

MINUTES
of the
SIXTY-SECOND MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

September 18, 2017
State Capitol, Room 307
Santa Fe

The sixty-second meeting of the Public School Capital Outlay Oversight Task Force was called to order by Representative Stephanie Garcia Richard, chair, on September 18, 2017 at 9:11 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Stephanie Garcia Richard, Chair
Sen. Craig W. Brandt
Dr. Greg Ewing
Dr. Carl Foster
Kirk Hartom
Sen. Stuart Ingle
Antonio Ortiz for Deputy Secretary Paul
Aguilar, Public Education Department
Richard A. Perea
Mike Phipps
Rep. G. Andrés Romero
Stan Rounds
Dr. Eugene Schmidt
Rep. James E. Smith
Sen. John Arthur Smith
Sen. Mimi Stewart, Designee for Sen. Papen
Sen. Bill Tallman
Xochitl Torres Small
Alan Webber

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Daniel A. Ivey-Soto
Sen. Gay G. Kernan

Absent

Sen. William P. Soules, Vice Chair
Rep. Brian Egolf
Rep. Patricia A. Lundstrom
Sen. Mary Kay Papen
T.J. Parks
Rep. Dennis J. Roch
Secretary Duffy Rodriguez, Department of
Finance and Administration
Sen. Benny Shendo, Jr.

Sen. Howie C. Morales
Rep. Harry Garcia
Rep. D. Wonda Johnson
Sen. Cliff R. Pirtle
Sen. Sander Rue
Sen. Pat Woods

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)

Sharon Ball, Researcher, LCS

Jeff Eaton, Fiscal Analyst, LCS

Michelle Jaschke, Researcher, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of handouts are in the meeting file and are posted online.

Monday, September 18**Welcome and Approval of August 14, 2017 Minutes**

Representative Garcia Richard welcomed members and guests. On a motion duly made and seconded, the minutes of the August 14, 2017 meeting were approved without objection.

Consensus Revenue Projections and Public School Capital Outlay Council (PSCOC) Financial Plan

Denise Irion, chief financial officer, Public School Facilities Authority (PSFA), presented revised information for the sources and uses of funds included in the PSCOC financial plan. The plan shows uncommitted balances shrinking in the out years. Ms. Irion also provided members with details regarding the PSCOC project award schedule.

David Abbey, director, Legislative Finance Committee (LFC), and chair, PSCOC, presented the Consensus Revenue Estimating Group (CREG) General Fund recurring revenue outlook for fiscal year (FY) 2017 through FY 2020. Mr. Abbey reported that the preliminary FY 2017 recurring revenue estimate is \$5.7 billion, \$140.4 million higher than the December 2016 consensus estimate. He pointed out that this is just one of several examples of unusual and questionable data reported in recent months. The LFC has requested but has not received any information from the Taxation and Revenue Department (TRD) to explain certain data anomalies that present risks to the reliability of the CREG forecast.

Mr. Abbey reported that appropriations continue to exceed revenues over the course of FY 2015 through FY 2018. He further reported on continuing litigation regarding public school equalization guarantees and capital outlay as well as the food stamp program that combine with numerous other factors, most notably a reduced federal match for Medicaid and possible repeal of the Patient Protection and Affordable Care Act, to present serious spending pressures for the state. Senator Smith pointed out that current tax credit issues may represent a two percent to three percent potential drain on reserves as well.

Mr. Eaton presented information regarding the standards-based funding stream for public school capital outlay. The PSFA estimates that \$188.2 million is required annually to maintain the current condition of school facilities statewide. Mr. Eaton's analysis indicates that the state may have only 34 percent of the funding needed to maintain the current Facility Condition Index score over the next five to six years.

Members discussed line item five in the PSCOC financial plan, showing \$81.4 million in long-term bond funding as a source for PSCOC activities in FY 2018. A member questioned why the out years for that line item reflect zero dollars from that source. Ms. Irion and Mr. Abbey explained that, in the past, "sponge bonds" that provide a "pay as you go" type of financing have been used as that source, rather than assuming long-term debt. In this instance, \$81.4 million related to past General Fund capital improvement projects was swapped for the sponge bond capacity, essentially creating debt financing for the needs of the PSCOC as a means to prop up the General Fund. A member questioned the advisability of this approach, while other members stated that, given the drastic reductions in state funds and the threat of vetoes for any revenue enhancements, options for public school capital project funding were limited during the 2017 regular and special legislative sessions. Mr. Abbey noted that the PSCOC budget assumes a return to sponge bond financing in the future.

Task force members also discussed:

- a move to fund public school capital outlay projects through general obligation bonds;
- the shift of funding from standards-based awards to building systems awards; and
- a need to stabilize reporting mechanisms in the TRD with respect to tax credits and/or refunds owed to the oil and gas industry and municipalities.

What Happened to All of That Money? A Look at Completed Projects Opening This Fall

Superintendents or staff from the Albuquerque Public School District, the Deming Public School District, the Lordsburg Municipal School District, the New Mexico School for the Blind and Visually Impaired and the Roswell Independent School District reported on a wide range of school building projects scheduled to open this fall. The projects involve new construction as well as renovation and repurposing of existing facilities, but all share a focus on energy efficiency and meeting specific educational standards with user-centered design and the development of infrastructure that will enable flexibility over the long run. Many of the innovative features of these new and renovated facilities result in improved safety for staff and students, lower maintenance and energy costs and reduced staffing needs. All of the districts and schools reported the value and importance of community input in engineering a successful project.

Rocky Kearney, acting director, PSFA, responded to questions regarding the wide fluctuation in actual building costs per square foot, noting that it is almost impossible to tie those fluctuations to any one factor, given the varying conditions that influence construction throughout the state and the lengthy processes of planning, design and construction involved in

the projects. Mr. Kearney noted that construction costs are likely to rise in the wake of hurricanes Harvey and Irma, as demand for building materials increases. He further noted that the PSFA is in the process of producing a manual to describe many of the best practices illustrated in these and other successful projects throughout the state. The PSFA will distribute the manual to task force members when it becomes available.

What Happens to Old, Abandoned School Buildings? Examination of Issues Related to Realistic, Economical Disposal of Abandoned, "Unusable" School Facilities and Possible Solutions

Cassandra Cano, programs support manager, PSFA, and Martica Casias, planning and design manager, PSFA, described the existing statutory authority for demolition of abandoned buildings and presented a current list of unused school buildings and facilities classified in three categories: vacant, unoccupied and abandoned. It was noted that attempts have been made to address the issue of school districts having to continue to insure old abandoned buildings but that none of the statutory changes have addressed the continuing issue of districts having to divest themselves of unwanted or abandoned buildings by selling them at "fair market" value.

Senator Smith addressed the issue of fair market value, observing that in many rural areas appraisers have no "comparables" to produce a fair market valuation. He further noted that such valuations should factor in the length of time that a property has been on the market, among numerous other variables. Members discussed options for auctioning off such properties and asked that staff look into best practices in other states with regard to the disposal of real property.

Ms. Ball presented a modified draft of a bill intended to address some of the issues involved in the disposal of abandoned school buildings. She stated that she would incorporate the task force members' recommendations to strengthen the proposed legislation and present a new draft to the task force at a future meeting. Mr. Phipps observed that to his knowledge there are many more abandoned school buildings in the state than are included on the list provided by the PSFA.

Charter School Risk Review

Timothy M. Keller, state auditor, and Sanjay Bhakta, deputy state auditor, presented details surrounding their findings in the case of La Promesa Early Learning Center, a charter school whose former assistant business manager appears to have embezzled over \$600,000 from the school over the course of a six-year period ending in 2016, with the suspected complicity of the former executive director. The apparent ease of execution and lengthy duration of the mother/daughter duo's alleged escapades with respect to the charter school's funds again raise serious questions regarding what safeguards should be in place for charter schools to prevent such occurrences. In response to members' questions, Auditor Keller outlined four areas that continue to represent risk factors for charter schools:

- hand selection of governing boards by founders or directors;

- the use of a dedicated foundation or quasi-foundation to generate or move money for the school;
- the use of the same auditors over time and general handling of auditing needs; and
- having two family members serve as co-signatories on checks.

Mr. Bhakta reported that in this instance all of the required disclosures regarding familial relationships and other conflicts of interest had been completed but did not prevent the alleged embezzlement. Members discussed other guidance that might be needed by charter schools to ensure mutual exclusion of familial relationships and positions. A member asked how the Public Education Department's (PED's) audit process had missed the signs of misuse in the alleged scheme, asserting that the auditors are not chosen by the schools but rather by the PED at considerable expense to the state. Mr. Bhakta provided additional information regarding standard auditing procedures and observed that some supporting documents in this case appear to have been falsified.

Who Owns Charter School Facilities?

Mr. Burciaga presented a list of 12 charter schools with foundations deemed to be in lease-purchase agreements for the facilities in which the schools are located. Many of these agreements extend out over the course of the next 10 to 29 years. Mr. Burciaga reported that lease assistance awards will top \$15 million this year and that the requirement for charter schools to locate in public buildings remains. No standardized lease agreement has been developed thus far, according to Mr. Burciaga. He stated that with respect to those instances where a school's foundation owns the facility in which the charter school is located, proceeds from the sale of the facility would go first to any creditors and to cover outstanding obligations and then to the state through the Current School Fund.

Mr. Abbey reported surging and uncontrolled costs for lease assistance to charter schools and significant unused capacity in existing school facilities. He suggested establishing some authority, perhaps with either the PED or the PSFA, for limiting the development of new space for charter schools and for mediating disputes regarding school locations. Members discussed the feasibility of developing a standardized lease agreement or lease-purchase agreement. A member stated that it would be most important to establish what the requirements are for charter schools before they enter into lease agreements and suggested that a protocol be established for how charter schools locate in available public space.

Where Are All of the Children? A Look at the Background and Current Status of the State's Use of the Geographic Information System (GIS)

Ms. Casias and Andrew Martinez, project technician, PSFA, described a geocoding system that is now in-house with the PSFA that can provide a wealth of information to school districts by modeling where students live in a district and by tracking student migration patterns. This information can be particularly useful in "right-sizing" new facilities.

In addition, the GIS can show the location of critical infrastructure to assist in site location and can graphically illustrate the schools that have excess capacity, allowing the district to make boundary adjustments and rebalance its enrollment to better utilize all of its facilities. Mr. Martinez described a few of the many functions that he can use to create maps tailored to the specific needs of a school district, including modeling plans for student transportation.

Adjournment

There being no further business before the task force, the meeting was adjourned at 4:11 p.m.