

MINUTES

JOINT COMMITTEE ON STATE BUILDING CONSTRUCTION

December 13, 2007
Room 123-S—Statehouse

Members Present

Representative Joe Humerickhouse, Chairperson
Senator Pat Apple
Senator Greta Goodwin
Senator Laura Kelly
Senator Steve Morris
Senator Dwayne Umbarger
Representative Steve Brunk
Representative Bill Feuerborn
Representative Bob Grant

Staff Present

Audrey Dunkel, Kansas Legislative Research Department
Kimbra Caywood McCarthy, Kansas Legislative Research Department
Julian Efird, Kansas Legislative Research Department
Theresa Kiernan, Office of the Revisor of Statutes
Mike Corrigan, Office of the Revisor of Statutes
Helen Abramson, Committee Secretary

Conferees

Mike Hayden, Department of Wildlife and Parks
Richard Koerth, Department of Wildlife and Parks
Marilyn Jacobson, Department of Administration
Randy Riveland, Department of Administration
Jennie Chinn, Kansas State Historical Society
Carol McDowell, Kansas Preservation Alliance – written only
Sabrina Wells, Kansas Insurance Department
Mike Rogg, Northeast Kansas Technical College
Eric King, Board of Regents
Sheila Frahm, Kansas Association of Community Colleges Board of Trustees
Gary Hibbs, Department of Administration

Others Attending

See attached list.

Morning Session

Chairman Humerickhouse called the meeting to order at 9:00 a.m.

Staff distributed copies of the report from the Department of Administration (DOA) concerning change orders of less than \$75,000 which have been approved by the DOA. The attached documents reflect change orders which occurred during the month of November 2007 and the current status of major projects under construction.

Secretary Mike Hayden, Department of Wildlife and Parks (KDWP), presented testimony on the Department's FY 2009 capital improvement budget request ([Attachment 1](#)). The requested total on June 27, 2007 was \$9,799,500 and included an amount of \$3,000,000 from special revenue funds for acquisition of land at the former Parsons Army Ammunition Plant. In addition, the request did not address damage incurred by the KDWP from flood events during the summer of 2007.

The KDWP has revised the original request and deleted the requested \$3,000,000 for land acquisition at the Parsons Army Ammunition Plant. Since submission of the original request, it has been determined that the Labette County Redevelopment Planning Authority is not ready at this time to discuss the sale of property to the KDWP. This matter will be pursued at a later date.

The KDWP will not be requesting any major projects in the revised FY 2009 capital improvement request, but will be submitting a "status quo" budget of \$6,779,500. The following items are included:

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| Parks Major Maintenance projects | \$ 2,434,000 |
| Motorboat Access Facilities | 1,303,500 |
| Major Maintenance Projects at Public Lands | 150,000 |
| Boat Storage for Law Enforcement Vessels | 100,000 |
| Access Roads Maintenance | 1,592,000 |
| Bridge Maintenance | 200,000 |
| Land Acquisition | 500,000 |
| Wetlands Acquisition | 450,000 |
| River Access | 50,000 |

These projects are funded by \$1,500,000 from the State General Fund (SGF) and also from numerous other Department funds.

The FY 2009 budget request does not include any funding for continued development of the Kaw River State Park. The FY 2008 funds appropriated to develop the park have not yet been fully utilized and will not be totally expended until sometime in FY 2009. The Department will request additional development funds in the FY 2010 budget request.

The KDWP did experience flood damage during the summer months at both state parks and public wildlife areas. At the October 17, 2007 meeting of the State Finance Council, an amount of \$913,331 from the Wildlife Fee Fund was approved to repair flood damage at public wildlife areas

with the exception of the Cheyene Bottoms Wildlife Area. The "Bottoms" received excessive amounts of flood water that has been slow in receding. The reason it was excluded was because the water was so extensive, and in fact still is, so an estimate remains unknown. The Department has had to let the water go down slowly in order not to flood any downstream farmers. An estimate to repair flood damage at the "Bottoms" will be provided when available.

The estimated cost of the flood damage to the state parks is \$3,821,074. The Department has utilized \$330,684 of State Park Operations funding to initiate emergency repairs at the parks. That reduces the amount needed for repair of flood damage at the state parks to approximately \$3,500,000. In addition, the estimate includes \$1,000,000 to replace the Pottawatomie Creek Bridge on the Prairie Spirit Rail Trail (PSRT) that was destroyed during the June floods in Anderson County.

The KDWP has requested an FY 2008 State General Fund (SGF) supplemental appropriation request of \$2,500,000 from the Division of Budget. The amount requested did not include repair funds for the PSRT's bridge for two reasons. At the time of the request, the KDWP had not received replacement cost estimates for the bridge, and the Department had not received assurances from FEMA regarding the amount of federal funding which would be provided to replace the bridge.

The KDWP has received estimates to repair the bridge from a minimum of \$370,000 for replacement of the missing spans, without any work on the bridge substructure, to a maximum of \$686,700 to replace the whole bridge. The KDWP is submitting a request to FEMA for funds to replace the missing span on the bridge, of which 75 percent would be reimbursed from federal funds.

Representative Grant asked how many acres are involved in the land acquisition at the former Parsons Army Ammunition Plant and how close are they in dealing with the federal government as to the KDWP taking control of the area. Secretary Hayden replied there are about 11,000 acres, and they have been working with the redevelopment authority. Between 2,500 and 3,000 acres of the 11,000 acres are estimated to be appropriated for public lands for wildlife, fishing, hunting, and outdoor recreation. In addition, the development authority hopes to redevelop some of the acreage with a lot of industry. However, this is going to take some time, so the government has talked with KDWP about actually managing between 6,000 or 7,000 acres until development can take place on the land. There are management costs associated with it, and they do not have a lot of money. They have been working very extensively with the federal government and the transfer might occur during the 2008 Legislative Session.

Senator Umbarger explained in respect to the Parsons Ammunition Plant that he wants the Committee to understand that the work with the KDWP was initiated by the local people in Labette County. The people in the Parsons area see this as a big asset for them, but they do not have the means to manage all of it. Part of the acreage will never be able to be developed. They think it will be a good asset for Labette County and Southeast Kansas for KDWP to purchase the land. As far as it relates to the other land, they are presently not in a position to improve and manage it, and until that time, it should be under the management of KDWP as the best use of those assets.

Secretary Hayden explained that Pottawatomie Creek Bridge was over an active part of the trail when the flood occurred. The trail is still open but the KDWP does not allow anybody on the bridge. Stage three from Welda to lola is the stage that is not yet opened, and the bridge is not on that section. Stage three of the trail is almost completely opened except for one little overlay left in the City of lola, but presently the weather is precluding the finishing of the overlay. By April 2008, it is anticipated that the full trail will be opened in full length from Ottawa to Garnett to lola.

Secretary Hayden said the Department is going with the repair of the bridge rather than spending \$1 million to replace all of the bridge. However, an engineering study will be done on the bridge to see if the existing pilings can be used to cheapen the cost. That might be done for around

\$650,000.

Secretary Hayden explained that the KDWP has a number of revenue funds and the names can be found in the Department's budget request attached to today's testimony. Also, if there is land transfer work, most of them are eligible for 75 percent federal reimbursement from the federal excise tax on firearms and ammunitions. The KDWP has to put up the money first, and then the federal government reimburses them. KDWP would make a request to the Legislature to spend \$3 million out of the KDWP Wildlife Fee Fund, buy the land, and then seek federal reimbursement of 75 percent of that amount. Based on everything KDWP Wildlife Fee Fund knows about the standards, there is no reason to believe that it would not be approved by the federal government, as it is a standard land transfer which they fund all the time. The balance is in the KDWP Wildlife Fee Fund right now, and the Fund could handle that for a period of time.

Secretary Hayden said it may be mid-summer before all the flood damage can be determined. They are for the most part fully operational and in the winter time they do not operate the parks at full capacity anyway. Every park is open except during floods. Where the water stands on the infrastructure for a long time, they can get long term infrastructure damage. Sewer water and electrical damage is not immediately apparent and so they will probably be paying for this flood damage over the next several years as new problems become evident. The Department has tried to take all the projects that are FEMA eligible and push them to the head of the list so that they do not run out of time for FEMA participation. The problem with a lot of the state parks is that they are not FEMA eligible for reimbursement because they can be included in an inundation zone of our reservoirs. In other words, the government leases the agency the land and lets them build a park there, but they retain the right to flood that land in the event of flood damage because the land is designated as part of flood control. They have the authority to put water on KDWP and occasionally they do, and of course, these high water events are beyond their control. FEMA says that in this case, KDWP is not eligible because they knew it could flood. They have a contract that says it can flood, and the federal government is not going to reimburse the agency for those damages. For most of the state parks, particularly those that are in reservoirs flood plain, FEMA has already told KDWP that it is not eligible.

Discussion continued regarding whether inmate labor could be used at several of the parks. Secretary Hayden explained that the Department could purchase the material, use inmate labor, determine what it would cost if the Department went out on contract, and then ask FEMA for the difference. Secretary Hayden replied that what it amounts to is that the agency could seek reimbursement and see if that could be done. It is more expensive for contract labor. Since Ellsworth Correctional Facility is near Kanapolis State Park, it is an excellent place to use inmate labor, but other parks do not have access to inmate labor.

Senator Umbarger addressed the concern whether purchasing additional land (formally the Parsons' Ammunition Army Plant) is economical since there is so much revenue needed for flood damage. However, he wants the Committee to understand the timing is really being dictated by the federal government. In the BRAC Commission Alignment of bases, Kansas as a whole came out very well, but there was one sacrificial lamb in the whole group, and that was Parsons' Ammunition Army Plant. Southeast Kansas is one of the most depressed rural areas in Kansas. They devised the use of the government to come on board to determine what could be done to develop that property. Out of that, our delegation in Washington has worked diligently to try to get some kind of recognition and commitment from Washington. The word now is that it might be in March. This has been an ongoing deal. The federal government has been working on it for the past three years. He appreciates the thought process, but this is probably going to be a one-time opportunity because the change and ownership of that piece of property is going to take place. He would like to caution the Committee that this is not just important to Southwest Kansas because it could become a wasteland as many others have become in the past with the closure of these types of lands.

Representative Grant echoed the words of Senator Umbarger. He agreed that we are looking at some economic development (14,000 acres) in the southwest area of Kansas. If the whole thing was turned into a state park, there are already cabins (igloos) that sustain a temperature with little variance. To turn over a part of that for a state park would bring a lot people to that area. Three million acres for \$3 million dollars is not a bad price.

Marilyn Jacobson, Director of Finance and Facilities Management, Department of Administration, provided additional information regarding the Capitol Complex Utility Tunnel. Copies of her testimony from last month concerning the utility tunnels were distributed ([Attachment 2](#)). Last month, the Committee suggested that the DOA use emergency funds to temporarily repair the utility tunnel which is estimated to cost \$370,170. Also, the long-term future of the tunnel was discussed. The temporary repairs would only solve the problem for two years. Director Jacobson stated that she met with the State Finance Council on Monday. Secretary Goossen said that this may not be the correct response to the problem and proposed an alternate solution. The alternative proposed was for the DOA to front the money, so that those repairs could start occurring immediately, then the DOA would submit a supplemental request in FY 2008 during the legislative session. This would allow the DOA to be reimbursed for those emergency repairs. The members of the Council were in support of this alternative solution, so the DOA currently is moving forward with repairs and there will be a DOA supplement request for this item for FY 2008.

In the November Building Committee meeting, there was a request to contact the Kansas Department of Transportation (KDOT) regarding whether there could be any federal funds available if the utility tunnel also would include a pedestrian tunnel. Previously, those federal funds were coming out of the Transportation Enhancement program. Typically, the State of Kansas receives about \$8 to \$10 million yearly in federal funds and they generally go to Kansas City and counties for nontraditional transportation projects. There are some federal guidelines for pedestrian and bicycle paths, restoration of historical transportation buildings, and landscaping and scenic enhancement. These projects have to be for surface transportation. When this project was originally proposed in 2002 and funded with federal funds, it probably minimally, if not questionably, met the government's requirements. At this time, this project would not be eligible for those funds.

Committee discussion followed concerning why it is just now being heard. Director Jacobson provided copies to Committee members of the DOA capital improvements project requests from 2000 to 2010 and said this project first appeared in the DOA's capital improvement plan in 1998. Some funds were provided for a study of this project in 1999. Extensive discussion occurred in the 2002 Session about a pedestrian/utility tunnel, and a bill was actually introduced to prohibit this project from going forward. The proposal in 2002 included all of the Capitol Complex Building, including the Eisenhower Building.

Chairman Humerickhouse said that he believes the best way to approach the temporary repairs of the utility tunnel issue is for the Committee to show support for the DOA's supplemental request in 2008.

Senator Umbarger moved that the Committee recommend the State Finance Council's proposed solution to the utility tunnel situation. The Department of Administration will front the money for the temporary repair of the tunnel and then the Department of Administration will request funds by way of a supplemental request for FY 2008 for the reimbursement of the Department of Administration's front money. Representative Pottorff seconded. Motion carried.

Director Jacobson said the DOA has been in contact with Southwestern Bell, Westar, Cox Cable, and the City of Topeka, and especially the utility companies. They have informed DOA they will move their lines as they believe it is their responsibility. The temporary repair proposal cost does

not include the utility companies' lines. The temporary repairs allows for stopping the water infiltration; installation of a new sump pump; fixing the public utility penetrations of the tunnel walls; repair and seal some of the major joints and fractures in the tunnel walls and roof; installation of strut pipes and bearing plates to slow down wall displacement; and repairs to the existing pipe and conduit support framing. The long-term solution was for totally new grout and also using trenches instead of natural walk-through pedestrian tunnels. This will require some of the lines to be moved. In some cases, it will be the DOA's responsibility and other times it will be the utilities' responsibility.

Senator Umbarger remarked that the Committee appears to favor the DOA's Scheme D as presented in their testimony of November 30 for repairing of the existing tunnel system.

Discussion followed about how inspections will be made after repairing the utility tunnel and the circuit lines.

Director Jacobson next provided a summary of the DOA's Capitol Complex deferred maintenance plan as of August 2007 ([Attachment 3](#)). The DOA estimates \$240 million is needed to address deferred maintenance in the Capitol Complex Buildings. The Docking and Landon State Office Buildings are in the greatest need of attention. Specific recommendations regarding the future of these two buildings as well as methodology to address the remaining buildings and future maintenance needs are as follows:

- Reconstruct Docking State Office Building (DSOB);
- Infrastructure repair of Landon State Office Building;
- Maintenance premium of \$2.44 added to the rent rate; and
- Relocation of Highway Patrol from leased space into Docking.

The recommendation is to reconstruct DSOB. Occupants will be moved out of the building into leased space. DSOB will then be reconstructed by taking it down to its base structure and rebuilding it. The heat plant will be kept operational along with the Statehouse chilled water system. The existing heat plant located in the basement scores very high on the building condition scale and has an estimated useful life of at least 20 years. It also has enough capacity to sustain the existing infrastructure, which includes most of the Capitol Complex buildings. The new cooling tower will also stay and be used to support a new chilled water plant in the basement which will be sized to serve both the Statehouse and a reconstructed DSOB. Seat capacity would increase by 369 FTE for a total of 1,920. Usable square footage increases by 27,349 feet for a total of 384,000.

Current construction estimates to reconstruct Docking total \$77,426,276. This estimate is in today's dollars and does not include inflation. Additionally, the estimate does not include utility costs during construction, furnishings or moving costs. An assumption was made that central monitoring, central mail, and data centers would be relocated outside the Capitol Complex.

LSOB has a building condition value of 68.2 (deficient). As in Docking, the majority of the mechanical systems were installed in 1955 and have a typical service life of 20 or 30 years. A project to repair the façade on the exterior of the building and the roof is currently ongoing, at an estimated cost of \$2.5 million.

The recommendation regarding deferred maintenance in LSOB is to do non-cosmetic repairs to the building infrastructure only. The building will be kept occupied while individual repairs are done. Specific items to be addressed would include HVAC piping, ductwork, chiller replacement, fire protection, electrical, lighting, hazardous material abatement, windows and elevators. The cost is estimated at \$64,372,641. Landon's current seat capacity of 865 FTE and usable square footage of 216,195 feet would remain the same.

In order to address deferred maintenance issues in the remaining Capitol Complex buildings (Eisenhower, Judicial Center, Memorial, Curtis, Statehouse), as well as future needs to maintain the buildings at an acceptable level of quality and reliability, the DOA recommends including in the rent rate an annual cost per usable square foot. The Association of Physical Plant Administrators Maintenance and Operation of Buildings and Grounds Manual recommends 2-4 percent of the building replacement costs be budgeted annually for routine maintenance and repair of buildings. Using the industry standard of 2 percent equates to an additional \$2.44 per usable square foot of building space.

Director Jacobson stated that the DSOB is presently 95 percent occupied. Some legislators will be located in the building during the 2008 Legislative Session. Also, if the DSOB was renovated, it would be done wing by wing, not floor by floor, and the exterior would remain the same. The cost of reconstruction, including construction, furnishing, moving, and all of the costs at today's prices, would be approximately \$96 million. To do a phased wing by wing reconstruction of DSOB, the cost increases to \$105 million and would take an additional twelve to eighteen months. For a new building the size of DSOB located on state parking lot number two, the cost would be a little over \$100 million. If the building is reconstructed, the exterior would not look anything like it is presently. There were some drawings done several years ago by a company that came in and did a study. The exterior is not limited to those drawings, but there are a lot of possibilities for the exterior that would be much more attractive.

Representative Feuerborn inquired about the number of legislators that will be located in the DSOB during the 2008 Session and how important it is to have legislators within walking distance of the Statehouse. Director Jacobson stated that people will be moved out of DSOB sometime in 2010 if the building is to be reconstructed. The DOA has had conversations with some owners of a couple of very large buildings in downtown Topeka that are fairly empty, and after the last article appeared in the local newspaper, the local landlords are calling to make sure their names are on the list.

Representative Feuerborn said his concern was with all the other demands of the budget; to initiate a building project at this time might not be economically feasible and he wondered if the DSOB is basically sound. Director Jacobson responded that the exterior and interior are basically sound, but the issue of the poor rating is really regarding the interior infrastructures, as the systems are the original ones. To re-do the cooling system, electrical, wiring, heating, lighting, and so forth, on top of the other renovation items, the estimated cost would rise to \$147 million.

Director Jacobson stated that some legislators and staff are scheduled to remain in the DSOB until 2011.

Chairman Humerickhouse said any Committee action on the DOA deferred maintenance request for the DSOB will be delayed until the first part of the 2008 Legislative Session.

Director Jacobson referred Committee members to attachment "F" that has all the testimony of all the options of the Capitol Complex buildings and includes a description of the work to be done to the Dillon House at a cost of \$3 million. The estimated cost of razing the Dillon House and turning the property into a green space or a parking lot is \$252,000.

Director Jacobson briefed the Committee on the work that has been already done to the Dillon House. The roof was leaking badly, and two years ago a temporary patch was put on the roof at a cost of \$53,000. The roof is not leaking water at this point, but it is certainly not like having a good roof.

Randy Riveland, Architect, Division of Facilities Management, stated that the patches are a temporary measure, but it was fairly minimal work, and more work is necessary for it to be a good roof.

Mr. Riveland said the original estimate for reconstructing the Dillon House included an elevator, which would make the building ADA accessible, and also the reconstruction cost estimate included reconstructing the building so the second floor could be used for office space.

Staff distributed written testimony from the Kansas Preservation Alliance, Inc. (Attachment 4). The testimony gave some history of the Dillon House and urged the State Building Construction Committee to act boldly to stop the deterioration of the Dillon House; to appoint a committee to find a reuse for this beautiful building; and to move forward with a phased rehabilitation plan. Funds are available for different aspects of this project.

Sabrina Wells, Director, Financial Services Division, Kansas Insurance Department, presented testimony about the Dillon House. As most of this Committee knows, the Insurance Department owns a building that is just west of the Dillon House that is on the Historical Society's Register. This was a very sound decision of the State to purchase this building for the Insurance Department because there was a savings of \$250,000 at the time. The Insurance Department has made many improvements to this building with the Legislature's support and in conjunction with the Historical Society. However, the Insurance Department remains interested in the Dillon House. The Insurance Department said it would be willing to share in the expenses of bringing the Dillon House up to standards, but it cannot justify paying the full amount to bring it up to standards. It is a fee funded agency and have 180,000 licensed insurers; 60,000 of those are known residences and constitute the basis of its revenue. It cannot justify taking \$3 million plus to bring the building up to standards. Officials with the agency have discussed having 10 to 15 of the Department's employees occupy space in the Dillon Building if renovated office space was available. Also, its constantly using office rooms for consumers to come in and confidentially discuss their problems with insurance claims. There is not any way for the Department to justify the entire cost to bring the building up to cost, but it remains interested for use of some space. The Department also is interested in parking space. There are about five or more parking spaces along the back of the Dillon House. Most of the time they are vacant, even during the legislative session, and if for some reason the State would raze the building, it would be interested in that space.

Ms. Wells remarked that the Insurance Department had a design business company look at the building. The Insurance Department could probably handle anywhere from \$80,000 to \$100,000 for its participation, as right now the Insurance Department is paying the church \$20.00 monthly per stall for parking spaces.

There was extensive Committee discussion concerning various aspects of the cost for restoration of the Dillon House.

Jennie Chinn, Executive Director of the Kansas State Historical Society, presented testimony concerning the Dillon House (Attachment 5). The Dillon House was listed on the National Register of Places on December 27, 2006. It was nominated by the Kansas Preservation Alliance, a citizens' group. Director Chinn explained what the listing means, what the process of appealing the State Historic Preservation Office (SHPO) comment is, whether a listed property be sold, whether a

property can be removed from the National Register for Historic Places, whether the building can be rehabilitated into offices or other uses, and what the advantages there are to being listed.

National Register listing is largely honorific and does not carry any federal restrictions; however, all properties on the National Register in Kansas also are listed in the Register of Historic Kansas Places and protected under the state's preservation statute. The statute applies to listed properties and their environs (500 feet), and the Dillon House already was subject to review because it is located within the environs of the State Capitol. A review by the SHPO means that staff must comment on it if a proposed change to the property will harm or destroy the historic character of the property or its environs. By statute, the staff uses the Secretary of Interior's *Standard for Rehabilitation* to provide comment. While the standards for review of environs projects and listed property are slightly different, some actions, such as a demolition request, would receive a similar comment under either standard.

The Dillon House is eligible to apply for federal grants available only to listed properties. Currently, the Save America's Treasures (SAT) program provides grants to National Register properties of national significance; however, all ten Kansas properties that have been awarded have been the result of earmarks. This grant requires a dollar for dollar match, and the minimum grant request for historic property projects is \$125,000 federal share. The maximum grant request for all projects is \$700,000 for the federal share. In 2006, the average federal grant award to historic properties was \$223,000. The FY 2008 application deadline has not yet been established. Representative Tiaht is on the appropriations committee that reviews the Department of Interior's budget, which is where the SAT program is located. Any member of the Kansas delegation, however, may submit the earmark.

Senator Umbarger remarked that in order to get this issue off center, he is recommending that the Committee consider asking Carol Duffy McDowell, former president of the Kansas Preservation Alliance, Inc., to work with Director Chinn of the Kansas State Historical Society and others to look at the various options to provide information about the various funding sources. We found out today that they are limited at the federal level. There is also the amount of participation from the Insurance Department. I believe that if the State renovates the Dillon House correctly, the cost will be closer to \$5 million.

Senator Goodwin said she agreed fully with Senator Umbarger's remarks and she believes that Carol Duffy McDowell could be the spark plug. She asked whether there was a possibility that Ms. McDowell would take the lead on this issue. Senator Goodwin remarked that if Ms. McDowell, together with others in a group, would come back to the Committee with a recommendation that it be would greatly appreciated.

Representative Pottorff agreed with Senators Umbarger's and Goodwin's remarks.

Ms. McDowell presented written testimony only ([Attachment 6](#)), but did remark that there is not such a thing as a "Friends of the Dillon House."

Senator Apple commented he questioned if the Committee was going about this in the proper manner. He added that since the Committee is one of oversight, he wants to make sure that structurally that they are keeping the DOA in the loop. He also felt that a recommendation should come from the DOA and they should bring that information back to the Committee.

Staff stated that certainly the Joint Committee advises and consults, so it may make any recommendation it chooses and it will be put in its report. What Senator Apple may be getting at is the DOA is the implementing agency and anything to be done to the Dillon House is the job of the Director of Facilities Management. Director Jacobson added "on behalf of the Legislature."

Director Jacobson noted that if you look at the statute about the Dillon House, it is owned by the Legislature and the DOA staffs it for housekeepers, and other things. There is a special statute for the Dillon House, but the Division of Facilities Management is certainly happy to work on the Legislature's behalf.

Representative Grant said he believes that the Committee has delayed long enough to move forward on this project. The Committee basically knows the cost of the renovation and temporary repairs have been made to save it. He thinks the Committee needs to do what Ms. McDowell has suggested by exploring all our resources. Forming a group would be a good first step for coming up with various options for funding the Dillon House renovation.

Senator Umbarger moved that the Committee recommend forming a group made up of Carol Duffy McDowell, the Kansas State Historical Society, the Kansas Insurance Department, the Kansas Department of Administration, together with Senator Kelly, the Chairman of the House Appropriations Committee, and the Chairman and the Vice Chairman of the Joint Committee on State Building Construction for the purpose of exploring various options for funding the Dillon House renovation. Senator Goodwin seconded.

Chairman Humerickhouse questioned whether this group was too heavily loaded with legislative members. Senator Umbarger replied that the rationale from his perspective was that we need legislative backing on this issue. Representative Pottorff questioned if there is a time frame being put on this issue. Senator Umbarger said it would be his suggestion that the newly formed group would set a pace for this and the four legislators will be part of this. Representative Grant commented that he is not so concerned about having every little aspect reported back to the Building Committee. Also, his expectation is for the funding to be provided by grant money if the project goes forward. Senator Goodwin said she has some concerns regarding the amount of members that are going to be in the group. She knows it is hard to get legislators to meetings because of their other commitments. Representative Feuerborn said he believes this is a working group and not a committee, therefore, they are not under rules and regulations. Senator Goodwin agreed with Representative Feuerborn's remark. Senator Umbarger also agreed with Representative Feuerborn's remark and noted that he believes that this group will set a very fast pace to gather the information needed for the Building Committee to make a decision. Motion carried.

Chairman Humerickhouse recessed the Committee until 1:30 p.m.

Afternoon Session

Chairman Humerickhouse called the meeting to order at 1:30 p.m. and stated the first order of business is to review the draft legislation report (Attachment 7).

Theresa Kiernan, Office of the Revisor of Statutes, said that the first question in the bill actually is an amendment to a provision that was in HB 2556. That section requires that the current technical schools and Northeast Kansas Technical College make a plan to merge or affiliate or become an independent secondary education institution. This must be taken to take the Board of Regents (BOR). The sections have been interpreted to require those institutions to implement the plan. She has rewritten it so that not only do the schools have to submit a plan to the BOR by July 1, 2008, but they would have to implement a plan by July 1, 2009. She added some definitions to the current law, pertaining to the BOR, by striking out language in subsection (a) and reinserting it at the definition section of the technical school. She added a provision that would require that when a

technical school does merge, the BOR notifies the Department of Revenue for the purpose of the tax credit and the purposes of the deferred maintenance loan programs.

In Section 2 of the bill there is a provision in the State Education Institution long-term structure maintenance program. It is the part of HB 2237 that applies to the State Education Institutions. Under this section, the BOR is required to license and consult with this Committee regarding projects. It also requires that each individual state educational institution also advise and consult with the BOR before taking money from the fund for deferred maintenance projects. That requires a double “advise and consult,” so that language was taken out. There is still a requirement that the institutions have to come before the Building Committee.

Section 3, is a part of the infrastructure plan program (the program applies to Washburn University, the community colleges and technical colleges) for applying for finance group bonds to be issued by KDFA. The first amendment is actually a technical or “clean up amendment,” as Ms. Kiernan referenced the wrong statute in sub-section (d) which needs to be corrected. It actually refers to Northwest Technical College, but she added the definition of “technical schools” to mean the Northeast Kansas Technical College, Kansas City Area Technical School, Kaw Area Technical School, Salina Area Technical School, and Southwest Kansas Technical School.

In Section 4, in imposing an overall limit on the amount of bonds that KDFA may issue under the program, the aggregate limit currently is \$20 million overall. Technical schools are applicable in the first section of the bill, where an amount equal to \$4 million may be added to the limitation for each school that becomes affiliated or merges with another educational institution. Paragraph three (a) also states that applications from technical schools are to be given first priority for the new bond unit and there also are provisions for re-allocation of money.

Staff stated that if the Committee wanted to add those technical schools into the bonding authority, it needs to increase the dollar amount available. Using the formula, 25 current institutions access \$100 million, which is why the Revisor chose the \$4 million number. Also, there was discussion about setting priorities for those new schools.

The Revisor stated that the number in subsection (c) will be changed to 20 years instead of eight years for the date of maturity on bonds, as eight years is a short time for bonds.

In Section 5, words have been inserted pertaining to the tax credits for technical schools as follows: The limitation imposed under paragraph (A) of this subsection on the total amount of tax credits shall be increased: by \$78,125 for each technical school which complies with the requirements of KSA 2007 Supp. 72-4479, and amendments thereto, for tax year 2008; by \$156,250 for each technical school which complies with the requirements of KSA 2007 Supp. 72-4479 and amendments thereto, for tax year 2009; and by \$208,233.33 for each technical school which complies with the requirements of KSA 2007 Supp. 72-4479, and amendments thereto, for tax years 2010, 2011, and 2012.

In Subsection C of Section 5, paragraph B, “Technical school” has been added in various places in the bill. This would require the technical schools to qualify for the tax credit or the bond issues.

Eric King, Director of Facilities, Kansas Board of Regents, mentioned that the Joint Committee should pay particular attention to the lengthening of the bond period from 8 to 20 years as it will have a fiscal impact.

Mr. King explained that the BOR is in the process of identifying projects related to loan applications received that the KDFA has developed. The DOA is looking at more than bond issues.

He believes the Legislature will see a combination of some large projects, but most of the projects will be relatively small. He believes that there are going to be some institutions that use this money initially, and others will not. The BOR is at a stage of getting that information.

Sheila Frahm, Executive Director, Kansas Association of Community Colleges Board of Trustees, stated she felt it is very wise to look at things that do not take long. She agrees that it must be evaluated carefully, *i.e.*, what the options are and what kind of projects need to be accomplished. Some will be shorter than others. The request for extending this for a long time obviously makes the payback much easier for the schools, and KDFFA feels like it can get a better bond rate if it is not limited to \$20 million. Those are the two issues the schools bring forward. She does not know if they will suddenly use it all up, but it did not appear so with the initial request, but the next request could change. What is in the first phase will probably move ahead and the schools that make that application know that it was for a year. Ms. Frahm remarked that the request that was put out is based on the eight-year payback so the next request may change. What is in the first phase is probably going to move ahead and the schools that made that application know that it was for a year. It is not written to be retrospective. Some of the colleges did not apply due to a possible hope that they would be able to afford the payback if the time could be extended to 20 years.

Ms. Frahm continued by remarking that she does not understand that KDFFA made a remark if the price tag for the elevator is as high as initially thought.

Senator Apple remembers that when the Committee received the break down, if it is \$20 million a year for five years, that equals \$100 million. He is concerned that if we do not have a "revolving fund," the money would be used up quickly. Ms. Kiernan said that the schools have a \$15 million limit. He would like to see a break down from where we were to where we are now.

Ms. Frahm said she does not think the intent is to automatically use it all in one year, but instead would be used over a period of time; but Senator Apple is correct, at some point the \$100 million will be gone.

Senator Apple remarked his fear is that if the capabilities are there, then it is going to happen. His concern is that if there are some institutions that are really struggling financially in some of the smaller areas, they may not have the capability. Then the money gets used up by the wealthier institutions, and where does that leave the smaller institutions that are really struggling financially. Ms. Frahm mentioned that the limit helps a little. Later on when there are public hearings, Ms. Frahm's group can bring campus leaders to help understand what their projects are, and what the timing means to them. Some of those implications might be helpful to the Committee, rather than a generic overview.

Senator Apple remarked that he has the fear that all the money will be used up the first year and there is not a revolving fund that keeps coming up every year, then money will not be available in future years.

Mike Rogg, President of the Northwest Technical College (NWTC), presented testimony on behalf of the Kansas Technical Schools (Attachment 8) regarding the need to include five institutions by increasing the allocation for the program and requiring eligibility to be coupled with each institution's transition to accreditation through merger or other avenue. NWTC fully supports this idea and concurs with those recommendations.

Mr. Rogg then pointed out the wording in the bill that says such a plan shall be implemented on or before July 1, 2008. From the institutions' point of view, it would like to ask the Committee to consider some language that would reflect along the lines of "on or before July 1, 2008 that such a plan be presented but it has until July 1, 2009 to implement the plan." It is very difficult to get a plan in by the July 1, 2008, date. He also reviewed part (c) on top of page one, and requested that by

simply adding "the plan must be submitted July 1, 2008, but would not have to be implemented until 2009," which would still comply with the requirement of this section.

Research staff stated that if that change is made, the technical schools or college would have access to the additional funds before they became accredited, merged or affiliated. Compliance in coming up with a plan and compliance with implementing the plan are two different things.

Mr. Rogg stated if an institution plans to merge by July 1, 2008, it will not be fully compliant as an institution and it will not have its HLC accreditation before July 1, 2009, until the plan is fully implemented. It takes a while to get the plan implemented once it is submitted.

Senator Umbarger said he understands the change the technical schools want. After plans are submitted to the Board of Regents by July 1, 2008, the technical schools want wording added that they have until July 1, 2009 to implement the plan.

The Committee next discussed recommendations regarding changes to architect/engineer fees.

Eric King, Director of Facilities, Board of Regents, discussed his role as Chairman of the Joint Facilities Team. He said he remembers mentioning to this Committee previously that this group began as one of Governor Sebelius' BEST teams early in her first term of office, with the charge of identifying potential efficiencies and improvements related to planning and construction in state government. The group of agency architects/planners found merit in meeting to discuss common issues, and has continued to meet on a monthly basis for several years now.

As discussed at the meeting on October 25, 2007, the Joint Facilities Team has spent considerable time and effort analyzing differences between statutes related to various design professionals. The Team believes that the changes proposed will provide consistency and clarity (Attachment 9). Mr. King briefly went through the changes. Finally, Mr. King said it is important to note that the Team has been working closely with other stakeholders, specifically AIA Kansas and the American Council of Engineering Companies of Kansas (ACECKS). They are supportive of the recommended changes.

Committee discussion followed on change number 75-1264 of the review process, for reviewing changes orders that exceed \$75,000. The Joint Facilities Team is recommending that the amount be increased to \$100,000.

Staff stated that the last time the statute was amended was in 2000. They will have to find out what the amendment was.

Senator Umbarger moved that the Committee recommend the change order limit be increased from \$75,000 to \$125,000 concerning the review process by the Joint Committee. Representative Grant seconded. Motion carried.

Gary Hibbs, Manager of Facilities Planning, Design and Construction for the Division of Facilities Management and the Department of Administration, presented testimony regarding architect and engineering fees for building construction projects (Attachment 10). He said his presentation deal strictly with the fee structure.

The Joint Facilities Team, a shared-service group of agency facilities representatives from the Board of Regents, the Department of Corrections, the Department of Social and Rehabilitation Services, the Juvenile Justice Authority, the Adjutant General's Department, the Department of Transportation, the Highway Patrol, and all other agencies that contract for building construction

projects as part of their self-directed charge, have been evaluating the fees structure used by the State of Kansas and agencies to pay for architect/engineer (A/E) design services.

KSA 75-1263 establishes fees for project architects and establishes the criteria for calculating fees paid to the design team for A/E services. The current criterion is a defined maximum fee percentage, which is adjusted downward on an incremental scale of three-fourths percent per \$2,250,000 of construction cost increase, to a defined minimum fee percentage. Currently, those limits are 7 percent and 5 percent. An additional maximum 4 percent can be added to the base fee for projected complexity. If the design team is not required to provide the normal level of services, the fee is reduced by negotiation for the value of services not to be provided. The original statute was created in 1974 and it was revised in 1978, 1979, 1986, and 1990. The 1990 revision adjusted the incremental ranges of the construction costs from \$1,000,000 to \$2,250,000. One unusual aspect of the Kansas calculation method is the incremental fee percentages are applied to the corresponding incremental construction cost ranges. Most states use a set percentage applied to the total construction cost.

The concept and objectives of the Joint Facilities Team evaluation were to:

- Compare the process used by other states to determine A/E fees;
- Create consistent and equitable fee negotiations between all agencies and all design firms;
- Establish fee ranges to reflect the current level of services required by the State of Kansas;
- Estimate the current practice for design firms to characterize all the projects as the most complex; and
- Define the following criteria using schedules and guidelines as tools to use in all negotiations:
 - Cost of Construction;
 - Complexity Factor;
 - Construction Type; and
 - Services Required.

The team evaluated nine states that use an approach similar to Kansas' and that were readily available on the internet. They examined 12 examples using various adjustments to the following four factors:

- Percentage of increase for small to large costs of construction;
- Percentage of increase for less to more project complexity;
- Compare overall process of other states to those of the State of Kansas;
- Average fee amounts in other states; and
- Overall process changes, based on those of other states.

They selected an example that appeared to be the most balanced of the 12 examples examined. The concept and objective evaluation addressed the following issues and the listed solutions of the four identified criteria.

- Cost of Construction
 - Issue: Recognize the current costs limits used in KSA 75-1263 are out of date.
 - Solution: Adjusted the set points of the construction costs.

Complexity Factor

- Issues:
 - Currently no standard;
 - Informally based on prior projects; and
 - No consistency among agencies.

- Solution: Establish a list of building types based on typical components used by agencies. Assign 5 levels of complexity.

- Construction Type
 - Issues:
 - Currently no set standard;
 - Informally based on prior projects; and
 - No consistency among agencies.

 - Solution: Establish 3 specific types: new, remodel, and combination.

- Services Required
 - Issues:
 - Currently an informal process is used.
 - Not consistent.

 - Solutions:
 - Developed a list of services typically required by state agencies.
 - Develop a checklist to identify what is required or is not required for a specific project.

The recommendation developed from the evaluation, and after review and discussion with the architectural and engineering professions, is a matrix of fees based on the four criteria consisting of construction cost, project complexity, construction type, and services required. The negotiated fee percentage is multiplied as a simple calculation to the estimated cost of construction to establish the A/E services fee for the project.

Mr. Hibbs' written testimony is accompanied by examples of the lists and guidelines prepared as tools, and a comparative example of new versus existing fees.

Mr. Hibbs explained that when firms submit the proposals, those proposals are sent to the State Building Project Commission (SBPC). The Commission select a minimum of three firms and a maximum of five firms. Then each of those firms is interviewed by the agency. From those interviews, the first firm is selected along with a second-rated firm. Negotiations start with the first firm, and if consensus is not reached, the first firm is dismissed and the process starts over again with the second firm. It is very rare that the second firm needs to be contacted.

Senator Umbarger remarked that the Committee was talking about architectural and engineering fees and changing the matrix so members can get a better representation in the bid process. He asked how the Capitol restoration would be categorized and whether the complexity factors would be considered as well as the construction type. He also asked whether this type of criteria review, in relation to architecture and engineering fees, would call for more accurate bids on reconstruction of the State Capitol Building.

Mr. Hibbs stated that it is his view that because of the uniqueness and very complex factors, adding to the historical factor, plus lots of remodeling over the years, that everything about the Statehouse is so unique that it requires a very different approach. The Capitol restoration is so different that it is unlikely that this process would improve the A/E fees on this type of building. The Capitol is certainly not a typical project.

Committee discussion followed concerning increased costs of material increasing A/E fees. Director Jacobson explained that what Mr. Hibbs is talking about applies to state agency projects that are different than for the Statehouse. A statute exempts the Statehouse from the normal process so that contract is done differently. For projects concerning state agency contracts, if the cost of material rises, the agency would not raise the A/E fees, as that fee was negotiated and set before the project started.

Discussion followed concerning a major policy change in statute 75-1263 regarding the Committee's draft report. It was the Joint Committee's decision that this change in statute could remain in the Committee's draft report as it could be amended out later.

Representative Grant moved for the Committee to introduce legislation as recommended by the Joint Facilities team as set out in its evaluation of architect/engineer fees for building construction projects dated December 13, 2007. Senator Umbarger seconded. Motion carried.

Eric King, Director of Facilities, Board of Regents, presented the approved lists of priority projects at its meeting on February 14, 2007 (Attachment 11). In addition to giving the universities a blueprint to assist their planning, the lists also serve to inform policymakers about the specific projects that will be undertaken to address the most pressing maintenance needs if funding is made available. The lists have been developed assuming an initial "down payment" of \$200,000. The lists do not represent the entire \$727 million deferred maintenance backlog.

Mr. King remarked that a few weeks ago they were talking about the tax spreads. There had been some questions by the campuses for investment donors for endowments on projects that can be participated in. The discussion focused on whether to allow the investors to donate to a building that they might have a fondness for, but is not of the highest priority in terms of deferred maintenance. Mr. King thinks this Committee was going along with what the Board staff was thinking. That is, at least initially, the donor is only going to be able to give to the highest priority project. But if they do not sell all the tax credits, then they may have to go to plan "B," whatever that turns out to be. He thinks initially the donors need to put money towards the buildings with the worst conditions. He is proposing a list taken from February 14, 2007. It will still need to come before the Joint Committee for recommendation. He thinks if there is consensus to pick the familiar projects, *i.e.*, those known as the worst projects, then it should be a fairly safe situation.

It is important to understand that the numbers associated with the following project lists are estimates, not known numbers. As such, it is likely that the project costs will vary from the estimates the BOR has provided. Some flexibility is appropriate, but accountability is essential. Thus, the Board proposes that the universities provide quarterly updates and reports. These reports also will be shared with the Joint Committee on State Building Construction. Once the final projects and budget estimates have been established, spreadsheets will be developed that can track any changes to the original allocations. Deviations from the original estimates will be allowed up to a predetermined amount; however, changes over that set amount will require justification and Board approval. Changes to the original list of projects will likewise require ample justification and Board approval. A final report accounting for all the expenditure of appropriations approved by the 2007 Legislature will be made to the Governor and Legislature when the 2007 program is completed.

Chairman Humerickhouse stated that the Committee will be meeting the first week of the 2008 Legislative Session for the purpose of election of officers, and to address any clean up work.

Chairman Humerickhouse adjourned the meeting.

Prepared by Helen Abramson
Edited by Kimbra Caywood McCarthy

Approved by Committee on:

April 29, 2008

(Date)

