

**MINUTES
of the
SEVENTY-FIRST MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**July 29, 2019
State Capitol, Room 307
Santa Fe**

The seventy-first meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator William P. Soules, chair, on July 29, 2019 at 9:00 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Sen. William P. Soules, Chair
Rep. G. Andrés Romero, Vice Chair
Rep. Eliseo Lee Alcon
Martha "Marty" Braniff
Rep. Jack Chatfield
Carl Foster
Mike Hyatt
Sen. Stuart Ingle
Rep. Patricia A. Lundstrom
Cinthia Martinez, designee for Secretary of
Finance and Administration Olivia
Padilla-Jackson
Sen. Mary Kay Papen
T.J. Parks
Mike Phipps
Stan Rounds
Eugene Schmidt
Sen. Benny Shendo, Jr.

Advisory Members

Sen. Michael Padilla
Sen. Cliff R. Pirtle
Sen. Mimi Stewart
Rep. Christine Trujillo
Sen. Pat Woods

Guest Legislator

Rep. Willie D. Madrid

Absent

Kara Bobroff, Acting Secretary of Public
Education
Sen. Craig W. Brandt
Rep. Brian Egolf
Greg Ewing
Rep. David M. Gallegos
Kirk Hartom
Cindy Montoya
Richard A. Perea
Sen. William E. Sharer
Sen. John Arthur Smith

Rep. Harry Garcia
Sen. Daniel A. Ivey-Soto
Sen. Gay G. Kernan
Sen. George K. Munoz
Sen. Sander Rue
Rep. Linda M. Trujillo

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Jeff Eaton, Research and Fiscal Policy Analyst, LCS
Michelle Jaschke, Researcher II, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file and are posted online at www.nmlegis.gov.

Monday, July 29**Welcome and Introductions**

Senator Soules welcomed task force members and asked members and staff to introduce themselves. On a motion duly made and seconded, the minutes of the May 30, 2019 meeting were approved without objection.

Public School Capital Outlay Council (PSCOC) Financial Plan and Time Line

Jonathan Chamblin, executive director, Public School Facilities Authority (PSFA), presented background information on the PSCOC and the PSFA. He noted that the PSFA has four primary functions: providing staff support to the PSCOC; administering funding for public school capital projects; providing project management support and expertise; and managing a range of facility information. Mr. Chamblin reported that supplemental severance tax bond proceeds provide the funding stream for PSCOC projects and provided an overview of sources and uses for fiscal year (FY) 2019, including projections through FY 2023.

Mr. Chamblin updated members on the PSFA FY 2020 operating budget. The PSFA has adjusted the budget to accommodate a shortfall by leaving some staff positions vacant and making other cutbacks. The PSFA will be requesting supplemental funding during the next legislative session to meet the needs of the second half of FY 2020. According to Mr. Chamblin, legislation presented last year to mitigate budget shortfalls for the PSFA by modifying the calculation by which a budget ceiling is established for the PSFA died in the house but will be introduced again during the next legislative session. A large influx of funding for public school capital projects, combined with funding for several new programs and recent implementation of the building systems and security programs, has placed a severe strain on PSFA staff and has increased the need for contractual services as well. Mr. Chamblin reported that the PSFA will soon have more than 400 active school security improvement projects since the implementation of the new school security program in the last fiscal year.

Origins of the State Equalization Guarantee (SEG) Distribution Formula and Capital Outlay Prior to the *Zuni* Lawsuit

J. Placido Garcia, Jr., Ph.D., former director, Legislative Education Study Committee (LESC), recounted his experiences working with the legislature to address school funding needs prior to the *Zuni* lawsuit. Dr. Garcia testified that the SEG formula that was developed had two purposes: equalize education funding in an objective manner; and provide for distribution of the funding in a non-categorical way to preserve school district autonomy. Those concepts have since been eroded, he said. He cited mandated salary levels as a categorical appropriation, and the reduction in the state credit for federal impact aid distributions to school districts from 95% to 75% as dis-equalizing, but he acknowledged that the conceptual framework of the SEG is still intact.

Dr. Garcia observed that education is big business in rural areas and that school superintendents frequently act as lobbyists for their districts. He further observed that statewide, charter schools have been established essentially as autonomous administrative units, creating strains on the public educational system and its funding and creating a new educational industry around charter schools and their development.

Dr. Garcia questioned the accountability of charter schools and testified that charter schools should be accountable to local school districts. In response to members' questions, Dr. Garcia stated that organizational structure is lacking to ensure the accountability of charter schools but that the state seems to be incrementally approaching the concept of equity in charter school and traditional public school funding.

The *Zuni* Lawsuit and the Development of the Standards-Based School Capital Outlay Process

Paula Tackett, former director, LCS, provided an overview of the tenets of the *Zuni* lawsuit and the development of the standards-based public school capital outlay process. The *Zuni* lawsuit was filed in January, 1998, and in March of that year, the Public Education Department (PED) appointed a task force to study public school capital outlay issues. Representative Ben Lujan and Senator Linda M. Lopez co-chaired that task force. Ms. Tackett reported that MGT of America was hired by the department to conduct an initial inventory and assessment of school facilities in the state. In 1999, the state reduced the impact aid credit in the SEG formula from 95% to 75% with the reserved 20% earmarked for public school capital outlay needs. At that time, the state created new supplemental severance tax bonds and authorized \$100 million for public school capital improvements to be issued over a four-year period, limiting their issuance to 62.5% of previous year severance tax revenues.

Ms. Tackett reported that in October 1999, the Eleventh Judicial District Court ruled that the system in place at that time was unconstitutional and gave the state until July 28, 2000 to address the issue. At that point, the limit for issuance of supplemental severance tax bonds was increased to 87.5% of previous years severance tax revenues and issuance of an additional \$475 million of bonds was authorized for public school capital improvements to be issued over an

estimated 10-year period. A new 16-member Public School Capital Outlay Task Force was then created that included the former dean of the University of New Mexico (UNM) School of Law, the secretary of finance and administration, the state investment officer, the secretary of public education, the chairs of the Legislative Finance Committee (LFC), the Senate Education Committee and the House Education Committee and nine public members with expertise in education and finance, including two representing the federal impact aid districts.

In April, 2000, the court held a status conference, and the state asked the court for additional time — until December 2000 — to report on progress made by the newly created task force, chaired by the former dean of the UNM School of Law. The extension was granted and, in June, 2000, the new task force began its meetings to review the current and future needs for public school capital outlay projects; to develop and analyze funding options for a permanent revenue stream; to review the local participation formula enacted in the 2000 legislative session; and to review the issues relating to federal impact aid funds and other local and federal revenues received by the school districts.

According to Ms. Tackett, the task force recommended a multi-pronged approach that included a three-year, 100% state-funded program to correct health and safety and code deficiencies in order to correct "past inequities" per court order; an increase in the state match amount for the Senate Bill 9 (1975 S.S.) (SB 9) program (two mill levy funding mechanism); continuation of the critical public school capital outlay program to complete critical capital projects and to allow time for the PSCOC to complete a statewide needs assessment and develop adequacy standards; continuation of the \$20 million annual earmark for federal impact aid districts for three more years; a recommendation on permanent funding sources; and a revised state/local match formula.

In the 2001 legislative session, the state adopted a new, statewide public school capital outlay system based on facility adequacy standards and a state/local share formula to determine state grant amounts as the basis for a long-term funding system. In addition, the legislature appropriated funds for a statewide assessment of all school facilities to be used to rank schools under the new adequacy standards; established a short-term deficiency corrections program; appropriated \$200 million to correct the most serious facility life, safety and health deficiencies; and created a new state agency — the Deficiency Corrections Unit, now the PSCOC — to administer the changes.

Additional funding for maintenance was provided by increasing the state guarantee amount under the Public School Capital Improvements Act from \$35.00 to \$50.00 per unit per mill and expanding the existing critical public school capital outlay program to include more school districts. Supplemental severance tax bonds were designated as the permanent funding stream for the public school capital outlay program without the need for annual legislative approval.

In May, 2001, the court appointed a special master to review the state's progress in developing a uniform system for funding public school capital improvements. In October of that year, the special master held a three-day hearing on the state's progress. In January, 2002, the special master issued a report finding that the state "is in good faith and with substantial resources attempting to comply with the requirements" of the court. However, the report also found that "because the use of direct appropriations necessarily removes substantial funds from the public school capital outlay process where merit and need on a priority basis dictate how funds are to be distributed, the state should take into account in its funding formula these appropriations as an element thereof". In May, 2002, the court adopted the report of the special master and agreed to continue to review the state's progress.

Ms. Tackett reported that in September, 2002, the PSCOC adopted newly developed adequacy standards as required by the law after two full years of development and public hearings around the state. During the 2003 legislative session, a revised state-share formula was adopted to include millage consideration along with bonded indebtedness in determination of local effort and also adopted an offset against state grant awards for direct appropriations for non-operating purposes. To address the issues related to direct appropriations to school districts for capital improvements, an offset formula was included that was calculated so that wealthy districts would have a greater offset percentage applied against their future state public school capital outlay grant awards from the PSCOC than less wealthy school districts. Additional funding for maintenance was provided by adding a \$5.00 per unit per mill minimum distribution to school districts through the SB 9 program. Up to \$40 million of additional funds was appropriated for the deficiencies correction program and a new, permanent PSFA agency was created to implement the prioritized funding process based on adequacy standards, commonly referred to as the "standards-based process".

In October, 2003, the PSCOC implemented the standards-based process for the 2003-2004 grant award requests. During the 2004 legislative session, the state increased the limit for issuance of supplemental severance tax bonds from 87.5% to 95% and designated \$67 million of additional funding for the deficiencies correction program and for projects begun under the critical public school capital outlay program but not yet completed. The Public School Capital Outlay Task Force was recreated to serve until January 1, 2005 to complete its work. Ms. Tackett stated that the PSCOC provided \$189 million of grant awards under the 2004 pilot year of the standards-based program. The permanent task force, the PSCOOTF, was created, and effective July 1, 2005, the PSCOOTF began its oversight and monitoring role.

Evolution of the Standards-Based Public School Capital Outlay Process and Continuing Requests for PSCOC Program Expansion

Mr. Chamblin provided a comparison of public school capital outlay funding in the state prior to and after implementation of the standards-based program. He elaborated on how the standards and state funding limits have evolved to continue to address school district concerns. He then provided a range of information on changes that have been implemented to the adequacy standards and a summary of changes that are currently under consideration. Mr. Chamblin

summarized the progress that has been made in the state toward improving facilities conditions and discussed the need for legislation to increase the funding ceiling for the PSFA. He listed a number of programs that the PSFA administers and those it has recently begun to administer, and he noted how funding for the agency has not kept up with the demands on its staff.

Review of Public School Capital Outlay and Federal Impact Aid

David Abbey, director, LFC, and member, PSCOC, provided a wide range of information addressing the issue of federal impact aid and public school capital outlay. He noted that funding availability drives some of the ability of the PSCOC to respond to district needs. Mr. Abbey reported on the \$24 million included in the public school capital outlay bill during the 2019 legislative session to address the need for teacherages in rural districts and for assistance to federal impact aid districts to build beyond adequacy. Members discussed a number of issues related to federal impact aid, funding formulas and needed legislation.

Adjournment

There being no further business before the task force, the meeting adjourned at 4:24 p.m.