

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

Monday, October 8, 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, October 8, 2012, in Room 151 of the State Capitol in Little Rock, Arkansas. The following members attended:

Legislative Members: Senator David Johnson, Co-Chairman.

Non-Legislative Members: John Coleman, Richard Davies, Charlie Foster, Anne Laidlaw, Zack Mobley, Martha Jane Murray, Mark Robertson, and Ken Smith.

Also attending: Senator Gene Jeffress; Representatives David Fielding, Billy Gaskill, and Buddy Lovell; and Jonathan Flannery for Mark Kennedy.

Senator Johnson called the meeting to order.

CONSIDERATION TO APPROVE SEPTEMBER 10, 2012, MINUTES [EXHIBIT C]

Without objection, the September 10, 2012, minutes were approved.

DISCUSSION – PROPOSALS FOR TASK FORCE RECOMMENDATION [EXHIBITS D1 & D2]

PERFORMANCE BASED ENERGY CONTRACTING - DRAFT

Mr. Scott Hamilton, Director, Arkansas Energy Office (AEO), Arkansas Economic Development Commission (AEDC), explained proposed changes that would simplify how agencies use Performance Based Energy Contracting (PBEC).

- Change the bid process from a Request for Proposal (RFP) to a Request for Qualification (RFQ), providing companies more flexibility and better negotiating opportunities on the front end of contracts.
- Allow energy audits, rather than the more expensive investment-grade audits, offering both parties more flexibility.
- Require agencies to comply with contract measures to qualify for reimbursement.
- Require agency's operational savings to meet proposed savings measure costs, allowing up to a 20-year payback.
- Will probably add language to allow agencies other than the Air-Conditioning, Heating and Refrigeration Institute to rate new equipment and new technologies.
- Require payment-performance bonds for companies that will potentially work on a project.
- Change PBEC's administering office from the Arkansas Department of Finance & Administration Procurement Office (DFA-PO) to AEO.
- Allow state agencies to use Maintenance and Operation dollars to pay for PBEC compliance measures.

Mr. Smith asked if AEO expects agencies to make immediate payments to the contractors; and if so, where does the agency get money to do that? Mr. Hamilton said AEO is exploring state agencies' resources and maybe to allow more programs such as Revolving Loan Fund Programs (RLFP) and bonds; AEO is looking into this.

Mr. Smith said Arkansas has \$30 million in Qualified Energy Conservation Bonds (QECCB); 70% is earmarked for state and local government entities. He asked if state agencies could use those funds to pay for PBEC. Mr. Hamilton explained QECCBs are bond-financing, not loan funds; but some funds could be structured for state-agency use.

In response to a question by Mr. Mobley, Mr. Hamilton said moving PBEC to AEO allows them to bring market-price inflation and deviation to light. As the office negotiates contracts, they will identify variables and list them in contracts to provide flexibility.

Ms. Robin Rogers, Deputy Director of State Procurement, DFA-PO, said the Procurement Office supports moving PBEC's administration from their office to AEO.

In response to a question by Mr. Smith, Ms. Laidlaw said:

- Arkansas Building Authority (ABA) administers RLFP.
- RLFP started with a little less than \$12 million.
- As of July 1, 2013, the fund will have \$4 million ready to re-loan.
- The minimum requirement for a project is \$250,000.
- ABA markets RLFP to state agencies to encourage new projects and works with them to meet the program's mandate.

Property Assessed Clean Energy (PACE) – SB516 of 2011

Mr. Mark Robertson explained, during Arkansas's last legislative session, the previous Task Force recommended language for SB516, to allow Property Assessed Clean Energy (PACE) bonds. The bill passed in the Senate, but fell a few votes short in the House. Mr. Robertson said SB516's residential side had issues pertaining to lien seniority. The bill created a framework to allow any jurisdiction authorized to issue revenue bonds to establish the program. Currently, a group is studying how modifications to SB516 can address previous concerns. Mr. Robertson said the Governor's Office believes a PACE bill that is commercial specific should have little resistance.

Right now, he sees two ways to handle PACE legislation:

- As two separate pieces of legislation; or
- One piece of legislation that is broad enough to allow residential standards to come effective when the federal side gives a green light.

Vermont's \$2 million pilot PACE program includes a junior lien that should cover about 2,000 residences. Mr. Robertson said policies for the lending side of PACE overcome his concerns about putting PACE in a junior lien position. Discussions do not usually support junior liens but do support developing legislation for bonds to be issued and the programs defined.

In response to a question by Senator Johnson, Mr. Robertson said the banking industry's main concern with PACE is the lien position. Banks must be able to acquire mortgages and administer loans. Mr. Robertson noted, QECB funds could be dedicated to a loan-loss reserve for guaranteeing loans.

Senator Johnson said the next Task Force meeting is November 19, 2012. Mr. Ron Hughes will discuss radiant barriers.

With no further business, the meeting adjourned at 2:00 p.m.