

MINUTES OF THE SENATE WAYS AND MEANS COMMITTEE

The meeting was called to order by Chairman Dwayne Umbarger at 10:40 A.M. on March 5, 2008, in Room 123-S of the Capitol.

All members were present except:

Senator Carolyn McGinn - excused

Committee staff present:

Jill Wolters, Senior Assistant, Revisor of Statutes
Alan Conroy, Director, Kansas Legislative Research Department
Kristen Clarke Kellems, Assistant Revisor of Statutes
Mike Heim, Assistant Revisor of Statutes
Audrey Dunkel, Kansas Legislative Research Department
Julian Efird, Kansas Legislative Research Department
Leah Robinson, Kansas Legislative Research Department
Jarod Waltner, Kansas Legislative Research Department
Melinda Gaul, Chief of Staff, Senate Ways & Means
Mary Shaw, Committee Assistant

Conferees appearing before the committee:

Theresa Gordzica, Chief Business & Financial Planning Officer, University of Kansas
Senator Marci Francisco
Corey Peterson, Executive Vice President, Associated General Contractors of Kansas, Inc.
Trudy Aron, Executive Director, American Institute of Architects
Bob Totten, Public Affairs Director, Kansas Contractors Association
Diane Gjerstad, Wichita Public Schools

Others attending:

See attached list.

Copies of the Kansas Legislative Research Department Budget Analysis Report for FY 2008 and FY 2009 were available to the committee.

Subcommittee reports on:

Kansas Department of Transportation (Attachment 1)

Subcommittee Chairman Dwayne Umbarger reported that the subcommittee on the Kansas Department of Transportation concurs with the Governor's recommendation in FY 2008 and concurs with the Governor's FY 2009 recommendation with adjustments and notations.

Senator Schodorf moved, with a second by Senator Taddiken, to adopt the subcommittee budget report on the Kansas Department of Transportation in FY 2008 and FY 2009. Motion carried on a voice vote.

Chairman Umbarger opened the public hearing on:

SB 638--Authorizing the state board of regents to convey certain real estate in Lawrence on behalf of KU

Staff briefed the committee on the bill.

The following conferees testified on the bill:

Theresa Gordzica, Chief Business and Financial Planning Officer, University of Kansas, testified in support of **SB 638 (Attachment 2)**. Ms. Gordzica explained that the bill authorizes the Kansas Board of Regents to

CONTINUATION SHEET

MINUTES OF THE Senate Ways and Means Committee at 10:40 A.M. on March 5, 2008, in Room 123-S of the Capitol.

sell the property described as Lots 11 and 12 in Block 13 in Lane's Second Addition, also known as 1043 Indiana. It was noted that the University does not wish to continue to invest limited resources on the building but believes there may be private parties interested in rehabilitating the building. Ms. Gordzica noted that the University of Kansas wants to be in good favor with the Oread Neighborhood Association and would be all right with lots 7, 8, 9 and 10 being added to the bill.

Senator Marci Francisco testified as a neutral conferee on **SB 638** (Attachment 3). Senator Francisco spoke on behalf of the Oread Neighborhood Association and she expressed concerns regarding possible parking issues related to the property.

The Chairman closed the public hearing on **SB 638**.

Chairman Umbarger opened the public hearing on:

SB 649--State educational institutions may expend non-state moneys for capital improvement projects

Staff briefed the committee on the bill.

The following conferees testified on **SB 642**:

Theresa Gordzica, Chief Business and Financial Planning Officer, University of Kansas, testified in support of **SB 638** (Attachment 4). Ms. Gordzica explained that the University requested the changes proposed in the bill primarily so they can respond more quickly when a project is developed and funded and provided some examples. She noted that exempting the universities from the capital improvements process would not give universities the ability to construct and repair at will. The Board of Regents will retain its oversight and approval role in capital improvement projects and all capital improvement projects under the proposed will still need to be presented to the Joint Committee on State Building Construction.

Written testimony was submitted by Reginald "Reggie" Robinson, President and CEO, Kansas Board of Regents (Attachment 5).

The Chairman closed the public hearing on **SB 638**.

Chairman Umbarger opened the public hearing on:

SB 642--Unified school districts; alternative building construction procurement

Mike Heim, Assistant Revisor, briefed the committee on the bill (Attachment 6).

The Chairman welcomed the following conferees on the bill:

Corey Peterson, Executive Vice President, Associated General Contractors of Kansas, Inc., who testified in support of **SB 642** (Attachment 7). Mr. Peterson explained that nationally both public and private owners are now utilizing alternative project delivery methods for construction projects in lieu of the traditional "design-bid-build" method where the lowest responsible bidder is selected. He noted that following the hearing on **SB 485**, the Associated General Contractors met with Johnson and Sedgwick Counties and came up with several minor amendments to their bill including some amendments that also made sense for the school bill, so there were included in the attached balloon which is attached to his written testimony.

Trudy Aron, Executive Director, American Institute of Architects in Kansas, testified as a proponent on **SB 642** (Attachment 8). Ms. Aron explained that **SB 642** allows school districts options on how they design and/or construct schools and currently most districts procure design and construction as three distinct and separate actions - design, bid, build. **SB 642** allows, but does not mandate, two other delivery methods. In closing, Ms. Aron noted that AIA Kansas believes that in most instances, school districts should use the usual design-bid-build delivery.

CONTINUATION SHEET

MINUTES OF THE Senate Ways and Means Committee at 10:40 A.M. on March 5, 2008, in Room 123-S of the Capitol.

Diane Gjerstad, Wichita Public Schools, testified in opposition to **SB 642** (Attachment 9). Ms. Gjerstad mentioned that just as the Associated General Contractors took time to research and analyze the impact of expanding public policy to include new alternative methods, they believe school districts should be given time to thoughtfully review, discuss and analyze whether these new alternative construction methods are in the best interest of the taxpayers and their elected board of education represent.

Bob Totten, Public Affairs Director, Kansas Contractors Association, testified as a neutral conferee on **SB 642** (Attachment 10). Mr. Totten explained that as an organization, they want the bidding process for transportation projects to be open, objective, cost effective and free of political influence. He noted that the highway construction industry supports the bill as it does not change the way school districts will procure bids on roads and highways and stand alone parking.

Written testimony was submitted by Dan Moran, Builders' Association and Kansas City Chapter, AGC, (Attachment 11).

The Chairman closed the hearing on **SB 642**.

The meeting adjourned at 12:05 p.m. The next meeting was scheduled for March 6, 2008.

SENATE WAYS AND MEANS
GUEST LIST

Date March 5, 2008

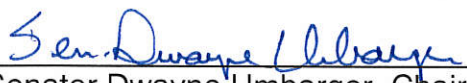
NAME	REPRESENTING
Cathy Deaton	Budget
Judy Orr	Industry of Architects
Doni White	Obstetric
marci francisco	Oread Neighborhood Assoc.
COREY PETERSON	AGC of Kansas
Scott Heider	ACEC of Kansas
Theresa Giordzica	Univ. of Kansas
Jim Modig	Univ. of Kansas
Bob Toffin	Ks Contractors
MARK BOBANYAK	CAPITOL STRATEGIES
Tom Whitaker	Ks Motor Carriers Assn
Wendy Wilson	KAPA
Wendy Wilson	KEMCA
ERIC KING	KBOR
Bob Lanning	KU
Christy Campbell	LGR
John Rasmussen	KASB
Elva Erickson	KDOT
Marci Ferrill	KDOT
SHERYL WELER	RTP
JAY KRAMER	Career Group
Callie Coco	Kearney + Associates Inc
Lindsey Douglas	Heinlaw Firm

SENATE SUBCOMMITTEE REPORT

Department of Transportation

FY 2008 and FY 2009

March 5, 2008



Senator Dwayne Umbarger, Chairperson



Senator Chris Steineger



Senator Ruth Teichman

Senate Ways and Means
3-5-08
Attachment 1

House Budget Committee Report

Agency: Department of Transportation **Bill No.** 2947

Bill Sec. 53

Analyst: Efird

Analysis Pg. No. Vol. II - 1727

Budget Page No. 397

Expenditure Summary	Agency Estimate FY 08	Governor's Recommendation FY 08	House Budget Committee Adjustments
Operating Expenditures:			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	660,332,539	660,332,539	0
Subtotal - Operating	\$ 660,332,539	\$ 660,332,539	\$ 0
Capital Improvements:			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	741,838,274	741,838,274	0
Subtotal - Capital Improvements	\$ 741,838,274	\$ 741,838,274	\$ 0
TOTAL – Reportable	\$ 1,402,170,813	\$ 1,402,170,813	\$ 0
Nonreportable Expenditures*	\$ 132,064,266	\$ 132,064,266	\$ 0
GRAND TOTAL	\$ 1,534,235,079	\$ 1,534,235,079	\$ 0
FTE Positions	3,201.5	3,201.5	0.0
Non FTE Uncl. Perm. Pos.	41.8	41.8	0.0
TOTAL	3,243.3	3,243.3	0.0

* Includes Off-Budget Nonreportable expenditures for the Radio Communications Program.

Agency Estimate

The agency's revised request includes reportable expenditures of \$1.402 billion and nonreportable expenditures of \$132.1 million, for total expenditures of \$1.534 billion. The revised request includes 3,201.5 FTE positions and 41.8 non-FTE positions. Adjustments to the FY 2008 reportable expenditures include an increase of \$172.0 million, or 14.0 percent, above the amount approved by the 2007 Legislature:

- A supplemental request of \$1.7 million, all from the State Highway Fund, for commodities, vehicle servicing, and diesel fuel;
- KSIP expenditures of \$807,078 for technology replacement; and
- Other adjustments in the FY 2008 expenditures totaling an increase of \$170.3 million that are primarily in the Construction program, attributed to shifting projects from prior fiscal years.

Governor's Recommendation

The Governor concurs with the agency's revised FY 2008 estimate for expenditures and FTE positions.

House Budget Committee Recommendation

The Committee concurs with the Governor's recommendation.

House Committee Recommendation

The Committee concurs with the Budget Committee's recommendation.

Senate Subcommittee Report

Agency: Kansas Department of Transportation **Bill No.** SB 655 **Bill Sec.** 53

Analyst: Efird **Analysis Pg. No.** Vol. II - 1727 **Budget Page No.** 397

<u>Reportable Expenditure Summary</u>	<u>Agency Estimate FY 08</u>	<u>Governor's Recommendation FY 08</u>	<u>Senate Subcommittee Adjustments</u>
Operating Expenditures:			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	660,332,539	660,332,539	0
Subtotal - Operating	<u>\$ 660,332,539</u>	<u>\$ 660,332,539</u>	<u>\$ 0</u>
Capital Improvements:			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	741,838,274	741,838,274	0
Subtotal - Capital Improvements	<u>\$ 741,838,274</u>	<u>\$ 741,838,274</u>	<u>\$ 0</u>
TOTAL	<u><u>\$ 1,402,170,813</u></u>	<u><u>\$ 1,402,170,813</u></u>	<u><u>\$ 0</u></u>
FTE Positions	3,201.5	3,201.5	0.0
Non FTE Uncl. Perm. Pos.	41.8	41.8	0.0
TOTAL	<u><u>3,243.3</u></u>	<u><u>3,243.3</u></u>	<u><u>0.0</u></u>

Agency Estimate

The agency requests a revised reportable FY 2008 budget totaling \$1.4 billion, which is an increase of \$172.0 million, or 14.0 percent, above the amount approved by the 2007 Legislature. Requested reportable expenditures from the State Highway Fund total \$1.1 billion, which is an increase of \$174.8 million, or 18.9 percent, above the approved amount. The revised estimate includes 3,201.5 FTE positions, which is no change from the approved amount. Adjustments to the FY 2008 approved budget include:

- A supplemental request of \$1.7 million, all from the State Highway Fund, for commodities, vehicle servicing, and diesel fuel;
- KIP expenditures of \$807,078 for technology replacements; and
- Other adjustments to the FY 2008 budget totaling \$170.3 million that are primarily in the Construction program, attributed to shifting projects from prior fiscal years.

The agency's FY 2008 revised estimate includes non-reportable expenditures of \$132.1 million, which is an increase of \$1.3 million, or 1.3 percent, above the amount approved by the 2007 Legislature.

Governor's Recommendation

The Governor concurs with the agency's FY 2008 revised estimate.

Senate Subcommittee Recommendation

The Subcommittee concurs with the Governor's FY 2008 recommendation, including a supplemental request of \$1.7 million, all from the State Highway Fund, for commodities, vehicle servicing, and diesel fuel.

House Budget Committee Report

Agency: Department of Transportation **Bill No.** 2946

Bill Sec. 67

Analyst: Efirid

Analysis Pg. No. Vol. II - 1727

Budget Page No. 397

Expenditure Summary	Agency Request FY 09	Governor's Recommendation FY 09	House Budget Committee Adjustments
Operating Expenditures:			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	664,921,597	666,644,618	(9,813,554)
Subtotal - Operating	<u>\$ 664,921,597</u>	<u>\$ 666,644,618</u>	<u>\$ (9,813,554)</u>
Capital Improvements:			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	943,138,589	940,617,589	0
Subtotal - Capital Improvements	<u>\$ 943,138,589</u>	<u>\$ 940,617,589</u>	<u>\$ 0</u>
 TOTAL	 <u><u>\$ 1,608,060,186</u></u>	 <u><u>\$ 1,607,262,207</u></u>	 <u><u>\$ (9,813,554)</u></u>
 Nonreportable Expenditures**	 \$ 173,553,581	 \$ 173,553,581	 \$ 0
 GRAND TOTAL	 <u><u>\$ 1,781,613,767</u></u>	 <u><u>\$ 1,780,815,788</u></u>	 <u><u>\$ (9,813,554)</u></u>
 FTE Positions	 3,150.5	 3,150.5	 0.0
Non FTE Uncl. Perm. Pos.	41.8	41.8	0.0
TOTAL	<u><u>3,192.3</u></u>	<u><u>3,192.3</u></u>	<u><u>0.0</u></u>

* Of the Budget Committee's recommended reductions, \$5,683,984, including all from special revenue funds, is related to pay plan adjustments.

** includes Off-Budget Nonreportable expenditures for the Radio Communications Program.

Agency Estimate

The agency requests reportable expenditures of \$1.608 billion and nonreportable expenditures of \$173.6 million, for total expenditures of \$1.782 billion. The request includes 3,150.5 FTE positions and 41.8 non-FTE positions. The reportable budget includes an increase of \$205.9 million, or 14.7 percent, above the FY 2008 revised request. The request includes:

- \$4,517,433, all from the State Highway Fund, to replace 245 vehicles.
- 3,150.5 FTE positions, which is a decrease of 51.0 FTE positions from the FY 2008 revised request. The agency was granted an additional 136.0 FTE positions when the Comprehensive Transportation Program (CTP) was approved. As the CTP enters its final years, the agency planned for the reduction of positions through attrition. The agency's FTE count was reduced by a total of 48.0 from FY 2006 to FY 2008.

Governor's Recommendation

The Governor recommends reportable expenditures of \$1.607 billion and nonreportable expenditures of \$173.6 million, for total expenditures of \$1.781 billion. The Governor concurs with the agency's reduction of 51.0 FTE positions below the current fiscal year, with the recommendation for 3,150.5 FTE positions and 41.8 non-FTE positions. The Governor recommends a FY 2009 reportable budget which is an increase of \$205.1 million, or 14.6 percent, above the FY 2008 recommendation. The Governor recommends the following adjustments in State Highway Fund expenditures:

- \$2,258,700 for the replacement of 123 vehicles;
- \$3,343,201 for a 2.5 percent cost of living adjustment;
- \$638,553 for an under market group increase; and
- \$13,392,987 for capital improvement building projects that are reviewed by the Joint Committee on State Building Construction.

House Budget Committee Recommendation

The Committee concurs with the Governor's FY 2009 recommendation with the following exceptions:

1. **Pay Plan Adjustments.** Delete \$5,683,984, all from special revenue funds, to remove the following pay plan adjustments recommended by the Governor. Pay plan adjustments will be considered in a separate bill.
 - a. **State Employee Pay Increases.** Delete \$3,343,201, all from the special revenue funds, to remove the amount recommended by the Governor for the 2.5 percent base salary adjustment.
 - b. **Classified Employee Pay Plan.** Delete \$638,553, all from special revenue funds, to remove the amount recommended by the Governor for FY 2009 pay increases for basic vocational classes and for those employees identified as having the most disparity relative to market rate.
 - c. **Longevity Pay.** Delete \$1,702,230, all from special revenue funds, to remove the amount recommended by the Governor for longevity bonus payments.
2. **Shrinkage Adjustment.** Delete \$1,870,870, all from special revenue funds, to adjust the salaries and wages shrinkage rate. Apply a 5.1 percent shrinkage rate in FY 2009, the same as the 5.1 percent in FY 2008 recommended by the Governor. The adjustment would increase the base salary shrinkage from 4.0 percent to 5.1 percent, an increase of 1.1 percent in FY 2009, or \$1,870,870, all from special revenue funds. The Subcommittee also recommends review of agency data at Omnibus regarding shrinkage rates and staffing vacancies related to FTE positions. The Subcommittee would note that the following table shows staffing changes in terms of FTE positions generally associated with the period of the Comprehensive Transportation Plan (CTP). Recent reductions and reallocations within the agency shifted the internal assignment of FTE positions.

The agency indicates it has reduced through FY 2009 a total of 97.0 FTE positions from the 136.0 FTE positions added for the CTP.

	FY 1999	FY 2009	Change
Management	526.5	565.0	38.5
Local Support	51.0	56.0	5.0
Maintenance	1,535.0	1,572.0	37.0
Construction	999.0	957.5	(41.5)
Total	3,111.5	3,150.5	39.0

3. **Replacement Vehicles.** Delete \$2,258,700, all from special revenue funds, for the replacement of 123 vehicles, and review at Omnibus.
4. **Natural Disasters.** Note that Omnibus review should be conducted for damage to short line railroads and the possibility of using funds from the Rail Service Improvement Fund for providing assistance to short line railroads that suffered damage from natural disasters. The Subcommittee also would like to commend the agency for its response to the challenges associated with the state's natural disasters last year, and for its continued excellent service in fulfilling all of its other regular duties and operations.

House Committee Recommendation

The Committee concurs with the Budget Committee's recommendation, with the following adjustments:

1. Delete \$6,367,000, all from special revenue funds, for a capital improvement building project - construct Kansas Highway Patrol Troop F Headquarters at Wichita and consider during Omnibus.
 2. Note the 800 MHz system and communications upgrades continue to progress in FY 2008, with Phase 11-B, and with Phase 11-C scheduled in FY 2009.
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Senate Subcommittee Report

Agency: Kansas Department of Transportation **Bill No.** SB 658

Bill Sec. 67

Analyst: Efird

Analysis Pg. No. Vol. II - 727

Budget Page No. 397

Reportable Expenditure Summary	Agency Request FY 09	Governor's Recommendation FY 09	Senate Subcommittee Adjustments*
Operating Expenditures:			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	664,921,597	666,644,618	(7,942,684)
Subtotal - Operating	\$ 664,921,597	\$ 666,644,618	\$ (7,942,684)
Capital Improvements:			
State General Fund	\$ 0	\$ 0	\$ 0
Other Funds	943,138,589	940,617,589	0
Subtotal - Capital Improvements	\$ 943,138,589	\$ 940,617,589	\$ 0
TOTAL	\$ 1,608,060,186	\$ 1,607,262,207	\$ (7,942,684)
FTE Positions	3,150.5	3,150.5	0.0
Non FTE Uncl. Perm. Pos.	41.8	41.8	0.0
TOTAL	3,192.3	3,192.3	0.0

* Of the Subcommittee's recommended reductions, \$5,683,984, including all from special revenue funds, is related to pay plan adjustments.

Agency Request

The agency requests FY 2009 reportable expenditures of \$1.6 billion, which is an increase of \$205.9 million, or 14.7 percent, above the FY 2008 revised request. Reportable expenditures from the State Highway Fund total \$1.3 billion, which is an increase of \$203.1 million, or 18.5 percent, above the FY 2008 revised request. The request includes:

- \$4,517,433, all from the State Highway Fund, to replace 245 vehicles, and
- 3,150.5 FTE positions, which is a decrease of 51.0 FTE positions from the FY 2008 revised request. The agency was granted an additional 136.0 FTE positions when the Comprehensive Transportation Program (CTP) was approved. As the CTP enters its final years, the agency planned for the reduction of positions, through attrition. The agency's FTE count was reduced by a total of 48.0 from FY 2006 to FY 2008.

The agency's FY 2009 request includes non-reportable expenditures of \$173.6 million, which is an increase of \$41.5 million, or 31.4 percent, above the FY 2008 revised request. The requested non-reportable expenditures from the State Highway Fund total \$165.0 million, which is an increase of \$41.5 million or 33.6 percent, above the FY 2008 revised request.

Governor's Recommendation

The Governor recommends a FY 2009 reportable budget of \$1.6 billion, which is an increase of \$205.1 million, or 14.6 percent, above the FY 2008 recommendation. Reportable expenditures from the State Highway Fund total \$1.3 billion, which is an increase of \$202.3 million, or 18.4 percent, above the FY 2008 recommendation. The Governor recommends the following adjustments in State Highway Fund expenditures.

- \$2,258,700 for the replacement of 123 vehicles;
- \$3,343,201 for a 2.5 percent cost of living adjustment; and
- \$638,553 for an under market group increase.

The Governor concurs with the agency's FY 2009 request for all other funds expenditures and non-reportable expenditures. The Governor also concurs with the agency's FY 2009 FTE position limitation request, including a reduction of 51.0 FTE positions. The Governor also concurs with the State General Fund loan repayment of \$30.8 million that will be the third annual installment of the four year planned transfers that will be completed in FY 2010.

Senate Subcommittee Recommendation

The Subcommittee concurs with the Governor's FY 2009 recommendation with the following adjustments and comments:

1. **Pay Plan Adjustments.** Delete \$5,683,984, all from special revenue funds, to remove the following pay plan adjustments recommended by the Governor. Pay plan adjustments will be considered in a separate bill.
 - a. **State Employee Pay Increases.** Delete \$3,343,201, all from the special revenue funds, to remove the amount recommended by the Governor for the 2.5 percent base salary adjustment.
 - b. **Classified Employee Pay Plan.** Delete \$638,553, all from special revenue funds, to remove the amount recommended by the Governor for FY 2009 pay increases for basic vocational classes and for those employees identified as having the most disparity relative to market rate.
 - c. **Longevity Pay.** Delete \$1,702,230, all from special revenue funds, to remove the amount recommended by the Governor for longevity bonus payments.
2. **Replacement Vehicles.** Delete \$2,258,700, all from special revenue funds, for the replacement of 123 vehicles, and review during Omnibus.

3. **Short Line Railroads.** The Subcommittee would note a comment made in the Subcommittee on Capital Improvements regarding a review during Omnibus of damages suffered by short line railroads from recent natural disasters and the request of a report from KDOT regarding either financial assistance or loan forgiveness for the short line railroads.

4. **Gardner Intermodal Facility.** The Subcommittee would note a report made to the Subcommittee on Capital Improvements regarding the Burlington Northern Santa Fe Railway (BNSF) announcement to build an intermodal facility adjacent to their transcontinental rail line between the cities of Gardner and Edgerton in Johnson County. This line acts as the conduit for shipment of goods from China into the US interior. It is anticipated that upon opening, 2,000 trucks will be utilizing that facility each day; and over the next 20-30 years the volume of trucks will increase to 4,000 per day. In addition, a logistics park is being developed which will be adjacent to the intermodal facility. The logistics park will have more than 7 million square feet of warehouse development. This development will generate additional truck traffic, eventually reaching 6,000 trucks per day.

At this time, KDOT has two separate projects in the design phase that relate directly to the intermodal facility and the ancillary development. The total cost for the first project is estimated at \$2.45 million and is 100 percent federally funded. The scheduled let date for this project is August 2009. A consultant is currently working on the location study and environmental documentation for the second project. The estimated cost for the second project ranges from \$10 million to \$25 million depending on the location and type of interchange. Funding for this portion of the project has not been identified. The consultant study is scheduled to be completed by the end of January 2009.

Senate Ways and Means Committee

Hearing on SB ~~649~~ 638

March 5, 2008

Testimony of Theresa Gordzica
Chief Business and Financial Planning Officer
University of Kansas

Good Morning Chairman Umbarger, and members of the committee, I am Theresa Gordzica, Chief Financial Officer at the University of Kansas. Jim Modig, the KU Director of Design and Construction Management is with me today also. I appreciate the opportunity to testify in support of SB 638.

SB 638 authorizes the Board of Regents to sell the property described as Lots 11 and 12 in Block 13 in Lanes' Second Addition, also known as 1043 Indiana. The building at 1043 Indiana was built as a residence in 1900 and was purchased by the University in 1950 and adapted for office space. The building is wood framed with wood siding. The building is not ADA compliant and has fire and life safety issues. The office spaces are inefficient and poor quality work environment.

The building is in need of significant repairs and code upgrades. Both the exterior and the interior of the building need attention. For example, the building needs new windows and exterior doors, a new roof, and the siding should be repaired or replaced. Inside, the mechanical, electrical and plumbing systems need improvement and upgrade. To make the building ADA compliant, an elevator would have to be installed, doors and restrooms would need modifications. The estimated cost of all this work is over \$600,000.

In addition, the National Register of Historic Places recently approved an expansion of the Historic Oread Neighborhood that now places this building in the 500 foot area of notification / environs of the district. This new development will require that any improvements to the building be reviewed and approved by the Campus Historic Preservation Board and the Lawrence Historic Resources Commission.

The University does not wish to continue to invest limited resources on the building but believes there may be private parties interested in rehabilitating the building.

I would be happy to answer any questions.

Senate Ways and Means
3-5-08
Attachment 2

Oread Neighborhood Association • Lawrence, Ks. 66044



5 March 2008

Chairman Dwayne Umbarger and Members of the Senate Ways and Means Committee:

I appear before you as a member of the Board of Directors of the Oread Neighborhood Association to share concerns regarding Senate Bill 638.

This bill authorizes the Board of Regents to sell lots 11 and 12 in Block 13 in Lane's Second Addition in the city of Lawrence. The property is within the boundaries of the Oread Neighborhood. The neighborhood association has been concerned with the upkeep of the structure and understands from a regent's report that "The university does not wish to continue to invest limited resources in the building and believes there may be private parties interested in rehabilitating the building."

The map on the city website shows lots 7, 8, 9, 10, 11 and 12 in Block 13 as part of the state owned property on this block. The concern of the neighborhood regarding this sale is that there is a large structure but no parking on the two lots, 11 and 12, which are proposed for sale and parking on the lots 7, 8, 9 and 10 that are not included in the sale but will be retained by the state. Certainly the university is aware that the availability of parking is a chronic problem in Oread. It is also not clear to us that a private entity would be able to obtain a city building permit to rehabilitate this property without having some additional area for parking available on or adjacent to the site. In addition, the neighborhood would like to see at least a few of the mature trees to the west of the structure retained.

I would ask that the Board of Regents confirm that the stated intention of the sale, to make the property available for private renovation, can be accomplished using the existing zoning codes and subdivision regulations before the legislature authorizes this sale.

marci francisco

Marci Francisco
1101 Ohio
Lawrence, Kansas 66044

*Senate Ways and Means
3-5-08
Attachment 3*

Senate Ways and Means Committee

Hearing on SB 649

March 5, 2008

Testimony of Theresa Gordzica
Chief Business and Financial Planning Officer
University of Kansas

Good Morning Chairman Umbarger, and members of the committee, I am Theresa Gordzica, Chief Financial Officer at the University of Kansas. Jim Modig, the KU Director of Design and Construction Management is with me today also. I appreciate the opportunity to testify in support of SB 649.

SB 649 would allow KU and other Regents institutions move more quickly on construction projects that are not funded with State General Fund or other state tax sources. The proposed legislation would allow those projects funded by non-state moneys to proceed with approval of the Joint Committee on State Building Construction and the Board of Regents. Non-state moneys are primarily tuition and restricted fees funds, but would include funds from any source except the State or any State agency.

Why do we seek this change? Primarily so that we can respond more quickly when a project is developed and funded. Let me provide a couple of examples. Competition for top faculty is fierce. Many times the recruitment package includes lab space that must be updated or modified to meet the new faculty member's research focus. Lab renovations can easily approach \$1 million. The faculty member may accept our offer in the spring and arrive on campus in August. Under the current process, we could not begin design until the following July after the project had been included in a capital improvements bill and approved by the Legislature. The project will cost more because of inflation and faculty researcher will have spent a year in inadequate lab space.

The renovations to Smissman Hall provide another example of why this flexibility is sought. KU has requested federal funding for a portion of the \$2,338,000 project cost. The balance of the funds will be from overhead and university resources. Because of the source of funds and the cost of the project, the current process is to seek legislative approval through the annual capital improvement process. Construction cannot proceed until the capitol improvement budget is signed into law.

Exempting the universities from the (capital improvements) process will not give universities the ability to construct and repair at will. The Board of Regents retains its oversight and approval role in capital improvement projects.

Additionally, all capital improvement projects under this proposed bill will still have to be presented to the Joint Committee on State Building Construction.

The University of Kansas appreciates the Committee's attention to this legislation. The Legislature has stressed the importance to all state agencies on the importance of being good stewards of taxpayer dollars. We continually to look for opportunities for KU to become more efficient in its operations.

I would be happy to answer any questions.



KANSAS BOARD OF REGENTS

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March 5, 2008

Senator Dwayne Umbarger, Chairman
Senate Ways and Means Committee
Statehouse, Room 120-S
Topeka, KS 66612

Senator Laura Kelly, Ranking Member
Senate Ways and Means Committee
Statehouse, Room 401-S
Topeka, KS 66612

Dear Chairman Umbarger and Ranking Member Kelly:

On behalf of the Kansas Board of Regents, I write to you in support of Senate Bill 649, legislation that would expand current state law that exempts certain capital improvements funded by private moneys from state construction/contracting laws to also include those projects funded by non-state moneys, which might include restricted fees collected by universities for the construction and renovation of state educational institutional buildings. It is important to note that this proposal mirrors similar legislation enacted in 2005 that eliminated the \$1 million cap for university research foundation projects.

Current law provides state universities with an exemption from state construction/contracting laws for those projects under \$1 million if they are funded with private moneys from non-governmental sources. The state universities would benefit if the \$1 million cap was eliminated and expanded to include projects funded by non-state moneys (restricted fees, tuition, federal moneys, etc.) which are not drawn from the state general fund. The combination of lifting the cap and augmenting the exemption to cover non-state moneys would enable the universities to undertake appropriate capital improvement projects in an expedited manner which could lead to lower planning and construction costs.

Current law impedes the universities from quickly proceeding with crucial projects beneficial to students and faculty research efforts. As an example, KU is planning for new sophisticated laboratory space for engineering research in Learned Hall. The estimated cost of the proposed project is \$1.5 million which will be funded by non-state moneys from tuition enhancements and the KU Endowment. Delays in such projects limit the ability for researchers to have access to high quality research labs to compete for federal research grants.

There is no direct fiscal impact to the State of Kansas since funds available for use under this law are either private or non-state moneys. KU has indicated that this legislation, if enacted, would expedite capital improvement projects resulting in fewer delays and lower project costs. All capital improvement projects affected by this proposed legislation would still ultimately require Board of Regents and Joint Committee on Building Construction approval.

Thank you for your consideration of Senate Bill 649.

Sincerely,

Reginald L. Robinson
President and CEO

Senate Ways and Means
3-5-08
Attachment 5

MARK J. TORRENCE, ATTORNEY
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES
KANSAS LEGISLATURE

Legal Consultation—
Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
Secretary—
Legislative Coordinating Council
Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
Legislative Information System

MEMORANDUM

To: Senate Committee on Ways and Means
From: Mike Heim, Assistant Revisor
Date: March 5, 2008
Re: Summary of 2008 SB 642

Overview

SB 642 would enact the Kansas school district alternative project delivery construction procurement act. The bill is patterned after the alternative project delivery building construction procurement act, K.S.A. 2007 Supp. 75-37,141 through 75-37,147 and SB 485 which would enact the county alternative project delivery act. The state law applies to the agency or state education institution as defined in K.S.A. 2007 Supp. 76-756. The bill authorizes school districts to utilize an integrated comprehensive building design and construction process as an alternative to the traditional more separated process where the design and construction phases are not integrated. The bill authorizes two distinct alternatives: Construction management at risk project delivery procedures and design-built project delivery procedures.

Definitions

Section 2 contains definitions. Note in particular the following:

“Alternative project delivery” means an integrated comprehensive building design and construction process, including all procedures, actions, sequences of events, contractual relations, obligations, interrelations and various forms of agreement all aimed at the successful completion of the design and construction of buildings and other structures whereby a construction manager or general contractor or design-build team is selected based on a qualifications and best value approach. (See subsection (c)).

“Design-build contract” means a contract between the school district board and a design-builder to furnish the architecture or engineering and related design services required for a given

RS- H:\StaffDocs\MikeH\MEMOSum08SB642.wpd (bhutley)

Senate Ways and Means
3-5-08
Attachment 6

public facilities construction project and to furnish the labor, materials and other construction services for such public project. (See subsection (i)).

“Construction management at-risk services” means the services provided by a firm which has entered into a contract with the school board to be the construction manager or general contractor for the value and schedule of the contract for a project, which is to hold the trade contracts and execute the work for a project in a manner similar to a general contractor, and which is required to solicit competitive bids for the trade packages developed for the project and to enter into the trade contracts for a project with the lowest responsible bidder therefor. Construction management at-risk services may include, but are not limited to, scheduling, value analysis, system analysis, constructability reviews, progress document reviews, subcontractor involvement and prequalification, subcontractor bonding policy, budgeting and price guarantees and construction coordination. (See subsection (k)).

The Initial Process

Section 3, page 4, lists criteria the school board should consider for projects utilizing this act, eq. the likelihood of saving substantial time or money; where an accelerated schedule is needed due to an emergency, etc. (See Subsection (b)). Subsection (c) requires public comment at a school board meeting. Subsection (d) requires regular bidding procedures if the board determines not to use the alternatives authorized by this act.

Construction Management At-Risk Project Delivery

Section 4 (pages 5 - 7) establishes procedures to be followed when utilizing construction management at-risk project delivery services. The selection recommendation committee shall solicit proposals in a three stage selection process. See subsection (d) (pages 5 -6). Once all proposals for services have been submitted, Phase III requires the selection recommendation committee to conduct interviews of all proposers and to select the firm providing the best value. All proposals may be rejected and the board may solicit new proposals.

Building Design-Built Project Delivery

Section 5 (pages 7 - 10) establishes similar procedures including a three phase process for design-built projects.

Other Provisions

Section 6 on page 10 requires public disclosure of bids and bid information.

Section 7 prohibits the use of the act for the process of designing, constructing or repairing stand-alone parking lots.



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 WAYS AND MEANS**

SB 642

March 5, 2008

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

Mister Chairman and members of the committee, my name is Corey Peterson. I am 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 in Kansas (with the exception of Johnson and Wyandotte counties).

AGC of Kansas supports Senate Bill 642 and respectfully asks that you report it favorably for passage.

Two years ago, the legislature passed House Bill 2394, enacting the Kansas alternative project delivery building construction procurement act for state agencies. As with this new law, SB 642 provides the means to utilize construction management at-risk and design build for buildings when deemed appropriate, utilizing clear guidelines and safeguards to protect the public trust.

Nationally, both public and private owners are now utilizing alternative project delivery methods for construction projects in lieu of the traditional "design-bid-build" method where the lowest responsible bidder is selected. AGC feels that if public dollars are used to finance a construction project, alternative project delivery methods should be used on an exception basis, only if it is shown that it is in the best interest of the public to use these alternative methods over the traditional "design-bid-build" method.

SB 642, like HB 2394 in 2006, establishes transparent and objective criteria for school districts to use during the selection of a construction manager or design builder. These guidelines will prevent political influence and favoritism toward one or more companies, and just as importantly protect the school district from the perception of such.

As more public owners consider the use of alternative project delivery methods, AGC feels that all public owners should use a selection process that will maintain the public trust through an open and objective selection process.

In addition to SB 642, you have previously heard testimony on SB 485, which was introduced to accomplish the same objective for Kansas counties. Following that hearing, AGC met with Johnson and Sedgwick counties and came up with several minor amendments to their bill. Several of these amendments also made sense for the school bill, so they have been included in the attached balloon.

The AGC of Kansas **respectfully requests that you recommend SB 642 for passage as amended.** Thank you for your consideration.

Senate Ways and Means
3-5-08
Attachment 7

SENATE BILL No. 642

By Committee on Ways and Means

2-19

AGC of Kansas Balloon:
Minor changes following
work on SB 485 (Counties)
and discussion with rep
from KASB.

9 AN ACT concerning the procurement of design and construction serv-
10 ices for unified school district improvements contracts; enacting the
11 Kansas unified school district alternative project delivery building con-
12 struction procurement act.
13 *Be it enacted by the Legislature of the State of Kansas:*
14 Section 1. Sections 1 through 7, and amendments thereto, shall be
15 known and may be cited as the Kansas unified school district alternative
16 project delivery building construction procurement act.
17 Sec. 2. As used in the Kansas unified school district alternative pro-
18 ject delivery construction procurement act, unless the context expressly
19 provides otherwise:
20 (a) "Act" means the Kansas unified school district alternative project
21 delivery building construction procurement act.
22 (b) "Board" means board of education of every unified school district
23 in Kansas, as defined in K.S.A. 72-8201, and amendments thereto, with
24 the authority to award public contracts for building design and
25 construction.
26 (c) "Alternative project delivery" means an integrated comprehensive
27 building design and construction process, including all procedures, ac-
28 tions, sequences of events, contractual relations, obligations, interrela-
29 tions and various forms of agreement all aimed at the successful comple-
30 tion of the design and construction of buildings and other structures
31 whereby a construction manager or general contractor or design build
32 team is selected based on a qualifications and best value approach.
33 (d) "Ancillary technical services" include, but shall not be limited to,
34 geology services and other soil or subsurface investigation and testing
35 services, surveying, adjusting and balancing air conditioning, ventilating,
36 heating and other mechanical building systems and testing and consultant
37 services that are determined by the board to be required for the project.
38 (e) "Architectural services" means those services described by sub-
39 section (e) of K.S.A. 74-7003, and amendments thereto.
40 (f) "Best value selection" means a selection based upon ~~project cost,~~
41 ~~qualifications~~ and other factors.
42 (g) "Building construction" means furnishing labor, equipment, ma-
43

← Delete & replace with "objective
criteria related to price, features,
functions, life-cycle costs"

1 material or supplies used or consumed for the design, construction, altera-
2 tion, renovation, repair or maintenance of a building or structure. Build-
3 ing construction does not include highways, roads, bridges, dams,
4 turnpikes or related structures or stand-alone parking lots.

5 (h) "Design-build" means a project for which the design and con-
6 struction services are furnished under one contract.

7 (i) "Design-build contract" means a contract between the board and
8 a design-builder to furnish the architecture or engineering and related
9 design services required for a given public facilities construction project
10 and to furnish the labor, materials and other construction services for
11 such public project.

12 (j) "Construction services" means the process of planning, acquiring,
13 building, equipping, altering, repairing, improving or demolishing any
14 structure or appurtenance thereto, including facilities, utilities or other
15 improvements to any real property, excluding stand-alone parking lots.

16 (k) "Construction management at-risk services" means the services
17 provided by a firm which has entered into a contract with the board to
18 be the construction manager or general contractor for the value and
19 schedule of the contract for a project, which is to hold the trade contracts
20 and execute the work for a project in a manner similar to a general con-
21 tractor, and which is required to solicit competitive bids for the trade
22 packages developed for the project and to enter into the trade contracts
23 for a project with the lowest responsible bidder therefor. Construction
24 management at-risk services may include, but are not limited to sched-
25 uling, value analysis, system analysis, constructability reviews, progress
26 document reviews, subcontractor involvement and prequalification, sub-
27 contractor bonding policy, budgeting and price guarantees and construc-
28 tion coordination.

29 (l) "Construction management at-risk contract" means the contract
30 whereby the board acquires from a construction manager or general con-
31 tractor a series of preconstruction services and an at-risk financial obli-
32 gation to carry out construction under a specified cost agreement.

33 (m) "Construction manager or general contractor" means any indi-
34 vidual, partnership, joint venture, corporation, or other legal entity who
35 is a member of the integrated project team with the board, design pro-
36 fessional and other consultants that may be required for the project, who
37 utilizes skill and knowledge of general contracting to perform precon-
38 struction services and competitively procures and contracts with specialty
39 contractors assuming the responsibility and the risk for construction de-
40 livery within a specified cost and schedule terms including a guaranteed
41 maximum price.

42 (n) "Cost plus guaranteed maximum price contract" means a cost-
43 plus-a-fee contract with a guaranteed maximum price. This includes the

1 sum of the construction manager's fee, the construction manager's con-
2 tingency, the construction manager's general conditions, all the subcon-
3 tracts, plus an estimate for unbid subcontracts. The construction manager
4 agrees to pay for costs that exceed the guaranteed maximum price and
5 are not a result of changes in the contract documents.

6 (o) "Design-builder" means any individual, partnership, joint ven-
7 ture, corporation or other legal entity that furnishes the architectural or
8 engineering services and construction services, whether by itself or
9 through subcontracts.

10 (p) "Design criteria consultant" means a person, corporation, part-
11 nership or other legal entity duly registered and authorized to practice
12 architecture or professional engineering in this state pursuant to K.S.A.
13 74-7003, and amendments thereto, and who is employed by contract to
14 the board to provide professional design and administrative services in
15 connection with the preparation of the design criteria package.

16 (q) "Design criteria package" means performance-oriented specifi-
17 cations for the public construction project sufficient to permit a design-
18 builder to prepare a response to the board's request for proposals for a
19 design-build project.

20 (r) "Engineering services" means those services described by subsec-
21 tion (i) of K.S.A. 74-7003, and amendments thereto.

22 (s) "Guaranteed maximum price" means the cost of the work as de-
23 fined in the contract.

24 (t) "Selection recommendation committee" means school board or a
25 committee comprised of school board members .

Insert: "or a combination of school
board members and school
administrators."

26 (u) "Parking lot" means a designated area constructed on the ground
27 surface for parking motor vehicles. A parking lot included as part of a
28 building construction project shall be subject to the provisions of this act.
29 A parking lot designed and constructed as a stand-alone project shall not
30 be subject to the provisions of this act.

31 (v) "Preconstruction services" means a series of services that can in-
32 clude, but are not necessarily limited to: Design review, scheduling, cost
33 control, value engineering, constructability evaluation and preparation
34 and coordination of bid packages.

35 (w) "Project services" means architectural, engineering services, land
36 surveying, construction management at-risk services, ancillary technical
37 services or other construction-related services determined by the board
38 to be required by the project.

39 (x) "Public construction project" means the process of designing, con-
40 structing, reconstructing, altering or renovating a unified school district
41 building or other structure. Public construction project does not include
42 the process of designing, constructing, altering or repairing a public high-
43 way, road, bridge, dam, turnpike or related structure.

1 (y) "Stipend" means an amount paid to the unsuccessful proposers
 2 to defray the cost of submission of phase II of the design-build proposal.
 3 Sec. 3. (a) Notwithstanding any other provision of the law to the con-
 4 trary, the board is hereby authorized to institute an alternative project
 5 delivery program whereby construction management at-risk or design-
 6 build procurement processes may be utilized on public projects pursuant
 7 to this act. This authorization for construction management at-risk and
 8 design-build procurement shall be for the sole and exclusive use of plan-
 9 ning, acquiring, designing, building, equipping, altering, repairing, im-
 10 proving or demolishing any structure or appurtenance thereto, including
 11 facilities, utilities or other improvements to any real property, but shall
 12 not include stand-alone parking lots.

Insert: ...unsuccessful **"and responsive"** proposers...

13 (b) The board shall approve those projects for which the use of the
 14 alternative project delivery procurement process is appropriate. In mak-
 15 ing such determination, the board shall consider the following factors:
 16 (1) The likelihood that the alternative project delivery method of pro-
 17 curement selected will serve the public interest by providing substantial
 18 savings of time or money over the traditional design-bid-build delivery
 19 process.
 20 (2) The ability to overlap design and construction phases is required
 21 to meet the needs of the end user.
 22 (3) The use of an accelerated schedule is required to make repairs
 23 resulting from an emergency situation.
 24 (4) The project presents significant phasing or technical complexities,
 25 or both, requiring the use of an integrated team of designers and con-
 26 structors to solve project challenges during the design or preconstruction
 27 phase.
 28 (5) The use of an alternative project delivery method will not en-
 29 courage favoritism in awarding the public contract or substantially dimin-
 30 ish competition for the public contract.
 31 (c) When a board intends to utilize an alternative project delivery
 32 method, the board shall allow public comment on this intention at a
 33 school board meeting. Notice of this intention shall be clearly stated on
 34 the board agenda and in the official newspaper of the school district.
 35 Public comment on this intention at a board meeting shall occur before
 36 the selection process set forth in this statute may commence.
 37 (d) Notwithstanding the provisions of K.S.A. 72-6760, and amend-
 38 ments thereto, if the board deems that the project does not qualify for
 39 the alternative project delivery methods included under this act, then the
 40 construction services for such project shall be obtained pursuant to com-
 41 petitive bids and all contracts for construction services shall be awarded
 42 to the lowest responsible bidder consistent with the provisions of K.S.A
 43 72-6760, and amendments thereto.

Insert: ...projects **"or programs"** for which ...

1 Sec. 4. Construction management at-risk project delivery procedures
2 shall be conducted as follows:

3 (a) The board shall determine the scope and level of detail required
4 to permit a qualified construction manager or general contractor to submit
5 construction management at-risk proposals in accordance with the
6 request for proposals given the nature of the project.

7 (b) Prior to completion of the construction documents, but as early
8 as during the schematic design phase, the construction manager or general
9 contractor shall be selected. The project design professional may be
10 employed or retained by the board to assist in the selection process.

11 (c) The board shall publish a notice of the request for qualifications
12 and proposals for the required project services at least 15 days prior to
13 the commencement of such requests in the official newspaper of the
14 school district and with a statewide school board or construction industry
15 association website in accordance with K.S.A. 64-101, and amendments
16 thereto, and in such other appropriate manner as may be determined by
17 the board.

18 (d) The board shall solicit proposals in a three stage qualifications
19 based selection process. Phase I shall be the solicitation of qualifications
20 and prequalifying a minimum of three but no more than five construction
21 manager or general contractors to advance to phase II. Phase II shall be
22 the solicitation of a request for proposal for the project, and phase III
23 shall include an interview with each proposer to present their qualifica-
24 tions and answer questions.

25 (1) Phase I shall require all proposers to submit a statement of qual-
26 ifications which shall include, but not be limited to:

- 27 (A) Similar project experience;
- 28 (B) experience in this type of project delivery system;
- 29 (C) references from design professionals and owners from previous
30 projects;
- 31 (D) description of the construction manager or general contractor's
32 project management approach; and

33 (E) bonding capacity. Firms submitting a statement of qualifications
34 shall be capable of providing a public works bond in accordance with
35 K.S.A. 60-1111, and amendments thereto, and shall present evidence of
36 such bonding capacity to the board with their statement or qualifications.
37 If a firm fails to present such evidence, such firm shall be deemed un-
38 qualified for selection under this subsection.

39 (2) The board shall evaluate the qualifications of all proposers in ac-
40 cordance with the instructions of the request for qualifications. The board
41 shall prepare a short list containing a minimum of three and maximum
42 of five qualified firms, which have the best and most relevant qualifica-
43 tions to perform the services required of the project, to participate in

Delete and replace with "or"

Delete and replace with "...early as
"the initiation of the project," the
construction manager ...

1 phase II of the selection process. If the board receives qualifications from
 2 less than four proposers, all proposers shall be invited to participate in
 3 phase II of the selection process. The board shall have discretion to dis-
 4 qualify any proposer that, in the board's opinion, lacks the minimal qual-
 5 ifications required to perform the work.

6 (3) Phase II of the process shall be conducted as follows:

7 (A) Prequalified firms selected in phase I shall be given a request for
 8 proposal. The request for proposal shall require all proposers to submit
 9 a more in depth response including, but not be limited to:

- 10 (i) Company overview;
- 11 (ii) experience or references, or both, relative to the project under
- 12 question;
- 13 (iii) resumes of proposed project personnel;
- 14 (iv) overview of preconstruction services;
- 15 (v) overview of construction planning;
- 16 (vi) proposed safety plan;
- 17 (vii) fees, including fees for preconstruction services, fees for general
- 18 conditions, fees for overhead and profit.

19 (4) Phase III shall be conducted as follows:

20 (A) Once all proposals have been submitted, the selection recom-
 21 mendation committee shall interview all of the proposers, allowing the
 22 competing firms to present their proposed team members, qualifications,
 23 project plan and to answer questions. Interview scores shall not account
 24 for more than 50% of the total possible score.

Delete (moving it to next paragraph as amended below)

25 (B) The selection recommendation committee shall select the firm
 26 providing the best value based on the proposal criteria and weighting
 27 factors utilized to emphasize important elements of each project for ap-
 28 proval by the board. All scoring criteria and weighting factors shall be
 29 identified by the board in the request for proposal instructions to pro-
 30 posers. The selection recommendation committee shall proceed to ne-
 31 gotiate with and attempt to enter into contract with the firm receiving
 32 the best total score to serve as the construction manager or general con-
 33 tractor for the project. Should the selection recommendation committee
 34 be unable to negotiate a satisfactory contract with the firm scoring the
 35 best total score, negotiations with that firm shall be terminated, and the
 36 committee shall undertake negotiations with the firm with the next best
 37 total score, in accordance with this act.

Insert: "Interview presentation scores shall not account for more than 50% of the total possible score."

38 (C) If the selection recommendation committee determines, that it
 39 is not in the best interest of the board to proceed with the project pur-
 40 suant to the proposals offered, the selection recommendation committee
 41 shall reject all proposals. If all proposals are rejected, the board may solicit
 42 new proposals using different design criteria, budget constraints or
 43 qualifications.

1 (D) The contract to perform construction management at-risk serv-
 2 ices for a project shall be prepared by the board and entered into between
 3 the board and the firm performing such construction management at-risk
 4 services. A construction management at-risk contract utilizing a cost plus
 5 guaranteed maximum price contract value shall return all savings under
 6 the guaranteed maximum price to the school district.

Delete and replace with **“will typically be awarded in phases; preconstruction followed by one or more amendments for construction. The contract form will be ”**

7 (E) The board or the construction manager at-risk, at the board’s
 8 discretion shall publish a construction services bid notice in the official
 9 newspaper of the school district and website of a statewide school board
 10 association or construction industry association and in such other appro-
 11 priate manner for the construction manager or general contractor as may
 12 be determined by the board. Each construction services bid notice shall
 13 include the request for bids and other bidding information prepared by
 14 the construction manager or general contractor and the board. The board
 15 may allow the construction manager or general contractor to self-perform
 16 construction services provided the construction manager or general con-
 17 tractor submits a sealed bid proposal under the same conditions as all
 18 other competing firms. At the time for opening the bids, the construction
 19 manager or general contractor shall evaluate the bids and shall determine
 20 the lowest responsible bidder except in the case of self-performed work
 21 for which the board shall determine the lowest responsible bidder. The
 22 construction manager or general contractor shall enter into a contract
 23 with each firm performing the construction services for the project and
 24 make a public announcement of each firm selected at the first school
 25 board meeting following the selection.

Insert: **“and”**

26 Sec. 5. Design-build project delivery procedures shall be conducted
 27 as follows:

28 (a) The board shall determine the scope and level of detail required
 29 to permit qualified persons to submit design-build proposals in accord-
 30 ance with the request for proposals given the nature of the project.

Insert: **“qualifications and”**

31 (b) Notice of requests for proposals shall be published at least 15
 32 days prior to the commencement of such requests in the official news-
 33 paper of the school district in accordance with K.S.A. 64-101, and amend-
 34 ments thereto, and a website of a statewide school board association or a
 35 construction industry association. The board shall publish a notice of a
 36 request for proposal with a description of the project, the procedures for
 37 submittal and the selection criteria to be used.

38 (c) The board shall establish in the request for proposal a time, place
 39 and other specific instructions for the receipt of proposals. Proposals not
 40 submitted in strict accordance with such instructions shall be subject to
 41 rejection.

42 (d) A request for proposals shall be prepared for each design-build
 43 contract containing at minimum the following elements:

- 1 (1) The procedures to be followed for submitting proposals, the cri-
- 2 teria for evaluation of proposals and their relative weight and the proce-
- 3 dures for making awards.
- 4 (2) The proposed terms and conditions for the design-build contract.
- 5 (3) The design criteria package.
- 6 (4) A description of the drawings, specifications or other information
- 7 to be submitted with the proposal, with guidance as to the form and level
- 8 of completeness of the drawings, specifications or other information that
- 9 will be acceptable.
- 10 (5) A schedule for planned commencement and completion of the
- 11 design-build contract.
- 12 (6) Budget limits for the design-build contract, if any.
- 13 (7) Requirements, including any available ratings for performance
- 14 bonds, payment bonds and insurance.
- 15 (8) Any other information that the board at its discretion chooses to
- 16 supply, including without limitation, surveys, soil reports, drawings of ex-
- 17 isting structures, environmental studies, photographs or references to
- 18 public records.
- 19 (e) The board shall solicit proposals in a three-stage process. Phase I
- 20 shall be the solicitation of qualifications of the design-build team. Phase
- 21 II shall be the solicitation of a technical proposal including conceptual
- 22 design for the project and phase III shall be the proposal of the construc-
- 23 tion cost.
- 24 (1) The board shall review the submittals of the proposers and assign
- 25 points to each proposal as prescribed in the instructions of the request
- 26 for proposal.
- 27 (2) Phase I shall require all proposers to submit a statement of qual-
- 28 ifications which shall include, but not be limited to, the following:
- 29 (A) Demonstrated ability to perform projects comparable in design,
- 30 scope and complexity.
- 31 (B) References of owners for whom design-build projects have been
- 32 performed.
- 33 (C) Qualifications of personnel who will manage the design and con-
- 34 struction aspects of the project.
- 35 (D) The names and qualifications of the primary design consultants
- 36 and contractors with whom the design-builder proposes to subcontract.
- 37 The design-builder may not replace an identified subcontractor or sub-
- 38 consultant without the written approval of the board.
- 39 (E) Firms submitting a statement of qualifications shall be capable of
- 40 providing a public works bond in accordance with K.S.A. 60-1111, and
- 41 amendments thereto, and shall present evidence of such bonding capa-
- 42 bility to the board with their statement of qualifications. If a firm fails to
- 43 present such evidence, such firm shall be deemed unqualified for selec-

1 tion under this subsection.
 2 (3) The board shall evaluate the qualifications of all proposers in ac-
 3 cordance with the instructions prescribed in the request for proposal.
 4 Qualified proposers selected by the evaluation team may proceed to phase
 5 II of the selection process. Proposers lacking the necessary qualifications
 6 to perform the work shall be disqualified and shall not proceed to phase
 7 II of the process. Under no circumstances shall price or fees be consid-
 8 ered as a part of the prequalification criteria. Points assigned in the phase
 9 I evaluation process shall not carry forward to phase II of the process. All
 10 qualified proposers shall be ranked on points given in phases II and III
 11 only. The two phase evaluation and scoring process shall be combined to
 12 determine the greatest value to the board.

Delete and replace with :
 "qualifications"

13 (4) The board shall have discretion to disqualify any proposer, which
 14 in the board's opinion, lacks the minimal qualifications required to per-
 15 form the work.

16 (5) The board shall prepare a short list containing a minimum of
 17 three, but no more than the top five qualified proposers to participate in
 18 phase II of the process. If less than four proposers respond, all proposers
 19 shall be invited to participate in phase II of the selection process.

20 (6) Phase II of the process shall be conducted as follows:
 21 (A) Proposers shall submit their design for the project to the level of
 22 detail required in the request for proposal. The design proposal should
 23 demonstrate compliance with the requirements set out in request for
 24 proposal.

25 (B) Up to 20% of the points awarded to each proposer in phase II
 26 may be based on each proposer's qualifications and ability to design, con-
 27 struct and deliver the project on time and within budget.

28 (C) The design proposal shall not contain any reference to the cost
 29 of the proposal.

30 (D) The design submittals shall be evaluated and assigned points in
 31 accordance with the requirements of the request for proposal.

Insert: "design and "

32 (7) Phase III shall be conducted as follows:

33 (A) The phase III proposal shall provide a firm fixed cost of construc-
 34 tion. The proposal shall be accompanied by bid security and any other
 35 submittals as required by the request for proposal.

36 (B) The proposed contract time, in calendar days, for completing a
 37 project as designed by a proposer shall be considered as an element of
 38 evaluation in phase III. The request proposal shall establish a user delay
 39 value for each proposed calendar day identified in the proposal.

Delete and replace with "may"

40 (C) Cost and schedule proposals shall be submitted in accordance
 41 with the instructions of the request for proposal. Failure to submit a cost
 42 proposal on time shall be cause to reject the proposal.

43 (8) Proposals for phase II and III shall be submitted concurrently at

1 the time and place specified in the request for proposal. The phase III
2 cost proposals shall be opened only after the phase II design proposals
3 have been evaluated and assigned points.

4 (9) Phase III proposals shall be opened and read aloud at the time
5 and place specified in the request for proposal. At the same time and
6 place, the evaluation team shall make public its scoring of phase II. Cost
7 proposals shall be evaluated in accordance with the requirements of the
8 request for proposal. In evaluating the proposals, each proposers' adjusted
9 score shall be determined by adding the phase III cost proposal to the
10 product of the proposed contract time and the user delay cost, and divid-
11 ing that sum by the phase II score.

12 (10) The responsive proposer with the lowest total number of points
13 shall be awarded the contract. If the board determines, that it is not in
14 the best interest of the school district to proceed with the project pursuant
15 to the proposal offered by the proposer with the lowest total number of
16 points, the board shall reject all proposals. In such event, all qualified
17 proposers with higher point totals shall receive a stipend pursuant to
18 subsection (e)(12), and the proposer with the lowest total number of
19 points shall receive an amount equal to two times such stipend.

20 (11) If all proposals are rejected, the board may solicit new proposals
21 using different design criteria, budget constraints or qualifications.

22 (12) As an inducement to qualified proposers, the board shall pay a
23 stipend, the amount of which shall be established in the request for pro-
24 posal, to each prequalified design-builder whose proposal is responsive
25 but not accepted. Upon payment of the stipend to any unsuccessful de-
26 sign-build proposer, the board shall acquire a nonexclusive right to use
27 the design submitted by the proposer, and the proposer shall have no
28 further liability for its use by the board in any manner. If the design-build
29 proposer desires to retain all rights and interest in the design proposed,
30 the proposer shall forfeit the stipend.

31 Sec. 6. Every bid proposal conforming to the terms of the advertise-
32 ment, together with the name of the proposer, shall be recorded, and all
33 such records with the name of the successful proposer indicated thereon
34 shall, after award or letting of the contract, be subject to public inspection
35 upon request. The board shall, within five days after award or letting of
36 the contract, publish the name of the successful proposer. The public
37 notice on public display shall show the phase II and III scores and the
38 adjusted final score. The board shall, within five days after award or letting
39 of the contract, have the names of all proposers whose bid proposals were
40 not selected, together with phase II and III scores and the final adjusted
41 score for each, available for public review.

42 Sec. 7. The provisions of the Kansas unified school district alterna-
43 tive project delivery building construction procurement act shall not apply

← Delete

1 to the process of designing, constructing, altering or repairing stand-alone
2 parking lots.
3 Sec. 8. This act shall take effect and be in force from and after its
4 publication in the statute book.

AIA Kansas

A Chapter of The American Institute of Architects

March 5, 2008

TO: Ways and Means
FROM: Trudy Aron, Executive Director
RE: Support of SB 642



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Jerry E. Volesky, AIA
Topeka
Eric Wittman, Assoc AIA
Wichita

Good Morning Senator Umbarger 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 642.

AIA Kansas is a statewide association of architects and intern architects. Our 700 members are currently designing the facilities we will 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 642 allows school districts options on how they design and/or construct schools. Currently, most districts procure design and construction as three distinct and separate actions – design, bid, build. SB 642 allows, but does not mandate, two other delivery methods.

The first is CM @ Risk. After the design team is selected, the district selects a contractor on the basis of their qualifications for a particular project and works with the design team throughout the design process. The contractor then bids out the packages for construction. The second is Design/Build where the design and construction is provided under one contract. The Design/Builder is selected on the basis of their qualifications for a specific project.

If the school district wants to use the traditional method of design-bid-build they do as they have always done. However, if they want to use either CM @ Risk or Design/Build on a project, they must allow for public input and comment before going forward.

AIA Kansas believes that in most instances, school districts should use the usual design-bid-build delivery. In some circumstances, CM @ Risk and Design/Build would be warranted and this bill provides a methodology for using these delivery methods.

Thank you and I'll be glad to stand for questions.

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Executive Director
Trudy Aron, Hon. AIA, CAE

Senate Ways and Means
3-5-08
Attachment 8



Senate Ways and Means
Senator Umbarger, chair

S. B. 642 – Alternative Construction

*Submitted by: Diane Gjerstad
Wichita Public Schools*

Mr. Chairman and Members of the Committee:

S.B. 642 would authorize school districts to use either “design build” or “construction management at-risk” as alternative construction methods to the traditional design-bid-build method.

S.B. 642 evolved from a two-year study process by Associated General Contractors.

Just as AGC took time to research and analyze the impact of expanding public policy to include new alternative methods, we believe school districts should be given time to thoughtfully review, discuss and analyze whether these new alternative construction methods are in the best interest of the taxpayers our elected board of education represent.

Additionally, Newton Public Schools has requested an Attorney General’s opinion in this area of law. We believe waiting for the opinion would give direction in crafting legislation, if legislation is even needed.

We would suggest a committee made up of a wide representation of school districts, school attorneys, architects and the construction industry to methodically review the bill and analyze the implications for school construction. For example, in our brief review we found on page 4, lines 38 – 42 language which appears to make the “alternative” method the primary method. The language would require the Board to *first* consider and reject the two alternative methods before using the traditional design-bid-build. Another question we had was given the legislature’s interest in energy efficiency in new school construction, would the alternative construction methods promote energy efficiency or not? Many questions arise.

S.B. 642 is a significant public policy change which we believe should be cautiously measured.

Thank you, Mr. Chairman.

*Senate Ways and Means
3-5-08
Attachment 9*

THE KANSAS CONTRACTORS ASSOCIATION, INC.



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Testimony

By the Kansas Contractors Association

before the Senate Ways and Means Committee

on SB 642

March 5, 2008

Mr. Chairman and members of the Committee, I am Bob Totten, Public Affairs Director for the Kansas Contractors Association. Our organization **represents over 300 companies** who are involved in the construction of highways and water treatment facilities in Kansas and the Midwest.

Today, I want to address our organization's concerns and present position regarding Alternative Delivery methods when companies submit bids. Our present policy is as follows:

The Kansas Contractors Association (KCA) strongly supports full and open competition among all parties providing construction and affiliated services. The construction industry's health and integrity depend on every qualified firm having an equal opportunity to compete.

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Attachment 10

The Kansas Contractors Association recommends that owners select the delivery systems that best fit their particular needs but with due regard for their independent interest in an open and competitive construction industry. KCA maintains that alternative delivery systems are appropriate for the public sector if the selection process is as open, objective, cost effective and free of political influence as the competitive bid system.

This position regarding alternative bid procurement does not come lightly as we have debated and discussed alternative delivery methods within our organization off and on for the past ten years. The bottom line is that we as an organization want the bidding process **for transportation projects** to be open, objective, cost effective and free of political influence. We believe in the competitive bid process and that transportation projects should be awarded to the lowest and most responsible bidder.

This measure sufficiently exempts the bidding of roads, bridges, highways and stand alone parking lots from the alternative bid procurement selection process. Therefore, the highway construction industry supports this bill as it does not change the way school districts will procure bids on roads and highways and stand alone parking

I appreciate the time you have heard on this important issue to our industry and stand for questions.

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TESTIMONY TO THE SENATE WAYS AND MEANS COMMITTEE REGARDING SENATE BILL 642

Dan Morgan

The Builders' Association and Kansas City Chapter, AGC
March 5th, 2008

Thank you, Mister Chairman, and members of the committee. My name is Dan Morgan. I am director of governmental affairs for the Builders' Association and the Kansas City Chapter of Associated General Contractors of America. The Builders' Association and KC Chapter, AGC represent more than 1,100 general contractors, subcontractors and suppliers engaged in the commercial and industrial building construction industry. Half of our members are located in the Kansas City area and are either domiciled in Kansas or perform work in the state. I appreciate the opportunity to provide this testimony in support of Senate Bill 642.

SB 642 is very similar to HB 2394 which was overwhelmingly approved by the Kansas Legislature in 2006 and to SB 485 which was heard by your committee earlier this session. Like HB 2394 which authorized state agencies and the Board of Regents to procure building construction projects using alternative project delivery methods and SB 485 which would authorize such methods for county projects, SB 642 would allow school boards to select a construction manager or general contractor or a building design-build team based on a qualifications and best value approach rather than the traditional design-bid-build procurement method on appropriate projects.

When determining whether alternative delivery is appropriate for a project members of the school board would consider such factors as whether its use would result in substantial savings of time or money, whether there is a need to overlap the design and construction phases on the project and whether use of an accelerated schedule is needed to make repairs in an emergency situation. In other words, the use of alternative delivery is not intended as a substitute for awarding public contracts to the lowest responsible bidder. Rather, it is meant to provide a good alternative in appropriate circumstances and only after a determination has been made that it is in the public interest to use an alternative method of delivery.

In an environment where more and more local governments are opting to use alternative delivery methods on certain projects, we do like the fact that SB 642 conforms well to current law affecting state agencies and to proposed new law affecting counties. It also establishes uniform procedures for all school boards to follow when awarding such contracts. We have reviewed the balloon amendments proposed by AGC of Kansas and respectfully ask that you incorporate these changes and recommend SB 642 favorably as amended.

*Senate Ways and Means
3-5-08
Attachment 11*