issues. The passage of Wichita’s 2000 bond issue launched 80 projects which had to be designed and constructed within five years. The attachment lists most of the projects. We built nine new schools; most of our neighborhood schools received from 4 to 10 new classrooms. Layering another state agency, computer modeling, requiring yet another sign-off will delay construction, add cost and delay occupancy on already tight time-schedules.

Madame Chair, our new schools are already meeting most of the standards in IECC without the costly overhead found in this bill. SB 452 is an added expense which is not needed.

*Senate Natural Resources
February 14, 2008
Attachment 4*

Wichita Public Schools
 Bond Construction 2000-2007
 Updated 2/7/08

H.R.

Elementary Schools					Elementary Schools (cont.)					Middle Schools				
School Name	Added Classrooms	Library	MPR	Cafeteria	School Name	Added Classrooms	Library	MPR	Cafeteria	School Name	Added Classrooms	Library	MPR	Cafeteria
Adams	8	1	1		Irving	12				Allison	9	1		
Allen	new				Jackson	new				Brooks	13	1		
Anderson	6				Jefferson	10	1	1		Coleman	8			
Beech	4				Kelly	5		1		Curtis	4	1		
Benton	4				Kensler	5				Hadley	11	1		
Black	2				Lawrence	5				Hamilton	19			
Bryant	6				Levy	7				Jardine Diversified	8			
Buckner	11	1	1		Lincoln	3	2			Marshall	13			1
Caldwell	5				Linwood	new				Mayberry	5	1		
Cessna	7	1			Little	3		1		Mead	8	1		
Chisholm Trail	4	1			L'Ouverture	8	1	1		Pleasant Valley Middle	4			
Clark	6				McCullom	4				Robinson	9			
Cloud		1			McLean	4				Stucky	new			
College Hill					Minneha	5	1			Wilbur	8			
Colvin	12			1	OK	11		1		High Schools				
Earhart	new				Park	11	1	1		School Name	Added Classrooms	Library	MPR	Cafeteria
Emerson	1		1		Payne			1		Chisholm Life Skills	5		1	
Enterprise	new				Peterson	3	1			East	25			1
Franklin	5		1	1	Pleasant Valley	6				Heights	26			
Gammon	2				Price-Harris	15	1	1		Metro Boulevard	2			
Gardiner	8				Riverside			1		Metro Meridian	1		1	
Gordon Parks Academy	new				Seltzer	3				Metro Midtown	2			
Greiffenstein	3	1	2		Stanley	2				North	51	1		
Griffith	12	1	1		Washington	new				Northeast	5			
Harry Street	1	1	1		White	21	1	1		Northwest	27			
Horace Mann	new				Woodland	3		1		South	28			
Hyde	1	1	1		Woodman			1		Southeast	16			
										Sowers	2		1	
										West	19			
	108	9	9	2		146	9	12	0		328	7	3	2

Grand Totals Added Classrooms: 582 Libraries: 25 MPR's: 24 Cafeterias: 4 New Schools: 9



AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Kansas

Affiliated with:
American Council of Engineering Companies
Kansas Society of Professional Engineers
National Society of Professional Engineers
Professional Engineers in Private Practice

TESTIMONY

TO: SENATE NATURAL RESOURCES COMMITTEE

FROM: SCOTT HEIDNER
EXECUTIVE DIRECTOR
ACEC KANSAS

RE: SB 452

DATE: FEBRUARY 14, 2008

Chair McGinn, members of the committee, thank you for the opportunity to share our input on SB 452. My name is Scott Heidner, and I am the Executive Director of the American Council of Engineering Companies of Kansas (ACEC Kansas). We are the association that represents private consulting engineering companies in Kansas. We have approximately seventy five member companies, employing several thousand Kansans.

Our testimony today applies only to sections 6 and 7 of the bill. We appear today as neither a proponent or an opponent of the bill in its entirety, but to urge you to amend sections 6 and 7. We support the intent, but there are several ambiguities and problems.

In section 6, the bill requires rules and regulations be adopted requiring certain energy standards for state construction projects, specifically that they be "designed, constructed, and certified" to meet certain energy efficiency levels. This is going to present serious problems for both the design professional and the owner of the facility, in this case the state. The problem is specifically with the word "certified".

Professional liability insurance policies will not cover contracts which require the design professional to "certify" the performance of the product. The same is true of words such as "warranty" or "guarantee". Engineers are rightly held to very high standards, but are not in a position to offer such assurances on the performance of the final product. They are not present at every step of construction and are generally not in control of how the final product is used.

*Senate Natural Resources
February 14, 2008
Attachment 5*

Scott Heidner, Executive Director

This problem is even more prevalent with the type of energy efficiency systems envisioned under this bill. These systems in many cases will require complex construction, and specific requirements on usage once constructed. The design professional is not in a position to ensure either of these things. When annual audits are conducted, and a building is found to be out of compliance, the designer will not have been in a position to ensure that the systems and instructions have been properly used.

The results of requiring such an assurance can be disastrous due to the fact that it is not insurable. A claim against a design professional, when not covered by their professional liability policy, can result in economic losses far beyond what most firms can pay. In such a case the owner, in this case the state, also is unable to recoup monies that are owed. It is truly a lose-lose situation.

We recognize that the bill asks the Secretary of Administration to enact rules and regulations which may further define some of these issues, but we strongly urge you to clarify this language in the bill so the direction will be clearer. Either removing the word "certified", or making it clear that the "certification" is in no way a requirement of the design professional, would make this language more effective.

We realize that this section is part of a larger public policy question, and we have no desire to be an impediment to your pursuit of broader policy questions.

With that, we would urge you to amend this language, and would be happy to stand for any questions. Thank you.



Building a Better Kansas Since 1934
200 SW 33rd St. Topeka, KS 66611 785-266-4015

**TESTIMONY OF
ASSOCIATED GENERAL CONTRACTORS OF KANSAS
BEFORE SENATE COMMITTEE ON NATURAL RESOURCES
SB 452**

February 14, 2008

By Corey D Peterson, Associated General Contractors of Kansas, Inc.

Madam Chairman and members of the committee, my name is Corey Peterson. I am the Executive Vice President of the Associated General Contractors of Kansas, Inc. The AGC of Kansas is a trade association representing the commercial building construction industry, including general contractors, subcontractors and suppliers throughout Kansas (with the exception of Johnson and Wyandotte counties).

AGC of Kansas is neutral on SB 452 and asks that you consider an amendment.

The AGC of Kansas has concern with language included in sections 6 and 7, establishing new energy efficiency standards for state-owned buildings and public schools. More specifically, New Section 7(b) where it states:

“If the average building energy or water consumption savings over the one-year period following the date of beneficial occupancy is 85% or less than the energy efficiency performance standards or water efficiency performance standards established pursuant to this act, parties including, but not limited to, the building architect or designer, state agency or school district and the contractor or the construction manager at risk, shall investigate, determine the cause of the failure to achieve the standards and recommend corrections or modifications to meet such standards.”

AGC has concerns with the provisions that require the “contractor or construction manager at-risk to investigate and determine the cause of the failure to achieve the standards and recommend corrections or modifications to meet such standards”. First it is sure to create a situation that will more likely result in “finger pointing” between parties instead of resolution. Secondly, who is to pay for these professionals to return to a job one year after completion? Also, even if the building is designed and constructed according to the code, how can a contractor determine whether the occupying owner followed the recommended operating procedures?

Finally, representatives from the bonding industry have expressed their concern that the language in section 7 will result in performance guarantees for general contractors. The fear is that SB 452 will obligate the general contractor to a performance guarantee. If that happens, the bonding company will not offer surety support if a performance bond is required.

Again, the AGC of Kansas **is neutral on SB 452 and asks that you consider the attached amendment.** Thank you for your consideration.

*Senate Natural Resources
February 14, 2008
Attachment 6*

**Testimony on
S.B. 452**

Senate Committee on Natural Resources

February 14, 2008

Presented by:

Dr. Gary George, Assistant Superintendent, Olathe USD 233*

Thank you for the opportunity to appear before you this morning. I would like to make clear to members of this committee that I am not here in opposition to or as a proponent of **S.B. 452**. I am here to speak to a specific section of the bill that would significantly impact school districts.

S.B. 452, Section 6, mandates that “new construction projects by state agencies *and public school buildings for school districts* be designed, constructed and certified to achieve energy consumption levels that are at least 25% below the levels established under the ASHRAE standard or the IECC, as appropriate, if such levels of energy consumption are life-cycle cost-effective for such projects and buildings.” **We respectfully request that school buildings be removed from this section of the proposed legislation.**

Many Kansas school districts have adopted energy management programs, implemented energy-saving strategies, and adopted environmentally-preferable practices. Districts have taken voluntary steps to ensure that public school buildings and facilities, especially those newly constructed, are designed to increase energy efficiency and reduce consumption to the maximum extent practicable given resources available. Several districts are building facilities to meet the Leadership in Energy and Environmental Design (LEED)1 certification standards and purchase products that have the Energy Star designation.

Beyond this basic premise, there are other technical aspects of this Section that raise significant concerns for districts, including:

¹Green Building Rating System developed by the U.S. Green Building Council

*Senate Natural Resources
February 14, 2008
Attachment 7*

1) The timeline for implementation

The provisions of this bill are applicable to any building or structure where the construction commences after its publication in the statute book. The legislation stipulates that the Secretary of Administration will develop rules and regulations for compliance; however, the bill does not specify a timeline for promulgation of the rules or provide for public feedback during the process.

2) The undetermined and unfunded compliance costs for implementation

This year (FY 2008), twenty-five (25) districts have scheduled bond elections for construction of and renovations to school buildings and facilities. To-date, eleven (11) initiatives have passed and nine (9) are scheduled to be voted upon later this year. Last year (FY 2007), ten (10) districts successfully passed bond issues. In most cases, the bond initiatives include projects scheduled for construction with the next 3-5 years. Cost estimates for these projects do not include the mandates proposed in the bill and [in 2007] were approved, by taxpayers, with the expectation that these projects would be completed within a specified time period and at the projected cost. In fact, in future bond elections, increased costs may make it more difficult for districts to fund new construction. The alternative may be to continue operating less efficient facilities.

While school districts have been voluntarily implementing energy efficiency and cost savings programs, they are doing so within the constraints of limited budget authority and resources allocated for construction costs. Section 6 requires public school districts to meet the proposed standards “if such levels of energy consumption are life-cycle cost-effective for such buildings.”

If districts are required to meet these additional compliance standards, we believe that this legislation should include language that holds the state responsible for any additional compliance costs.

3) The determination of life-cycle cost-effectiveness

This standard for implementation is ambiguous. We recognize that determining true cost-effectiveness requires a life-cycle perspective; however, it also requires that all costs and benefits of a given project be evaluated and compared over its economic life. The challenge and uncertainty lies in how best to determine the true costs and benefits of implementing standards.

It is reasonable to expect that the provisions of this bill will increase building design and construction costs. Architectural and engineering modifications during the design and building phases are major contributors to the overall cost of capital projects. The methodology employed for calculating the “life-cycle” cost effectiveness, unless specified, will produce varied determinations about how long it would take districts to realize any benefit.

Ultimately, additional costs, if not funded by the Legislature, will likely result in higher local mill levies and raise the cost of state aid for bond and interest.

The potential excess costs associated with the requirements of this bill – through increased construction costs, change orders, and additional land requirements (for run-off and reuse) – could negatively impact a district’s ability to fulfill its obligation and commitment to constituents.

We strongly encourage the committee to consider the fiscal impact this bill would have on districts and, equally as important, the potential and unintended impact this may have on school districts and local taxpayers. Again, we respectfully request that School Buildings be removed from the proposed S.B. 452.

This testimony was submitted
on behalf of

**United School Administrators of Kansas (USA|Kansas)
Kansas Association of School Boards (KASB)
Kansas Families for Education (KFE)
Kansas National Education Association (KNEA)
Schools for Quality Education (SQE)
Schools for Fair Funding (SFF)
Blue Valley School District (USD 229)
Kansas City (KCK) School District (USD 500)
Olathe School District (USD 233)
Shawnee Mission School District (USD 512)
Topeka School District (USD 501)
Wichita School District (USD 259)**

*Ray Hammerlund,
Director of Energy Office*

Steps to Success With FCIP

**Kansas Energy Office
Russ Rudy
FCIP Administrator**

Presentation Goal - To Answer...

- ⌘ What is FCIP?
- ⌘ What is Performance Contracting?
- ⌘ The benefits of Performance Contracting
- ⌘ Potential projects
- ⌘ The benefits of the FCIP
- ⌘ How to participate in the program
- ⌘ The cost to participate in the program

What is the FCIP ?

- ⌘ The FCIP is a program which enables public agencies easy access to a method of construction known as *energy savings performance contracting*
- ⌘ KSA 75-37,125 Authorizes the FCIP to provide support and resources
- ⌘ Essentially the FCIP streamlines the process of developing a partnership between a public agency and an Energy Service Company (ESCO)

*Senate Natural Resources
February 14, 2008
Attachment B*

What is Performance Contracting

- ⌘ It's a construction method of implementing energy-saving improvements within an existing budget by financing them with money saved through reduced operating expenditures
- ⌘ Facilities make no up-front investments and instead finance projects through guaranteed annual energy savings
- ⌘ This type of performance contracting is known as an Energy Service Performance Contract (ESPC)
- ⌘ It is important to note that by law the Energy Service Contractor must guarantee that the operating cost savings created by the project will pay for the project

Performance Contracting Benefits

- ⌘ Improvements are made without additional funding
- ⌘ Improvements are based on best "life-cycle" cost, not lowest bid, resulting in higher efficiency equipment
- ⌘ You have input on equipment selection
- ⌘ ESCO's design-build responsibility for all facets of construction lowers overhead costs
- ⌘ Fast-track construction costs less, resulting in more funds available for improvements
- ⌘ ESCO guarantees the results
- ⌘ No change order

Potential Projects

- ⌘ Lighting: Replace incandescent, upgrade fluorescent
- ⌘ Heating: Replace aging boilers, steam traps and pumps
- ⌘ Cooling: Replace aging chillers, cooling towers or pumps
- ⌘ Ventilation and Distribution: Install variable speed fans or replace fan or pump motors
- ⌘ Controls: Install a new energy management control system or improve operational strategies
- ⌘ Water: Install water saving plumbing fixtures
- ⌘ Building: Increase insulation levels, replace windows
- ⌘ Alternatives: Wind, peak shaving, geo-thermal

FCIP Benefits

- ☞ Pre-negotiated *standardized FCIP Contracts* with ESCO's for Audits and Construction saves time and money
- ☞ Independent *3rd party verification* of audit accuracy
- ☞ Assistance *throughout the process* from concept through project completion, including inspection
- ☞ Participation in construction administration
- ☞ Independent *3rd party assistance* with dispute resolution
- ☞ Project *follow-up assistance* with warranty items and savings guarantee resolution if necessary throughout term

How to Participate in the FCIP

☞ Three Steps

- Preliminary Audit
- Investment Grade Audit
- Energy Performance Contract

How to Participate in the FCIP

☞ Preliminary Audit

- Arrange site tour for ESCO's, provide 36 months utility data
- Create team, review ESCO presentation/proposals
- ESCO's make presentation based on site tour and info provided
- Select ESCO to move to next phase, Investment Grade Audit
- Do not select ESCO and stop process. There is no financial obligation at this stage
- FCIP participates in all steps *except* selection

How to Participate in the FCIP

☞ Investment Grade Audit

- ☑ Establish full scope of facilities to be audited and enter into standard Investment Grade Audit agreement
- ☑ IGA fee is based on pre-negotiated rates
- ☑ Financial obligation occurs *unless* ESCO cannot develop financially viable project which fits needs of customer
- ☑ ESCO completes intensive site survey to establish opportunities
- ☑ ESCO - customer workshops occur to fine tune audit details
- ☑ ESCO develops final Investment Grade Audit to become part of Energy Performance Contract
- ☑ Customer makes final approval of all IGA details
- ☑ FCIP participates in IGA review and Workshops

How to Participate in the FCIP

☞ Energy Performance Contract

- ☑ ESCO and Customer enter into standard Energy Performance Contract
- ☑ ESCO completes financing agreement details
- ☑ Kickoff meeting occurs to establish construction schedule and details
- ☑ Equipment selections submitted to customer for review and approval
- ☑ Progress meetings occur weekly with ESCO, Sub contractors, customer and FCIP
- ☑ Pay applications submitted monthly
- ☑ Project inspections occur periodically and upon completion
- ☑ Measurement and verification occurs according to contract details
- ☑ FCIP participates in all phases of Energy Performance Contract.

The Cost to Participate

☞ The FCIP is fee funded according to the following formula

- ☑ 4% of the first \$100,000 of the project amount
- ☑ 3% of the next \$400,000 of the project amount
- ☑ 2% of the next \$500,000 of the project amount
- ☑ 1% of the next \$4,000,000 of the project amount
- ☑ 1/2% of any amount in excess of \$5,000,000

☞ No fee is assessed if there is no economically viable project developed during the Investment Grade Audit

☞ Fee may be "rolled into" project finance amount

FCIP

FOR MORE INFO...

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