

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:15 a.m. on February 3, 2010, in Room 785 of the Docking State Office Building.

All members were present except:

Dan Johnson-excused  
Tom Moxley-excused

Committee staff present:

Matt Sterling, Office of the Revisor of Statutes  
Cindy Lash, Kansas Legislative Research Department  
Iraida Orr, Kansas Legislative Research Department

Conferees appearing before the Committee:

Virgil Gleason, City of Olathe  
Nathan Eberline, League of Kansas Municipalities  
Ryan Freed, Kansas Corporation Commission

Others attending:

Twenty including the attached list.

Hearing on:

**HB 2488 - State agencies and political subdivisions; facility conservation improvements.**

Matt Sterling, Office of the Revisor of Statutes, (Attachment 1), gave an overview to the committee regarding **HB 2488**.

Proponents:

Virgil Gleason, City of Olathe, (Attachment 2), spoke to the committee in support of **HB 2488**.

Questions were asked and comments made by Representatives: Vern Swanson, Tom Sloan, Milack Talia, Forrest Knox, Rob Olson, Vince Wetta, and Carl Holmes.

Nathan Eberline, League of Kansas Municipalities (Attachment 3), offered testimony in support of **HB 2488**.

Opponents:

Ryan Freed, Kansas Corporation Commission, (Attachment 4), spoke to the committee in opposition of **HB 2488**.

Questions were asked and comments made by Representatives: Joe Seiwert, Forrest Knox, and Rob Olson.

There hearing on **HB 2488** was closed.

Representative Holmes made announcements regarding the schedule for the rest of this week and next week.

The next meeting is scheduled for February 4, 2010.

The meeting was adjourned at 10: 07 a.m.

# HOUSE ENERGY AND UTILITIES COMMITTEE GUEST LIST

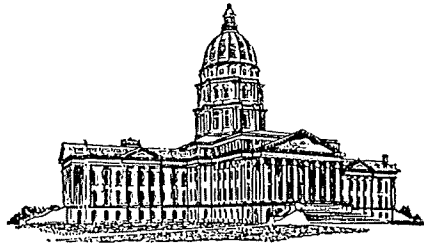
DATE: February <sup>3</sup> 2, 2010

NAME	REPRESENTING
PHIL WAGES	KEPCO
TOM DAY	KCC
RYAN FREED	KCC
Corey Mohr	KDOC
Mark Gleason	City of Olathe
LON STANTON	NORTHERN NATURAL GAS Co.
Susan Kluff	KCC
Nathan Eberline	LKM
Day Mays	Olathe
Kimberly Sady	GSPA
Larry Beg	MWE
Mark Schreiber	Westar
Jason French	BP
Clare Gustin	Sunflower Electric
Michelle Peterson	Capitol Strategies
Jessica Brooks	Intern

MARY ANN 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: Chairman Holmes and members of the House Committee on Energy and Utilities  
From: Matt Sterling, Assistant Revisor of Statutes  
Date: 2/3/10  
Subject: House Bill No. 2488

Under current law, state agencies may enter into contracts or lease-purchase agreements for energy conservation measures in their buildings only if the estimated energy and operational cost savings over a specified time-period is greater than the cost of the energy conservation measures.

“Energy conservation measure” is defined as an energy study, audit, improvement or equipment which is designed to provide energy and operational cost savings at least equivalent to the amount expended by a participating political subdivision or state agency for such energy study, audit, improvement or equipment over a period of not more than 30 years after the date such improvement or equipment is installed or becomes operational, as the case may be.

HB 2488 would permit increased revenues to be included in the definition of energy conservation measure and would allow a state agency to include increased revenue in the calculation of cost savings to meet the payback requirements of energy conservation measures.



February 3, 2010

To: House Committee on Energy and Utilities  
From: Virgil Gleason, Deputy Director, Municipal Services, city of Olathe  
Subject: Support of HB 2488

On behalf of the City of Olathe I would like to thank you for the opportunity to speak in support of House Bill 2488, a fairly simple amendment to K.S.A. 75-37,125, which authorizes the Kansas Facility Conservation Improvement Program (FCIP).

In 2008, the city of Olathe started the FCIP process and identified a number of potential energy conservation measures (ECMs) for city facilities. In partnership with Johnson Controls, Inc., our Energy Services Company (ESCO), we refined that list and have begun a number of motor, pump, and lighting improvements in treatment plants and other facilities some of which were originally built in the 1950's. In addition, the approved FCIP includes replacement of the city's old water meters with new meters and supporting technology to allow greater efficiencies and better customer service.

One ECM that was not included in our work program has prompted our support for this amendment. An energy audit conducted early in the FCIP process identified potential for a grease and Septage Receiving Station at our Harold Street Wastewater Treatment Plant. Waste haulers use such facilities to deposit grease, oils, and other wastes generated primarily from restaurants and food processors. Currently, the closest location is in Kansas City, Kansas. The audit identified an opportunity for a more convenient location for Johnson County haulers in the city of Olathe. The additional volumes of waste grease would enhance the wastewater treatment process, would help decrease our reliance on natural gas for heating the plant digesters and provide a new revenue opportunity for the city.

Unfortunately, the city was not able to include this ECM in the final FCIP because a legal determination for the State Energy Office prohibited the use of new revenue on the basis that the statute did not expressly authorize measures that generated new revenue. Since, the increment of new revenue was necessary to fund installation of the receiving station in the time frame required by the FCIP; so this ECM was dropped from the final list.

The legal determination seemed contrary to the marketing materials for the program that state....*"if a project results in an increase in revenue to the agency then this revenue may*

HOUSE ENERGY AND UTILITIES

DATE: 2/3/2010

ATTACHMENT 1-1

*also be used in the economic justification for a project."* We have discussed this technicality with Energy Office staff, the League of Kansas Municipalities, and our energy contractor, and we believe that this amendment would help clarify what many stakeholders already believed was part of the FCIP.

Passage of this amendment will allow the city of Olathe to reconsider this ECM in the future, and would also help other public entities in Kansas that may use the FCIP program to reduce energy costs thru new projects by being allowed to include new revenues that occur as a result of their projects. We believe the FCIP is an excellent tool that deserves a higher profile as Kansas moves forward with a variety of energy initiatives in this economy.

Thank you.



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League of Kansas Municipalities

**To:** Senate Local Government Committee  
**From:** Nathan Eberline – League of Kansas Municipalities  
**Date:** February 3, 2010  
**Re:** Support for House Bill 2488

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Thank you for the opportunity to offer testimony regarding House Bill 2488. The League of Kansas Municipalities supports this bill and the opportunity to clarify a current area of ambiguity. House Bill 2488 modifies K.S.A. 75-37,125—a statute that encourages public agencies (state, municipalities, counties, and schools) to use energy savings performance contracting (ESPC) to access financing for planning and implementing projects.

Recently, the State Energy Office determined that K.S.A. 75-37,125 does not expressly authorize measures that generate new revenue. Subcategory 4 currently reads that:

“Energy conservation measure” means an energy study, audit, improvement or equipment which is designed to provide energy and operational cost savings at least equivalent to the amount expended by a participating political subdivision or state agency for such energy study, audit, improvement or equipment over a period of not more than 30 years after the date such improvement or equipment is installed or becomes operational, as the case may be.

By adding “or increased revenues” to this clause, it will correct the statute to allow for the intended purpose of allowing public agencies to develop and benefit from their energy conservation measures.

House Bill 2488’s modification to authorize measures that generate new revenue will provide clarification to K.S.A. 75-37,125, while encouraging public agencies to participate in the valuable FCIP program. It is with these policy considerations in mind that the League supports House Bill 2488.

[www.lkm.org](http://www.lkm.org)

*HOUSE ENERGY AND UTILITIES*  
DATE: 2/3/2010  
ATTACHMENT 3

**Before the House Energy and Utilities Committee  
Comments by the  
Staff of the Kansas Corporation Commission  
February 3, 2010**

**House Bill 2488**

Thank you, Mr. Chairman, and members of the Committee. I am Ryan Freed, Energy Efficiency Programs Manager for the State Energy Office. I oversee the Facility Conservation Improvement Program (FCIP) which operates under the authority in KSA 75-37,125.

The Facility Conservation Improvement Program (FCIP) is designed to provide cost-effective energy-efficiency improvements for government organizations. To do this, the FCIP has contracted with 10 pre-approved Energy Service Companies (ESCOs). These ESCOs provide customers with a comprehensive, turn-key, facility improvement project. Because the statute allows government organizations to avoid the traditional low-bid procurement strategy, it is required that these projects have sufficient energy and operational savings to cover the full cost of the investment within a 30-year period. This is calculated by dividing the total cost of the project by the annual energy and operational savings.

The Kansas Corporation Commission (KCC) opposes expanding this calculation to include increased revenue.

Currently, the FCIP does not allow increased revenue to be included in the savings calculations. We base our decision on an informal opinion the Attorney General's office issued in 2007. The letter states:

"...projects which provide legitimate energy savings can and should be included. However, projects where energy savings is a matter of conjecture or projects that are clearly speculative in regards to energy savings, such as the example of rising construction costs in the future, should not be included in the calculations used to satisfy the requirements of the statute."

We believe that basing savings on speculative revenue poses too much risk to the customer, particularly when statute requires that these enhancements be sufficient to cover the cost of the improvement. It is also unlikely that ESCOs would guarantee the increased revenue.

Therefore, we believe that customers are best served when projects include savings based on measurable historical data, rather than speculative revenue.

*HOUSE ENERGY AND UTILITIES*

DATE: 2/3/2010

ATTACHMENT 4