

MINUTES OF THE SENATE EDUCATION COMMITTEE

The meeting was called to order by Chairman Jean Schodorf at 1:30 p.m. on February 2, 2009, in Room 545-N of the Capitol.

All members were present except:

Senator Anthony Hensley- excused
Senator Bob Marshall- excused
Senator Dwayne Umbarger- excused

Committee staff present:

Matt Sterling, Office of the Revisor of Statutes
Martha Dorsey, Kansas Legislative Research Department
Sharon Wenger, Kansas Legislative Research Department
Dorothy Gerhardt, Committee Assistant

Conferees appearing before the committee:

Sharon Wenger, Kansas Legislative Research Department
Warren Corman, Head Architect, University of Kansas
Dale Glenn, American Institute of Architects
Eric Stafford, Associated General Contractors

Others attending:

See attached list.

Hearing on **SB 9 - State educational institutions; capital improvements totally financed with non-state moneys**

Sharon Wenger, Kansas Legislative Research Department, presented a short summary of **SB 9** which would exempt construction and renovation projects on university campuses from bureaucratic requirements in regard to bidding and construction. This proposal was brought to the Legislative Educational Planning Committee (LEPC) by the Board of Regents. As submitted to the LEPC, the Regents reported as part of the gift-funded projects a cost saving could be realized as well as be a quicker way to construct or renovate projects. This would involve any project that was constructed or renovated with 'non-state' moneys. Non-state moneys at this point could include tuition, fees and federal funds. It would not mean there would be no competition. The Joint Committee on State Building Construction would still review the project. Projects would still be inspected by the Division of Architectural Services. There would still be competitive acquisition policies. These would be policies developed by the state educational institution and approved by the State Board of Regent. She pointed out endowment association projects could still be financed only with private moneys. It was also mentioned that after much discussion, LEPC agreed to introduce this bill but not to recommend it.

Warren Corman, Head Architect, University of Kansas (Attachment 1) presented testimony in support of **SB 9**. In summarizing the bill, he stated the objective is an attempt to speed up the bidding process without removing any of the regulations that guarantee it is done correctly with regard to bidding, code review, acceptance by the state, and inspections. He stated this is an attempt at getting everyone to work as a team - architects, owners, state, secretary of administration, contractor - and not as adversaries, while improving efficiency.

Dale Glenn, American Institute of Architects (Attachment 2), also spoke in support of **SB 9**.

Eric Stafford, Associated General Contractors (Attachment 3), spoke in opposition to **SB 9** as currently written. He stated their opposition rested with their concern that each institution would have their own set of guidelines; and, also feel guidelines should remain in statute and not under the rules and regulations of the Board of Regents. Their final concern with the proposed revisions lies with the combining of procurement phases for the Construction Management at-Risk delivery method.

The hearing on **SB 9** was closed.

CONTINUATION SHEET

Minutes of the Senate Education Committee at 1:30 p.m. on February 2, 2009, in Room 545-N of the Capitol.

Chairman Schodorf requested a meeting with Eric Stafford, Associated General Contractors of Kansas, Inc. and Kathy Damron, University of Kansas, and other interested parties to work on wording of the bill that all sides would feel comfortable with.

The next meeting is scheduled for February 3, 2009.

The meeting was adjourned at 2:25 p.m.

EDUCATION COMMITTEE GUEST LIST

DATE: February 2, 2009

NAME	REPRESENTING
SUE PETERSON	K-STATE
MATH DUMMON	KVU
Bill Brady	Capitol Strategist
ERIC KING	KFOR
COREY PETERSON	AGC of KS
Eric Stafford	AGC of KS
DAN MORGAN	Builder's Assn & KC/AGC
Tom Kutz	KASB
JJD Simone	D. Schmidt
LAD MEALY	KEARNEY Assoc.

Monday February 2, 2009 Statehouse

Senator Schodorf and members of the Senate Education Committee

RE: Senate Bill 9

The state universities in Kansas have been working on a plan to inspire more teamwork and efficiency in the planning and construction of state building projects. Money is tight and will continue to be scarce for the foreseeable future.

The old traditional procedure of design, then bid, then maybe rebid and then build usually works. But not always. Sometimes we must plan and build quickly to put a program or procedure in place to meet an urgent need. For example, training more pharmacists for Kansas. Sometimes we need better or more space in order to compete nationally for research grants that might cure cancer or other now incurable and dread diseases.

The old traditional design-bid-build worked well in the earlier years. I can vouch for the 1940's and 50's when I worked in the State Architect's office. It worked well in the 60's and 70's and 80's when I was the architect for the Kansas Board of Regents. It especially worked well when the low bidding contractor was a very experienced firm and could work well with the state and the owner and was solid financially.

Gradually in the 80's and 90's and currently, with the advent of computer aided design, electronic transmissions and scanning, faxing, e-mailing and cell phones, the design industry changed into a much faster communication system. The older system that I grew up on was no longer workable with fast pace needed on the larger projects. We had to adjust to the times.

One of the other changes was that funding for university projects used to be all state and federal funds. In the 60's the Higher Education Facilities Commission provided 1/3 and the state of Kansas provided 2/3 of the funds for every project. The state funds were either from the State General Tax Fund or the Kansas Educational Building Fund. That has gradually changed to where it is a rarity to build on university campuses with the SGF and the KEBF is primarily for maintenance and repairs to existing facilities. Now, about 95% of our funds for construction and remodeling come from self-generated campus funds: residence hall fees, student fees, student union fees, parking fees, athletic fees, ticket income, federal grants and endowment gifts.

Many times we are required to move quickly and efficiently to produce a project. For example, the new Multidisciplinary Research Building (Mr. "B") on west campus at KU. In the fall of 2004 it became obvious that to grow our cancer research grants and studies we had to have more research space and more modern space. We were using research laboratories that I had designed in the early 1950's - Malott Hall.

Following the endowment law we interviewed and hired architects, engineers, laboratory consultants and contractors within a few weeks and started the design. We started

Senate Education
2-2-09
Attachment 1

excavation for a huge basement to house a heating and cooling plant for the entire research area on west campus. We built as we designed and under constant inspection of the budget, the design and the construction. The state offices in Topeka approved the plans, the building codes and the construction as we progressed and then accepted the building for the state of Kansas in a short 15 months after we started the planning. This was a record for a new \$40 million facility as complicated as the program required for all the types of research in the building. By working as a team, and not adversaries, we left our egos at the door, paid the contractor and the architects a fair fee and saved millions of dollars as a result.

There is a handout describing the time schedule for this Mr. "B" project and a comparison with the standard state process.

Working with gift funds and endowment we have been able to expedite other projects the same way. We have a new, nationally recognized research team now on campus, relocated from the east coast, that needed a whole new research wing for their work. We were able to design and construct this new two story wing as a team effort in record time and research has started about a year early.

Senate Bill 9 is a realization that the old method needs improving and that we have had a good example in place with endowment for over 20 years. Senate Bill 9 does not apply to any project that is still funded by state tax funds such as the SGF and the KEBF. It applies to all other funds that are generated on campus.

All of the checks and balances needed for fair and ethical selection and production of projects is still in place in SB 9. All of the details of how it can work will be installed in the Policy Manual of the Kansas Board of Regents for all of the institutions of higher education governed by the Regents.

For example: all projects would be approved by the Board of Regents and would be advertised for professional services in the Kansas Register and the purchasing web sites. A/E firms would submit statements of qualification as they do now. The qualifications submitted would be reviewed by a committee set up by the Board of Regents that would include representatives of the Regents, the university, the user group, the secretary of administration and a rotating position from the AGC / AIA / ACEC. The selection committee would select the most qualified firm for the particular project and negotiate the contract and the fee. The contract would follow the normal form now used by the university and the state and the plans and specifications would be approved by the secretary of administration.

Selection of construction contractors would be by a similar method. Contractors that bid on projects would be selected by public bidding with the award to the lowest responsible bidder. Construction managers at risk would be selected in a similar manner as the process for architects and engineers. This process would be spelled out in detail in the Board of Regents Policy Manual.

The Construction Manager at Risk team would work with the owner and the architect from the inception of the project and feed the team with real costs of the various parts of construction so that at the proper time the CM could give a guaranteed maximum price (GMP) and the project would develop with full confidence that it would not go over the budget and be completed on time. The contractor would work with an open book for the owner to see at all times and would be paid a fair but standard rate for a fee. All other costs related to the project would be paid by the owner without markup or hidden costs. This method has worked successfully all over the USA and we have used it on numerous projects with endowment in recent years. We can vouch for its benefits.

Last week a group of us from the university and the Board of Regents office met with representatives of the AGC, AIA and ACES to discuss their support of SB 9. It is our feeling that all parties feel it is a better way to design and build in today's climate. It will enable the owner to match very qualified firms to a particular size project based on their experience and abilities. It puts the responsibility for success on the university where the funds are generated.

We have developed a detailed process for each of the various parts of the design and construct system. These processes have been reviewed by the architectural and engineering society representatives and they are supportive.

If anyone would like a copy of the five-page process that will go into the Board Policy Manual we will leave a copy with the committee for reproduction. It is still in draft form but covers the important issues.



Warren Corman, University Architect and
Special Assistant to the Chancellor
Registered Architect and Licensed Professional Engineer

FILE

The University of Kansas

Office of the Chancellor

September 2005

TWO DIFFERENT METHODS FOR DESIGN AND CONSTRUCTION (Using the \$40 million Multidisciplinary Research Building as an example)

THE TYPICAL STATE OF KANSAS METHOD -----

- Sept. 2004 Chancellor and Provost develop concept and idea for new laboratories
- Oct. " Outline program prepared by researchers and KU staff
- Nov. " Program and budget concepts presented to Gov. budget hearings
- Jan. 2005 Legislative session starts
- April " Legislature approves program and funding sources
- May " State advertises for architects and engineers
- June " Slate of architectural firms announced for interviews
- July " Interviews with architects and selection announced
- Aug. " Contract signed with architects
- Sept. " Architectural firm begins planning
- Nov. " Firm presents concepts and schematic plans for approval
- Dec. " Firm is into design development phase
- Feb. 2006 Design development approved
- July " Working drawings and specs. Completed
- Aug. " Advertise for bids through state purchasing department
- Sept. " Bids received for construction
- (IF BIDS WITHIN BUDGET THE PROCESS CONTINUES)
- Oct. " Construction contract awarded
- Dec. " Construction starts on site (allow 24 months)
- Dec. 2008 Construction complete and building accepted by state
- Jan. 2009 Move in and occupy building

1 YEAR MINIMUM

1 YEAR MINIMUM

2 YRS, 4 M. MINIMUM

Total time from October 2004 to January 2009 = 4 years & 4 months = 52 months

(IF BIDS ARE NOT WITHIN BUDGET ADD 6 MONTHS FOR REDESIGN AND REBIDDING)

Total time would then be 4 years & 10 months = 58 months

(over)

The University of Kansas

FILE

Office of the Chancellor

SECOND METHOD -- PRIVATE FUND PROCESS THROUGH ENDOWMENT

Sept.	2004	Chancellor and Provost develop concept and idea for new laboratories
Oct.	"	Researchers and KU staff prepare outline program and budget
Oct.	"	KU and endowment select architects, engineers and contractors
Nov.	"	Contractors begin sitework as architects prepare structural plans Site utilities, roadwork and site earthwork bids in budget
Dec.	"	Subcontractor bids running about \$3 million over budget. Architects and engineers instructed to work with all contractors to reduce price
Jan.	2005	Building contracts back within budget. Bond sale for \$45 million at 5.19% interest. Completion date set for December 15, 2005
April	"	Concrete frame and all concrete floors and roof finished
Aug.	"	Building roof watertight and windows installed. Air conditioning turned on with interior painting started
Sept.	"	Laboratory casework and benches delivered and installation begins
Oct.	"	Flooring and ceiling work underway
Dec.	"	Construction complete and researchers begin moving in to offices and laboratories

Total time from October 2004 to December 2005 = 15 months

ANALYSIS OF DIFFERENCE BETWEEN TWO METHODS ----

- A. The cost difference in time and inflation is estimated to be \$6 million.
- B. The cost difference in lost time and lost grants is estimated to be \$12 million.
- C. We will have spent about \$400,000 in overtime on the second method
- D. We very carefully selected the architects, engineers and contractors as part of the owner team and provided partnering sessions to make sure we were all working together and not as adversaries
- E. We negotiated the architect's contract over the phone within 48 hours of contacting them and they started to work several months before they had a signed contract. The chancellor and our research corporation provided \$500,000 up front funding to use before the bonds were sold. The contractor's contracts were done in a similar manner with endowment and KU providing a letter assuring the contractor of payment before the bonds were sold.
- F. By the second method we were able to build a huge power plant underneath the building in a 24 foot high basement that not only provides heating and cooling for the new building but has space in it for future boilers and chillers for the entire research campus of about 800,000 square feet of buildings.

(over)



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Jason VanHecke, AIA
Wichita

Executive Director
Trudy Aron, Hon. AIA, CAE
info@aiaks.org

February 2, 2009

TO: Senate Education Committee
FROM: Dale Glenn , AIA
RE: Support for SB 9

Good Afternoon Chair Schodorf and Members of the Committee. I am Dale Glenn representing the American Institute of Architects in Kansas. I am an architect in private practice in Lawrence.

AIA Kansas is a statewide association of architects and intern architects. Most of our 700 members work in over 120 private practice architectural firms designing a variety of project types for both public and private clients. Our members are designing tomorrow's building today, aiming to meet the "triple bottom line": economy , people and environment.

AIA Kansas is supporting SB 9 that will allow the Kansas Regents to use non-state funds to for capitol construction in the same manner they now use for endowment projects.

We did have some concerns about the process the Regents would use for selecting their architectural services. We want to thank the Regents and representatives from the University of Kansas for meeting with us to write rules and regulations that the Regents intend to use for their procurement of design services. These proposed regulations will provide a fair, open and competitive process and alleviates the concerns we had with SB 9.

Therefore, AIA Kansas supports SB 9.

Thank you for allowing us to testify on this matter. I'll be happy to answer any questions you may have.

Senate Education
2-2-09
Attachment 2



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 EDUCATION
SB 9**

February 2, 2009

By Eric Stafford, Associated General Contractors of Kansas, Inc.

Madam Chairman and members of the committee, my name is Eric Stafford. I am the Director of Government Affairs for 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).

The AGC of Kansas opposes Senate Bill 9 and asks that you do not recommend SB 9 favorably for passage.

SB 9 as introduced exempts Regents institutions from the state bidding statutes for projects financed with "non-state" monies. It has been expressed to AGC that the intent of this bill is to expedite the lengthy approval process facing Regents schools for construction projects. Revised language was also proposed following a meeting last week in which AGC was asked to offer comments.

After reviewing the revised language, AGC members have some concerns. First, and foremost, AGC has expressed its willingness to work with the Board of Regents on ways to expedite the approval/funding process, but do so in a way that continues to protect the public trust. Several AGC members have a philosophical difference regarding the definition of "non-state" monies and whether these funds should be considered private, or follow the same guidelines as private dollars given to an endowment association or foundation.

Second, if our groups can come to an agreement on language, our members strongly feel these guidelines should remain in statute and not under the rules and regulations of the Board of Regents. AGC remains cautious that the guidelines could arbitrarily be changed at a later date with no input from the public or industry.

The third and final concern with the proposed revisions relates to the combining of procurement phases for the Construction Management at-Risk (CM) delivery method. All contractors submitting proposals would then have to go to the expense of preparing fee proposals, even though only three of them will be opened. This will discourage competition and increase the cost of doing business for the industry.

Again, the AGC of Kansas and its members are more than willing to work with the Regents to find a solution that benefits all parties while protecting the interest of the public. AGC has a long history of working together with the Board of Regents and appreciate their willingness to have AGC be a part of discussions on issues of mutual interest.

Again, the AGC of Kansas respectfully requests that you do not recommend SB 9 favorably for passage.

Thank you for your consideration.

*Senate Education
2-2-09
Attachment 3*