

MINUTES

SPECIAL COMMITTEE ON ENERGY, NATURAL RESOURCES, AND ENVIRONMENT

November 7-8, 2007
Room 241-N—Statehouse

Members Present

Representative Carl Holmes, Chairperson
Senator Jay Emler, Vice-Chairperson
Senator Marci Francisco
Senator Carolyn McGinn
Senator Mark Taddiken
Representative Terry McLachlan
Representative Ty Masterson
Representative Larry Powell
Representative Gene Rardin
Representative Don Schroeder
Representative Josh Svaty

Staff Present

Mary Galligan, Kansas Legislative Research Department
Cindy Lash, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Hank Avila, Kansas Legislative Research Department
Matt Todd, Revisor of Statutes Office
Jason Thompson, Revisor of Statutes Office
Mike Corrigan, Revisor of Statutes Office
Renaë Hansen, Committee Assistant

Morning Session

Chairperson Carl Holmes called the meeting to order at approximately 10:00 a.m.

Intensive Groundwater Use Control Areas

The Chairperson recognized Adrian Polansky, Secretary of the Department of Agriculture, who provided a written response to questions raised at the previous meeting ([Attachment 1](#)). He noted that the Department will be working with stakeholders over the next year to develop IGUCA

rules and regulations that clarify the role of Groundwater Management Districts (GMD) in IGUCA proceedings and that add requirements for review of IGUCAs by advisory committees. He stated that GMD officials said they preferred to address these issues through regulations, and keep existing statutes intact. In addition, the Secretary addressed the issue of taking, noting that the Kansas Supreme Court determined that allocation and regulation of water under the Water Appropriation Act is constitutional, and that water rights are subject to control and regulation. In response to comments about the need for an independent hearing officer at IGUCCA proceedings, the Secretary stated that the Chief Engineer is the only person qualified to decide water resource matters that are as technically complex as IGUCAs. Finally, he noted that the Department believes the IGUCA statutes were enacted in the best interest of all Kansans, and that the Department has acted consistently with the statutes by judiciously establishing IGUCAs through fair and open processes.

The Chairperson recognized Matt Todd, Revisor of Statutes Office, who presented a table summarizing testimony on IGUCAs from the previous meeting ([Attachment 2](#)). In addition, he distributed a list of statutory options for implementing the various ideas proposed by conferees ([Attachment 3](#)).

Committee members discussed the different ideas presented and possible legislation.

Chairperson Holmes deferred to Senator Taddiken to guide the Committee through its discussion.

Representative Larry Powell proposed an independent panel chaired by the Chief Engineer, to determine whether an IGUCA is needed. The Chief Engineer would not be a voting member of the panel. Members of the panel would represent 3 types of water users: agricultural, industrial, and municipal. Of the 7 voting members, all of whom must reside in the area where the IGUCA was proposed, 3 members would be appointed by the Speaker of the House, 3 by the Senate President, and 1 member would be appointed by the Chief Engineer. The panel would make a recommendation to the Chief Engineer, who would decide if an IGUCCA was needed. The Chief Engineer would be required to explain why he accepted or rejected the recommendations of the panel. If an appeal of the decision is made after an IGUCA is established, it should be heard *de novo* by the court without requiring that a lawsuit be filed. Senator Emler clarified that *de novo* means a court would look at a case "from the beginning." Representative Powell also stated he thinks IGUCAs should be reviewed every 3 years by a group different than the panel that makes the recommendation regarding establishment of an IGUCA.

Senator Emler suggested having the court make its determination on the record, using the same information the Chief Engineer used to make the initial determination. He stated that a *de novo* proceeding can be quite expensive, because new information can be brought into the decision-making process.

Chairperson Holmes suggested the Committee break this idea down into parts for individual consideration.

Representative Powell moved to propose legislation incorporating the aforementioned ideas regarding establishment of an IGUCA. The motion was seconded by Senator Emler.

During discussion on the motion, questions were raised about whether panel members would be paid. Representative Powell said he anticipated they would be volunteers, but would receive compensation for travel. Committee members also clarified that, in the motion under consideration, the Chief Engineer was not required to follow the recommendation of the panel, but would have to state the rationale for whatever decision he made. Senator Francisco raised questions about

whether the panel makeup would ensure that groups with differing opinions about water use were represented.

The motion passed 6-3.

Representative Powell moved that a panel be established to review every 3 years whether an IGUCA should continue, with the burden of proof on the state. The motion was seconded by Representative Masterson.

Senator Emler explained that “burden of proof on the state” means that the Chief Engineer would have to present information, and the panel would recommend whether the IGUCA should continue. It was noted that the Chief Engineer would still make the final decision. Representative Powell said the burden of proof should be on the State because the State has many legal resources, and has experts with all the information in the Division of Water Resources.

Representative Schroeder questioned the 3-year review cycle, noting that water levels change based on natural fluctuations of dry periods and rainy periods, and that some natural cycles last 5 years or longer. Chairperson Holmes stated that 3 years was too short, as drought cycles run much longer than that. He indicated a 10-year review period would be reasonable. Senator Taddiken noted that the Secretary of Agriculture suggested a 7-10 year review cycle.

The maker and second of the motion agreed to change the review period in the motion to 5 years.

Senator McGinn said she did not want the Department of Agriculture to have to tie up significant staff resources in frequent reviews, and because of that, she was supportive of a 5-7 year review cycle. Representative McLachlan also had concerns about the amount of staff time involved, and asked how intensive the reviews would be, and how costly they would be to the state. Representative Masterson said he thought the review should be fairly simple.

Senator Francisco made a substitute motion to endorse the concept in the Secretary’s regulation (presented in Attachment 1), and ask the agency to proceed with the regulation. Representative Rardin seconded the substitute motion.

Representative Powell said the Secretary’s proposed regulation includes many elements he does not support. Senator McGinn expressed concern that the Secretary’s proposed regulation lets the Chief Engineer select all the panel/committee members.

The question was called on the substitute motion.

The substitute motion failed 3 to 6.

Senator Emler moved to table the motion on the floor until November 8, 2007, when a written draft could be presented to the Committee for discussion and final action. Senator McGinn seconded the motion. The motion to table passed.

Staff pointed out that a draft of the Committee report on the IGUCA topic has been added to the Committee notebooks (Attachment 4).

Comprehensive Study of Energy Efficiency of State and Local Government Buildings

The Chairperson recognized Jim Mason, Director of Campus Facilities for Hesston College, who discussed the College's energy efficiency program which has allowed it to reduce usage while adding space (Attachment 5). He stated that utility usage was quite high when he came to the school, and listed a number of minor improvements they have made that have reduced electric and natural gas consumption by about 20 percent. This included such things as central monitoring of temperatures in all facilities, unplugging water fountains and shutting down walk-in coolers during school breaks, installing motion sensors in areas where people commonly forgot to turn off lights, replacing windows, switching to compact florescent bulbs, educating faculty and students on conservation, installing R-40 insulation, and establishing a reservation system for use of all rooms so that room temperatures reflect planned usage.

Senator McGinn pointed out that information received from USD 373 Newton regarding its energy savings plan has been added to Committee notebooks (Attachment 6).

Afternoon Session

Eric King, Director of Facilities, Kansas Board of Regents, addressed questions from the previous Committee meeting. To encourage energy efficiency improvements in major maintenance projects, he suggested adding the phrase "energy conservation" to the definition of "Project" in the deferred maintenance program, and defining energy conservation as "engineering analysis including an evaluation and comparison of life cycle cost versus first cost only." He provided detailed information on the extent and likely reasons that FCIP projects at KU and KU Medical Center failed to fully achieve the anticipated savings. With regard to KSU, he stated that the University has retained an independent consultant, Stanley Consultants, to analyze the failure to achieve projected energy savings. Chevron was the ESCO for the projects on all three campuses (Attachment 7).

Senator Taddiken asked for more information about the non-performance issues at KSU, as well as how much Stanley is being paid. Chairperson Holmes asked what the contract with Stanley involves. Mr. King said he would provide that information to staff. (Subsequent to the meeting the information provided by Mr. King was sent to the Committee.) (Attachment 8)

It was noted that Chevron does not have any more work on those three campuses, but that it is being considered for projects at other universities.

Chairperson Holmes asked whether the contracts covered all the buildings on the campuses, or just a few. Mr. King said they cover quite a few of the buildings. Chairperson Holmes then asked if this meant those buildings would not see any more energy-savings projects in the next 20 years. Mr. King responded that this was likely true. Senator Taddiken pointed out that if there were to be a subsequent contract for different work, it would be difficult to sort out who gets to count the energy savings.

Representative McLachlan asked whether the energy savings are paying the bills for the energy improvements. Mr. King said the loans are being repaid for KU and the KU Medical Center from savings in energy usage plus payments from Chevron, but negotiations with KSU are still being conducted. He agreed that as the price of fuel escalates, the value of BTUs saved increases.

Marilyn Jacobson, Department of Administration, provided the Committee with an update on the Department's activities regarding energy efficiency (Attachment 9). She told the Committee that the Department of Administration and the Governor's Office are considering joining a partnership of the National Governors' Association initiative *Securing a Clean Energy Future* (SCEF) and the Climate Savers Computing Initiative that would be a resource for many ideas to help save energy throughout state agencies (Attachment 10).

The following points were made during a general discussion:

Although it would cost the State nothing to join the Chicago Climate Exchange, once the measurements are put in place, a state that does not achieve the goals has to pay the organization. The benefit to joining the Exchange is that the State could sell carbon sequestration credits to other states that need them to be in compliance with the standards. Senator Taddiken noted that he sells credits through the Chicago Climate Exchange, and he did not have to join to sell his credits.

It was suggested that the University of Kansas use commercial flights to transport officials, instead of a University jet carrying only a few people, which is not energy efficient. Chairperson Holmes noted that the airplane is funded by an endowment, which the State has no control over, but the flights set a bad example when the State is trying to increase energy efficiency.

The Eisenhower State Office Building was recently remodeled at a significant cost, and Committee members expressed concern about having to go back in and retrofit for energy savings. Chairperson Holmes requested that ESCO reports on the Eisenhower building be sent to the House and Senate Utilities and Natural Resources Committees after they have been presented to the agencies.

Questions were raised about whether the renovation and restoration of the Capitol involves any energy projects. Ms. Jacobson told the Committee she would find out whether an energy audit has been done on the Statehouse.

Universal Service Fund

Don Low, Director of Utilities, and Janet Buchanan, Chief of Telecommunications at the Kansas Corporation Commission (KCC), described the history of the Federal Universal Service Fund (FUSF), including the basis for the Fund and the Federal Communication Commission's (FCC) decision to require states to certify that carriers who receive FUSF have used the money appropriately. An order by the KCC in 2005 specified new criteria carriers had to meet in order to be certified. After conducting hearings on the criteria in 2006, the Commission declined to revise its prior decision to exclude expenditures and investment in non-supported areas from data used to certify a carrier's use of FUSF (Attachment 11).

Senator Taddiken asked whether a carrier has to be eligible for FUSF to receive Kansas Universal Service Fund support. Mr. Low indicated that was not a requirement for receiving Kansas USF.

Dan Jacobson, President, AT&T Kansas, testified in support of the KCC decision to require carriers to demonstrate they are spending FUSF moneys in qualifying areas. He stated that the decision creates a level playing field for competing companies and encourages competition. His testimony included a map showing AT&T service areas in Kansas (Attachment 12).

Steve Mowery, Vice-President for Public Policy, Alltel, stated that the purpose of the FUSF is to benefit customers. He said that his company uses FUSF to support services where costs are high, and that they serve only the high-cost areas of AT&T territory (Attachment 13).

In response to Committee members' questions, Mr. Mowery noted that if service from an Alltel tower stretches into an AT&T service area, Alltel cannot use FUSF moneys to pay for the portion of tower costs that serve customers in AT&T's service area. Mr. Mowery clarified how the FUSF moneys are distributed and noted that the distribution of FUSF is a subject of great debate at the federal level. He also stated that allocation of federal funds is based on the actual number of customers served, not on the potential number that could be served.

Representative Masterson asked KCC staff how they respond to the charge that the KCC is breaking the law. Ms. Buchanan noted that this charge was made in other proceedings, in which a carrier stated that the State law does not allow the KCC to regulate wireless telecommunications. Mr. Low stated that in administering FUSF, the KCC is acting pursuant to a delegation under federal law.

Senator Taddiken asked KCC staff whether a company that used FUSF to build a tower could lease space on that tower to other companies. Mr. Low said he saw no reason they could not.

Mark Johnson, Attorney testifying on behalf of U.S. Cellular, discussed the re-certification process for FUSF. He stated that the KCC's 2-1 decision that non-incumbent carriers cannot use FUSF moneys in AT&T service areas makes Kansas an outlier. He noted that the Missouri Public Service Commission recently ruled that nothing in federal or state law would prevent U.S. Cellular from spending FUSF in rural areas served by AT&T in Missouri. Mr. Johnson said that Kansans living in rural areas served by AT&T will not see the improvements in service or reductions in price that result from competition. He believes the Commission's decision is legally wrong both at the federal level and at the state level, where he thinks it is a violation of KSA 66-1,143(b). He suggested that the Legislature could correct the situation with narrowly scoped legislation that would prohibit the KCC from determining how FUSF moneys can be spent in the state (Attachment 14).

Senator Taddiken asked whether restricting the KCC's jurisdiction would affect any other issues. Mr. Johnson said he did not think it would. Senator Francisco asked how many other states have made specific findings similar to Missouri's. Mr. Johnson indicated he did not know. Senator Francisco asked if he could make a rough estimate, and Mr. Johnson stated he would get back to the Committee with an answer. Mr. Johnson later provided Committee members with several public documents related to this topic, including:

- Public Utility Commission of Oregon, Order #07-111
- Vermont Public Service Board, Docket # 6934
- Missouri Public Service Commission, Case No. TO-2005-0384
- FCC Order, 18 F.C.C.R. 22559, 2003

John Mitus, ETC Program Manager, Sprint Nextel, presented testimony urging the Committee to look for opportunities to better coordinate the policies and actions of State government to ensure that each office, agency, and branch is acting to promote, rather than stifle, development. He stated that adequate telecommunication services are critical to the long-term economic development of rural areas, and also provide essential health and safety benefits. He said if Sprint Nextel is not able to use FUSF moneys in rural areas that are part of the AT&T wireline service area, Sprint Nextel might be in the position of having to tell customers that service improvements have to wait (Attachment 15).

Senator Taddiken asked Dan Jacobsen, AT&T, why his company has not filed for a subsidy for the company's wireless component. Mr. Jacobsen said they provide wireless service in relatively few rural areas.

Senator Emler presented a map to the Committee that shows the service exchange areas for the State of Kansas ([Attachment 16](#)).

During discussion with Mr. Mitus, Senator Emler noted that if a company used FUSF moneys to build cellular towers, other companies could rent or lease space on the tower for wireless services they provide. He suggested that KSA 66-1,143(b) be reviewed when considering whether the KCC had the authority to determine how wireless carriers can use FUSF.

Senator McGinn said there are many people who are close to a metropolitan area who do not have access to broadband. The problem arises when you get beyond 3 miles from a phone company's central office.

Senator Emler clarified that just because AT&T has certain wireline service areas, it is not necessarily certified to provide wireless service there.

Committee Discussion and Direction to Staff

Staff stated that the draft report on the Distribution of Gasoline, Biofuels, and Diesel is in the Committee notebooks. Conclusions and recommendations will be added after the Committee acts on those matters ([Attachment 17](#)).

Senator Emler suggested that the meeting start at 9:00 a.m. Thursday, that the two items on the morning agenda be moved up, and that the Committee then hold a discussion on various topics before receiving followup information from the September meeting.

The meeting was adjourned at 4:38 p.m.

November 8, 2007 Morning Session

Senator Emler called the meeting to order at approximately 9:00 a.m.

Distribution and Transportation of Gasoline, Biofuels, and Diesel

Hank Avila, Kansas Legislative Research Department, presented a document that provided conferees' follow-up answers to Committee questions ([Attachment 18](#)). He also reviewed a draft of the Committee report ([Attachment 19](#)). The Committee discussed the following recommendations:

- Explore ways for truckers to move the fuel products more expeditiously during a declared emergency.
- Due to the fact that the waiting time at a fuel terminal facility for a motor carrier during a declared emergency is generally longer than the driving time, a method

should be developed so that the waiting time will be considered in compensating the trucker.

- Develop a priority system for truckers who in a declared emergency can transport the fuel product expeditiously, thereby avoiding back-ups and delays in moving the fuel product.
- Gather information from other states concerning the making of biodiesel fuel, including, but not limited to safety regulations, the appropriate agency or entity to regulate the product and other related issues. This information also should be reported to the appropriate committees during the 2008 Legislative Session.
- The Kansas Department of Health and Environment should explore ways to regulate biodiesel fuel producers, especially above-storage facilities.
- The Kansas Department of Agriculture should check the meters on petroleum terminals during off peak times.
- The State of Kansas should strive to once again become an exporter of petroleum.
- The Legislature should review incentives to enhance refinery capabilities in Kansas.

Comprehensive Study of the Energy Efficiency of State and Local Government Buildings

Cindy Lash, Kansas Legislative Research Department, presented a matrix comparing in detail the energy efficiency and conservation requirements for public buildings in five states (Arizona, Louisiana, North Carolina, Nevada, and Texas) and the Federal Energy Policy Act of 2005 ([Attachment 20](#)).

Mike Corrigan, Revisor of Statutes Office, presented a memorandum on the review of State agencies' leases by the Joint Committee on State Building Construction ([Attachment 21](#)). He provided a copy of a proposed lease comparison for the Kansas State Gaming Agency as an example of the type of information collected ([Attachment 22](#)).

In response to questions, Department of Administration staff explained that when the lease form says "in base w/stop", it means that the item (for example, utilities) is included in the base lease rate, up to a certain amount. Above that amount, the State pays the cost.

Mike Corrigan also presented a memorandum on staffing for the facilities conservation improvement program (FCIP) at the KCC ([Attachment 23](#)).

Mr. Corrigan then presented a draft bill prepared at the Chairperson's request for Committee discussion which incorporates several elements of the Governor's Executive Directive: requiring, by 2010, a 10 percent increase in the average fuel economy of motor vehicles purchased by the state; requiring the purchase of products which are at least as energy efficient as Energy Star products; requiring computers to be turned off when not in operation for four hours or longer; requiring collection of data on energy consumption and costs for all state owned and leased real property and submitting a report to the Legislature on property with excessive energy use; prohibiting the lease of property unless the lessor has submitted an energy audit and agreed to address issues identified

in the audit; requiring increased marketing of the facilities conservation improvements program by the KCC; and encouraging agencies occupying state-owned buildings to participate in FCIP (Attachment 24).

Representative McLachlan stated he wants to ensure that the Board of Regents schools are incorporating energy efficiency measures when they perform deferred maintenance.

Ray Hammarlund, Director of the Energy Programs Division, KCC, presented a description of the FCIP, including the fees charged and staffing issues. Mr. Hammarlund noted that they need to “cash-flow” the current program before they look at expanding it. The program needs two additional staff to address the current workload, but they have not yet determined whether program receipts are sufficient to fund those positions (Attachment 25).

Senator Taddiken asked whether new positions need to be permanent, or whether they could be temporary. Mr. Hammarlund said that based on the skill level required, they need to be permanent positions. He reiterated that the program is not ready to expand. He noted that there are no trend lines with which to analyze the financial capture rate of the energy savings projects.

Representative McLachlan asked how shortfalls at KU and KSU will affect FCIP. Ryan Freed of the KCC said because Chevron is paying KU, there are no problems with payment to the FCIP. The KSU situation is under negotiation. Chairperson Holmes clarified that the payments from Chevron are made to the universities, and asked if there were any restrictions on how they spend the money. Mr. Freed said FCIP does not monitor that. Representative Masterson asked whether FCIP was a necessary entity, or whether agencies and cities could contract with ESCOs on their own. Mr. Freed said any city or school could contract with an ESCO on their own, and that some do. He said many do not have the skill or experience to handle the process on their own.

Rod Meredith, Assistant Director of Public Works, Riley County, presented a description of the new sustainable public works complex that Riley County is constructing. Mr. Meredith said the plans call for 10 buildings. He discussed the cost-saving, sustainability features that already have been implemented, such as ground source heat pumps in one building, extensive use of natural lighting and overall green design, radiant heating in workshops, and an automatic wash system for large equipment. Their vision is to help save tax dollars by being a leader in the State in implementation of renewable energy efficient systems at county facilities. He said energy savings to-date have been considerable (Attachment 26).

Representative Powell asked if Riley County conducted cost-benefit analyses prior to undertaking the energy conservation projects. Mr. Meredith said they did, and indicated that the payback on the geothermal heating system was expected to be 7 to 8 years, while the payback on the vehicle wash system was only 3 years. The County is currently analyzing proposed solar projects. Representative Svaty asked about using solar for on-demand heating systems. Mr. Meredith said they are in the process of working out how big the solar panels will have to be for on-demand hot water. Senator McGinn asked who they work with on wind power generation issues. Mr. Meredith said it depends on the project, sometimes they go directly to vendors, but if the project is going to tie into the grid, they go to the utility.

Sheila Frahm, Executive Director, Kansas Association of Community College Trustees, discussed with the Committee ways to help increase awareness of energy efficiency. Ms. Frahm referred to an e-mail submitted by Dr. Vicky Smith, Neosho County Community College. In that e-mail, Dr. Smith presented ideas for encouraging community colleges to become more energy efficient (Attachment 27).

Senator Francisco asked about Dr. Smith's suggestion that funds be provided for community colleges to cover the cost of an investment-grade audit, the basis for an energy conservation project. Ms. Frahm explained that a number of up-front costs are incurred before you get to bonding or other measures to finance a project. Senator Emler and Ms. Frahm discussed the difference between the current bonding authority and the low-cost loans proposed by Dr. Smith.

Universal Service Fund, Discussion of Conclusions and Recommendations

Staff provided members of the Committee with copies of a map showing the unique Kansas phone service districts ([Attachment 28](#)).

Senator Emler noted that rural and high cost areas can be close to urban areas. He said there needs to be a way to use FUSF moneys in the AT&T service area. He noted AT&T's concern about a level playing field. He said the Committee had four options, as follows:

- Introduction and favorable recommendation of a bill that requires the KCC to certify expenditure of high-cost universal service fund support made by competitive ETCs in AT&T's service area.
- Introduction and favorable recommendation of a bill that would provide AT&T with additional pricing flexibility and that would direct the KCC to certify expenditure of high-cost universal service fund support made by competitive ETCs in AT&T's service area.
- Introduction and favorable recommendation of a resolution expressing to the KCC the Legislature's intent that Federal Universal Service Fund support for high-cost areas be certified for use by competitive ETCs both outside of and within the AT&T service territory.
- Do nothing.

Representative Svaty said he would like to hear more during the Session about why the KCC ruled the way it did.

Representative Schroeder said he was curious about how the KCC decision was affecting providers. Dan Johnson of AT&T said that in other states, AT&T has price flexibility in all areas, which is very helpful when competing against companies that are receiving a subsidy.

Senator Francisco said she still wanted to see information about the 26 states that Alltel officials said treat FUSF moneys differently than Kansas. In addition, she wanted to see a copy of the dissenting opinion from the KCC decision. Senator Taddiken asked how the 26 states define competitiveness.

Senator Emler said the Committee may want to make some type of statement on rural areas. Representative Svaty said he thinks the Committee felt FUSF ought to be available everywhere, and that they might want to make a statement to that effect. Representative Masterson said he supports relieving cost controls on AT&T.

A copy of the KCC order discussed during the hearing, with the dissenting opinion, was distributed to Committee members ([Attachment 29](#)).

Afternoon Session

Energy Efficiency, Discussion and Recommendations

Representative Masterson stated that he thinks it would be reasonable to recommend that new State construction exceed the energy efficiency portion of the standards by 25-30 percent.

Representative Rardin noted that while the North Carolina legislation is onerous overall, he likes their approach to monitoring and reporting, particularly with regard to the requirement to determine the cause of the shortfall, and how to correct it, if energy consumption is 85 percent or less than the performance goals. He also liked the language related to energy use in buildings in the federal energy act.

Representative Powell moved to accept the bill as written (Attachment 24) as a starting place for Committee action. The motion was seconded by Senator Taddiken.

Senator Taddiken moved to amend the proposed bill by adding a requirement that newly constructed State-owned buildings would have to meet applicable ASHRAE (American Society of Refrigerating and Air-Conditioning Engineers) and IECC (International Energy Conservation Code) 2006 standards. The motion was seconded by Representative Powell.

Representative Masterson stated that in Wichita, commercial buildings already have to meet IECC standards. Representative Svaty suggested that State-owned building be required to exceed the standards by some percentage.

Representative Masterson moved to offer a substitute motion that would make new construction exceed the code requirements of ASHRAE and IECC by 25 percent. The motion was seconded by Representative Svaty. Motion carried.

Senator Emler raised several questions about Section 3 of the proposed bill, including how the time period of 4 hours was chosen, and how it would be enforced.

Representative Svaty moved to delete Section 3 of the proposed bill. The motion was seconded by Senator McGinn. The motion carried.

Senator Francisco moved to include the language from the North Carolina statute that included gathering and using metered data with requirements that the building meet 85 percent of the standards set. The motion was seconded by Representative McLachlan. The motion carried.

Representative Powell moved to include the water conservation portion of the North Carolina statute, but to change the required consumption reduction to 35 percent, and to apply to water the metered data requirements included in the previous motion. The motion was seconded by Senator Francisco. The motion carried.

Chairperson Holmes questioned whether the bill should expand beyond State-owned buildings to include the K-12 education system, Regents buildings, prison buildings, and local government buildings—essentially all buildings funded by State dollars. Senator Francisco noted that Regents' facilities and prisons are State-owned buildings. Senator McGinn and Representative Powell thought local governments should be excluded from the bill. Senator Taddiken concurred, saying the State should lead by example, and consider mandating conservation only if local

government does not engage in energy conservation. Chairperson Holmes reminded the Committee that the State pays 60-70 percent of the cost of some K-12 buildings.

Representative Svaty suggested the State should lead, and if schools do not think they should be part of the bill, they should make their case during the Session. Senator McGinn expressed concern about placing mandates on local units of government. She pointed out that the Committee heard testimony from many local officials who were very forward-thinking. She said she could support including K-12, but not local units of government.

Chairperson Holmes moved to require K-12 buildings to meet the same standards as State buildings. The motion was seconded by Representative Masterson. The motion carried.

It was noted that some members would encourage the inclusion of county and other local governments when this legislation comes before the Legislature.

Representative Schroeder asked to be recorded as a “no” vote.

Senator Francisco moved to remove the first sentence of Section 2 of the proposed bill. The motion was seconded by Representative Svaty. The motion carried.

Chairperson Holmes moved to make the controlling entity for the K-12 portion of the bill the State Board of Education instead of the Secretary of Administration. The motion was seconded by Representative Powell. The motion carried.

Staff requested clarification regarding the cost benefit analysis to be included in the bill. Representative Masterson suggested using the language from the federal act, and the Committee agreed that it referred to the original life-cycle cost effectiveness analysis carried out in the design process of the new construction.

The Committee asked to see a draft of the amended bill before they take final action at the December meeting.

Senator Taddiken moved to recommend one additional position for the KCC for FCIP, and to send this recommendation to the House Appropriations Committee and the Senate Ways and Means Committee and to the chairs of the appropriate subcommittees. The motion was seconded by Senator Francisco. The motion carried.

IGUCA

As requested by the Chairperson, Representative Powell distributed copies of the proposed bill as amended on November 7 “Motion passed 11/7/07 regarding independent review panel” (Attachment 30) and the proposed mandatory review provision (Attachment 31). Attachment 31 is the written expression of the motion made in Committee on November 7.

Jason Thompson, Revisor of Statutes Office, explained the provisions of Attachments 30 and 31.

Senator McGinn distributed a proposed change that would allow the Chief Engineer to appoint 2 of the 6 members of the review committee (Attachment 32).

Senator Taddiken directed the Committee to focus discussion on the review process. There was discussion about how often the reviews should occur, and a suggestion was made to consider

staggering the reviews to reduce the workload on the staff. Representative McLachlan suggested stretching the review period to 7 years, given the length of drought cycles.

Senator Emler made a conceptual motion to make the review period every 7 years, with staff directed to figure out a schema to guarantee an appropriate rotation, specifying individual IGUCA's or dates of inception to ensure a revolving review. The motion was seconded by Representative Powell. The motion carried.

Senator Francisco moved to include language into the bill that clarifies that the review process deals with existing IGUCA's, and that the review occurs within 7 years. The motion was seconded by Representative McLachlan. The motion carried.

Senator McGinn moved to include a provision using the review portion of her proposal (see Attachment 32) for the review of existing IGUCAs. The motion was seconded by Representative Schroeder. The motion carried.

Representative Rardin moved to amend the language proposed on the previous day so that the makeup of the committees for the review process and for the establishment of new IGUCA's would be consistent. The motion died for lack of a second.

Senator Francisco moved to substitute the 6 options from the Secretary's proposed regulation for the 3 options in New Sec. (b) (1)-(3) and New Sec. (c)(1)-(3) of Attachment 31. The motion was seconded by Representative Rardin.

Representative Powell asked what the effect of this change would be. Senator Francisco said the Secretary's language describes specific options more clearly. It was pointed out that this amendment would allow the review committee to recommend that the Chief Engineer extend the boundaries of an IGUCA.

Representative Masterson made a substitute motion to remove from line 3 of the proposed amendment, the words "or extend." The motion was seconded by Senator Francisco. The substitute motion carried.

Senator Taddiken asked the Committee to consider the review process proposal as amended by the Committee.

Representative Rardin moved to amend the bill so that the committees on mandatory review and establishment of new IGUCAs have the same makeup. The motion was seconded by Representative Svaty. The motion carried.

Representative Powell offered a proposal for *de novo* court review (Attachment 33). Jason Thompson provided further explanation. *De novo* means "anew; afresh; a second time"; in terms of the review process, it means the court would start over with presentation of facts, and new information could be submitted.

Representative Powell moved to adopt the de novo process described in Attachment 33. The motion was seconded by Representative Schroeder. The motion failed.

Representative Svaty was concerned that this becomes micro-managing, and would represent a major policy shift. Representative Powell explained that he wants to make it a *de novo* review because he is familiar with a case where information was left out of the original hearing.

Jason Thompson clarified that the provision being discussed by the Committee is applicable only to the decision to create an IGUCA.

Representative Powell suggested language that would, under certain circumstances, allow non-use of a water right to be considered an act of water conservation (Attachment 34).

Jason Thompson explained the current law and the non-use provision proposed.

Chairperson Holmes stated this should be a stand-alone bill, separate from the IGUCA legislation. Because this issue was not in the Committee's charge, it cannot initiate a bill, but could make a recommendation. He noted that it is important that the well and the water distribution system stay in existence.

Representative Powell moved that the Committee recommend to the 2008 Legislature that a bill following the language of this proposal be introduced. The motion was seconded by Senator Emler. The motion carried.

Representative Svaty made a motion to approve the minutes of the October Committee meeting. Representative Powell seconded the motion. The motion carried.

The next meeting is scheduled for December 4, at 10:00 a.m.

Chairperson Holmes thanked Senator Emler and Senator Taddiken for their assistance in helping with the Telecommunications and IGUCA issues.

The meeting was adjourned at 3:20 p.m.

Prepared by Renae Hansen
Edited by Cindy Lash

Approved by Committee on:

December 4, 2007
(Date)