

**MINUTES**  
**LEGISLATIVE TASK FORCE ON SUSTAINABLE BUILDING DESIGN AND PRACTICES**  
**OF THE**  
**ARKANSAS GENERAL ASSEMBLY**

**Monday, February 6, 2012**  
**1:30 P.M.**

**Room 151, State Capitol**  
**Little Rock, Arkansas**

The Legislative Task Force on Sustainable Building Design and Practices met at 1:30 P.M., Monday, February 6, 2012, in Room 151 of the State Capitol in Little Rock, Arkansas. The following members attended:

**Legislative Members:** Senator David Johnson, Co-Chairman; Representative Greg Leding, Co-Chairman; and Senator Jake Files.

**Non-Legislative Members:** Chris Benson, John Coleman, Richard Davies, Charlie Foster, Anne Laidlaw, Mikel Lolley, Zack Mobley, Barbara Nix, Mark Robertson, and Kenneth Smith.

**Also attending:** Representative Billy Gaskill and Representative Nate Steel.

Representative Leding called the meeting to order.

**CONSIDERATION TO APPROVE JANUARY 9, 2012, MINUTES [EXHIBIT C]**

**Without objection, the January 9, 2012, minutes were approved.**

**DISCUSSION OF DRAFT LEGISLATION ON ENERGY SAVINGS PERFORMANCE CONTRACTING [EXHIBIT D]**

**Ms. Jane Benton, Administrator, Office of State Procurement, Arkansas Department of Finance and Administration (DFA)**, said the Energy Savings Performance Contracting (ESPC) law needs changes that make it more open-ended and offers specific instructions to agencies. The goal is to keep the law from being prohibitive as the industry changes. She explained the changes as:

- Sec. 1, page 1, lines 24-27: Restrictive language was stricken to make the law more flexible as changes happen in the industry.
- Sec. 1, page 2, lines 8-15: Language was adjusted to allow agencies to evaluate energy service companies' (ESCO) proposal details.
- Sec. 2, pages 2-3: Language was adjusted to clarify that once an agency has selected an ESCO provider, both partners have a commitment to end the contract. This guarantees payment from the ESCO if savings fall short.
- Sec. 2, page 3, line 15: "Bid-bond" was stricken and language was added that requires a payment and performance bond to be in place. This ensures that the state's financial portion of the contract is upheld, even if the ESCO goes out of business.

Senator Johnson asked how the problems noted in the November 14 meeting are addressed in this draft. Ms. Benton said the proposed modifications address procurement, but more process resolution is needed for funding. An advisory committee with members from DFA, Arkansas Economic Development Commission (AEDC), and the Arkansas Building Authority (ABA) has been formed to guide agencies about financial options. The committee believes that once the investment grade audit is complete, state agencies can fund the project themselves or contract with an ESCO. Ms. Benton noted, supporting legislation may be needed on the 2010 bonding constitutional amendment.

Mr. Davies said state agencies pay utility bills from the maintenance and operations (M&O) line item. The ESPCs require agencies to purchase equipment that must be capitalized, but capitalizing is not allowed from M&O. The new law needs provisions that enable agencies to capitalize the equipment. Ms. Benton said Paul Lothian and Brandon Sharp from DFA have suggested adding a line to M&O that allows debt-services to be paid. This would provide that the expense goes to the ESCO rather than the equipment company; but she is going to get more information on this.

Mr. Smith asked if the law could be expanded to allow local governments to participate in ESPCs. Melanie Hayes, Senior Account Executive, NORESCO, was recognized, and said there is existing legislation that enables cities, counties, and K-12 to engage in the contracts. Ms. Benton said she does not think local governments want their law changed because they already complete more ESPC projects than state agencies.

Mr. Smith asked which agency will manage the Guarantee Energy Cost Savings Act (GECSA), noting he thinks a central entity is needed to monitor compliance, provide updates, and report savings. Ms. Benton said the act is primarily an energy issue and the Arkansas Energy Office already ensures that the procurement aspect of other acts and executive orders are carried out, but the managing agency for GECSA has not been decided.

Ms. Nix asked who monitors K-12 compliance. Ms. Hayes said Dr. Charles Stein, Director, Division of Facilities and Transportation, told her the reports are supposed to be submitted to him, but he rarely receives them. K-12 has had enabling legislation for ESPCs since the mid-1990s, and at least a dozen projects have been completed by various ESCOs.

Senator Johnson asked if the advisory committee had discussed additional staff resources that an agency would need to administer the act. Ms. Laidlaw said Act 1494 of 2009 is in place and costly to administer, so she doubts any agency has extra staff to monitor and administer contracts. Mr. Benson agreed, and said administering the GECSA will require contractual and legal knowledge. Ms. Benton said most states have a staff person dedicated to administering the act. Mr. Mobley suggested that the state or individual districts hire an on-call architect or engineer and have the cost covered in the contract. Mr. Smith said each ESPC could include an amount dedicated to administration.

Ms. Benton asked direction on how to proceed.

Senator Johnson asked Joi Leonard, Committee Attorney, to include a provision in the draft regarding the need to capitalize goods. Authority needs to be vested with a state agency, and the consensus is the Arkansas Energy Office is the place to house the GECSA. Senator Johnson noted he recognizes the vested agency will need additional staff resources. Mr. Davies said it would be helpful if the General Assembly included ESPCs as an authorized expenditure from M&O.

Mr. Robertson said it is unclear how the barriers noted at the November meeting are being addressed in the draft legislation. Ms. Benton addressed each topic:

- *The ESPC law was placed in procurement when enacted in 2005 / Lack of education and understanding of ESPCs:* Ms. Benton said the procurement office does not have expertise in energy and engineering. The law should be placed with the agency where it can get the best effect.
- *Most state agencies do not have a professional engineer to conduct the initial investment grade audit:* Ms. Benton said perhaps the state has or could hire an engineer.
- *Agencies are concerned about reduced funding when energy savings are realized that may prohibit payback:* Bonding legislation to support the 2010 constitutional amendment would give agencies another tool for ESCO agreements.
- *Agencies must have an appropriation to finance the project:* Agencies need a line item to capitalize ESPC equipment.

- *ESCOs may not want to work on smaller projects:* Agencies may want to "lump" projects together to create one project that would be more attractive to an ESCO. Mrs. Benton said she will bring this topic up to the advisory committee.
- *Enabling legislation is needed to support the 2010 constitutional amendment that allows state agencies to use bonding to finance ESPCs:* Senator Johnson said the 2010 constitutional amendment will be addressed with separate legislation in the 2013 Session.
- *The law stipulates ESPCs will be solicited by a request for proposal (RFP), but a request for qualification (RFQ) would be more appropriate:* Requiring the solicitation method to be a RFP makes it restrictive.

Senator Files said one job duty for the GECSA administrator could be to seek energy-saving opportunities for the state, and the savings could help pay for the position. Senator Johnson agreed.

Representative Leding said the next meeting is March 12, 2012, at 1:30 p.m.

Mikel Lolley said he wants the AEDC Energy Plan Survey to be available to the task force, and asked Mr. Benson if the task force would be a stakeholder in conversations about the plan. Mr. Benson said he was unsure of that, but the governor's office finalized the stakeholder lists weeks ago. He does not see any reason why the task force cannot look at the survey and as a group, express their points of view. Mr. Smith agreed with Mr. Lolley and said he wants the task force to be an entity with a "say". Senator Johnson said the Energy Plan Survey could be discussed at the next meeting.

Mr. Robertson said Act 1494 of 2009 had a broader context in the earlier days – a more holistic approach that pertained to buildings. He hopes the commission remembers this and wants to re-address points that have been left out and pertain to being a building task force, not just an energy task force.

With no further business, the meeting adjourned at 2:20 p.m.