APPROVED DECEMBER 12, 2011

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

Monday, November 14, 2011
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, November 14, 2011, 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: Chris Benson, John Coleman, Richard Davies, Charlie Foster, Mark Kenneday, Anne Laidlaw, Mikel Lolley, Zack Mobley, Martha J. Murray, Barbara Nix, and Kenneth Smith.

Also attending: Representatives David Fielding and Marshall Wright.

Senator Johnson called the meeting to order and welcomed everyone to the meeting.

CONSIDERATION TO APPROVE SEPTEMBER 29, 2011, MINUTES (EXHIBIT D)

Without objection, the September 29, 2011, minutes were approved.

PERFORMANCE-BASED CONTRACTS

Ms. Jane Benton, Administrator, Office of State Procurement, Arkansas Department of Finance and Administration (DF&A) [HANDOUT #1], said Energy Savings Performance Contracting (ESPC) is offered by energy service companies (ESCOs) as a way for public sector entities to obtain and finance energy saving projects. ESPCs guarantee energy cost savings that pay for project costs over the life of the contract and can provide resources to finance and acquire capital and equipment to improve energy efficiency in public buildings without up-front capital costs. Agencies want to save on operational costs and be energy efficient, but the process is difficult. The ESPC field has identified the following barriers that continue to deter progress:

- The ESPC law was placed in procurement when enacted in 2005.
- Lack of education and understanding of ESPCs.
    - Personnel expertise (few engineers and lack of understanding of finance options).
    - Facilities personnel (few energy experts on staff).
    - Management (lack of understanding about how financing will be repaid).
- Most state agencies do not have a professional engineer to conduct the initial investment grade audit.
- Agencies are concerned about reduced funding when energy savings are realized that may prohibit payback of the project.
- Agencies must have an appropriation to finance the project.
- ESCOs may not want to work on smaller projects.

- Enabling legislation is needed to support the 2010 Constitutional Amendment that allows state agencies to use bonding to finance ESPCs.
- The law stipulates ESPCs will be solicited by a request for proposal (RFP), but a request for qualification (RFQ) would be more appropriate.

The department is moving forward with ESPCs by:

- Development of an advisory review committee to assist agencies with the ESPC process.
- Establishment of an energy service coalition to provide education and outreach.
- Streamlining the procurement process with assistance from state agencies and ESCOs.

ESCOs provide turnkey [designed, supplied, built, installed, fully complete and ready to operate] services, guarantee energy savings and pay back debt service if guaranteed energy savings are not reached. Many benefits are provided by ESCOs, but there is a significant cost to the state by using this method.

Mr. Ken Smith, on behalf of the Arkansas Advanced Energy Association (aaea), gave a PowerPoint presentation **[ATTACHMENT #1] [HANDOUT #2]** and said the aaea is a new trade association dedicated to growing Arkansas' economy by expanding the energy workforce and manufacturing base through increased development, manufacture, and utilization of advanced energy technologies.

ESPCs convert dollars spent on wasted energy into energy-saving capital improvements in the customer's facility with capital from third parties, banks or specialized energy project finance companies and are structured to be self-financing. ESPCs operate by having an ESCO identify energy-saving opportunities, implement improvements paid from savings, arrange financing, guarantee savings that meet or exceed annual debt service payments, and pay any guaranteed savings shortfalls. ESPC project services include preliminary audits, investment grade audits, engineering designs, arrangement of project financing, construction management, commissioning, monitoring, verification, operation and maintenance. Several contract arrangement programs are offered, but performance-based contracts dominate the market.

Since 1990, the ESCO industry has delivered:

- $40 billion in projects
- $50 billion in guaranteed and verified savings
- 330,000 person-years of direct employment
- $25 billion of infrastructure improvements
- 420 million tons of CO_2 savings at no additional cost

Utility incentives are available to private and public sectors, and these opportunities will improve in 2012 and 2013. ESCO work is primarily being done in municipalities, state agencies and hospitals. Currently, 75% of ESCO work pertains to energy efficiency, but on-site renewable work is a growing trend.

Richard Davies recommended legislation that authorizes debt service fees and utility bills to be paid from the same line item, such as maintenance and operations, would be helpful and would eliminate double appropriation.

Ms. Murray expressed concern regarding ESCOs that manufacture energy saving products and have control over project audits, designs, and product specifications once they are awarded a contract; and asked if the state has a perspective on best prices and products. Ms. Benton said this is why a RFQ rather than a RFP would be more beneficial. Evaluation criteria could be determined so every ESCO that intends to bid on a project has a prequalified list and knows certain criteria must be met before a bid can be placed. Brandon Sharp, Budget Director and Paul Louthian, Administrator - Office of Accounting, both with the DF&A, are working with Ms. Benton on this.

Mr. Kenneday said energy efficiency is a three-legged stool: energy-intensity, square footage, and cost of utility. If one component changes, the savings dynamic changes and makes it impossible to lock that dollar into actual debt payback. Legislation must be adjusted to manage capitalization and depreciation. Any energy efficiency process cannot begin with a RFP, it must begin with a RFQ. The opportunities for energy efficiency are such that a guaranteed savings contract would create a risk so high that savings would be diminished by risk management and the contractor would be required to build into the original estimate.

Mr. Benson said lack of central focus is a statewide issue, but the list of barriers and formation of an advisory group is a good starting place for progress. State agencies need more incentive to become engaged in the energy saving process.

Senator Johnson said it would be helpful to begin drafting a bill for sharing among Task Force members. Ms. Benton said the Advisory/Review Committee would like to work with the Task Force on the draft. Senator Johnson wants this draft legislation ready for the February meeting.

ARKANSAS DEVELOPMENT FINANCE AUTHORITY BOND – AS PER ACT 814 OF 2011 (EXHIBIT F)

Mr. Gene Eagle, Vice President for Development Finance, Arkansas Development Finance Authority (ADFA), said state agencies are not authorized to pledge general revenue for paying debt service, and recommended having bond counsel review any proposed legislation because it deals with bonded indebtedness.

Qualified Energy Conservation Bonds (QECBs) are taxable municipal bonds authorized by the federal government. Interest on QECBs is paid as a subsidy to the investor by the federal government at 70%. The interest rate for qualifying projects is currently around 2%. Most QECBs fund energy projects such as natural gas conversion and residential green communities. About 70% of QECBs are used for government projects, 30% fund private projects. The primary challenges facing QECBs are education and lack of projects emerging. The ADFA hopes to work with the Arkansas Department of Human Services to finance some of their energy saving projects with QECBs.

Act 814 of 2011 allows the ADFA, the largest counties in Arkansas and the city of Little Rock to administer federal volume cap. The ADFA does not want to see this money go unused and intends to ask entities that are authorized, but have not utilized these resources to waive their right to these funds to the state, so the money can be aggregated across Arkansas. There are no time constraints on this funding. Current legislation presents a challenge because paying debt service from general revenue is forbidden. Decoupling equipment purchases and financing would make transactions more transparent and allow them to be examined separately.

The next meeting will be held December 12, 2011, at 1:30 P.M.

With no further business, the meeting adjourned at 3:00 P.M.