

Approved: March 19, 2010
Date

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:00 a.m. on February 11, 2010, in Room 785 of the Docking State Office Building.

All members were present except:

Representative Dan Johnson- excused
Representative Mike Slattery- excused

Committee staff present:

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

Conferees appearing before the Committee:

David Hutchings, KBI
Scott Jones, KCP & L
James Joerke, Johnson County Sustainability Program
Chris Cardinal, Sierra Club
Matt Goddard, Heartland Community Bankers Association
Maril Hazlett, Climate Energy Project

Others attending:

Twenty-one including the attached list.

Hearing on:

HB 2652 - Kelsey Smith act; call location; amendments.

Matt Sterling, Revisor of Statutes (Attachment 1), gave an overview of **HB 2652**.

Questions were asked and comments made by Representatives: Annie Kuether, and Joe Seiwert.

Proponent:

David Hutchings, KBI (Attachment 2), spoke to the committee in favor of **HB 2652** noting the changes that are applicable to the current law to require wireless carriers to forward the information to the KBI.

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

The hearing on **HB 2652** was closed.

Hearing on:

HB 2663 - Concerning cities and counties and the creation of energy management districts.

Matt Sterling, Revisor of Statutes, (Attachment 3), gave the committee an overview of **HB 2663**.

Questions were asked and comments made by Representatives: Tom Sloan, and Rob Olson.

Proponents:

Representative Milack Talia, (Attachment 4), offered testimony in support of **HB 2663**. He noted the reasons why this bill was needed and the steps that would happen should this bill be enacted. He also commented why this bill's proposal is uniquely different to the current way of doing things. He also included some

CONTINUATION SHEET

Minutes of the House Energy and Utilities Committee at 9:00 a.m. on February 11, 2010, in Room 785 of the Docking State Office Building.

proposed amendments with his testimony.

Questions were asked and comments made by Representatives: Tom Sloan, Margaret Long, and Vern Swanson.

Scott Jones, KCP & L (Attachment 5), gave testimony in support of **HB 2663**.

James Joerke, Johnson County Sustainability Program (Attachment 6), gave testimony in support of **HB 2663**. He noted many of the benefits of promoting energy efficiency and the use of renewable sources of power.

Chris Cardinal, Sierra Club (Attachment 7) offered testimony in support of **HB 2663**. He noted that this bill would set up a novel method of funding energy efficiency and renewable energy improvements for homeowners and business people.

Written Proponents:

Written testimony presented in support of **HB 2663** are as follows:

- James Roberts, The Great Plains Alliance for Clean Energy, (Attachment 8)
- Susan Brown, Energy Savings Store, (Attachments 9)

Written Neutral:

Written neutral testimony on **HB 2663** was presented:

- Kathleen Taylor Olsen, Kansas Bankers Association, (Attachment 10)

Neutral:

Matt Goddard, Heartland Community Bankers Association (Attachment 11), spoke to the committee on **HB 2663** and noted some of the issues that they had with the bill as it is currently written.

Maril Hazlett, Climate Energy Project (Attachment 12), presented testimony in regards to **HB 2663** and also included an article (Attachment 13), addressing a small wind business in Greensburg, Kansas.

Questions were asked and comments made by Representatives: Rob Olson, Milack Talia, Richard Proehl, Tom Sloan, Rocky Fund, Vern Swanson, Tom Moxley, Forrest Knox, and Carl Holmes.

Sandy Jaquot, League of Kansas Municipalities, also contributed to the question and answer period.

The hearing on **HB 2663** was closed.

Cindy Lash presented information to the committee (Attachment 14), that addresses some of the committee member's questions concerning the current Texas state-level Emergency Services IP Network (ESInet) Advisory Council.

The next meeting is scheduled for February 12, 2010.

The meeting was adjourned at 10:08 a.m.

HOUSE ENERGY AND UTILITIES COMMITTEE GUEST LIST

DATE: February 11, 2010

NAME	REPRESENTING
Matthew Goddard	Heartland Community Bankers Association
Tim Grogan	KTAT
TOM DAY	KCC
PAUL WAGOS	KEPCO
Jack Dook	KCBPU
Jandy Jacquet	LKM
James Joerke	Johnson County, KS
DFH	KFC
Gary Anderson	KSC
LARRY BIRG	MIDWEST ENERGY
DAVID HUTCHINGS	KBI
ERIK SARTORIUS	City of Overland Park
Nichelle Peterson	Capital Strategies
Scott Jones	KCP
Mike Reed	Sprint
M. Harlett	CEP
Mari Tucker	Commerce
Kimberly Sady	GRPA
Shelly Allen	KRITC

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—
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Legislative Committee Staff
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Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
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MEMORANDUM

To: Chairman Holmes and members of the House Committee on Energy and Utilities
From: Matt Sterling, Assistant Revisor of Statutes
Date: February 11, 2010
Subject: House Bill No. 2652

HB 2652 would amend K.S.A. 2009 Supp. 22-4615, or the Kelsey Smith Act. The act currently requires a wireless telecommunications carrier, upon request of law enforcement, to provide call location information of a user in order to respond to an emergency situation involving risk of death or physical harm. Currently, the KBI is required to obtain contact information for all wireless carriers authorized to do business in Kansas in order to facilitate any law enforcement requests for call location information.

HB 2652 would amend the act to require that all wireless telecommunications carriers registered in Kansas submit emergency contact information to the KBI, instead of requiring the KBI to obtain the information. The carriers would be required to provide this contact information annually by April 15th or upon any change in contact information.

The bill would also require the KBI to maintain a database containing emergency contact information for all carriers registered in Kansas and would make the information immediately available upon request to all public safety answer points in the state. The KBI would be given an extension until July 1, 2011 to promulgate rules and regulations to fulfill the requirements of this bill.

HOUSE ENERGY AND UTILITIES

300 SW TENTH AVE - STE 010-E, Statehouse—TOPEKA, KANSAS
PHONE (785) 296-2321 FAX (785) 296-6668 E-mail: Revisor'st

DATE: 2/11/2010
ATTACHMENT 1



Kansas Bureau of Investigation

Robert E. Blecha
Director

Steve Six
Attorney General

Testimony in Support of HB 2652
Before the House Committee on Energy and Utilities
David Hutchings, Special Agent in Charge
Kansas Bureau of Investigation
February 11, 2010

Chairman Holmes and Members of the Committee,

I appear today on behalf of the Kansas Bureau of Investigation in support of immediate passage of HB 2652. This bill would amend KSA 2009 Supp. 22-4615.

Present language requires that wireless telecommunications carriers provide call information to law enforcement in the event of an emergency and that the KBI obtain and maintain emergency contact information for all such wireless carriers and disseminate it quarterly to all public safety answer points.

This bill would amend present law to require wireless carriers to provide the emergency contact information to the KBI and would allow the KBI to make the information readily accessible to law enforcement agencies in a readily available and more current form upon request.

These changes help the KBI better manage this responsibility. The bill places a clear burden upon the carriers to provide the necessary emergency contact information, a requirement that is arguably lacking from the present language.

Also, the KBI believes we can better serve law enforcement needs by making the emergency contact information available through our help desk which operates 24 hours a day, seven days a week. Public safety answer points currently utilize the help desk routinely and are able to get immediate assistance. Law enforcement agencies may go months or, in the case of some smaller agencies, years without needing to utilize the wireless emergency contact list, and we feel we can better serve them by maintaining it in a readily accessible and current form at the help desk. We would still disseminate the list to any agency wishing to have it, but the KBI would not be able to ensure that it is up to date once it leaves us.

Again, the changes requested serve the sole purpose of allowing the KBI to better perform the requirements of the present law.

Thank you for your time and consideration. I would be happy to answer your questions.

HOUSE ENERGY AND UTILITIES

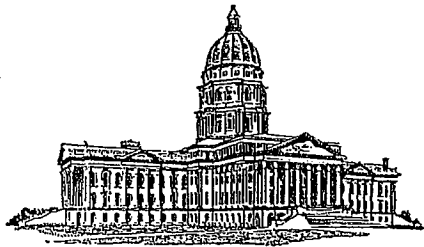
DATE: 2/11/2010

ATTACHMENT A

MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



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MEMORANDUM

To: Chairman Holmes and members of the House Committee on Energy and Utilities
From: Matt Sterling, Assistant Revisor of Statutes
Date: February 11, 2010
Subject: House Bill No. 2663

HB 2663 would authorize cities and counties to create energy management districts for the purpose of constructing, installing or acquiring energy efficient improvements or renewable energy improvements. After creation of the district, property owners within the assessment area could opt-in to the program. The costs of the improvements would be assessed against the property benefitted by the improvements and paid for solely from the proceeds of the assessments. Below is a more detailed description of the contents of the bill.

Section 2: Contains definitions for an “energy efficient improvement” and a “renewable energy improvement”.

Section 3: Enables the governing body of a city or county to establish energy management districts for the purpose of constructing, installing or acquiring energy efficient or renewable energy improvements.

Section 4: Enables a city or county to assess the cost of an improvement against the property benefitted by the improvement. The improvements must be authorized by city ordinance or county resolution and constructed under the direction of the municipal engineer or the governing body. The owner of the property may also arrange for improvements that qualify under the ordinance or resolution and obtain financing for the improvements from the city or county forming the district.

Section 5: Requires that a city or county would have to adopt a resolution of intent to initiate the formation of an energy management district. The resolution of intent would contain: (a) The intent to designate an area for the assessment; (b) a description of the boundaries of the proposed district; (c) a general description of the goals of the district; (d) a finding that the district served a public purpose of the governing body by achieving its defined goals; (e) a summary of the eligible energy efficiency improvements and renewable energy improvements; (f) such other information as deemed advisable by the governing body; and (g) the time and place of a public hearing to be held by the governing body to consider establishment of the district.

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Section 6: Requires that notice of the public hearing for the proposed establishment of an energy management district would be published in the official newspaper of the city or county and a copy of such notice and a copy of the resolution of intent would be mailed to all owners in the proposed district.

Section 7: Requires that after the public hearing, if the city or county decides to establish a district, the city or county would create the district by ordinance (city) or resolution (county). The ordinance or resolution creating the district would be required to contain: (a) A description of the boundaries of the district; (b) a list of all eligible energy efficiency and renewable energy improvements; (c) a finding that the district serves a public purpose of the city or county; (d) a method for ranking requests from property owners for financing if requests exceed the authorization amount; (e) specification of whether the property owners may purchase the equipment for the energy efficiency or renewable energy improvement directly or contract for the installation; (f) a draft contract specifying the terms and conditions to be agreed upon by the city or county and any property owner on which the improvements are to be made; and (g) the terms of members or method of appointment and duties of any manager, administrator or board established to manage the district.

Section 8: States that within 45 days following publication of an ordinance or resolution establishing a district, the property owners could file a petition in opposition to the district and if a majority of the owners signed it, the district would be dissolved.

Section 9: Provides that the district could be modified or abolished by ordinance (city) or resolution (county) and would require written notice to the property owners.

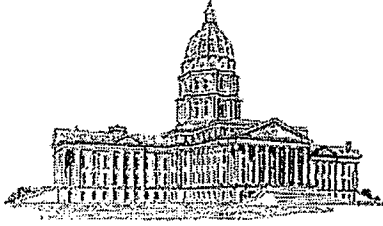
Section 10: Would enable a city or county to issue bonds in one or more series to finance improvements located within the district. The bonds would be made payable from a pledge of revenues from special assessments imposed pursuant to section 11. The terms and conditions of the issuance of the bonds would be determined by the ordinance or resolution of the city or county. The bonds issued would be exempt from all state taxes except inheritance taxes.

The bonds would be required to contain the following recitals: The authority under which the bonds are issued; that the bonds conform with the provisions, restrictions and limitations thereof; and that the bonds are to be paid from the money and revenues from special assessments. The bonds would also be required to mature within 22 years. A city or county issuing bonds under this act would be permitted to refund all or part of such issue pursuant to the provisions of K.S.A. 10-116a.

Section 11: Provides that the governing body creating a district would levy and collect special assessments upon property owners in the district that have had improvements made. The costs of all improvements would be paid from the proceeds of the special assessments. The assessments would be payable at the time of the payment of property taxes and all assessments would earn interest at a rate provided by the contract between the city or county and the owner of the property owner.

MILACK TALIA
HOUSE OF REPRESENTATIVES

STATE CAPITOL
300 SW TENTH STREET
TOPEKA, KANSAS 66612
(785) 296-7646
MILACK.TALIA@HOUSE.KS.GOV



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STATE OF KANSAS | 23RD DISTRICT

February 11, 2010

Chairman Holmes, Vice-Chair Knox, Rep. Kuether, and Members of the Energy Committee,

Property Assessed Renewable Energy (PARE) programs enable local governments to finance renewable energy and energy efficiency projects on private property, including residential, commercial and industrial properties. The programs eliminate the chief barrier to clean energy installations: the large upfront cost. Typical steps in creating PARE bonds are as follows:

- State enabling legislation allows for special local bonding districts,
- With public input, a local government creates a energy management district (EMD),
- The local government issues a PARE master bond,
- Residential, commercial, or government property owners apply for PARE funds to install renewable energy and energy efficiency projects, and then
- The PARE bond funds are treated as a "property tax lien" and repaid by property owner over a maximum of 22 years as part of the property tax bill.

There are three major characteristics, however, that make PARE unique. First, participation is 100% voluntary. Only those residential, commercial, or government property owners who choose to participate in the PARE program pay additional costs. PARE bonds are not be subsidized by the entire district—only by those who voluntarily participate; see Sec. 10(b). Second, bond proceeds are used to pay for prequalified renewable energy and energy efficiency projects on participating properties. For example, solar panels, small wind turbines, high efficiency HVAC systems, and water conservation measures. Third, if the property owner sells the property, the PARE bond stays with the property and payments are assumed by the new property owner.

The reason why I introduced HB 2663, with amendments, was to give local governments a powerful tool that would stimulate local "green" businesses while providing a competitive financing program for property owners. One of the main obstacles preventing investments in renewable energy or energy efficiency projects is that the upfront costs are too great and the savings are spread across too many years. PARE bonds realign costs with savings by taking the upfront costs and spreading it over the years while a property owner realizes their savings year after year. Thank you for your consideration of this bill.

1 able resources, including, but not limited to, photovoltaic systems, solar
2 thermal systems, small wind systems, biomass systems or geothermal sys-
3 tems, as may be authorized by the governing body.

4 Sec. 3. The governing body of any city or county, in accordance with
5 the procedures and subject to the limitations of this act, may establish
6 one or more energy management districts within the city or county for
7 the purpose of constructing, installing or acquiring energy efficiency im-
8 provements or renewable energy improvements.

9 Sec. 4. Any city or county may construct energy efficiency improve-
10 ments or renewable energy improvements and assess the cost thereof,
11 wholly or in part, against the property especially benefited by such im-
12 provements. The improvements shall be authorized by city ordinance or
13 county resolution and shall be constructed under the direction of the
14 municipal engineer or other officer having similar duties or under the
15 direction of the governing body in accordance with plans and specifica-
16 tions adopted by the governing body or, if such improvements qualify
17 pursuant to the ordinance or resolution of the governing body, the owner
18 of the real property may arrange for the improvements and obtain fi-
19 nancing for the improvements from the city or county through the process
20 set forth in the ordinance or resolution forming the district.

21 Sec. 5. Any city or county may initiate the formation of an energy
22 management district by the adoption of a resolution of intent. Such res-
23 olution of intent shall contain the following: (a) The intent to designate
24 an area for the assessment, even if the area will cover the entire city or
25 county; (b) a description of the boundaries of the proposed district; (c) a
26 general description of the goals and details to be provided within the
27 district; (d) a finding that the district served a public purpose of the gov-
28 erning body by achieving its defined goals; (e) a summary of the eligible
29 energy efficiency improvements and renewable energy improvements; (f)
30 such other information as deemed advisable by the governing body; and
31 (g) the time and place of a public hearing to be held by the governing
32 body to consider establishment of the district.

33 Sec. 6. Notice of the public hearing on the proposed establishment
34 of an energy management district shall be published once in the official
35 newspaper of the city or county and a copy of such notice and a copy of
36 the resolution of intent shall be mailed by first class mail to all owners of
37 real property in the proposed district. Publication and mailing shall be at
38 least 30 days prior to the hearing and the hearing shall be held not later
39 than 60 days after adoption of the resolution of intent.

40 Sec. 7. If the city or county, following the public hearing, determines
41 it advisable and in the public interest to establish a district, the city or
42 county shall create the district by ordinance or resolution, as appropriate.
43 The ordinance or resolution creating the district shall contain the follow-

Residential property owners shall be considered eligible for purposes of this act if the residential property owner has paid more than 20% on their mortgage and are not required to purchase private mortgage insurance.

The costs for renewable energy and energy efficiency projects on the property cannot exceed 10% of the appraised value of the property.

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HOUSE OF REPRESENTATIVES

STATE CAPITOL
300 SW TENTH STREET
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February 10, 2010

Proposed Amendments and Rationale HB 2663

- Section 4,
 - Adds: Residential property owners shall be considered eligible for purposes of this act if the residential property owner has paid more than 20% on their mortgage and are not required to purchase private mortgage insurance. The costs for renewable energy and energy efficiency projects on the property cannot exceed 10% of the appraised value of the property.
 - Rationale: this would ensure those wanting to participate in the PARE program are able to participate.



**Testimony of Scott Jones
Before the House Energy and Utilities Committee
In Support of House Bill 2663
February 11, 2010**

Kansas City Power & Light supports energy efficiency and renewable energy and believes House Bill 2663 is a reasonable way to help develop these projects.

Communities we serve are interested in attracting new development projects and customers are interested in energy efficient and sustainable facilities. This legislation seems to align the interests of both parties and provides a method to finance the projects. There may be issues with how cities and counties carry out this legislation, but we are encouraged by the progress and innovation this bill provides for new funding options.

Thank you for the opportunity to voice our support.

Scott Jones – KCP&L
Manager, Kansas Government Affairs
816-556-2458; scott.jones@kcpl.com

HOUSE ENERGY AND UTILITIES

DATE: 2/11/2010



Testimony regarding House Bill 2663 – An act concerning cities and counties; creating energy management districts.

Contact:

James Joerke, Sustainability Program Director
Johnson County Facilities Management Department
111 S. Cherry Street, Suite 2100
Olathe, KS 66061-3441
voice: 913-715-1120
fax: 913-715-1130

Committee Members:

Thank you for the opportunity to comment this morning on House Bill 2663. My name is James Joerke, sustainability program manager for Johnson County, Kansas. Johnson County strongly supports the effort to establish legislation that would enable Kansas cities and counties to create energy management districts.

The Johnson County Board of County Commissioners has taken clear positions on the issues of energy efficiency and environmental protection. As part of the legislative platform it adopted on November 19, 2009, the board expressed its support for state efforts to:

- (1) develop and implement cost effective, scientifically-based energy and environmental plans, including plans to address greenhouse gas emissions, (2) stimulate investment in energy conservation and alternative energy technology, (3) consider economic, social and natural resource impacts when making decisions, and (4) provide local governments flexibility and resources to meet the community's energy and environmental goals.

In December of 2007, the board passed a resolution setting greenhouse gas reduction targets both for county government operations and for the county as a whole. The resolution calls for reducing community-wide emissions of greenhouse gases 80 percent by 2050. This is consistent with targets that have been adopted by cities and counties across the US, and which have been included in proposed federal climate legislation. Currently, 54 percent of all greenhouse emissions in Johnson County are associated with the use of electricity. Improving efficiency and increasing our reliance on renewable energy in the residential, commercial and industrial sectors will be essential if we are to meet our emissions reduction goals.

The benefits of promoting energy efficiency and the use of renewable sources of power are numerous. First, using electricity more efficiently could help to reduce the well-documented environmental and public health impacts associated with emissions from coal-fired power plants. Community-scale efforts to weatherize homes, upgrade HVAC equipment, and install renewable energy systems could generate a significant number of new jobs. Such programs would also lead to reduced energy costs for consumers, potentially leading to new discretionary spending that would invigorate state and local economies. As we have begun to see here in Kansas, the expanded use of renewable sources of energy can also help create new industries and generate new employment.



We believe that enabling local governments to establish Property Assessed Renewable Energy (PARE) districts would be a step in the right direction for the state, for local governments and for the citizens of Kansas. We urge your support of the bill with the following caveats:

1. It is our understanding that cities and counties would be able to create PARE districts at their own discretion within the parameters established by the state. We believe this autonomy is important to ensuring that energy districts are created only when and where it makes sense to do so.
2. Administering a PARE program has the potential to generate significant work for local governments that choose to undertake such an effort. Local governments, like the state, are currently facing significant revenue shortfalls and are being forced to do more with less. Johnson County would be unable to administer a PARE program in the absence of new resources. We understand that the intent of the legislation would be to enable local governments to cover program administration costs using PARE bond revenues.
3. To the extent that the state enables local governments to establish PARE programs, we urge the state to develop clear procedures for creating and administering them.
4. The current draft of HB 2663 does not address the issue of transfer of property. In the event that a homeowner participating in a PARE program were to sell the property or were subject to foreclosure, it is unclear whether he would be responsible for the remaining debt, or whether the obligation would be transferred to a third party. We suggest that language be added to the bill to clarify this point.

Thank you for the opportunity to express our support for this bill.

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CLUB
FOUNDED 1892

SIERRA CLUB, KANSAS CHAPTER
9844 GEORGIA, KANSAS CITY, KS 66109

STATEMENT OF CHRIS CARDINAL, LEGISLATIVE COORDINATOR
FEBRUARY 11TH, 2010
BEFORE THE HOUSE ENERGY AND UTILITIES COMMITTEE

Chairman Holmes and honorable members of the committee:

Thank you for the opportunity to testify in support of HB 2663 today, and for the fine work this committee and its members do for the state of Kansas. My name is Chris Cardinal, and I am here on behalf of the Kansas Chapter of the Sierra Club, the nations largest and oldest grassroots environmental organization.

Many opportunities for improving energy efficiency remain untapped due to a lack of attractive financing options, a condition currently exacerbated by weak financial markets. In a recent survey by Johnson Controls, Inc. of more than 1,400 real estate and facilities managers, limited capital availability was cited as the most common barrier to capturing potential energy savings.¹

For many property owners, it makes economic sense to improve the energy efficiency of their homes and/or install solar panels. But they aren't doing it because of high upfront cost, long term commitment and difficulties with financing. How many of us would have cell phones if we had to buy 20 years of minutes up front?

HB 2663 would set up a novel method of funding energy efficiency and renewable energy improvements for homeowners and business people. Enabling this legislation expands traditional usage of land secured financing by allowing local governments to sell bonds and use the proceeds to make loans to a homeowner and business that can cover the up-front cost of energy efficiency improvements and/or solar arrays. Property owners then pay back the loan through a voluntary line item on their property tax bills at a low fixed interest rate over a 20-year period.

This "creative financing" for energy efficiency projects is really just pragmatic; homeowners are more likely to purchase clean energy sources if the price tag resembles a cellular plan (i.e. \$/per month over x years) versus a \$20,000 one time cost.

The loan is tied to the property, so if you move away the balance stays with the building. This adds value to the property. Because the loan repayments are tied to the property, it is recovered in the escrow portion of the monthly house payment.

In the near term, energy efficiency is the lowest cost, fastest, and most certain way to save energy, reduce greenhouse gas emissions, and lower consumers' energy bills. America's building

¹ Johnson Controls 2009 Energy Efficiency Indicator Report Executive Summary – May 6, 2009

HOUSE ENERGY AND UTILITIES

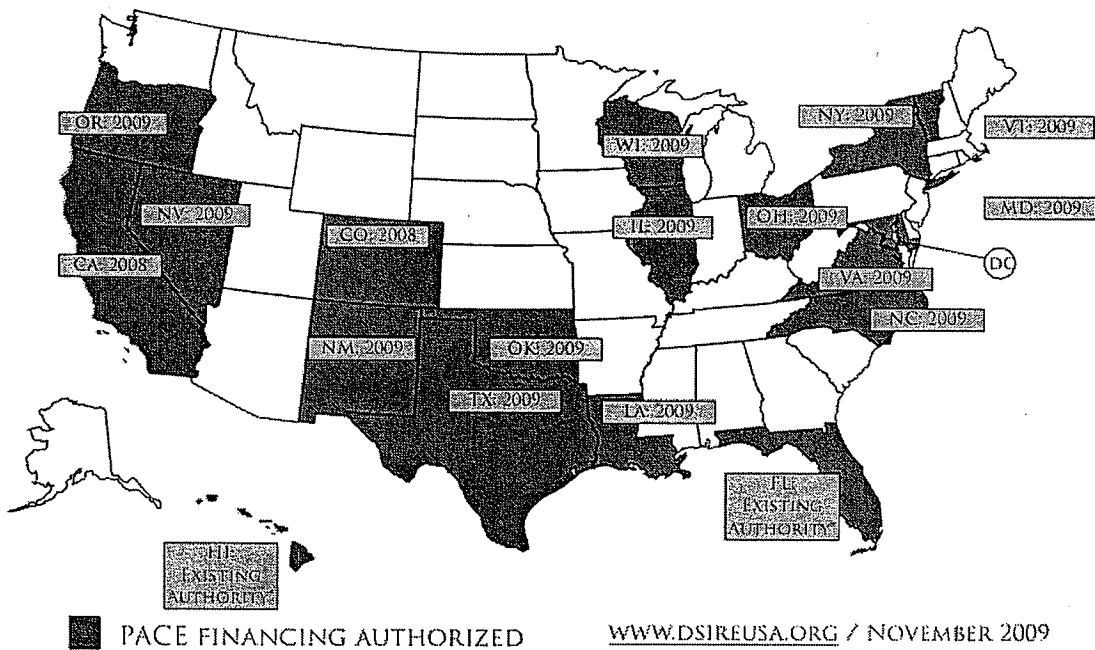
DATE: 2/11/2010

ATTACHMENT 7-1

stock represents nearly 40% of our nation's energy needs and accounts for roughly one-third of our greenhouse gas emissions. Well-proven methods for major efficiency gains in both commercial buildings and residential real estate exist today but have difficulty taking hold due to a number of well-documented market challenges.

Given the benefits of energy efficiency and solar-- reducing energy bills and your own personal carbon footprint --such a program offers a phenomenal tool to positively shape our quality of life. 18 states authorize PACE (16 states have passed legislation and 2 states permit it based on existing law). This is a very exciting idea that would provide a mechanism to overcome the upfront costs of energy efficiency and renewable energy systems.

PROPERTY ASSESSED CLEAN ENERGY (PACE)





THE GREAT PLAINS ALLIANCE FOR CLEAN ENERGY

James Roberts, Policy Director
Great Plains Alliance for Clean Energy
February 11, 2010

Mr. Chairman, members of the Committee, thank you for allowing me to speak to you on behalf of the Great Plains Alliance for Clean Energy, regarding HB 2663. GPACE is a non-profit which advocates for thorough debate of comprehensive energy policy in Kansas, while emphasizing development of renewable energy, energy efficiency, and native Kansas fuels sources.

HB 2663 allows local governments to choose to establish Energy Management Districts and in doing so, allows individual property owners within an established district to voluntarily opt into the program. We feel this is an effective means by which people can take significant steps to invest in both small-scale renewable energy production, and energy efficiency improvements. There is no mandate to comply and no penalty for non-participation.

The local control stipulated in HB 2663 allows those communities, neighborhoods, or individual businesses who wish to invest in any of the benefits related to energy efficiency and/or renewable energy production to choose to do so, while creating no financial or regulatory liabilities for any other entities that choose not to do so (other than the benefits and risks related to energy efficiency or renewable energy production that may be freely assigned by the marketplace).

As such, we feel the Energy Management Districts envisioned by HB 2663 provide potential innovators and leaders at the local level to capitalize on renewable energy and demand-side energy supply practices in the marketplace. Measures such as those resulting from HB 2663 create accountability - at a local, community scale - and help to normalize the process of investing in renewable energy production and energy efficiency improvements.

HB 2663 provides local authority by:

- Allowing standards and improvements to be developed by city or county entities. Their knowledge of and familiarity with the established district will be most effective in assessing possible investment opportunities and challenges.
- Allowing members of established districts to invest in renewable energy production and energy efficiency improvements without making neighboring properties or neighborhoods incur additional costs. This is established by the "opt-in" nature of the bond program.
- Each district may determine the amount of funding drawn down to establish energy management district bonds, so costs and budgeting are accounted for and managed at the local level.

While this bill does not create a single, comprehensive pathway to community-scaled renewable energy development and efficiency improvements, it is the type of creative and locally accountable policy that can allow willing Kansas communities to make real progress towards demand-side energy and cost management, greater resilience and energy security, and to seek the economic benefits offered by the emerging renewable energy economy.

I thank you for the opportunity to offer testimony this morning, and ask that you support HB 2663.



9 February 2010

RE: HB 2663

To whom it may concern:

The Energy Savings Store (TESS) strongly supports HB 2663(PARE) because of the job creating impact of this policy.

TESS is a Lenexa, KS based wind and solar design and installation firm, in business since 2003. We have installed more than 100 wind and solar projects across Kansas, Missouri and Illinois ranging from small residential clients to large customers like Johnson County, KS and Western Extralite in Manhattan, KS.

A major barrier to increasing sales and future hiring is the high up-front costs of renewable energy systems. Homeowners especially are concerned that they will not reap the benefits of the energy savings prior to moving to another home. This legislation eliminates both concerns by allowing the payments for the system to be spread out over a long period of time. If the purchaser moves, the next homeowner simply takes over the property tax payments and enjoys reduced energy bills.

TESS is one of the largest renewable energy firms in the state and we still only have 12 employees. If Kansas wants to encourage anything more than a boutique industry, policy such as this should be a focus. It doesn't raise any taxes – it simply gives cities the ability to offer their citizens an easier way to pay for renewable energy and energy efficient improvements. And it might just create a few more jobs as well!

Respectfully submitted:

Susan Brown
VP Business Development
The Energy Savings Store
15209 W. 99th
Lenexa, KS 66219



February 11, 2010

To: House Energy and Utilities Committee

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: HB 2663: Energy Management Districts

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to present written testimony today, supporting the proposed amendment suggested by Matthew Goddard, with the Heartland Community Bankers Association.

We are generally supportive of the bill's intent to promote energy efficiency or renewable energy improvements to homes, however, we share the concern with Section 11 of the bill and its potential to create tax liens that will take priority over existing liens such as a mortgage on that property.

When a lender makes the decision to make a loan to a borrower and to take a security interest in real property as collateral, the priority of that lien is an important factor in the decision. At the time of making the loan, the lender has knowledge of its priority and can make this most important decision based on that knowledge. To allow other lien holders to leapfrog over an existing lender would be unfair to that original lender who made the decision based on the facts at the time of the loan.

We concur that should such a lien for improvements be imposed on the property, it should be "subject to all prior liens of record". This does not deny the right to a lien for these improvements, but simply allows the lien to fall in a place of priority based on the timing of the attachment of the lien. We think this is a fair and reasonable result.

Thank you for the consideration of this request, and we respectfully request that the committee act favorably upon the amendment proposed by the Heartland Community Bankers Association.

H EARTLAND
H C OMMUNITY
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Matthew S. Goddard, Vice President

700 S. Kansas Ave., Suite 512
Topeka, Kansas 66603
Office (785) 232-8215 • Fax (785) 232-9320
mgoddard@hcbankers.com

To: House Energy and Utilities Committee
From: Matthew Goddard
Heartland Community Bankers Association
Date: February 11, 2010
Re: House Bill 2663

The Heartland Community Bankers Association appreciates the opportunity to appear before the House Energy and Utilities Committee to share our concern with House Bill 2663. While HCBA is generally supportive of the bill's intent, the funding mechanism contained in HB 2663 threatens to disrupt the mortgage marketplace.

The Heartland Community Bankers Association represents savings and loans and savings banks in Kansas, Colorado, Nebraska, Oklahoma and other Midwest states. Our members specialize in residential mortgage lending. During the first nine months of 2009, Kansas savings associations made more than \$2 billion in residential mortgage loans.

House Bill 2663 authorizes cities and counties to establish energy management districts for the purpose of constructing, installing or acquiring energy efficiency or renewable energy improvements. The projects performed by these energy management districts are funded by the issuance of bonds which are then repaid by imposing special assessments on the real property receiving the improvements. In practical terms, the property owner is receiving a loan. Section 11 of the bill provides that these special assessments are payable at the same time and in the same manner as property taxes. This means that should a property owner fail to make timely payment on the special assessment, their property will be subject to a tax lien that takes priority over existing liens.

It is the possibility of a tax lien that most concerns HCBA. Most Kansans lack the financial wherewithal to purchase a home without assistance from a mortgage lender. Lenders are able to make such loans because the home, i.e. real property, being purchased serves as the collateral. Filing the mortgage with the register of deeds before any other mortgages or liens grants priority status to a purchase money mortgage. Any subsequent liens are considered to be junior or inferior liens.

In the event of default, proceeds from the foreclosure sale are used to pay off the debt to the priority lien holder. Any remaining proceeds are then distributed to other lien holders, based on the order in which their liens were filed. Each lien holder is fully paid before funds go to satisfy a subsequent lien. There is no guarantee all of the lien holders will be fully paid.

Under existing case law and common law, a party cannot move ahead of previously filed liens in

order to establish priority. To allow lien holders to "jump ahead" would jeopardize the security that enables lenders to make mortgage loans. This would in turn diminish the value of mortgage loans from Kansas when they are sold elsewhere on the secondary market. Tax liens are the exception to this rule because they take priority over all other liens. Lenders realize this and make sure property taxes are paid, often by requiring money for tax payments be set aside in an escrow account.

As it is currently drafted, House Bill 2663 will allow liens to be imposed on real property that leap frog over existing liens. While special assessments are quite common in new housing developments, they are not common in established neighborhoods. Normally, in a new development a special assessment is levied for infrastructure at the start of construction and a mortgage lender is aware of it prior to making a loan. This allows any additional risk to be taken into account and, if necessary, calculated into the terms of the loan at the time of origination. House Bill 2663 could impose a special assessment on a 50-year old house that has had a mortgage for 20 years.

Traditionally, the House and Senate have been very mindful of protecting the existing priority of mortgages. Most recently, in 2003, the legislature enacted House Substitute for Senate Bill 272 that allowed SRS to place a lien on the real property of certain aid recipients. At the request of HCBA, that bill was amended to make the new SRS liens "subject to all prior liens of record." We would encourage the House Committee on Energy and Utilities to do the same with the attached balloon amendment. It specifies that a lien resulting from a special assessment levied by an energy management district shall be subject to all prior liens of record and requires that the lien be filed with the Register of Deeds. The amendment would protect Kansas consumers from changes in their mortgages and maintain the viability of Kansas mortgages on the secondary market.

A second concern HCBA has with HB 2663 is that the imposition of special assessments will have a negative effect on home values. When a special assessment is levied on property in a new development, the cost of the special assessment is calculated into the original purchase price of the property. With HB 2663, however, the special assessment may be added **after** the property is bought. John Doe may purchase a home for \$100,000 but soon thereafter be hit with a special assessment of \$15,000. It is our experience that the special assessment will impair the resale value of the house, hanging over it like a cloud, no matter what the energy improvement may have been. This will also have the effect of diminishing the value of the mortgage lender's collateral should the borrower eventually default and foreclosure be necessary.

HCBA supports both energy efficiency and renewable energy but we are concerned with the use of special assessments and super liens to fund them. The lack of any eligibility requirements or underwriting standards in HB 2663 for the loans made by an energy management district creates the potential that improvements will be approved without taking into consideration the ability of the property owner to repay the loan, something that private lenders must do. Such disregard will lead to a higher than normal number of tax liens and create more difficulties for mortgage lenders.

The Heartland Community Bankers Association appreciates your kind consideration of the attached balloon and our concerns with HB 2663.

1 due, the owner of the real property may pay the whole of the assessment
2 against such property with interest accrued to the date of payment to the
3 city or county treasurer. _____
4 Sec. 12. This act shall take effect and be in force from and after its
5 publication in the statute book.

Any lien filed pursuant to a special assessment authorized by this section shall be subject to all prior liens of record. The lien must be filed in the office of the register of deeds of the county where the real property is located and must contain the legal description of all real property in the county subject to the lien.

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Mr. Chairman, members of the Committee, thank you for the opportunity to address you regarding HB 2663.

In years past, some members of this committee have called for legislation that could help everyday Kansans gain better access to renewable energy and energy efficiency. At CEP, we hear from several constituencies who want to use these technologies to offset and reduce their monthly utility bills – the pleas come from homeowners, small businesses, schools, churches, working farms and ranches, and those interested in community wind. Not only do these Kansans want to save energy and money, but they also want to increase their energy independence and stimulate small business.

However, there is a problem – the high upfront costs of installing renewables and making energy efficiency improvements. HB 2663 represents one possible financing option to help Kansans surmount these obstacles. This bill is modeled on what is known as Property Assessed Clean Energy financing, or PACE. More than 15 states have PACE legislation in place already, including Texas and our neighbor, Colorado.

For Kansas, HB 2663 would fill a gap in our current resources. Right now, most of our government dollars for financing energy efficiency improvements are limited to residential programs, either administered through the Kansas Corporation Commission's Efficiency Kansas, or the Kansas Housing Resources Corporation. However, HB 2663 could offer a financing model more broadly available to commercial and nonprofit interests as well.

You might want to think of PACE as roughly the municipal or county government equivalent to Midwest Energy's award-winning How\$mart program. Typically, this is how PACE works:

- The state authorizes local governments to establish energy districts that provide the basis for issuing a small municipal bond.
- The proceeds of the bond are loaned to property owners who apply for funds to make certain pre-approved renewable energy and energy efficiency improvements to their homes.
- Property owners repay the funds in fixed annual assessments that appear on their property tax bill, usually over a twenty year period. If the property is sold, the assessment stays with the property until it is paid off.
- Property owners are then able to realize immediate monthly savings on energy bills, and finance the high upfront costs paid in installments over time.

An important thing to remember about PACE financing – participation in the energy management district is voluntary. The assessment is not a tax. If you don't want to make these

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improvements to your property, then you don't apply for the funds, and your property is not subject to any additional assessment. Nor are you paying for your neighbor's improvements.

Should the committee move forward with this bill, CEP would suggest a few modifications in the language.

1. Clarify that property owner participation in the energy management district is voluntary.
2. Consider allowing local governments to simply put on the ballot the question of whether to establish an energy management district.
3. Clarify details about the assessment, such as the term of the repayment.
4. Clarify how the pre-approved improvements are actually approved and carried out – and Midwest's How\$mart program already has figured out how to do this.

At best, this legislation could potentially offer local governments a valuable financing option for citizens, businesses, and community interests to pursue energy efficiency and renewables. All the state has to do is to authorize the model - then local governments and communities have the freedom to decide whether this opportunity suits their particular needs.

| Maril Hazlett | Associate Director, CEP | hazlett@climateandenergy.org | 785.760.0558 |
www.climateandenergy.org



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Eddie Ross
The Hutchinson News
eross@hutchnews.com

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Market snapshot

GREENSBURG - When brothers Mike and Kelly Estes surveyed the damage of what had been their Greensburg John Deere dealership, one thought came to mind: "blown away."

The EF5 tornado that swept through Greensburg on May 4, 2007, totaled the dealership itself and its inventory. Combines, tractors and other implements were left twisted, bent and broken like so many kids' toys that got in the way of a jackhammer. Once all was accounted for, the dealership sustained \$23 million in loss, including its building, 50 combines, 40 tractors and dozens of grain carts and sprayers.

The damage constituted the largest loss in the history of Federated Insurance, which insures the Estes family's company - BTI Inc., a chain of four John Deere dealerships in southwest Kansas. But the brothers didn't dwell on the damage - they looked to the future, never guessing what it would hold. Just short of three years later, the Estes family has taken the power that destroyed Greensburg and their dealership - wind - and found a way to help people all over North America use it to power their homes, farms and businesses.

Along the way, the Estes say, they've revolutionized the small wind industry in America by addressing fundamental problems that have plagued efforts to expand the use of the energy source. In doing so, they've helped create 100 jobs across the United States over the past year and have set up a training system that will likely bring hundreds of visitors to Greensburg annually.

"We really need the ingenuity and innovation that comes out of rural America to be a part of the creation of green jobs," said Daniel Wallach, director of Greensburg GreenTown, the nonprofit organization leading Greensburg's green initiative. "What the Estes brothers have done with BTI Wind just so perfectly embodies what needs to happen more often in this country."

A new venture Bucklin Tractor and Implement was founded in 1944 in Bucklin by Ralph Estes. The full-service John Deere dealership, called BTI for short, was managed by Ralph's son, Maynard Estes, father of Bud, Mike, Letty and Kelly Estes, until Maynard's death in 1989. The four siblings now run the operation, and Kelly Estes serves as president of the corporation.

In 1996, the Estes siblings expanded the company by purchasing the Greensburg location. In 2007, BTI expanded again, purchasing the Ness City location, and just after the May 4, 2007, tornado, they bought the Pratt location. After the tornado, Kelly and Mike Estes, encouraged by Greensburg's commitment to rebuild the community with sustainable methods, started researching the use of small wind to power their new Greensburg dealership.

What they learned about the small wind industry eventually led to a 2006 partnership with small-wind turbine manufacturer Endurance Wind Power and the founding of BTI Wind Energy. BTI Wind Energy is the master distributor in North America for Endurance Wind Power.

Through a network of farm implement dealerships across the United States and Canada, Endurance wind turbines are sold, serviced and repaired. The network - called the "Harvest the Wind" network - to date includes 32 dealerships with 250 locations that focus their sales efforts on customers like public institutions such as schools and hospitals, farmers, ranchers and manufacturers.

Currently, all dealerships in the Harvest the Wind network happen to sell John Deere equipment, but the Estes brothers are quick to clarify that the network is not affiliated with John Deere. Solving problems As the Estes brothers saw it, small wind's main obstacles went hand-in-hand.

First, there was a problem with unreliable manufacturers putting up unreliable turbines and then going out of business and leaving customers to handle the repairs that eventually needed to be made. Second, there had been no well-identified or well-educated sales and service staff to effectively market the products or to address mechanical problems that came up.

To address the first problem, the Estes brothers vowed to sell inventory only from companies with

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proven track records. They have confidence in Endurance Wind Power turbines - not only because of the company's reputation for being dependable, but also because the brothers have personal experience in being an Endurance client. BTI-Greensburg dealership boasts an Endurance 5KW turbine, which powered the construction of the dealership facility and now takes care of 7 percent to 10 percent of the facility's power needs. Soon, a 50KW Endurance turbine will be installed to fully power the dealership.

"We like them," Mike Estes said simply. "Their turbines work well and the company is reliable."

Regarding sales, service and repair, BTI set up the easily identifiable Harvest the Wind network and requires each dealership group within the network to employ two wind turbine service technicians and one "wind specialist," which basically oversees each dealership group's wind energy program - developing and establishing sales programs and understanding the technical side of that portion of the business.

BTI Wind also sought to make the purchase of the turbines easier by requesting that John Deere Company allow customers to use the John Deere Credit program to finance their wind turbine purchases, just like they'd use it to finance a combine.

"The friends we asked to join in really jumped on it," Kelly Estes said. "We selected the ones we wanted and didn't open it to everyone. That doesn't mean we won't open it up to more implement dealers in the future, but we knew if we didn't do it right the first time, we wouldn't get another chance."

And to ensure that the sales, service and repair work was done correctly, BTI Wind Energy requires all wind specialists and service technicians to undergo specialized training developed by BTI Wind Energy. The service technician training curriculum was developed with the help of Endurance and Garden City Community College's John Deere Tech program, where John Deere diesel technicians are trained.

Kent Kolbeck, a GCCC John Deere tech instructor who helped develop the service technician curriculum, said he was impressed with both BTI Wind Energy's idea and product.

"One of the reasons I suggested the college become involved is because I was pretty excited about the concept BTI was offering," he said, adding that the quality of and demand for the product was strong. "I look at what BTI Wind Energy is doing and really do think that this thing has legs. It won't be a short-term deal."

Finally, BTI Wind Energy includes a five-year service maintenance contract with every turbine purchase. Wallach said BTI Wind Energy provided the missing links that were needed to make the small wind industry successful.

"Here is a very creative company that tapped into this network of dealerships and proposed this idea that has just caught fire," he said. "Dealerships love the opportunity to sell another product, and farmers and ranchers love the opportunity to produce their own power."

Experiencing success Despite the economic recession, BTI Wind Energy has performed well over its first year and a half of operation. The demand from farmers and other large energy users who see an opportunity to create their own power is definitely present.

Dealerships within the network already are looking to increase their sales and service staff and, similarly, BTI Wind Energy has added to the inventory it offers. While the company started out selling only the 5KW Endurance turbines, it has expanded now to also offer Endurance's 35KW and 50KW models. Also, soon BTI Wind Energy will begin selling products from a second manufacturer, whose identity is not yet available for publication. Helping sales is a recently approved tax credit for up to 30 percent of the cost of a small wind turbine. And dealerships' local presence has proven popular.

For example, Kiowa County Memorial Hospital in Greensburg has purchased a 50KW turbine through BTI Wind Energy's dealership in Greensburg. Hospital administrator Mary Sweet said she liked the fact that she could dial a local number when she had questions about the turbine.

"Some of the companies we looked at buying from were several states away," she said. "The fact that they are close by makes me more comfortable. I know they will be there if I need anything."

Kelly Estes said he's been amazed at how well BTI Wind has done during the recession. "It has done so well. I'm looking forward to seeing what it will do when the economy recovers," he said.

Helping Greensburg Not only has BTI Wind Energy been a successful venture for the Estes family, it also has been a home run for Greensburg. In spring 2009, BTI Wind completed its headquarters, situated just to the west of the BTI-Greensburg dealership. The building includes five BTI Wind offices, and additional office space - which is at a premium in Greensburg - was also built. Renting offices in the building is Hutchinson law firm Martindell, Swearer & Shaffer, and Suzlon, the India-based company manufacturing the large wind turbines used in the John Deere wind farm south of Greensburg.

The building also includes a large training room where all BTI Wind Energy service technicians and wind specialists will receive training - meaning that several times a year 40 or so visitors from all over North America will make their way to Greensburg for training.

"Those people who need training also need to eat at our restaurants or maybe stay at our hotels," Mike Estes said. "I think it helps the whole area."

The formation of BTI Wind Energy has also meant the creation of several jobs locally. More are likely to be added in the future, Mike Estes said. One of those jobs went to Brad Estes, a nephew of Kelly and Mike Estes, who moved back to Kansas to become BTI Wind Energy's first wind specialist. He mentioned some other benefits of having BTI Wind in the area - mainly that local clients are the first to receive BTI Wind Energy offerings.

"We view our operation as the head of the network - the incubator for sales strategies," Brad Estes said. "So when we develop strategies to target certain markets - like feedlots or dairy farms - we try it here first."

The Estes brothers' commitment not only to build back their Greensburg dealership to the highest green standards, but also to help propagate the small wind industry across the nation, also aids Greensburg in its mission to become America's Model Green Community. Wallach added that the Estes brothers and BTI Wind beef up the international presentations he gives on Greensburg's green rebuilding efforts. "When we go talk to the rest of the world about being a model green community, we have to show that the community is on board," Wallach said. "These are guys who really could have

advocated for the status quo but instead stepped up and did something different. They took some risks.

"We need to perpetuate this kind of behavior and hold these kinds of folks up as models."

"We're using our friends primarily for now," Mike Estes said. "But heck, we could include a Case dealer in the network, too."

Currently the John Deere agreed, but extended the offer only to dealerships within the Harvest the Wind network. Understanding that a network is only as strong as its weakest link, the Estes brothers composed the Harvest the Wind network with hand-picked dealerships in which they had confidence.

"What they're doing delivers on a promise and a vision that we helped develop very early on of local jobs coming from utilizing local resources, ingenuity and innovation," Wallach said. "That shows everyone in the community that we've created some green jobs that we likely wouldn't have if the town hadn't chosen this path."

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Cindy Lash

From: Patrick Halley [phalley@nena.org]
Sent: Monday, February 08, 2010 8:19 AM
To: Cindy Lash
Cc: Laurie.Flaherty@dot.gov
Subject: TX Proposed State-Level ESInet Advisory Council

Cindy,

One of the Committee Members asked me for an update on TX. While I don't know everything they are doing, here is a proposed rule to enable the formation of a TX State-level Emergency Services IP Network (ESInet) Advisory Council. This is the type of state-level action that can only occur through the leadership of a state entity responsible for the overall management of the 9-1-1 system (in this case the TX Commission on State Emergency Communications, working closely with the TX 9-1-1 Alliance). As you know, I think the creation of state-wide ESInets is important along with a state-level 9-1-1 entity with sufficient authority.

Patrick

12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

Chapter 252. ADMINISTRATION

1 TAC §252.8

The Commission on State Emergency Communications (CSEC) proposes for comment new §252.8, State-level ESInet Advisory Council (Council).

The proposed new rule establishing the Council is authorized pursuant to the express powers and duties of CSEC in Health and Safety Code §771.051 and §771.052. The rule is being proposed in accordance with Government Code Chapter 2110, State Agency Advisory Committees, which requires state agencies to describe by rule an advisory committee's purpose and tasks, the manner in which a committee reports to the agency, and the duration of the committee.

BACKGROUND AND PURPOSE

Advancements in consumer communications technologies, e.g., text and instant messaging, exceed the capabilities of the legacy 9-1-1 system and, shortly, the expectations of consumers. Next Generation 9-1-1, or NG9-1-1, is an internet protocol-based system designed to handle advanced communications services and devices and operate with a host of emergency services programs, including interoperable radio dispatch and emergency notification service and alerts.

In January 2008, CSEC authorized staff to proceed with a Next Generation 9-1-1 Planning Project. As part of that project, staff developed a multi-year NG9-1-1 Master Plan to chart the course of CSEC's NG9-1-1 activities. A critical component of the master plan is a State-level Emergency Services Internet Protocol network (ESInet). A State-level ESInet is used for communications between public safety answering points (PSAPs) and other support entities in providing emergency call handling and response. The State-level ESInet will be interoperable with and interconnect to regional and other state ESInets to form a Texas Next Generation

Emergency Communications System that will be used for advanced 9-1-1 and other emergency services programs.

One of the tasks in CSEC's consulting contract with L. Robert Kimball & Associates was a State-level ESInet Management Framework report. This report reflects the input and agreement reached by representatives of Texas' 9-1-1 Entities, including the Texas Association of Regional Councils (representing the Councils of Government), the Texas 9-1-1 Alliance (representing the Emergency Communication Districts created under Health and Safety Code Chapter 772), and the Municipal Emergency Communications Districts Association (representing the Emergency Communication Districts recognized by Health and Safety Code §771.001(3)(A) (collectively, the Texas 9-1-1 Entities).

Based on the framework report, CSEC proposes to create an advisory council to advise and make policy recommendations to the Commission for the management of a State-level ESInet.

FISCAL NOTE

Paul Mallett, CSEC's executive director, has determined that for each year of the first five fiscal years that §252.8 is in effect there will be no fiscal implications to the state or local governments as a result of enforcing or administering the proposed section. As an advisory committee governed by Government Code Chapter 2110, State Agency Advisory Committees, expenses of Council members will not be reimbursed by CSEC unless specifically authorized by the Texas Legislature. CSEC's executive director or designee will be a Council member whose costs, if any, will be reimbursed by CSEC as an employee of the agency. The foregoing presumes that the executive director's designee is an employee of CSEC.

CSEC staff will spend an undetermined amount of time supporting the Council, including by Mr. Mallett or his designee as a member of the Council. Mr. Mallett has determined that the amount of staff time, and accordingly the cost to the state, will be significantly less than it otherwise would be were CSEC to rely solely upon staff to advise and make policy recommendations regarding a State-level ESInet.

PUBLIC BENEFIT

Mr. Mallett has determined that for each year of the first five years the new section is in effect, the public benefits will come from having a council composed of representatives from the Texas 9-1-1 Entities whose purpose is to advise and make policy recommendations to CSEC on a critical component of NG9-1-1. Mr. Mallett has also determined that for each year of the first five years the proposed section is in effect there are no probable economic costs to persons required to comply with the section, except for the unreimbursed costs of Council members who are not part of CSEC staff.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

CSEC has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

LOCAL EMPLOYMENT IMPACT STATEMENT

CSEC has determined that this proposal does not directly affect a local economy and therefore has not drafted a local employment impact statement as would otherwise be required under Administrative Procedures Act §2001.022.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

In accordance with Government Code §2006.002(c), Mr. Mallett has determined that there will be no adverse economic effect on small businesses or micro-businesses. Accordingly, CSEC has not prepared the economic impact statement or regulatory flexibility analysis that would otherwise be required.

TAKINGS IMPACT ASSESSMENT

CSEC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted in writing to Patrick Tyler, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942, by fax to (512) 305-6937, or email to patrick.tyler@csec.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*. All comments should include in the subject line "Comments to Proposed Rule 252.8 - State-level ESInet Advisory Council."

STATEMENT OF AUTHORITY

The new section is proposed under Health and Safety Code §771.051(a)(1), (2), (4), (7), (8), (9), (10), and §771.052; Government Code Chapter 2110.

No other statutes, articles or codes are affected by the proposed new section.

§252.8.State-level ESInet Advisory Council.

(a) Purpose. The purpose of this rule is to establish an Advisory Council (Council) to advise and make policy recommendations to the Commission on State Emergency Communications (Commission) regarding the establishment and management of a State-level Emergency Services Internet Protocol network (ESInet). The State-level ESInet is a private Internet Protocol (IP) network or IP Virtual Private Network (VPN) that is used for communications between public safety answering points (PSAPs) and among other entities that support or are supported by PSAPs in providing emergency call handling and response. The State-level ESInet is interoperable with and interconnects to regional and other state ESInets to form a Texas Next Generation Emergency Communications System that will be used for 9-1-1 and other emergency services programs.

(b) Tasks.

(1) Advise the Commission on matters regarding the establishment and management of the State-level ESInet; and

(2) Provide for 9-1-1 Entity collaboration on the management of the State-level ESInet, collective decision-making, and assurance that the requirements of the 9-1-1 Entities are met.

(c) Composition of Council. Council members should have the requisite training, experience and knowledge in 9-1-1 systems and network management to provide meaningful input into the implementation and operation of a complex network.

(1) The Council is composed of the following seven (7) members:

(A) the Executive Director of the Commission or designee as an ex-officio, non-voting member. (The Executive Director or designee may coordinate with and seek input from a county or other entity not otherwise a member of the Council);

(B) two members from the Texas Association of Regional Councils (TARC);

(C) two members from the Texas 9-1-1 Alliance (Alliance); and

(D) two members from the Municipal Emergency Communications Districts Association (MECDA).

(2) No two Council members may be from the same 9-1-1 Entity.

(3) The Commission may amend the composition of the Council to reflect and include emergency services other than 9-1-1 service.

(d) Bylaws. Draft bylaws for approval by the Commission. The bylaws shall, at a minimum, provide for the following:

(1) selection from among the members a presiding officer and an assistant presiding officer whose terms may not exceed two years; and

(2) establish standing committees.

(e) Terms of Office for Voting Members. Each member shall be appointed for a term of 2 years.

(1) Member terms begin on September 1st of the year of appointment.

(2) Members shall continue to serve after the expiration of their term until a replacement member is appointed.

(3) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of the vacating member's term.

(4) Members serve staggered terms, with the terms of one-half of the members expiring August 31 of each odd-numbered year. To implement staggered terms, the initial terms are as follows:

(A) one member each from TARC, the Alliance, and MECDA expire in 2011; and

(B) one member each from TARC, the Alliance, and MECDA expire in 2013.

(f) Council Meeting Attendance. Members shall attend scheduled Council meetings.

(1) A member shall notify the presiding officer or Commission staff if the member is unable to attend a scheduled meeting.

(2) It is grounds for removal, including by the Commission, if a member cannot discharge the member's duties for a substantial part of the member's appointed term because of illness or disability, is absent from more than half of the Council meetings during a fiscal year, or is absent from at least three consecutive Council meetings. The validity of an action of the Council is not affected by the fact that it is taken when a ground for removal of a member exists.

(g) Council Roles and Responsibilities. The Council's roles and responsibilities are based on the functions of the State-level ESInet. The Council shall, at a minimum, be responsible for the following:

(1) Objectives.

(A) Provide guidance and assistance for the monitoring and management of the Texas Next Generation Emergency Communications System.

(B) Advise the Commission and 9-1-1 Entities in developing and managing the following:

(i) managed service contracts with vendors;

(ii) professional service contracts with subcontractors;

(iii) Local Service Provider, networks, and application provider interfaces and specifications for State-level ESInet access; and

(iv) interlocal agreements between Regional ESInets and the State-level ESInet to bind both to operating standards and requirements consistent with the delivery of service and protection and management of respective networks, services and applications.

(2) Plans. The Council shall advise and make recommendations to the Commission in a plan(s) that, at a minimum, includes the following:

(A) Strategic Planning for the State-level ESInet. Strategic Planning is the Council's recommendation as to how the State-level ESInet is to be established, administered, operated and managed. Strategic planning also includes:

(i) strategic direction for the development, operation and management of the State-level ESInet for the five state fiscal years following the submission of the plan;

(ii) goals and objectives relating to the State-level ESInet;

(iii) priorities for the State-level ESInet;

(iv) identification of major issues relating to the development, operation and management, and improvement of the State-level ESInet;

(v) recommendations for long-range policy guidelines for the State-level ESInet; and

(vi) assessment of the progress made toward meeting the goals and objectives in prior Strategic Plans, including a survey of:

(I) the current degree of establishment and operation of ESInets throughout the state, including the State-level ESInet, Regional ESInets, and interconnection of Regional ESInets to the State-level ESInet;

(II) Texas 9-1-1 Entities' participation in and/or implementation of Regional ESInets; and

(III) Public Education.

(B) Network Operation Planning for the State-level ESInet. Network operational planning is the Council's recommendation as to the establishment of administrative, technical, and operational requirements to assure the security and performance of the State-level ESInet and interconnection to the State-level ESInet. Network operational planning also includes:

(i) projected costs of network operations for the two state fiscal years following submission; and

(ii) tactical direction for the operations, management and performance of the State-level ESInet and for interconnection to the state-level ESInet for the five state fiscal years following submission, including:

(I) security operations planning for the State-level ESInet;

(II) initiate and maintain a process for managing the configuration and changes to the State-level ESInet;

(III) incident management;

(IV) quality control;

(V) contingency planning from all interconnecting regions and vendors; and

(VI) initiate and maintain exit strategy process for disconnection of a regional ESInet from the State-level ESInet.

(C) Cost Allocation Planning for the State-level ESInet. Cost allocation planning is the Council's recommendation as to the identification of cost components of the State-level ESInet and how such costs are to be allocated to 9-1-1 Entities and/or Regional ESInets that are connected to the State-level ESInet. Cost allocation planning includes:

(i) projected costs of network operations for the two state fiscal years following the submission of the plan;

(ii) strategic direction for the on-going identification and allocation of State-level ESInet costs for the five state fiscal years following submission of the plan;

(iii) identification of components and costs for the State-level ESInet and interconnection of Regional ESInets;

(iv) identification of components and costs to be shared by the 9-1-1 Entities and/or Regional ESInets;

(v) survey of 9-1-1 Entities and/or Regional ESInets to assess and determine:

(I) the availability of funding for the two state fiscal years following submission; and

(II) the projected availability of funding for the five state fiscal years following submission;

(vi) methodology for allocating shared State-level ESInet costs to the 9-1-1 Entities and/or Regional ESInets; and

(vii) contingencies for lack of funding, or partial funding, for the components and costs the Council has identified that are to be shared by the 9-1-1 Entities and/or Regional ESInets.

(D) Future Planning for the Texas Next Generation Emergency Communications System.

(h) Reporting to the Commission.

(1) By June 1 of each year submit the plan(s) required in subsection (g) of this section.

(2) By January 1 of each year, or according to the schedule established by the Commission, submit a report that includes the following:

(A) an update on the Council's work, including:

(i) Council and committee meeting dates;

(ii) member attendance records;

(iii) description of actions taken by the Council;

(iv) description of how the Council has accomplished or addressed the tasks and objectives of this section and any other issues assigned to the Council by the Commission; and

(v) anticipated future activities of the Council;

(B) new developments for the State-level ESInet and among ESInet interconnectors and interfaces;

(C) evaluation and recommendations regarding the operation of the Texas NG9-1-1 System, including:

(i) current practices and issues; and

(ii) statistical information, including a detail of the interlocal agreements established between the Commission and regional ESInets and other emergency services networks seeking to interface with the State-level ESInet.

(D) description of the usefulness of the Council's work; and

(E) statement of costs related to the Council, including the cost of Commission staff time spent in support of the Council.

(i) Statement by a Member.

(1) The Commission and the Council shall not be bound in any way by any statement or action by a member except when the statement or action is in pursuit of specific instructions from the Commission.

(2) The Council and its members may not participate in legislative activity in the name of the Commission or the Council except with approval through the Commission's legislative process.

(j) Advisory Committee. The Council is an advisory committee in that it does not supervise or control public business or policy. As an advisory committee, the Committee is not subject to the Open Meetings Act (Texas Government Code, Chapter 551).

(k) Reimbursement for Expenses.

(1) In accordance with the requirements in Government Code, Chapter 2110, a Council member may receive reimbursement for the member's expenses incurred for each day the member engages in official Council business if authorized by the General Appropriations Act or budget execution process.

(2) No compensatory per diem shall be paid to Council members unless required by law.

(3) A Council member who is an employee of a state agency, other than the Commission, may not receive reimbursement for expenses from the Commission.

(4) A nonmember of the Council who is appointed to serve on a committee may not receive reimbursement for expenses from the Commission.

(5) Each Council member whose expenses are reimbursed under this section shall submit to Commission staff the member's receipts for expenses and any required official forms no later than 14 days after conclusion of the member's engagement in official Council business.

(6) Requests for reimbursement of expenses shall be made on official state travel vouchers.

(l) Commission Staff Input and Support. Commission staff shall:

(1) provide administrative support and input to the Council;

(2) with input and recommendations from the Council, oversee all administrative activities and Commission policies relating to the implementation, operation, and day-to-day management of the State-level ESInet;

(3) provide administrative support and input to the Council; and

(4) provide the Commission with the Council's plan(s) and report and a staff report on the Council's advice or policy recommendations.

(m) Applicable law. The Council is subject to Government Code, Chapter 2110, concerning state agency advisory committees.

(n) Commission Evaluation. The Commission shall annually evaluate the Council's work, usefulness, and the costs related to the Council, including the cost of Commission staff time spent supporting the Council's activities.

(o) Report to the Legislative Budget Board. The Commission shall report to the Legislative Budget Board the information developed in subsection (n) of this section on a biennial basis as part of the Commission's request for appropriations.

(p) Review and Duration. By September 1, 2015, the Commission will initiate and complete a review of the Council to determine whether the Council should be continued or abolished. If the Council is not continued, it shall be automatically abolished on that date.

(q) Definitions of Terms. Unless the context clearly indicates otherwise, the following terms are defined as provided in this section

(1) Local IP-enabled network. Local internet protocol enabled networks that when interconnected form regional ESInets.

(2) Network Components. Defined in NENA Function and Interface Standards for Next Generation 9-1-1, Version 1.0 (i3) NENA 08-002, Version 1.0 December 18, 2007.

(3) Regional ESInet. A system of interconnected local IP enabled networks with core functions for emergency services, including but not limited to 9-1-1 service.

(4) State-level ESInet. A private IP network or IP Virtual Private Network (VPN) that is used for communications between PSAPs and among other entities that support or are supported by PSAPs in providing emergency call handling and response. The State-level ESInet is interoperable with and interconnects to regional and other state ESInets to form a Texas Next Generation Emergency Communications System that will be used for 9-1-1 and other emergency services programs. 9-1-1 service is one application that may run on the State-level ESInet, but there may be separate applications to support the requirements of other users.

(5) Texas Next Generation Emergency Communications System. A system of interconnecting regional and State-level ESInets and other emergency services networks such as poison control and radio dispatch.

(6) Texas NG9-1-1 System. An end-to-end IP, interconnected and interoperable system of local, regional, and national emergency services networks with advanced capabilities for 9-1-1 call delivery to fully i3 (end-to-end IP-based) compliant individual PSAPs.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 13, 2010.

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Patrick Tyler

General Counsel

Commission on State Emergency Communications

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For further information, please call: (512) 305-6930