

Members

Sen. Teresa Lubbers, Chairperson
Sen. Ron Alting
Sen. Connie Lawson
Sen. Billie Breaux
Sen. Earline Rogers
Sen. Connie Sipes
Rep. Greg Porter
Rep. Duane Cheney
Rep. Denny Oxley
Rep. Robert Behning
Rep. Robert Hoffman
Rep. Sue Scholer



INTERIM STUDY COMMITTEE ON EDUCATION ISSUES

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MEETING MINUTES¹

Meeting Date: August 28, 2001
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St.,
Room 130
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Sen. Teresa Lubbers, Chairperson; Sen. Ron Alting; Sen. Connie Lawson; Sen. Billie Breaux; Sen. Earline Rogers; Sen. Connie Sipes; Rep. Greg Porter; Rep. Duane Cheney; Rep. Denny Oxley; Rep. Robert Behning; Rep. Robert Hoffman; Rep. Sue Scholer.

Members Absent: None.

Duties and Responsibilities of the Committee

Chairperson Teresa Lubbers called the first meeting of the Interim Study Committee on Education Issues to order at 10:12 a.m. She introduced the members of the Committee and went over the Committee's schedule. The second meeting on September 11 will deal with Indiana's special education coop system. The third meeting on October 2 will study school finance and the process used to determine the distribution of funds to school corporations. The fourth meeting on October 16 will review programs to attract and retain quality K-12 teachers. The final meeting on October 23 will review possible legislation and approve the final report. All meetings will begin at 10:00 a.m. in Room 233 of the State House.

Guaranteed Energy Saving Contract Program

Richard Rowley, General Counsel for the Department of Commerce

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Mr. Richard Rowley provided background information on the energy savings contract program. The law establishing the program was passed in 1993 and amended in 1995 and 1999. The program covers schools, civil units, universities, and state government. Guidelines for the program were last amended in 1995. The Department is in the process of updating the guidelines which should be finalized in the second half of next year. The guidelines, developed internally by the Department, help units establish a program and fill in the gaps in the statute.

Local units are supposed to file a report annually on energy savings under the guaranteed energy savings contract program with the Energy Policy Division of the Department of Commerce. The Energy Policy Division generates a report of these findings.

Mr. Rowley was asked how many local units of government have used the Guaranteed Energy Saving Contract Program. He responded that there are currently 100 active Guaranteed Energy Saving Contracts, and 84 of the contracts are with schools.

Gavin Williams, Building Efficiency Program Manager for the Energy Policy Division of Department of Commerce

Mr. Gavin Williams explained the process that a school uses in developing a guaranteed energy saving contract program. First, the school conducts an energy audit. Then schools will contact energy saving companies and enter into a contract to implement the energy savings recommendations.

Representative Brian K. Hasler

Representative Brian K. Hasler explained that the guaranteed saving contract language was originally proposed in 1992 to become law in 1993. During the 2000-2001 session of the legislature, he became aware of new guidelines made by the State Board of Accounts. He proposed an amendment to allow the inclusion of capital projects in the energy saving contract law. When replacing a boiler to increase efficiency, it may also be good to replace the pipes. Sometimes it is easier to replace the roof when trying to increase the insulation in the roof. The replacement of lights and ballistics can save money and time if both are done simultaneously, even if only one has to be replaced.

Representative Hasler stated that the updating the guidelines is overdue. The guidelines need to be clear but should not reduce the number of projects that can be done. The legislature should provide some guidance in the updating of the guidelines. He would recommend changing the statute to expand, not diminish the program. Currently the savings must accrue within 10 years. An increase to 15 years would allow larger projects to be considered for the program.

The Committee inquired into how many of the 100 active projects would not have been possible without the law. Representative Hasler responded that the projects would have been smaller, and maybe a school or contractor could provide further information on this question.

Representative Michael D. Smith agreed with Representative Hasler's comments and stated that the program should be improved and not reduced.

Dr. Brad Snyder, Superintendent of New Albany-Floyd County Schools

Dr. Snyder stated that the guaranteed energy savings program has been very important to the New Albany-Floyd School corporation. The school has about 11,000 students with 18 instructional facilities and 26 buildings. The low assessed valuation per student makes it difficult to do major capital projects. The heating and cooling systems of the schools are major issues. In CY 2000, the corporation worked on the heating and cooling systems for two schools. Dr. Snyder distributed a planning document used for the guaranteed energy saving contracts to improve the heating and cooling systems in the school. Due to the State Board of Accounts'

audit interpretation, the school will now have to change its plan.

The committee asked if the installation of fire alarms could be counted as energy savings. Dr. Snyder responded that the State Board of Accounts would be the agency to answer that question.

A question was asked if the savings were due to installation or capital avoidance. It is easier to replace pipes or other items when the ceiling is down and an item might need to be replaced in a couple of years. Dr. Snyder responded that it was true.

Dr. Robert Poffenbarger, Superintendent of Rochester Community Schools

Dr. Robert Poffenbarger stated that he had surveyed three building projects and the guaranteed energy savings contracts had helped finance the projects. The school board had some problems with the public in the early phases of the projects and formed a stakeholder's committee to review the projects. The stakeholder's committee liked the guaranteed energy saving contract program since the contractor was responsible for the quality of the project. He suggested that the legislature may need to amend the current statute, but it is an excellent financial tool for schools.

Mike Rogina, State Board of Accounts (SBOA)

Mr. Mike Rogina distributed a handout containing selected portions of Board of Accounts' audit findings on the energy savings contracts. Schools that use the guaranteed energy savings contract program do not use the competitive bidding process required for other construction projects and the project is not counted in the school's 2% of assessed valuation debt limitation. Audits have found a lack of documentation of the energy savings. Fire alarms and swimming pools have been included in the contracts, and the SBOA has questioned the documentation of the savings.

The committee asked if SBOA has an audit problem with capital avoidance. Mr. Rogina responded that the term "capital" needs to be defined. SBOA follows the Department of Commerce guidelines and rules when auditing expenditures, but schools need to provide documentation of savings. If a contract is not documented, then SBOA writes an audit exception. The SBOA has met with the Department of Commerce but delayed discussion until after this study committee meeting.

Susan Gordon, Staff Counsel for State Board of Accounts

Ms. Susan Gordon stated that the SBOA was not opposed to energy savings and makes no rules or guidelines for the program. She did state a concern about stipulated savings. Stipulated savings are savings that are assumed to occur when the contract is signed and are not monitored. One unit had a \$48 million guaranteed energy savings contract and stipulated savings of \$46 million. Energy savings on utility expenditures are generally well documented, but operational savings are less documented.

The committee asked about the SBOA's "School Administer" publication. Ms. Gordon responded that the "School Administer" is designed to inform schools about general audit findings and provide other information important to schools.

Phelps Nichols, Parke County Resident

Mr. Phelps Nichols stated that Parke County is in the process of using the guaranteed energy savings project process to do work on the Parke County courthouse. The energy savings of \$52,856 will not pay for the \$5.4 million Parke County courthouse project. He believed that the stipulated savings are meaningless.

Jennifer Hayes, Parke County Historic Landmarker & Preservation Society

Mrs. Hayes discovered the guarantee energy savings contract for Parke County Courthouse only because of due diligence on the project. She stated that any bill or law is only as good as it is enforced. Enforcement and accountability are missing as there is no monitoring of these contracts.

William J. Snodgrass, Mussett, Nicholas & Associates

Mr. William J. Snodgrass stated that the energy savings contracts are good ways of financing projects that could not be financed in the past. The use of stipulated savings and capital avoidance is sometimes smoke and mirrors.

Grant Smith, Citizens Action Coalition of Indiana

Mr. Grant Smith informed the Committee that the Citizen Action Coalition has done a report that shows \$700 M could be saved by energy efficiency. He stated that accountability is an issue and recommended the use of the Department of Commerce and SBOA in approving projects.

Jim Straeter, Rochester Resident

Mr. Jim Straeter told the Committee that he was concerned about the lack of documented savings and that a bond issue was used to finance a guaranteed energy savings project for Rochester Community Schools.

David Bottorff, Association of Indiana Counties

Mr. David Bottorff noted that counties have used the guaranteed energy savings contract program, and it is a great program when used properly.

Dr. Roger Thornton, Indiana Association of Public School Superintendents

Dr. Roger Thornton stated that sometimes in order to increase the energy efficiency of a roof, the roof has to be replaced as insulation cannot always be added to the bottom of the roof. He believes that the problem is that guidelines are not rules and were not promulgated using the state's rule making procedures. SBOA is rightfully looking at the issue, but since there are no promulgated rules, the issue is unclear.

Frank Bush, Indiana School Boards Association

Mr. Frank Bush said that the School Boards Association supports the energy savings concept. He reviewed the statute and pointed out in the statute where operating costs are discussed.

Denny Costerison, Indiana Association of School Business Officials

Mr. Denny Costerison stated that the statute and guidelines may need to be reviewed and modified, but the guaranteed energy savings contract is an important financial tool for local schools, especially schools with low assessed valuations.

Senator Lubbers asked that the Department establish a working group to preserve the program and remedy challenges. The topic will be revisited at the final meeting.

The committee was adjourned at 12:30 p.m.