



Public School Capital Outlay Oversight Task Force

2009 ANNUAL REPORT

*Legislative Council Service
411 State Capitol
Santa Fe, New Mexico
www.nmlegis.gov
January 2010
File No. 205.194-09*

***PUBLIC SCHOOL CAPITAL OUTLAY
OVERSIGHT TASK FORCE***

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**REPORT
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

Introduction

As the "direct descendant" of several task forces that were created as a result of the 1999 *Zuni* lawsuit (*The Zuni Public School District et al. v. The State of New Mexico et al.*, CV-98-14-11), the Public School Capital Outlay Oversight Task Force (PSCOOTF) is the entity charged by statute to monitor the implementation of the standards-based process established in provisions of the Public School Capital Outlay Act, the Public School Capital Improvements Act and the Public School Buildings Act; to monitor the revenue streams that fund the standards-based process; to oversee the work of the Public School Facilities Authority (PSFA); and to make annual recommendations related to the implementation of the standards-based public school capital outlay process to the legislature and the executive before the beginning of each legislative session.

The legislature established the standards-based public school capital outlay process in response to the judge's order in the *Zuni* lawsuit, which found the state to be in violation of the New Mexico constitution's uniformity clause¹. Filed by parents on behalf of their children in the *Zuni* public schools, and later joined by the Gallup-McKinley County and Grants-Cibola County public schools, the *Zuni* lawsuit successfully challenged the constitutionality of New Mexico's process for funding public school capital outlay that was in effect at the time. In 1999, Judge Joseph L. Rich, Eleventh Judicial District, gave the state until July 28, 2000 to correct past inequities and to establish and implement a uniform system of funding for future public school capital improvements. Later, the court extended the deadline in order to evaluate the legislation recommended by a task force established in 2000 and subsequently created by law in 2001.

The current task force consists of 25 members, including members of the legislature and the executive; certain designated public members, some of whom have expertise in finance and education; and superintendents of school districts or their designees, two of whom must be from districts that receive federal impact aid grants. Appendix 1 provides a listing of the members

¹"A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained." (Article 12, Section 1, Constitution of New Mexico).

who served during the 2009 interim.

Previous reports of the public school capital outlay task forces created by Laws 2001, Chapter 338 and re-created by Laws 2004, Chapter 125 provide details related to the background and development of the statewide standards-based public school capital outlay process that is now beginning its seventh year of implementation. While this report focuses primarily on the work of the task force during the 2009 interim, the following background information is provided for perspective on the issues before the task force.

Background

The earliest work that addressed public school capital outlay funding discrepancies was performed by a task force established by the State Department of Public Education (now the Public Education Department) in 1998 and co-chaired by Representative Ben Lujan and Senator Linda M. Lopez. This task force contracted with a nationally known consulting firm, MGT of America, to conduct a comprehensive review of issues concerning New Mexico public school capital outlay, including conducting a sampling assessment of public school facilities in 35 school districts.

The first legislatively created task force was established in 2000 in Senate Joint Memorial 21 by the Forty-fourth Legislature, Second Special Session, in response to an order by *Zuni* lawsuit Judge Rich giving the state until July 28, 2000 to correct past inequities and establish and implement a uniform system of funding for future public school capital improvements. Many of this first public school capital outlay task force's recommendations, issued in December 2000, were adopted in Laws 2001, Chapter 338, including statutory authorization to continue its work.

These recommendations focused on establishment of a transitional three-pronged framework for public school capital outlay that:

1. corrected past inequities by providing 100 percent state funding for immediate remediation of health and safety deficiencies identified in a one-time initial assessment of every public school throughout the state;
2. continued to fund the substantial backlog of critical capital outlay needs of school districts that had substantially used up their own resources for public school capital improvements; and
3. implemented a long-term public school capital improvement process based on the development of adequacy standards.

In addition, this measure increased the Public School Capital Improvements Act state guarantee (also called "SB 9" or "the two-mill levy") from \$35.00 per mill per unit (the first such increase in almost 30 years) to \$50.00 per mill per unit and designated supplemental severance tax bonds as the permanent revenue source for public school capital outlay.

In April 2001, Judge Rich appointed the Honorable Dan McKinnon, former state supreme court justice, as a special master to review the progress the state had made in correcting past inequities and in developing and implementing the new capital outlay process. In his report, Justice McKinnon concluded "that since 1998 the state has made a substantial effort to rectify the disparities..." in funding for school facilities and that "... at this time the state is in good faith and with substantial resources attempting to comply with the requirements of Judge Rich's previous directions". Adopting the report of the special master in May 2002, Judge Rich reserved the right to hold status conferences to monitor and review the state's progress in addressing issues raised by the *Zuni* lawsuit.

One of the issues raised in the special master's report was the disqualifying effect of direct legislative appropriations to individual schools for capital outlay purposes. The special master's report directed that these appropriations be taken into account in the funding formula that was to go into effect after September 1, 2003. In response to this directive, the 2003 legislature amended the funding formula (Laws 2003, Chapter 147) to provide an offset against state grant awards for public school capital outlay equal to a percentage of any funds received by a school district as a direct legislative appropriation using the local/state-share formula. At the time, the offset provision also applied to legislative appropriations for educational technology, with the reduction credited against the school district's annual distribution under the Education Technology Equipment Act.

Legislation enacted in 2004 made a number of improvements to the capital outlay process and provided \$57 million of additional funding for deficiency correction and continuation projects (Laws 2004, Chapter 125). It enacted many of the recommendations of the task force from the 2003 interim, including a recommendation to extend the life of the task force for an additional year, and added provisions relating to what are called "recalcitrant districts". These provisions would allow the Public School Capital Outlay Council (PSCOC) to bring a court action against a school district if it determines that the school district's facilities are below the minimum standard required by the constitution and that the district has consistently failed to take action. The court action could result in the imposition of a property tax in the school district to pay the district's required share of the costs of bringing the school facilities up to the adequacy standards. The task force considered the enactment of the recalcitrant district provisions as

another important step for ensuring that the new process will comply with the directives of the court in addressing the *Zuni* remedies.

Legislation enacted in 2005 added a number of refinements to the standards-based awards process as a result of experience gained during the pilot year, including many of the recommendations of the task force from the 2004 interim (Laws 2005, Chapter 274). Among those recommendations was completion of the deficiencies correction program with specific emphasis on the correction of serious roof deficiencies. In addition, this legislation created a separate two-year roof repair and replacement initiative and allocated up to \$30 million per year for fiscal years 2006 and 2007 for this initiative. The lease assistance program enacted in 2004 was modified to increase the maximum grant award from \$300 per member to \$600 per member and to extend this lease assistance to charter schools in their initial year of operation. In response to the task force's focus on improving maintenance of public school buildings, the SB 9 guarantee amount was increased from \$50.00 per mill per unit to \$60.00 per mill per unit with automatic yearly increases based upon the consumer price index. The legislation also established a framework to allow the PSCOC to waive a portion of the local share when funding a project that meets certain criteria.

The 2005 legislation also required new charter schools to meet educational occupancy standards before being chartered and established guidelines to assist in the transition of charter schools to public facilities by 2010 (later amended to 2015).

During the 2005 interim, the first full year of the task force's existence in its current iteration, the members reviewed the statewide assessment of school facilities; the deficiency corrections program; the roof deficiency corrections program; PSCOC awards; lease payment awards; the development of educational technology adequacy standards as directed by HB 511 from the 2005 legislature; and a number of issues related to charter schools. The task force also explored a number of new subjects, including high-growth school districts and schools; issues related to rural and very small schools; alternative capital financing options, including tax increment financing and industrial revenue bonds; and opportunities for energy-efficient school buildings.

Acting on the recommendations of the PSCOOTF, the 2006 legislature passed, and the governor signed into law, Laws 2006, Chapter 95, p.v., amending the Public School Capital

Outlay Act to:

- increase distributions for lease payments owed by schools, including charter schools;
- provide for partial state funding to school districts for the development of five-year facilities master plans, including full funding for some of the smaller school districts;
- allow the use of state funding for demolition of abandoned school buildings;
- create a process to identify and correct serious outstanding deficiencies at the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf if additional funding is provided;
- exempt all PSFA staff from provisions of the Personnel Act; and
- create a program for advancing to a school district the local matching share otherwise required if the money is for a "qualified high priority project", which is defined as a project in a high-growth area (also defined in the legislation). The legislation provides that, once a school district receives an advance of the local share, it is no longer eligible to receive state funding for future projects until the amount advanced is fully recouped by the amounts that would otherwise have been granted by the state.

Additional legislation passed and signed into law:

- requires school districts to submit a five-year facilities plan to the PSFA before beginning any PSCOC project;
- eases restrictions on the limits on school district cash balances and allows the balances to be used for the local match required for PSCOC grant awards;
- creates a New School Development Fund to provide funding for school districts for one-time expenditures associated with the opening of new schools;
- amends the Procurement Code to allow the PSFA to be its own central purchasing office;
- appropriates funding to continue the development and implementation of the Facility Information Management System (FIMS) program, a uniform web-based system to manage maintenance for school district facilities; and
- allocates funding to improve the indoor air quality of public schools.

During the 2006 interim, the task force heard testimony about the continuing statewide implementation of the FIMS and school district facilities master plans; revision of current PSFA oversight and review responsibilities, as well as concerns about a perceived PSFA staff focus on

regulation rather than assistance; cooperation among school districts, counties and municipalities regarding issues related to growth; energy-efficient school buildings; factors affecting construction costs; an update on development and implementation of educational technology adequacy standards as required in HB 511, passed by the 2005 legislature; and concerns about offsets for direct appropriations.

PSCOOTF endorsements for legislation for the 2007 session addressed testimony that the task force heard during the 2006 interim, particularly the effects and some unintended consequences of legislation enacted over the previous six or seven years. Recommendations in the task force "omnibus" bill that were enacted and signed into law (Laws 2007, Chapter 366, p.v.) included the following:

- exemption from PSFA approval of school construction projects costing \$200,000 or less;
- the following amendments to the Public School Capital Outlay Act:
 - reduction of offsets from future projects awards for special appropriations by 50 percent if the special appropriation is for a project that ranks in the top 150 projects statewide;
 - transfer of the offset against a local school district for special appropriations for state-chartered charter schools from the school district to the state-chartered charter school;
 - allowance of PSCOC grant assistance to purchase a privately owned facility that is already in use by a school district if the facility meets specified requirements;
 - provision for additional time to correct outstanding deficiencies in the remaining deficiencies correction process, including some roofing projects;
 - an increase in lease reimbursement payments from \$600 to \$700 per MEM with yearly increases for inflation; and
 - an extension of time for the lease payments to 2020 and an allowance for limited leased administrative space to qualify for the lease reimbursement;
- an amendment to the Public School Capital Improvements Act (SB 9) to increase the state guarantee from \$60.00 to \$70.00 per mill per unit with additional annual increases for inflation;
- amendments to the Public School Buildings Act ("HB 33") to:

- allow a percentage of revenues to be used for project management;
- increase the period for which a tax may be imposed from five to six years to track with SB 9 and other school district elections;
- require that future local school board bond resolutions contain the capital needs of charter schools based upon the appropriate five-year plans; and
- require that the proportionate revenue from future HB 33 taxes approved by voters be distributed directly to charter schools;
- amendments to state statute to assist with implementation of the constitutional amendment approved by voters in the 2006 general election whereby lease purchases are not considered debt in the constitutional sense, allowing school districts to enter into lease-purchase agreements without the leases being subject to voter approval; and
- amendments to the Procurement Code to provide for a contractor-at-risk mechanism for construction of education facilities.

Since 2003, when all districts became eligible to apply for public school capital outlay funds and the adequacy standards were made operational, the task force has heard testimony that some students live in school districts that may never have a large enough property tax base to be able to finance the building of facilities that can ever go above adequacy standards. The governor vetoed language in the omnibus bill that would have established a process to allow a school district to be eligible for an additional "beyond-adequacy" award if the PSCOC determined that:

1. the school district is otherwise eligible to apply for a grant under the Public School Capital Outlay Act;
2. the state share for existing grants under the act is 70 percent or greater;
3. the school district's voters have approved a total school property tax rate of at least nine mills over the past three years;
4. at least 70 percent of the students in the school district are eligible for free or reduced-fee lunches; and
5. for the next four years, because any local resources of the school district will be spent as the local match for projects, the school district will have no available resources from the state to exceed statewide adequacy standards.

The vetoed legislation would have equaled an amount from 10 to 25 percent of the original project cost. It would have been funded through a five-year reversion of 20 percent of all unreserved, undesignated reverting balances to the Public School Facility Opportunity Fund and by "shaving" three percent of all special legislative appropriations and depositing the proceeds into the fund. In his veto message, the governor requested further study of the funding sources and selection process.

PSCOOTF recommendations to the 2008 legislature resulted in the passage of an "omnibus" measure (Laws 2008, Chapter 90, p.v.) that proposed to amend the Public School Capital Outlay Act to allow the PSCOC to make awards above adequacy to qualifying school districts in addition to their standards-based funding. This section of the legislation was vetoed by the executive and did not become law. Other provisions of the bill that managed to avoid the veto pen included provisions for reducing the offset from a PSCOC grant award for direct appropriations made for joint use with another governmental entity; providing an increased grant award to school districts with a demonstrable exemplary record of preventive maintenance; reauthorizing continuation of FIMS funding; and appropriating funding to the already established New School Development Fund for expenditure in fiscal year 2009 and subsequent fiscal years for distributions to school districts for equipment and other nonoperating costs unique to the first year of a new school's operation.

Other PSCOOTF-recommended legislation did not receive executive messages and therefore were not considered by the 2008 legislature. They included measures to: 1) repeal the current statutory requirement for bonding of subcontractors; 2) allow for out-of-cycle transfer of charter school chartering authority from the local school district to the state or vice versa if appropriate; and 3) amend the Public School Insurance Authority Act to provide for limited coverage in certain circumstances such as the community use of a public school building.

PSCOOTF recommendations to the 2009 legislature reflected the task force's focus on an examination of the ramifications of the Charter Schools Act's requirement that charter schools be located in public facilities by 2010 and other charter school facility issues; policies to encourage the joint use of school facilities by other governmental, community and certain private entities; the relationship of funding to provide adequacy and space flexibility; and costs related to revisions to the statewide adequacy standards.

Legislation based on PSCOOTF recommendations that passed the 2009 legislature and were signed into law by the governor included the following in CS/SB 378 (Laws 2009, Chapter 258):

- amendments to the Charter Schools Act to extend to 2015 the deadline for charter schools to be located in public buildings;
- amendments to the Public School Capital Outlay Act to:
 - ▶ authorize up to \$10 million to be awarded for expenditure in fiscal years 2010 through 2012 for a roof repair and replacement initiative;
 - ▶ limit lease payment assistance for lease-purchase arrangements to charter school facilities;
 - ▶ remove the limit on the amount of lease payment assistance funds that may be awarded; and
 - ▶ require federal funds received by a school district or charter school for nonoperating costs be included in the district's or charter school's offset; and
- amendments to the Public School Capital Improvements Act to:
 - ▶ expand the definition of "capital improvements";
 - ▶ require bond resolutions to include charter school capital improvements; and
 - ▶ require proportional distributions of bond proceeds and state-match dollars to charter schools.

The governor vetoed language in CS/SB 378 that would have provided Public School Capital Outlay Act funding to pay for lights and bleachers for athletic fields at certain rural high schools and authorized an increase in grant assistance for qualifying rural high schools. The governor had vetoed similar legislative language in the 2008 session that would have increased grant assistance for certain rural high schools.

In response to testimony heard during the 2008 interim regarding difficulties with implementation of the Public School Lease Purchase Act, the task force endorsed a measure (HB 466, Laws 2009, Chapter 132) that amended the legislation passed in 2007, including the following:

- amendments to public school general obligation bond statutes to eliminate general obligation bond proceeds as a source of funding for lease-purchase agreements; and

- amendments to the Public School Lease Purchase Act to:
 - ▶ extend the lease-purchase time to 30 years;
 - ▶ limit the interest to the amount determined by the Public Securities Act;
 - ▶ allow a school district to require the owner to pay the current market value in excess of the outstanding principal due at the time of termination;
 - ▶ allow property acquired in a lease purchase to be considered public property;
 - ▶ require a local school board to comply with the Open Meetings Act when it enters into a lease-purchase agreement; and
 - ▶ require a local school board to include the tax revenue needed by a charter school if the charter school's charter has been renewed at least once.

Other legislation that passed the 2009 legislature and was signed into law included the following:

- amendments to the Public School Insurance Authority Act to allow for insurance for joint use of school buildings (Laws 2009, Chapter 198);
- a measure that appropriates \$575,000 from the Public School Capital Outlay Fund to develop and implement a geographic information system (Laws 2009, Chapter 115);
- amendments to the Public School Capital Outlay Act to add the New Mexico School for the Blind and Visually Impaired and the New Mexico School For the Deaf in the statewide deficiency corrections program (Laws 2009, Chapter 37); and
- new legislation to enact the Qualified School Construction Bonds Act to provide statutory language to implement the qualified school construction bonds program included in the federal American Recovery and Reinvestment Act of 2009.

Work During the 2009 Interim

In addition to its June 2 organizational meeting, the Public School Capital Outlay Oversight Task Force (PSCOOTF) held four full task force meetings during the 2009 interim (as provided for in statute): July 28-29, August 24, September 18 and December 11, 2009, as well as two work group meetings, September 17 and November 9.

The task force began its sixth year overseeing the implementation of the public school capital outlay standards-based process with a review of the 2008 interim's work, a review of the Public School Capital Outlay Council (PSCOC) 2008 annual report and a summary of the status of PSCOOTF-endorsed legislation.

During the remainder of the interim, the PSCOOTF heard testimony about the ongoing implementation of the standards-based process, the adequacy of the current permanent revenue streams, the relationship of current economic conditions to providing funding needed for the implementation of revisions to the standards (if necessary) and capital outlay funding resources and requirements for charter schools. For the past three years, the task force has endorsed legislation, which did not pass, to eliminate or modify the statutory requirement for the bonding of subcontractors for public school projects. In response to continued concerns, the task force established a work group to examine the costs and benefits of bonding subcontractors on public school projects. Therefore, during the 2009 interim, the task force appointed a work group to review this issue. Members include the following: Speaker Ben Lujan, Senator Vernon D. Asbill, Representative Keith J. Gardner, Representative Larry A. Larrañaga, Senator Cynthia Nava, Representative Rick Miera, Don Moya and Bud Mulcock, with Paula Tackett, Sharon Ball and Bob Gorrell serving as staff. Representatives from unions, contractors' organizations and contractors were also invited. (See attachment to the December 11, 2009 minutes for a complete list of participants.)

Meetings of the work group took place on September 17 and November 9, 2009. Discussion surrounded such issues as bond ratings, hard bids, sureties and raising the bonding limit. Work group members agreed on the positive effect of raising the state standard for bids. Members agreed that the work done during the 2009 interim has only isolated some issues to be considered, but members have not yet had enough time to work out any proposed solutions. The

work group members requested that they be allowed to continue their work during the 2010 interim.

Other topics that the task force considered during the 2009 interim addressed issues related to public school capital outlay project planning, in particular, the development and implementation of educational specifications. The task force heard from William S. DeJong, a nationally recognized educational facility planner who has participated in planning more than 1,000 new and renovation-type school projects, including two in New Mexico, one in the Central Consolidated School District and the other in Raton. Task force members heard testimony that the process of developing educational specifications allows educators to communicate program requirements to a designer or planner, and, without such planning, projects have a tendency to develop "scope creep", meaning that the scope of the project grows larger and larger, thus becoming more and more expensive. Dr. DeJong also said that the development of educational specifications is not an extra step in the planning process and that the process helps define clearly current and future requirements and, in addition, helps the school district justify and explain costs to the community, whose members will be paying these costs through mill levies and/or issuance of general obligation bonds.

Another topic that the task force considered during the 2009 interim was a kind of "refresher course" on the establishment of the public school capital outlay funding formula and its implementation. Task force members heard testimony from the former dean of the University of New Mexico School of Law, Robert Desiderio (who chaired the original Public School Capital Outlay Task Force); Janet Peacock, an economist and staff member of the original Public School Capital Outlay Task Force during the development and early implementation of the original standards-based process (2000 through 2004); Silvio Flaim, Ph.D., who worked at the Department of Finance and Administration (DFA) and assisted with the development of the formula; and Ms. Tackett. The goal of enacting the standards-based process was to provide a uniform system based on the principle of adequacy. The primary determinant in the state-share program continues to be the relative property tax wealth of the district measured by the assessed value for property taxes per member. To improve the statistical properties of the factor, the districts' average assessed value is measured against the statewide variance in average assessed value, and the calculation excludes districts whose assessed value per member is greater than

200 percent of the statewide average. The overall average state share for all districts is designed to be approximately 50 percent, with a minimum state share of 10 percent and a maximum state share not to exceed 100 percent.

To address concerns of the court regarding the disequalizing effect of direct legislative appropriations, state grant awards are reduced by an offset for PSCOC grant awards. When it was enacted in 2001, the offset for a district was 100 percent of the direct appropriations minus the state-share percentage calculated by the formula multiplied by the amount of the direct appropriation. Since 2003, the legislature has enacted a number of changes to the state funding formula related to offsets, including changing the offset, for educational technology direct appropriations to apply against PSCOC grants rather than against Educational Technology Fund distributions and partial exclusions of the offsets for direct appropriations that are prioritized among the top 150 ranked projects.

To reduce the volatility in the annual state-share amount, the calculation is now based upon a three-year "rolling" average of data for property valuations and mill levies rather than for a single year. Other legislative amendments have given the PSCOC authority to adjust the amount of local share for districts that are "property tax poor" and willing to bond themselves to a relatively high level.

Task force members also heard testimony about possible changes or adjustments to the formula, but task force members expressed concern about making any changes to the formula given the current economic outlook.

The task force heard a presentation from former Governor Toney Anaya, executive director, New Mexico Office of Recovery and Reinvestment, who explained the role of his temporary office, which was created by executive order to see that New Mexico "leaves no dollar [of ARRA funding] behind and to ensure that New Mexico competes effectively for ARRA funding and expends those dollars in compliance with federal requirements". The task force heard testimony that ARRA funds have saved the state from massive budget cuts by softening the anticipated cuts in school budgets and providing direct infusions in local economies, including \$738 million for Medicaid and \$466.6 million for public education. Members also heard testimony that New Mexico's allocation for tax-free bonds is \$128 million, and through authorization of these tax-free bonds, the U.S. Treasury will subsidize the interest

on the new school bonds. During this presentation, task force members were alerted to DFA concerns about language in the QSCBA that could make units of issuance so small that they would draw no bidders.

In response to these concerns, the task force asked that staff bring a bill draft to the August meeting so that the task force might, if it were "on the call" for the fall 2009 special session, endorse legislation to amend the QSCBA to make it more marketable. The task force did consider such a draft but waited until the 2010 regular session to endorse the legislation.

The chair of the PSCOC Awards Subcommittee provided the task force with the PSCOC's annual report on its 2009 Funding Cycle Awards. Task force members heard testimony that the PSCOC had awarded \$188,897,162 in the following distributions:

- \$131 million in state funds, net of offsets and waivers, for standards-based projects to 24 projects in 15 school districts;
- \$48.58 million reserved for possible out-of-cycle awards to nine projects in eight districts;
- \$931,562 from the Charter School Capital Outlay Fund to the Anansi Charter School in Taos;
- \$8.1 million for facility leasing assistance to 69 charter schools and eight public schools in 21 districts; and
- \$285,600 in state funds for demolition of old and abandoned facilities at Tohatchi Middle School in the Gallup-McKinley County district.

Task force members heard testimony that, given the broad economic decline in late 2008 and the corresponding reduction in severance tax revenues, funding public school capital outlay in the state has been particularly difficult during the 2009 funding cycle. With one-year commitments to later phase projects alone totaling about \$300 million, the need for diligence in eliminating idle funds, while also seeking new approaches for providing funds, has never been greater. In terms of completed projects, the task force members were informed that seven new schools and 13 renovated schools that are opening for the 2009-2010 school year were funded to some extent with PSCOC funds. As the economy continues to decline, the PSCOC will continue to struggle to meet documented school district capital outlay needs. The council is considering not taking any new applications for the 2010 awards cycle.

The task force also heard testimony from the State Board of Finance that revenues are expected to decline sharply in 2010; therefore, the board will not be able to fund bonds to the previous high levels. Estimates for supplemental severance tax bonding (STB) capacity were at approximately \$71 million at the time of the report. Supplemental STBs are expected to rebound over a five-year period.

Charter school facility issues were a topic of discussion at almost every PSCOOTF meeting during the 2009 interim. The task force heard testimony that legislation passed in 2006 requires districts to share Public School Buildings Act ("HB 33") funds with charter schools and that legislation passed in 2009 was passed with the same requirement for the Public School Capital Improvements Act ("two-mill levy" or "SB 9"). Representatives from charter schools and from the Public Education Department told the task force that several districts had recently had HB 33 elections that did not include charter schools in the proclamation. Charter school representatives asked for direction from the legislature regarding what recourse a charter school has if the district does not include the charters as the law requires.

At its final meeting, the task force elected to form a subcommittee to meet the Sunday before the session to decide on legislation for PSCOOTF endorsement for the 2010 session. The co-chairs indicated that they would appoint approximately six subcommittee members but invited all interested task force members to attend and participate in the January 2010 subcommittee meeting.

The recommendations contained in this PSCOOTF report represent the policy development work of the task force during the 2009 interim and the ongoing monitoring of the standards-based capital outlay program to ensure continued success toward achieving the goal of bringing all schools up to the adequacy standards and working to keep them there. During the 2009 interim, the work of the task force was assisted by a team of professional staff members from the Legislative Council Service, the Legislative Education Study Committee, the Legislative Finance Committee, the Department of Finance and Administration, the Public Education Department and the PSFA. The task force expresses its appreciation for the assistance of the staff in furthering its work.

Highlights of Recommendations and Proposed Legislation

The 2009 recommendations of the Public School Capital Outlay Oversight Task Force (PSCOOTF) furthered the work of earlier task force groups in terms of monitoring the continuing implementation of the standards-based process established in the Public School Capital Outlay Act (PSCOA) while continuing to be mindful of the state's commitments related to the *Zuni* lawsuit and the standards-based process for allocating Public School Capital Outlay Council funds.

PSCOOTF endorsements for the 2010 legislature included three bills that proposed the following:

- .179306.4 — Amends the Qualified School Construction Bonds Act to clarify the methodology for allocation of bonding authority.
- .180594.3 — Amends the PSCOA to extend the time period for roof repairs from 2012 to 2015 and provides for a maximum expenditure of \$10 million per year; amends the PSCOA to allow, rather than require, the Public School Facilities Authority (PSFA) to enter into contracts with the Construction Industries Division (CID) of the Regulation and Licensing Department and the state fire marshal and to require that funds distributed to the CID and the state fire marshal to be used to supplement, rather than supplant, appropriations to those entities; amends the PSCOA to allow for grant adjustments for high school facilities in certain remote, rural areas; amends the PSCOA to require the PSFA to administer procurement for certain emergency projects; enacts a temporary provision requesting the PSCOOTF to continue the working group that has been studying performance-based procurement for public school capital outlay projects and to report its findings and recommendations no later than December 15, 2010 to the governor and the legislature; and repeals the measure passed during the 2009 first special session to allow \$29 million from the Public School Capital Outlay Fund to be used to pay school district property insurance.
- .180595.3 — Amends the Charter Schools Act to require that on or after July 1, 2010, a new

charter school cannot open and an existing charter school cannot relocate unless the facilities of the new or relocating charter school receive a rating at or above the average New Mexico Condition Index average rating for all New Mexico public schools for that year; and amends the Charter Schools Act and the school construction code to require local school boards and governing bodies of charter schools to obtain approval of a lease agreement or lease-purchase agreement from the PSFA director by providing the director assurances that the building meets applicable statewide adequacy standards and the educational occupancy standards under New Mexico construction codes, or that the building can be, at a reasonable cost, brought to those standards.

Appendix A

***PUBLIC SCHOOL CAPITAL OUTLAY
OVERSIGHT TASK FORCE***

MEMBERSHIP, 2009 INTERIM

**PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
2009 INTERIM MEMBERSHIP**

Representative Rick Miera, Task Force Co-Chair	House Education Committee Chair
Senator Cynthia Nava, Task Force Co-Chair	Senate Education Committee Chair
Senator Timothy Z. Jennings	Senate President Pro Tempore
Representative Ben Lujan	Speaker of the House
Representative Henry "Kiki" Saavedra	House Appropriations and Finance Chair
Senator John Arthur Smith	Senate Finance Committee Co-Chair
Senator Vernon D. Asbill	Senate Minority Member
Senator Lynda M. Lovejoy	"Impact Aid" District Senator
Senator Sander Rue	Senate Minority Member
Representative Keith Gardner	House Minority Member
Representative Larry A. Larrañaga	House Minority Member
Representative W. Ken Martinez	"Impact Aid" District Representative
Don Moya	Deputy Secretary of Education
Katherine Miller	Secretary of Finance and Administration
Mike Phipps	Superintendent, Artesia Public Schools
Ernesto Valdez	Superintendent, Peñasco Independent Schools
Kilino Marquez	Superintendent, Grants-Cibola County Schools
Leonard Haskie	Assistant Superintendent, Support Services Gallup-McKinley County Schools
Elizabeth Marrufo	Director of Elementary Instruction, Las Cruces Public Schools
Cecilia Grimes	Retired public school teacher, public member with experience in education and finance
Lisa Grover, PhD	Chief Executive Officer, New Mexico Coalition for Charter Schools
James "Bud" Mulcock	Former business executive, current education lobbyist
Robbie Heyman	Bond counsel, public member with expertise in education & finance
Dr. John Mondragon	Retired educator

Appendix B

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

STATUTORY AUTHORITY AND DUTIES

22-24-7. Public school capital outlay oversight task force; creation; staff.

A. The "public school capital outlay oversight task force" is created. The task force consists of twenty-five members as follows:

- (1) the secretary of finance and administration or the secretary's designee;
- (2) the secretary of public education or the secretary's designee;
- (3) the speaker of the house of representatives or the speaker's designee;
- (4) the president pro tempore of the senate or the president pro tempore's designee;
- (5) the chairs of the house appropriations and finance committee, the senate finance committee, the senate education committee and the house education committee or their designees;
- (6) two minority party members of the house of representatives, appointed by the New Mexico legislative council;
- (7) two minority party members of the senate, appointed by the New Mexico legislative council;
- (8) a member of the interim legislative committee charged with the oversight of Indian affairs, appointed by the New Mexico legislative council, provided that the member shall rotate annually between a senate member and a member of the house of representatives;
- (9) a member of the house of representatives and a member of the senate who represent districts with school districts receiving federal funds commonly known as "PL 874" funds or "impact aid", appointed by the New Mexico legislative council;
- (10) two public members who have expertise in education and finance appointed by the speaker of the house of representatives;
- (11) two public members who have expertise in education and finance appointed by the president pro tempore of the senate;
- (12) three public members, two of whom are residents of school districts that receive grants from the federal government as assistance to areas affected by federal activity authorized in accordance with Title 20 of the United States Code, appointed by the governor; and
- (13) three superintendents of school districts or their designees, two of whom are from school districts that receive grants from the federal government as assistance to areas affected by federal activity authorized in accordance with Title 20 of the United States Code, appointed by the New Mexico legislative council in consultation with the governor.

B. The chair of the public school capital outlay oversight task force shall be elected by the task force. The task force shall meet at the call of the chair, but no more than four times per calendar year.

C. Non-ex-officio members of the task force shall serve at the pleasure of their appointing authorities.

D. The public members of the public school capital outlay oversight task force shall receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 NMSA 1978].

E. The legislative council service, with assistance from the public school facilities authority, the department of finance and administration, the public education department, the legislative education study committee and the legislative finance committee, shall provide staff for the public school capital outlay oversight task force.

History: Laws 2001, ch. 338, § 12; 2004, ch. 125, § 16; 2005, ch. 274, § 10; 2007, ch. 366, § 11; 2008, ch. 90, § 5.

The 2005 amendment, effective April 6, 2005, changed the name of the task force to the public school capital outlay oversight task force and the number of members from twenty to twenty four in Subsection A; deleted the dean of the university of New Mexico school of law or the dean's designee as a member in Subsection A; added in Subsections A(3), (4) and (9) respectively, the speaker of the house of representatives or the speaker's designee, the president pro tempore of the senate or the president pro tempore's designee, and a member of the interim legislative committee charged with the oversight of Indian affairs as members of the task force; provided in Subsection A(9) that the member who is a member of the committee charged with Indian affairs shall rotate annually between a senate member and a house of representatives member; deleted the former requirement in Subsection A(10) that three members be public members who have expertise in education and finance; provided in Subsection A(12) that two of the public members must reside in school districts that receive federal grants as assistance to areas affected by federal activity; provided in Subsection A(13) that two superintendents must be from school districts that receive federal grants as assistance to areas affected by federal activity; provided in Subsection B that the task force shall meet no more than four times per calendar year; deleted the former provision of Subsection C that members shall serve through June 30, 2005 and that the task force is terminated on July 1, 2005; and provided in Subsection C that non-ex-officio members shall serve at the pleasure of their appointing authorities.

Temporary provisions. — Laws 2007, ch. 366, § 24, provided that during the 2007 interim the public school capital outlay oversight task force shall continue to work toward an equitable and fair system that addresses the inequities between public school facilities among various school districts in this state. Toward that end, the task force shall assess the current statewide adequacy standards, the need for changing those standards and the effect upon school districts of any proposed change in the standards.

The 2007 amendment, effective July 1, 2007, changed the number of members of the public school capital outlay oversight task force to twenty-six and added Paragraph (10) of Subsection A to provide new legislative members representing PL 874 school districts.

The 2008 amendment, effective May 14, 2008, in Subsection A, changed the number of members from twenty-six to twenty five and deleted the state investment officer or the state investment officer's designee.

22-24-8. Public school capital outlay oversight task force; duties. (2005)

The public school capital outlay oversight task force shall:

A. monitor the overall progress of bringing all public schools up to the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act;

B. monitor the progress and effectiveness of programs administered pursuant to the Public School Capital Outlay Act and the Public School Capital Improvements Act [22-25-1 NMSA 1978];

C. monitor the existing permanent revenue streams to ensure that they remain adequate long-term funding sources for public school capital outlay projects;

D. oversee the work of the public school capital outlay council and the public school facilities authority as they perform functions pursuant to the Public School Capital Outlay Act, particularly as they implement the statewide-based process for making grant awards;

E. appoint an advisory committee to study the feasibility of implementing a long-range planning process that will facilitate the interaction between charter schools and their school districts on issues relating to facility needs; and

F. before the beginning of each regular session of the legislature, report the results of its analyses and oversight and any recommendations to the governor and the legislature.

History: Laws 2001, ch. 338, § 13; 2004, ch. 125, § 17; 2005, ch. 274, § 11.

The 2005 amendment, effective April 6, 2005, added Subsection A to provide that the task force shall monitor the progress of bringing public schools up to the statewide adequacy standards; deleted the former requirement in Subsection B that the task force review the condition index and the methodology used for ranking projects; provided

in Subsection C that the task force monitor revenue streams to ensure that they remain adequate; provided in Subsection D that the task force oversee the work of the council and the authority; added Subsection E to provide that the task force appoint an advisory committee to study the feasibility of a long-range planning process to facilitate interaction between charter schools and school districts.

Temporary provisions. — Laws 2009, ch. 37, § 2 provided that during calendar year 2009, the public school capital outlay oversight task force shall study reasonable alternatives for determining the local matching funds to be required from the New Mexico school for the blind and visually impaired and the New Mexico school for the deaf for a grant award pursuant to the Public School Capital Outlay Act and shall report its findings and recommendations to the second session of the forty-ninth legislature.

Appendix C

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

APPROVED 2009 INTERIM WORK PLAN

**2009 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

Membership

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Sen. Vernon D. Asbill
Veronica Garcia
Rep. Keith J. Gardner
Cecilia J. Grimes
Leonard Haskie
Robbie Heyman
Sen. Timothy Z. Jennings
Anna Lamberson
Rep. Larry A. Larrañaga
Sen. Lynda M. Lovejoy

Rep. Ben Lujan
Kilino Marquez
Elizabeth Marrufo
Rep. W. Ken Martinez
Katherine B. Miller
John B. Mondragon
Bud Mulcock
Mike Phipps
Sen. Sander Rue
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith
Ernesto Valdez

Background

Created by Laws 2005, Chapter 274, Sections 10 and 11, the public school capital outlay oversight task force serves as the permanent entity overseeing the implementation of the work of the public school capital outlay council and the public school facilities authority as they implement the state's standards-based public school capital outlay funding methodology. The task force consists of 25 members, including the respective secretaries of public education and finance and administration; the speaker of the house of representatives; the president pro tempore of the senate; the respective chairs of the house appropriations and finance, house education, senate finance and senate education committees; four minority party members, two from each house; a member of the Indian affairs committee, annually alternating between the senate and house; a member of the house and a member of the senate, each of whom represents districts that include federal impact aid districts; seven public members, two appointed by the speaker, two appointed by the president pro tempore and three appointed by the governor; and three superintendents, two of whom must be from federal impact aid districts, appointed by the New Mexico legislative council in consultation with the governor.

Approved Work Plan

Pursuant to statute, the task force will focus on the following activities:

1. monitoring the progress and effectiveness of programs administered pursuant to the Public School Capital Outlay Act and the Public School Capital Improvements Act;
2. monitoring the existing permanent revenue streams to ensure that they remain adequate long-term funding sources for public school capital outlay projects;
3. monitoring the overall progress of continuing to bring all public school facilities up to the statewide adequacy standards developed pursuant to provisions in the Public School Capital Outlay Act; and

4. overseeing the work of the public school capital outlay council and the public school facilities authority, particularly as they continue to implement the statewide process for making grant awards.

Additionally, the task force will focus on the following issues:

5. the relationship of current economic conditions to providing funding for adequacy and space flexibility;
6. revisions to the statewide adequacy standards and funding needed for implementation of revisions to the standards, if necessary;
7. review of capital outlay funding resources and requirements for charter schools;
8. establishment and oversight of a work group to examine the costs and benefits of the statutory requirement for the bonding of subcontractors as specified in Senate Joint Memorial 71 (introduced in the 2009 legislature);
9. review of the distribution and expenditure of public school capital outlay funding appropriated in the federal American Recovery and Reinvestment Act of 2009; and
10. review of the use of out-of-state contractors and subcontractors on public school projects.

Finally, the task force will report the results of its analyses and oversight, together with any recommendations, to the governor and the legislature before the start of the 2010 regular legislative session.

Approved Meeting Schedule

<u>Date</u>	<u>Location</u>
June 2 (organizational meeting)	Santa Fe
July 28-29	Santa Fe
August 24	Santa Fe
September 17-18	Santa Fe
November 9-10	Santa Fe

Appendix D

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

2009 MEETING AGENDAS AND MINUTES OF MEETINGS

Revised: June 2, 2009

**TENTATIVE AGENDA
for the
TWENTY-FIRST MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**June 2, 2009
Room 307, State Capitol
Santa Fe**

Tuesday, June 2

- 10:00 a.m. **Call to Order**
- 10:05 a.m. **Election of Co-Chairs**
- 10:10 a.m. **PSCOC/PSFA Annual Report**
—Robert Gorrell, Director, Public School Facilities Authority (PSFA)
—Mark Williams, Manager, Process Development, Strategic Planning and
Communications, PSFA
- 11:00 a.m. **Brief Review of 2008 Task Force Work and Summary of 2009
Legislation**
—Sharon Ball, Legislative Council Service (LCS)
—Paula Tackett, Director, LCS
- 11:45 a.m. **Discussion of Work Plan, Items for Future Agendas and Other
Organizational Business**
—Task Force Members and Staff
- 1:00 p.m. **Adjourn**

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

June 2, 2009
Room 307, State Capitol
Santa Fe

The twenty-first meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, at 10:10 a.m. on Tuesday, June 2, 2009, in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Sen. Vernon D. Asbill
Rep. Keith J. Gardner
Cecilia Grimes
Leonard Haskie
Robbie Heyman
Rep. Larry A. Larrañaga
Sen. Lynda M. Lovejoy
Kilino Marquez
Rep. W. Ken Martinez
Katherine B. Miller
Dr. John Mondragon
Don Moya for Veronica Garcia
Bud Mulcock
Sen. Sander Rue
Sen. John Arthur Smith

Absent

Sen. Timothy Z. Jennings
Anna Lamberson
Rep. Ben Lujan
Elizabeth Marrufo
Mike Phipps
Rep. Henry Kiki Saavedra
Ernesto Valdez

Staff

Sharon Ball, Legislative Council Service (LCS)
Robert Gorrell, Public School Facilities Authority (PSFA)
Scott Hughes, Department of Finance and Administration (DFA)
Frances Maestas, Legislative Education Study Committee (LESC)
Antonio Ortiz, Public Education Department (PED)
Aldis Philipbar, LCS
Paula Tackett, LCS

Guests

The guest list is in the original meeting file.

Tuesday, June 2

Public School Capital Outlay Council (PSCOC)/PSFA Annual Report

Mr. Gorrell, director, PSFA; Mark Williams, manager, Process Development, Strategic Planning and Communications, PSFA; and Jeff Eaton, operations manager, PSFA, reviewed the PSCOC/PSFA annual report with the task force. Mr. Eaton discussed the PSCOC awards history graph, noting the rise in the amount of awards up until 2005 due to a dramatic increase in severance taxes from oil and gas revenues. Mr. Eaton also discussed a pie chart showing the relative costs of the PSFA. He said that the PSFA's largest line-item costs are the specialized staff members who are based throughout the state in the school districts in which they serve. However, he said that the PSFA has remained below the five percent statutory limit. He noted that there is a lot of planning going on before school that is creating a more efficient process. He also said that the PSFA has not had significant audit findings since its inception, thanks to the staff. Mr. Gorrell added that the PSFA has had very few disputes in general and that it tries to have transparency and open communication. Mr. Williams said that 83 districts currently have master plans, 87 districts are using the Facilities Information Management System (FIMS), and it takes an average of nine days to process payables. He said that the PSFA's Maintenance Division has awarded 27 maintenance achievement awards to individuals and school districts that demonstrated commitment and success in school facility maintenance. Mr. Williams said that New Mexico has used the Facilities Assessment Database (FAD) for the past five years to quantify and rank public school facility needs in all school districts. He also said that better school facilities improve learning, and he pointed to the Peñasco School District as an example of a small school district using FIMS successfully.

In response to a questions from the task force, Mr. Gorrell clarified the difference between the Facility Condition Index (FCI) and the New Mexico Condition Index (NMCI). He said that the FCI is blind to the purpose of the school space whereas NMCI includes the purpose and the condition of the space. The task force also asked for clarification for criteria for school renovations and additions. There was also discussion regarding the relationship between federal stimulus money and educational funding for school construction. Mr. Gorrell noted that there is a lot of confusion surrounding the federal stimulus money, but the U.S. House of Representatives appears to have approved approximately \$46 million that would be allocated statewide based upon the percent of Title I funds received by districts. In response to a task force question, Mr. Moya stated that the U.S. Senate has yet to consider the bill.

There was also discussion as to how the federal stimulus money will affect the *Zuni* lawsuit and impact aid districts, and it was suggested that former Governor Toney Anaya be invited to give a presentation to the task force and discuss issues related to the federal stimulus money. In response to a question about what happens when a school district fails to pass a bond, Ms. Tackett, LCS director and PSCOC vice chair, said that the district does not come off the queue, but it does not receive funding, either. She added that, as yet, the PSCOC has not asked the court to declare a district "recalcitrant", thereby having a property tax imposed upon it by the courts to provide funding for the district's match.

Task force members also requested data on the amount of time it takes between a district's submitting a plan to the PSFA and receiving funding, as well as data on district-level administrative staff turnover.

Discussion of Work Plan, Items for Future Agendas and Other Organizational Business

Ms. Ball, LCS researcher, reviewed the proposed dates of future meetings with the task force and said that the New Mexico Legislative Council tries to avoid conflicts when selecting dates. Representative Miera suggested adding August 25 to the schedule as a precaution and asked if anything needs to be prepared for a potential special legislative session. Ms. Tackett replied that the task force may want to look at how qualified school construction bonds will be issued. The task force requested that the rural education tax credit and alternatives to educational specifications be added to the work plan. A chart from the PSFA on the price per square foot for new construction by region was requested. On a motion made, seconded and unanimously approved, the work plan was adopted.

Ms. Ball directed the task force's attention to the summary of bills endorsed by the task force. She noted that those included are the ones passed by the legislature and signed into law by the governor.

On a motion made, seconded and unanimously approved, the task force confirmed the New Mexico Legislative Council's appointments of Representative Miera and Senator Nava to be the 2009 co-chairs of the task force. The task force also welcomed two new members, Representative Gardner and Senator Rue.

There being no further business, the task force adjourned at 12:15 p.m.

Revised: July 27, 2009

**TENTATIVE AGENDA
for the
TWENTY-SECOND MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**July 28-29, 2009
State Capitol, Room 307
Santa Fe**

Tuesday, July 28

- 10:00 a.m. **Call to Order**
- 10:05 a.m. **Approval of June Minutes**
- 10:10 a.m. **Public School Capital Outlay Project Planning: Educational Specifications**
—William S. DeJong, Ph.D., REFP, Educational Planner, CEO, DeJong, Inc.
—Marilyn Strube, Educational Planner, Greer-Stafford SJCF, Inc.
—Tanya De Lara, Facilities Assessment Database (FAD) Manager
—Bill Sprick, Facilities Master Plan Manager
—Martica Casias, Planning and Design Manager
—Pat McMurray, Senior Facilities Manager, Public School Facilities Authority (PSFA)
—Gloria Rendón, Ed.D., Assistant Superintendent, Instructional Support and Vocational Education Division, Public Education Department (PED)
- 12:30 p.m. **Lunch**
- 1:30 p.m. **New Mexico's Standards-Based Capital Outlay Formula: Its Rationale, Computation and Operation**
—Janet Peacock, Contract Economist
—Antonio Ortiz, Manager, Capital Outlay Bureau, PED
—Dane Kennon, Superintendent, Cobre Consolidated Schools
- 4:00 p.m. **Recess**

Wednesday, July 29

- 9:00 a.m. **Adequacy Standards and Space Flexibility**
—Martica Casias, Planning and Design Manager, PSFA
—Andre Larroque, Building Standards Coordinator, PSFA

11:00 a.m. **Education-Related Funding from the Federal American Recovery and Reinvestment Act of 2009**
—Governor Toney Anaya, Executive Director, New Mexico Office of Recovery and Reinvestment (NMORR)
—Dona Cook, Team Leader, NMORR
—Bianca Ortiz Wertheim, State Director, United States Senator Tom Udall

12:00 noon **Lunch**

1:00 p.m. **Work Group to Examine Costs and Benefits of Statutory Subcontractor Bonding Requirements: Appointment of Members and Discussion of Scope of Work and Deadlines**
—PSCOOTF Co-Chairs, Members and Staff

3:00 p.m. **Adjourn**

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

**July 28-29, 2009
State Capitol, Room 307
Santa Fe**

The twenty-second meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, at 10:05 a.m. on Tuesday, July 28, 2009, in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair (7/28)
Sen. Vernon D. Asbill
Rep. Keith J. Gardner
Leonard Haskie
Robbie Heyman
Scott Hughes for Secretary Katherine B.
Miller
Sen. Timothy Z. Jennings
Rep. Larry A. Larrañaga
Sen. Lynda M. Lovejoy
Rep. Ben Lujan
Kilino Marquez
Rep. W. Ken Martinez
Dr. John Mondragon
Don Moya for Secretary Veronica Garcia
Bud Mulcock
Mike Phipps
Sen. Sander Rue
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith

Absent

Cecilia J. Grimes
Dr. Anna Lamberson
Elizabeth Marrufo
Ernesto Valdez

(Attendance dates are noted for members not present for the entire meeting.)

Staff

Sharon Ball, Legislative Council Service (LCS)
Robert Gorrell, Public School Facilities Authority (PSFA)
Frances Maestas, Legislative Education Study Committee (LESC)
Antonio Ortiz, Public Education Department (PED)
Aldis Philipbar, LCS
Paula Tackett, LCS

Guests

The guest list is in the original meeting file.

Tuesday, July 28

On a motion made, seconded and unanimously approved, the minutes of the June 2009 PSCOOTF meeting were adopted.

Public School Capital Outlay Project Planning: Educational Specifications

Ms. Ball said that the task force had requested information about two issues at the last meeting: educational specifications and the formula that creates the local and state funding matches. She introduced William S. DeJong, Ph.D., Recognized Educational Facility Planner (REFP), CEO, DeJong, Inc., Marilyn Strube, educational planner, Greer-Stafford SJCF, Inc., and Antonio Ortiz, director, Capital Outlay Bureau, PED, to discuss these issues.

Dr. DeJong provided the task force with some information about his background, which includes more than 30 years of experience in education and facilities planning. He said that, through his work, he hopes to provide school districts and other organizations with the tools necessary for exceptional educational programs. He indicated that he has been involved in planning more than 1,000 new and renovated school projects and is currently participating in the educational specification process in New Mexico in both the Central Consolidated and Raton districts.

Dr. DeJong explained that the process of developing educational specifications allows educators to communicate program requirements to a designer or planner. He said that without these specifications, a project tends to develop "scope creep", meaning that the scope of the project grows larger and larger and thus becomes more expensive. He explained the importance of using "planning labs" consisting of teams of stakeholders to determine educational specifications for a specific school. He stressed that educational specifications are a community effort.

Ms. Strube noted that school planning is complex and that, from her experience, New Mexico has done a great job in recognizing the uniqueness of each of the state's 89 districts as well as intra-district differences. She said that school districts have been doing master plans in limited scope for a long time, but, with the establishment of the statewide standards-based public school capital outlay program, the concept has moved to the state level.

Dr. DeJong explained that the educational specifications process is not an "extra step" — that "ed specs" would be completed in one form or another — but they do help to define clearly the requirements of the school early in the design process and save money in the long run. He said that development of educational specifications is a deliberate process that ensures the school meets current and future requirements. In response to a task force question, he said that developing educational specifications takes typically two to three months, a time period that is not any longer than other planning processes.

In response to questions from the task force, Dr. DeJong said that adequacy standards help set the guidelines for the educational specifications but added that space requirements should be flexible. Ms. Strube pointed out that adequacy standards do not take curriculum into consideration while educational specifications do. Dr. DeJong noted that other uses for school facilities — such as during out-of-school time — come under consideration in the educational specifications process. He also added that development of educational specifications is equally important to the process of doing school renovations. He said that, as planners, he and his colleagues do not try to push the district in any one direction but try to discourage district representatives from taking paths that will not work. He also said that "green" building practices, i.e., energy efficiency, are becoming the normal standard in new school buildings.

In response to additional questions, Dr. DeJong said that the educational specification process usually costs \$30,000 to \$40,000 and that it is too early to determine a cost-benefit analysis, but that the process takes less time with no additional cost to the project, prevents "finger pointing" after the fact, streamlines the process and keeps the project within the budget. He added that the process does not differ between school districts with large bonding capacities and those with small bonding capacities.

Mr. Gorrell added that PSFA staff recently attended a U.S. Education Department National Center for Education Statistics conference in Washington, D.C., where New Mexico was recognized as a national leader in implementation of standards-based processes and data-based prioritization of projects. As a result, the state has been able to demonstrate prioritization of many "shovel-ready" projects already in the queue. In response to an additional question, he said that adequacy standards set a minimum size for school spaces.

Pat McMurray, senior facilities manager, PSFA, said that educational specifications define the scope and cost of the project. He noted that the PSFA is asking school districts to start the educational specification process as early as one to one-and-a-half years in advance of actual construction of a project. He said that the educational specifications define the process earlier and more clearly and become the guidelines for the architects.

In response to a task force question about professional development for architects and planners, Ms. Strube said that architects are required to take a certain number of continuing education hours. Mr. Gorrell noted that there is no such requirement for the construction industry.

In response to additional task force questions, Tanya De Lara, PSFA facilities assessment database (FAD) manager, said that priority for determining annual Public School Capital Outlay Council (PSCOC) funding allocations is based on the number of deficiencies identified through the adequacy standards with the higher the score, the higher the position in the queue. Bill Sprick, facilities master plan manager, PSFA, affirmed that a five-year master plan is required for PSCOC grant awards.

In response to task force questions and discussion, Mr. Sprick said that the PSCOC has provided a total of \$1.3 million to fund development of master plans in 42 of the state's school districts and five charter schools. He also pointed out the advantages of implementation of a geographical information system (GIS), the development of which was provided for by the 2009 legislature. He explained the importance of knowing where students are living and going to

school, as well as determining migration. He said that the GIS will also allow the PSFA to gather data on cultural and demographic issues.

In response to task force discussion, Martica Casias, planning and design manager, PSFA, said that while new schools particularly need educational specifications, some schools currently scheduled for renovations have already defined their needs and do not need to go through the educational specification program.

In response to task force questions and comments, Ms. Ball said that the PED is working with the PSFA to determine the PED's role in the educational specification process. Mr. Ortiz said that Secretary Garcia agrees with the importance of educational specifications and that the consensus within the department is that educational specifications start at the community level. He said that Secretary Garcia has expressed the hope that any PED involvement would add to the value of the process.

In response to an additional question, Mr. Gorrell said that GIS data will be available to the public once the system is functioning appropriately.

New Mexico's Standards-Based Capital Outlay Formula: Its Rationale, Computation and Operation

Janet Peacock, contract economist and staff to the former Public School Capital Outlay Task Force (PSCOTF), said that prior to passage of legislation establishing the capital outlay funding formula and the standards-based process, PSCOC grant awards were made through what was then called the "critical capital outlay" program, which was established as a last source of funding for districts that had already spent most, if not all, of their locally available funds. To qualify, she said, the district had to be bonded to at least 75 percent of its capacity and have the two-mill levy ("SB 9") in place. With very little funding available, each district could get a grant award for one project — or one phase of a project — per year.

In 2000, legislative changes following the court ruling in the *Zuni* lawsuit were enacted but never implemented and included funding that would continue to be project-based rather than formula-based.

Ms. Peacock said that following the enactment of the standards-based process by the 2001 legislature, state funding was based on general principles adopted by PSCOTF with the goal of providing a uniform system based on the principle of adequacy. Funding would continue to be project-based using an objective measure of the need for the project. She added that districts would be required to provide some of the funding and maintain a high degree of local control over development and implementation of the project. She said that districts could exceed the adequacy standards using local funds.

Ms. Peacock explained that the PSCOTF Formula Subcommittee developed the recommendations for a new state-share program that was based on the equity principle and emphasized transparency. She explained that the primary determinant in the new state-share program would be the relative wealth of the district, measured by the assessed value for property taxes per member. To improve the statistical properties of the factor, the districts' average assessed value would be measured against the statewide variance in average assessed value, and the calculation would exclude districts whose assessed value per member is greater than 200

percent of the statewide average.

She also said that the new formula allowed districts that tax themselves above the statewide average to be rewarded. The state share would be increased by up to five percentage points for districts with a total property tax mill levy for all educational purposes that exceeds the statewide average. She explained that the use of total mill levies removed the direct link limited to bonding capacity and recognized the use of Public School Buildings Act (also called HB 33) pay-as-you-go levies and educational technology levies, as well as general obligation bond levies.

In addition, Ms. Peacock said, other funds available to the district, such as federal impact aid funds, other federal grant funds, private donations and other such sources of funding, were not taken into account in determining the state share for a district. She said that the task force felt that these funds should remain available to the district to meet its match requirement and provide facilities that exceed the adequacy standards.

Ms. Peacock explained that the overall average state share for all districts was designed to be approximately 50 percent and that a minimum state share of 10 percent should apply, with the maximum state share not to exceed 100 percent.

To address the concerns of the court regarding the disequalizing effect of direct legislative appropriations, state grant awards would be reduced by an offset for PSCOC grant awards, Ms. Peacock explained. She said that the original recommendation was for a dollar-for-dollar offset for all nonoperating direct appropriations, but the recommendation that was subsequently adopted by the legislature was to calculate the offset amount based on the state-share formula. The recommendation was seen by the task force members as reinforcing the equity aspect of the formula by allowing property-poorer districts to keep more of their direct appropriations. She explained that, specifically, the offset amount for a district is 100 percent of the direct appropriation minus the state-share percentage calculated by the formula multiplied by the amount of the direct legislative appropriation. The offset applies on a districtwide basis rather than a school-by-school basis, and the offset amount not used in any year is carried forward and applied to PSCOC grant amounts in future years.

Ms. Peacock said that, since 2003, the legislature has enacted a number of changes to the state funding formula related to the offsets:

- The offset for educational technology direct appropriations was changed to apply against PSCOC grants rather than against education technology fund distributions.
- Full or partial exclusions to the offset have been provided for appropriations for capital outlay projects that have been prioritized in the New Mexico facilities index ranking among the top 150 projects statewide, that have been designated for local government and district joint-use facilities and for appropriations to specific state-chartered charter schools.
- Federal funding for capital projects received under Title XIV of the federal stimulus legislation have been made subject to the offset.

Ms. Peacock added that, to reduce the volatility in the annual state-share amount, the calculation is now based on a three-year "rolling" average of data for property valuations and mill

levies, rather than for a single year. And, beginning in 2008, legislative amendments allow the PSCOC to add an additional five percentage points to the state-share amount for a district that has been exemplary in implementing and maintaining a preventive maintenance program.

Ms. Peacock said that other legislative amendments have given the PSCOC the authority to adjust the amount of the local share for districts, taking into account the following considerations:

- The district has insufficient bonding capacity over the next four years to meet its local match and currently imposes at least 10 mills for general obligation debt repayment.
- The district has fewer than 800 members, is relatively poor (at least 70 percent of its students qualify for free and reduced-fee lunches), has a local share under the formula of 50 percent or more and currently imposes at least seven mills for general obligation debt repayment.
- The district has an enrollment growth of at least 2.5 percent, will be building a new high school within two years and currently imposes at least 10 mills for general obligation debt repayment.

Mr. Ortiz explained that the formula itself appears to be not very transparent because it is complicated as it appears in statute. He distributed a chart that he created to graphically determine the way changes to the three main components of the formula will change the balance in the state and district shares. He said that changes to land valuations, membership and residential tax mill levies affect the state-match percentages in the following ways:

- when the land valuations increase, the district share increases and the state share decreases;
- when the land valuations decrease, the district share decreases and the state share increases;
- when membership increases, the district share decreases and the state share increases;
- when membership decreases, the district share increases, and the state share decreases;
- when the residential mill levies increase, the district share decreases and the state share increases; and
- when the residential tax mill levy decreases, the district share increases and the state share decreases.

Mr. Ortiz' chart is reproduced below:

	LAND VALUATIONS		MEMBERSHIP		RESIDENTIAL TAX MILL LEVIES	
	Increase	Decrease	Increase	Decrease	Increase	Decrease
DISTRICT SHARE	↑	↓	↓	↑	↓?	↑
STATE SHARE	↓	↑	↑	↓	↑?	↓

Note: The required state share for a PSCOC project is determined by a formula created in statute, Section 22-24-5 NMSA 1978. There are three main components used in the formula. The components include land valuations, membership and the amount of residential mills a school district has imposed. The chart above reflects how the state share percentage may change if one of the components within the formula changes. The chart only reflects the results if only one of the components changes. The results may differ if changes occur to more than one of the factors.

Dane Kennon, superintendent, Cobre Consolidated Schools, explained that he had come to the task force to make members aware of the effect of drastic changes to a district's property tax base. He explained that 600 jobs were lost in Cobre when the copper mine shut down, resulting in a significant decrease in the tax base for the schools. He said that the district has been receiving advances from the PSFA for the district share of project cost, but there may come a time when the district cannot pay back its advances. Mr. Kennon added that the PSFA is currently helping the district meet its obligation, but with the current local share at 42 percent, the district will not be able to continue to provide such a large share of funding over an extended period of time.

In response to task force questions, Mr. Kennon said that his school district has lost many students and, as a result, his community has considered consolidating the schools. However, the district is currently waiting to see exactly how many students return for the new school year before making a decision.

Responding to task force questions and discussion, Mr. Ortiz said that the state-share formula is calculated annually in May as required by statute and that the results are subsequently available on the PED web site. He also stated that his office prepares a reference document before each session that is available to legislators, legislative staff and other interested parties that is distributed during session. He said that the PED has never had a district appeal its calculation. He emphasized that the calculation is based upon a three-year "rolling average", which works to mitigate sudden fluctuations in the factors that affect a district's share requirement.

Task force members also discussed the possible effect of stimulus money on the formula. Mr. Moya, deputy secretary, PED, indicated that, at this time, very little, if any, federal stimulus funding would affect PSCOC grant awards and the standards-based process.

Wednesday, July 29

Adequacy Standards and Space Flexibility

Ms. Casias reviewed some of the definitions in the adequacy standards and said that the adequacy standards guide is used by educational planners and district personnel. Andre Larroque, building standards coordinator, PSFA, discussed the development of the adequacy planning guide. He said that the guide establishes the scope and budget for each project and that the educational specifications stage is the first opportunity for planners to use the guide. Mr. Larroque said that the guide incorporates guidelines to flesh out the minimum standards to help districts develop a realistic plan. He said that the most significant addition to the guide spells out the minimum space policy while allowing for flexibility.

In response to task force questions, Mr. Larroque said that, while "green" building requirements are taken into consideration during the design and building process, facility requirements related to the educational program are the first priority. He said that the PSFA encourages designers to use such "green" practices as natural lighting and highly efficient appliances, but those factors do not typically have an impact on space.

In response to task force comments and questions, Mr. Gorrell indicated that PSFA now requires districts to build pitched roofs on all new and some appropriately remodeled buildings to mitigate damage and leakage problems associated with flat roofs. Ms. Casias said that districts are not assessed any penalty for excess square footage in schools built prior to adequacy. Mr. Gorrell said that some districts have particular problems dealing with unusually high growth. He said that, because portables have gotten an undeserved bad reputation, districts are now designing and building large facilities for future growth, but as a community ages, there are fewer children, so a large school may not be necessary for the future.

Mr. Gorrell also said that good quality preventive maintenance makes a big difference in the life of a building. He said that it is hard to dispute the data about reactive versus proactive maintenance. He pointed out that the maintenance budget is based on the first few years of the building's life, during which time the building requires very little maintenance, and never increases as the building gets older.

The task force also discussed the issue of school vandalism. Joseph Escobedo, Albuquerque Public Schools (APS), said that, by statute, districts can only recover up to \$4,000 for school vandalism, so it is often cost prohibitive to prosecute offenders. He said that there are only two security guards on night duty for 133 schools and that the City of Albuquerque Police Department does not respond to school alarms in Acoma. Phil Ewing, assistant principal, La Cueva High School, APS, said that La Cueva has security cameras on its campus and that the school prosecutes civilly.

Work Group to Examine Costs and Benefits of Statutory Subcontractor Bonding Requirements: Appointment of Members and Discussion of Scope of Work and Deadlines

The task force appointed a subcommittee to review this issue. Members include the following: Senator Asbill, Representative Gardner, Representative Larrañaga, Speaker Lujan, Representative Miera, Mr. Moya, Mr. Mulcock and Senator Nava. Co-Chair Miera indicated that any other task force members who would like to participate are welcome to do so and indicated

that Ms. Tackett, Ms. Ball and Mr. Gorrell would serve as staff. He also asked that staff invite appropriate representatives of the construction industries and trade unions to participate.

Education-Related Funding from the Federal American Recovery and Reinvestment Act of 2009 (ARRA)

Governor Toney Anaya, executive director, New Mexico Office of Recovery and Reinvestment (NMORR), explained that the role of his temporary office, which has been created through an executive order, is to ensure that "no dollar [of ARRA funding] is left behind and to ensure that New Mexico competes effectively for ARRA funding and expends those dollars in compliance with federal requirements". He said that an estimated \$3 billion in federal stimulus money will be going to states in direct allocations and awards. He said that, additionally, \$288 billion will be available in the form of tax relief nationwide, more than \$30 billion of bond authority will be available to businesses and communities through loans and new tax-exempt and tax credit bond programs nationwide and \$74 billion in competitive grants and incentives will be available nationwide.

He noted that ARRA funds saved the state from massive budget cuts by softening the anticipated cut in school budgets and providing direct infusions in local economies. Governor Anaya showed the task force a chart of funding for the state by policy area, including \$738 million for Medicaid and \$466.6 million for public education. He said that the federal stimulus money is nonrecurring ("a one-time thing") and that it cannot be used for new programs that will need ongoing funding. He said that there is no money for capital outlay or new school construction. He added that Governor Richardson has allocated \$22 million for competitive grants, \$1 million for oversight, \$4 million for the potential purchase of the College of Santa Fe, \$57.8 million for Governor Richardson's projects and \$2 million to the Human Services Department.

Ms. Ball introduced Bianca Ortiz Wertheim, state director of U.S. Senator Tom Udall's office. Ms. Ortiz Wertheim said that she had come to the task force meeting to listen to members' concerns and comments about what was and was not funded in the ARRA.

Governor Anaya, Dona Cook, team leader, NMORR, and Ms. Ortiz Wertheim fielded questions and comments from task force members. Governor Anaya said that the Department of Finance and Administration (DFA) will determine if projects are eligible for ARRA funding, and the NMORR will review requests. He added that the PED is responsible for ensuring that the state meets the four criteria for educational stabilization, but that the PED is receiving no additional funding for the undertaking, so the agency will need support and will work closely with the NMORR. He noted that New Mexico's allocation for tax-free bonds is \$128 million. Through authorization of these tax-free bonds, the U.S. Treasury will subsidize the interest on the new school bonds. Ms. Ortiz Wertheim said that federal stimulus act implementation language makes it clear that local control over the funds distributed through the ARRA will be locally controlled as long as local boards stay within the confines of the provisions of the ARRA. Mr. Moya added that the districts have had to sign a written agreement with the PED to stay within the confines of the ARRA.

Governor Anaya said that his office is working on an auditing process that will include a zero-tolerance policy for mistakes. He said his office is attempting to find funding to help the PED to conduct its oversight without running a budget deficit.

Governor Anaya then explained the steps his office took to educate the public about the stimulus package, which included regional outreach seminars. He added, however, that his outreach seminars obviously had not made clear that the NMORR is not a funding agency because his office has received \$15 billion worth of requests for the \$58 million available.

Ms. Cook explained that the individual and business benefits are not reimbursements like the reimbursements received for state projects; some are direct (e.g., food stamps) and some are tax incentives (e.g., new house credit). Governor Anaya added that a project does not have to be finished in order to receive the reimbursement. He also added that reimbursement payments can be scheduled weekly or even daily. There was some discussion among task force members regarding qualified school construction bonds, with the DFA expressing a concern that the units are too small to draw any bidders.

There being no further business, the task force meeting adjourned at 12:05 p.m.

Revised: August 24, 2009

**TENTATIVE AGENDA
for the
TWENTY-THIRD MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**August 24, 2009
State Capitol, Room 307
Santa Fe**

Monday, August 24

- 10:00 a.m. **Call to Order**
- 10:10 a.m. **Qualified School Construction Bonds: Recommendations for Legislation**
—Task Force Members and Staff
- 11:00 a.m. **Revenue Projections**
—Olivia Padilla-Jackson, Director, State Board of Finance
—Becky Gutierrez, Senior Economist, Legislative Finance Committee (LFC)
—Daniel White, Senior Economist, LFC
- 11:30 a.m. **Public School Capital Outlay Council (PSCOC) 2009 Funding Cycle Awards**
—David Abbey, Chair, Awards Subcommittee, PSCOC
—Katherine Miller, Chair, PSCOC
- 12:30 p.m. **Lunch**
- 1:30 p.m. **Public School Facility Maintenance: FIMS Implementation, Equipment
Inventory Progress and Preventive Maintenance Plans**
—Bob Bittner, Maintenance Manager, Public School Facilities Authority (PSFA)
—Les Martinez, Maintenance Specialist, PSFA
—School District Staff
- 3:00 p.m. **Charter School Facility Issues**
—Sue Griffith, Registered Lobbyist
—Lisa Grover, Ph.D., Executive Director, New Mexico Coalition of Public
Charter Schools (NMCPCS)
—Patty Matthews, Esq., Legal Counsel, NMCPCS
—Antonio Ortiz, Director, Capital Outlay Bureau, Public Education Department
- 4:30 p.m. **Adjourn**

**MINUTES
of the
TWENTY-THIRD MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**August 24, 2009
State Capitol, Room 307
Santa Fe**

The twenty-third meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, at 10:15 a.m. on Monday, August 24, 2009, in Room 307 of the State Capitol.

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Sen. Vernon D. Asbill
Rep. Keith J. Gardner
Cecilia J. Grimes
Leonard Haskie
Robbie Heyman
Sen. Timothy Z. Jennings
Rep. Larry A. Larrañaga
Rep. Ben Lujan
Kilino Marquez
Don Moya for Secretary Veronica Garcia
Mike Phipps
Rep. Henry Kiki Saavedra
Ernesto Valdez

Absent

Dr. Anna Lamberson
Sen. Lynda M. Lovejoy
Elizabeth Marrufo
Rep. W. Ken Martinez
Secretary Katherine B. Miller
Dr. John Mondragon
Bud Mulcock
Sen. Sander Rue
Sen. John Arthur Smith

Guest Legislator

Rep. Jimmie C. Hall

Staff

Sharon Ball, Legislative Council Service (LCS)
Tim Berry, Public School Facilities Authority (PSFA)
Robert Gorrell, PSFA
Frances Maestas, Legislative Education Study Committee (LESC)
Antonio Ortiz, Public Education Department (PED)
Aldis Philipbar, LCS
Paula Tackett, LCS

Guests

The guest list is in the original meeting file.

Monday, August 24

Qualified School Construction Bonds: Recommendations for Legislation

Ms. Ball explained briefly the substance of and rationale for the Qualified School Construction Bonds Act, which was passed by the 2009 legislature. She said that the act amends the Public School Code and Section 6-15-5 NMSA 1978 to authorize the necessary structure to implement the "qualified school construction bonds" and the "build America bonds" programs included in the federal American Recovery and Reinvestment Act of 2009 (ARRA) signed into law on February 17, 2009 (also called the "stimulus bill"). Qualified school construction bonds are designed to give the state and school districts the authority to issue tax-free bonds for school construction projects. She said that the authorization would be for \$11 million in fiscal year 2010 and \$11 million in fiscal year 2011. She also noted that, as one of the 100 largest school districts in the nation, Albuquerque Public Schools (APS) had been allocated directly approximately \$44.6 million for its own issuance of tax-free bonds.

Ms. Ball indicated that both Department of Finance and Administration and State Board of Finance (BOF) staff had expressed concerns about some of the provisions of the bill as it was signed into law, particularly the language that requires the Public School Capital Outlay Council (PSCOC) to make the allocations on a pro rata basis in the event that districts apply for more than the \$11 million available. She added that some members had expressed an interest in requesting the governor to include the issue on the call for the special session.

Gary Carlson, contract drafter, LCS, reviewed the bill draft with task force members. He said that the major change occurs at the end of the bill draft in Section 4, Subsection F, which clarifies the criteria for distribution of the allocation. He said that federal law requires bond proceeds to be used within three years of their issuance.

He said that additional changes in the bill include changing language to reflect that the amount of the allocation that New Mexico receives is based on a calendar year and that any unused allocation will revert back to the Public School Capital Outlay Fund. In response to a question from a task force member, Mr. Carlson clarified that nothing in the bill affects the \$44.6 million allocated to APS or prevents APS from applying for additional allocations from the state share. Ms. Tackett clarified that the bill does not increase bonding capacity; it simply allows for the district to issue its bonds tax free.

Olivia Padilla-Jackson, director, BOF, said that the pro rata language would force the PSCOC to allocate really small amounts to many schools. She said that the bonds would be more marketable if the BOF could merge larger amounts.

Revenue Projections

Becky Gutierrez, senior economist, Legislative Finance Committee (LFC), said that the price of natural gas has been revised down from \$4.80 to \$4.30 per thousand cubic feet for FY 2010, but that prices are expected to increase for FY 2011. She said that gas prices have fallen below \$3.00 over the past several days due to high storage levels and a lack of industrial demand, though the New York Mercantile Exchange (NYMEX) is expecting a sharp increase in prices by next spring. Ms. Gutierrez noted that oil prices have rebounded to around \$65.00 per barrel after falling to the mid-\$30.00 range in the early spring. She said that the price of oil has been revised

from \$47.00 to \$63.00 per barrel in FY 2010 and from \$53.00 to \$70.00 per barrel in FY 2011. She added that higher oil prices and lower gas prices offset each other, so FY 2010 revenue estimates could not be revised significantly upwards.

Ms. Padilla-Jackson discussed supplemental severance tax bond (STB) bonding capacity with the task force. She said that senior STB capacity is based on an amount that allows the total senior STBs outstanding to be serviced with 50 percent of the severance tax revenues. She said that supplemental STB capacity is based on an amount that allows the total supplemental notes, when added to all other STB debt service, to total no more than 95 percent of prior fiscal year revenues. She explained that revenues are expected to decline sharply in 2010, so the board will not be able to fund bonds to the previous high levels. She said that the BOF will be able to fund only what is available in cash, an estimated \$71 million. She noted that supplemental STBs are expected to rebound over a five-year period, and she discussed some long-term bonding scenarios.

Daniel White, senior economist, LFC, said that the revenue forecast for last year was off by \$50 million to \$100 million and that there was more money than expected. However, he emphasized that, with such an inaccurate forecast, the state could easily have been short that amount rather than over. He said that the LFC is working on a new formula with other agencies to ensure a more accurate forecast.

In response to a question about how using the reserves affects bonding, Ms. Padilla-Jackson said that the BOF is looking to see what other states have done. She said that the rating agencies want to see a plan for building the reserves back up, so she suggested incorporating that into any spending plans. In response to additional questions, Ms. Gutierrez said that the LFC relies on national data for estimates on prices. She added that the state is down from between 95 to 99 rigs last year to about 42 this year with no new pipelines. Ms. Gutierrez also said that she did not have the information on the amount of gas reserves in the state, but that she would get that data to the task force. Ms. Padilla-Jackson suggested monthly forecasts to avoid any misjudgments in bonding capacity.

PSCOC 2009 Funding Cycle Awards

David Abbey, chair, Awards Subcommittee, PSCOC, said that the PSCOC awarded \$188,897,162 in the following distributions:

- \$131 million in state funds, net of offsets and waivers, for standards-based awards to 24 projects in 15 school districts;
- \$48.58 million reserved for possible out-of-cycle awards to nine projects in eight districts;
- \$931,562 from the Charter School Fund to the Anansi Charter School in Taos;
- \$8.1 million in state funds for facility leasing assistance to 69 charters and eight public schools in 21 districts; and
- \$285,600 in state funds for demolition of old and abandoned facilities to Tohatchi Middle School in Gallup.

Mr. Abbey noted that it was a difficult funding cycle, given the broad economic decline in late 2008 and the corresponding reduction in severance tax revenues that fund public school capital outlay in New Mexico. He added that, with out-year commitments to later phase projects

alone totaling about \$300 million, the need for diligence in eliminating idle funds, while also seeking new approaches for providing funds, has never been greater. He added that the PSCOC prioritized funding for projects that were fully "shovel ready". Mr. Abbey reviewed the adjusted facility condition index (FCI), saying that the FCI formula is the total cost of repairing all school buildings, and that the rule of thumb has been that when a facility has an individual score greater than 60 percent, it prompts the council to look at whether it is more cost effective to replace, rather than repair, the facility. He also noted that the average FCI score has dropped from 172 percent in 2004 to about 64 percent currently. He said that these declines correlate directly to the record levels of public school infrastructure funding from 2002 through 2007.

Additionally, Mr. Abbey said that seven completely new schools and 13 renovated schools funded to some extent with PSCOC funds will open this school year. He also discussed priorities in project funding for 2010, which include expectations for construction funding, a requirement for completion of one project phase before funding is requested for the next phase and project scopes defined by the community before entering into a design professional and/or lease agreement. He also noted that charter schools are now integrated into the standards-based process for capital outlay and that, by statute, all charters will be required to be in public buildings by 2015. Mr. Abbey also touched on the standards-based funding formula, noting that the aim originally was for the state to have an average 50 percent share in a project, but conditions in the current economy have resulted in an increase in the state share. He suggested that the PSCOC work with experts in this area to examine possibilities for more reliance on the local share. Ms. Tackett added that the PSCOC had discussed reviewing the funding formula and that any review or recommendations should come back to the task force.

Some concerns were raised about charter school funding by task force members regarding fiscal accountability and cost effectiveness. There was also a concern that new schools scheduled to open in 2010 may sit empty or be under-utilized because of a lack of funding for operations. There was some discussion about the definition of a "shovel ready" project, with Mr. Abbey explaining that "shovel ready" means that the project is ready to issue a bid for construction. Mr. Gorrell added that a "shovel ready" condition really occurs 18 months to 24 months before construction begins and that local voters have approved local bonds and the design has been completed. In response to other questions and concerns, Mr. Abbey said that waiver of a district's share of project funding is based on the assumption that waivers supplement the local match when a district is bonded to capacity. Mr. Abbey also said that the legislature could look at freezing FY 2010 funds and may consider changing the funding source from supplemental STBs to general obligation bonds. An interest in allowing districts to use SB 9 and HB 33 money to pay for maintenance salaries was also expressed.

Public School Facility Maintenance: FIMS Implementation, Equipment Inventory Progress and Preventive Maintenance Plans

Bob Bittner, maintenance manager, PSFA, said that in 2003 the PSFA began requiring all districts to have a preventive maintenance (PM) plan in place and to update the facility maintenance database as facility changes occur. He said that all district PM plans must be updated at least every 12 months. He said that the PM plan must specify the broad purpose of the its maintenance department and list the specific goals to be undertaken during the subsequent year. He said that the district must provide an organizational chart depicting the district's supervisory chain for directing maintenance activities and listing general responsibilities of each

of the maintenance groups. He said the district must also provide its priorities for accomplishment of maintenance work and describe procedures for maintenance actions to schedule and complete maintenance work. In addition, Mr. Bittner said that the district must provide its schedules by prescribed frequencies for the recurring inspection and maintenance of all types of building systems and equipment installed in district facilities. He said that, in addition, the district must list each of the specific inspections and PM tasks to be scheduled for every type of building component or equipment item as well as the scheduled standard duties for custodial personnel at each facility. Finally, the district must include in the PM plan a list of all major PM and repair projects expected to be accomplished in the next few years and a summary page listing dates of last review of the PM plan and any revisions.

Les Martinez, maintenance specialist, PSFA, discussed the New Mexico Facility Information Management System (FIMS) software provided through Public School Capital Outlay Fund dollars to each public school district. He said that the maintenance software streamlines the entire work order process from request to completion. He also explained that the PM software helps create, schedule, assign and manage recurring PM tasks for all district facility equipment, and the utility software tracks and analyzes utility consumption and costs to identify savings opportunities. Mr. Bittner noted that the PSFA assisted with compiling equipment and facility inventories for all the districts and imported the data into FIMS to create a PM plan for each piece of equipment. Mr. Martinez added that the districts do not really see the benefits of FIMS until the data are entered. Mr. Bittner also added that the PSFA is working to develop and implement a comprehensive training program with the Construction Industries Division of the Regulation and Licensing Department for basic maintenance tasks.

The task force then heard from several superintendents about their experiences with FIMS. Many stated that the software had extended the life of their school equipment and provided for flexibility in scheduling maintenance. Patty Harrelson, Regional Education Cooperative (REC) #6 director, said her REC has a former superintendent to work as a liaison with the PSFA, has access to the software and can travel to smaller districts that do not have a maintenance supervisor to help complete and enter work orders.

Charter School Facility Issues

Sue Griffith, registered lobbyist, noted that statute normally exempts schools from paying property taxes. She said that some of her clients are being required to pay property taxes from their lease and/or state equalization guarantee funds because they are leasing property from private landlords, who are passing along the cost of property taxes. She said that in 2009, legislation was introduced to exempt charters from property taxes, but the bill failed and an attorney general's opinion on the matter was ambiguous. She said that affected charter schools are hoping that legislation can be enacted to exempt public schools in leased buildings from paying property taxes.

In response to an issue raised by the panel about the Georgia O'Keeffe Museum and other organizations being exempt from property tax because of their qualification as an educational facility, Representative Gardner said the comparison is not the same. Because the museums own some of those properties, there is no violation of the anti-donation clause. He discussed the problems associated with exempting a private property owner who leases a building for educational purposes for a short, or even long, period of time because of the function of the

building. He said that it would be disparate taxing and could lead to issues with the anti-donation clause. He urged the charters to look at their lease agreements and work the problem out there. Dr. Evalyne Hunnemuller, DATA Charter operator, noted that there is an added cost to the property tax assessment based on building renovations, equipment, etc., which can be deducted by the school, but it is very minimal.

Lisa Grover, Ph.D., executive director, New Mexico Coalition of Public Charter Schools, addressed the second part of the presentation, saying that in 2006, legislation was passed requiring school districts to share HB 33 funds with charter schools, and in 2009, legislation was passed requiring districts to share SB 9 funds. Mr. Ortiz said that some districts recently had HB 33 ballot questions but did not include the charter schools in the proclamation. He said that he did not believe this was done intentionally because the district does not even include the names of its own schools in the proclamation, but that it may cause problems. He said that another issue relates to state-chartered charter schools. Mr. Ortiz said that another problem has to do with portables. He said that many charters want to enter into a lease-purchase agreement for portables, but that the Public School Lease Purchase Act only applies to real property, and portables are considered personal property, so the task force may want to look at the issue. After some discussion, Dr. Grover suggested changing the statute to include the "useful life" of a portable. Dr. Hunnemuller said that the districts are looking for direction from the legislature and asked what recourse a charter school has if the district does not include the charters. Mr. Moya, deputy secretary, PED, added that the districts could still share the funds even if the charters are not specifically named because they are still considered local schools, but the problem is with the state-chartered charter schools. Dr. Grover thanked the legislature and the task force for their support.

There being no further business, the task force adjourned at 4:20 p.m.

TENTATIVE AGENDA
for the
TWENTY-FOURTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

September 17-18, 2009
State Capitol, Room 307
Santa Fe

Thursday, September 17

Meeting of the work group to study the costs and benefits of the statutory requirement for the bonding of subcontractors on public works building projects and to develop a process for determining a prequalified preferred bidder list — separate agenda.

Friday, September 18

10:00 a.m. **Call to Order**

10:10 a.m. **Facilities Condition Index (FCI) and New Mexico Condition Index: History, Status and Targets**

—Robert Desiderio, Esq., Dean Emeritus, University of New Mexico, School of Law, and Chair, Public School Capital Outlay Task Force, 1999-2005

—Paula Tackett, Esq., Vice Chair, Public School Capital Outlay Council (PSCOC)

—Robert Gorrell, Director, Public School Facilities Authority (PSFA)

12:00 noon **Update from Work Group to Examine Costs and Benefits of Statutory Subcontractor Bonding Requirements and to Develop a Process for Determining a Prequalified Preferred Bidder List**

—Paula Tackett, Esq., Vice Chair, PSCOC

12:30 p.m. **Lunch**

2:00 p.m. **PSCOC Projects Under Contract**

—Robert Gorrell, Director, PSFA

—Jeff Eaton, Chief Financial Officer, PSFA

3:30 p.m. **Potential Legislation for the 2010 Session: Preliminary Discussion**

—Task Force Members and Staff

4:00 p.m. **Adjourn**

**MINUTES
of the
TWENTY-FOURTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**September 18, 2009
Room 307, State Capitol**

The twenty-fourth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, at 10:20 a.m. on Friday, September 18, 2009, in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Sen. Vernon D. Asbill
Rep. Keith J. Gardner
Cecilia J. Grimes
Leonard Haskie
Robbie Heyman
Rep. Larry A. Larrañaga
Sen. Lynda M. Lovejoy
Rep. Ben Lujan
Kilino Marquez
Dr. John Mondragon
Bud Mulcock
Antonio Ortiz for Secretary Veronica Garcia
Sen. Sander Rue
Ernesto Valdez

Absent

Sen. Timothy Z. Jennings
Dr. Anna Lamberson
Secretary Katherine B. Miller
Mike Phipps
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith

Guest Legislator

Rep. Jimmie C. Hall

Staff

Sharon Ball, Legislative Council Service (LCS)
Tim Berry, Public School Facilities Authority (PSFA)
Robert Gorrell, PSFA
Aldis Philipbar, LCS
Paula Tackett, LCS

Guests

The guest list is in the original meeting file.

Friday, September 18

Facilities Conditions Index (FCI) and the New Mexico Conditions Index: History, Status and Targets

Ms. Tackett, vice chair, Public School Capital Outlay Council (PSCOC), told task force members that she and Robert Desiderio, dean emeritus, University of New Mexico School of Law, and chair of the PSCOOTF from 1999 to 2005, would take them on a trip down memory lane — particularly for the new members — discussing the history of the Facilities Condition Index (FCI), where it is now and how it got there. She said that while the state district court in the *Zuni* lawsuit had adopted the court-appointed special master's report regarding the state's system for funding public school capital outlay, both the court and the special master had expressed serious concerns about the disequalizing effect of special legislative appropriations to schools and districts. She reported that even though the court indicated the state had moved forward in this area, a part of the court's order required the state to correct past inequities.

Mr. Desiderio said that the *Zuni* lawsuit was behind the creation of the adequacy standards and that every school should meet a certain standard of adequacy. He said that the state looked at methodologies to rate schools objectively and teamed with professional consultants, 3-D International (3DI), to develop a rating system. Mr. Desiderio said the process began by evaluating every school facility; then a standard was developed based on national BOMA standards and the lifecycle of the facility for every school building in the state. He said that as the state had developed the adequacy standards, it had to go beyond the many national standards to include issues such as space requirements. He noted that the FCI was developed by 3DI on national standards and that the New Mexico Condition Index (NMCI) developed by the PSCOC incorporated the state adequacy standards, which included New Mexico-specific issues such as space. He also added that 3DI developed a very sophisticated computer program in order to maintain the ongoing FCI database.

Mr. Gorrell described the PSFA's process for evaluating schools, including renovations, new construction and maintenance.

The panel then answered questions from the task force. There was some discussion surrounding the use of SB 9 funds for some operational costs. Mr. Gorrell was requested to look at the PSFA's records to see which, if any, schools are in danger of not opening for the 2010 school year because of a shortage of general fund operating revenues. In response to a question from a task force member, Tanya DeLara, PSFA, said that the PSFA needs \$307 million per year (state and local share) in order to remain at 36% of NMCI. Ms. Tackett explained that funding for the state share of PSCOC grants comes from supplemental severance tax bonds (SSTBs).

Mr. Heyman, public member, explained that the SSTB program was developed and supported by the original Public School Capital Outlay Task Force in 2001 and 2002.

He said that the first PSCOC bonds were long term, but reliance on long-term bonds changed over time when "sponge" capacity became more important. He noted that, currently, the importance is now shifting back to long-term bonds. He also expressed some concern with the constitutional provision of the SSTB program. Ms. Tackett then explained the FCI graph provided by the PSFA, stating that the graph shows growth from 28% of New Mexico schools meeting national standards in 2005-2006 to 45.5% now. Some discussion about formula issues came up because some believed that the state was putting in more than its 50% share, but Ms. DeLara explained that the PSCOC is contributing only an average of 39% per year over the last four years for all school construction, which includes PSCOC and other school projects.

Update from Work Group to Examine Costs and Benefits of Statutory Subcontractor Bonding Requirements and to Develop a Process for Determining a Pre-Qualified Bidder List

Ms. Tackett reviewed who was in attendance at the work group meeting. She said that discussion surrounded such issues as bond rating, hard bids, sureties and raising the bonding limit. She said that everyone was concerned about cost and quality, protecting employees and hiring locally. She added that staff was asked to look at Massachusetts, the University of New Mexico Hospital (UNMH) and the General Services Department to come up with a viable mechanism for pre-qualification. Ms. Tackett said that the work group agreed on the positive effect of raising the state standard and that there would be no limit on the number of those involved as long as they met the standard. She noted that the work group would like to continue to meet.

The task force then engaged in some discussion about the work group meeting. Concerns were expressed about rural contractors being cut out if standards are set too high. It was also noted that the state has spent \$9 million on subcontractor bonding, but no bonds have been called.

On a motion made by Representative Gardner and seconded by Senator Asbill, the task force approved an extra meeting for the work group.

PSCOC Projects Under Contract

Jeff Eaton, chief financial officer, PSFA, said that the PSFA is expecting \$20 million per month in awards in 2010 and that there are 89 active projects statewide. He said that the PSFA has been able to move quickly on the projects because the PSCOC awards have come in phases. He said that a district has to have funding in place in order to actually receive an award. Mr. Eaton reviewed a chart with the task force and pointed out projects that were awarded in July 2009. He explained that the PSCOC makes awards and then certifies to the State Board of Finance the need for funding for projects. Mr. Gorrell explained that the awards are based on forecasts of available revenue from severance tax bonds. Mr. Eaton said that after being notified of an award, an award recipient enters into a contract and then pays when specified stages of work are completed.

Mr. Gorrell and Mr. Eaton then answered questions from task force members. Mr. Eaton explained that "project award not accepted by district" on the table means that the project may not have local funding. In response to a question from a task force member, Mr. Berry said that bonds are often sold with contingencies. Mr. Eaton said that about \$12 million in project balances have been recycled. Mr. Gorrell explained that schools that do not pass bonds do not lose their place in the queue. In response to a question about the state putting in less of a percentage, Mr. Gorrell said it would be difficult to replace state funding with local funding. He also explained that if an SB 9 vote fails, it usually means that the community is making a statement about a larger issue, but, despite the economy, most districts have been doing a good job of passing bonds. Mr. Gorrell said that the PSFA has to look at charter schools alongside all other schools for equity, but that it also has to take the charter's mission into consideration. Ms. DeLara said that all schools have been surveyed, but that the queue may seem skewed because schools that were built prior to the implementation of the adequacy standards may still look good but do not meet the educational adequacy standards.

Potential Legislation for 2010 Session: Preliminary Discussion

Ms. Tackett and Ms. Ball recapped issues that have been identified for potential bill drafts, including:

- subcontractor bonding;
- qualified school construction bonds, including raising the limit to \$250,000;
- use of SB 9 for maintenance and insurance for two years;
- rural tax credit;
- lease-purchase for "useful life" of portables for charter schools; and
- language that would allow the Public Education Department to deny a charter if its proposed facility does not meet adequacy standards.

Mr. Ortiz expressed concerns about the issue of requiring districts to include charters in their HB 33 proposals.

There being no further business, the task force adjourned at 2:30 p.m.

Revised: December 10, 2009

**TENTATIVE AGENDA
for the
TWENTY-FIFTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**December 11, 2009
Room 307, State Capitol
Santa Fe**

Friday, December 11

- 9:30 a.m. **Call to Order**
Approval of July, August and September Minutes
- 9:45 a.m. **Adequacy Funding Formula: History and Necessary Components**
—Silvio Flaim, Economist, Los Alamos National Laboratory
- 10:45 a.m. **Public School Capital Outlay Council (PSCOC) Award Contingencies:
A Discussion**
—Tim Berry, Deputy Director, Public School Facilities Authority (PSFA)
—Paula Tackett, Vice Chair, PSCOC Awards Subcommittee
- 11:30 a.m. **Roadblocks to Program Implementation**
—Bob Gorrell, Director, PSFA
—Tim Berry, Deputy Director, PSFA
- 12:00 noon **Update from Work Group: Subcontractor Bonding Requirements and
Developing a Process for Pre-Qualified Bidders**
—Steve Crespin, Executive Director, Mechanical Contractors Association of
New Mexico
—Norm Gabel, Jaynes Corporation
- 12:30 p.m. **Lunch**
- 1:45 p.m. **Legislation for the 2010 Session: Discussion**
—Task Force Members
- 4:00 p.m. **Adjourn**

**UNAPPROVED MINUTES
of the
TWENTY-FIFTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**December 11, 2009
Room 307, State Capitol
Santa Fe**

The twenty-fifth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, at approximately 9:45 a.m. on Friday, December 11, 2009, in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Sen. Vernon D. Asbill
Rep. Keith J. Gardner
Rep. Larry A. Larrañaga
Sen. Lynda M. Lovejoy
Rep. Ben Lujan
Kilino Marquez
Rep. W. Ken Martinez
Katherine B. Miller
Dr. John Mondragon
Mike Phipps
Sen. Sander Rue
Rep. Henry Kiki Saavedra
Ernesto Valdez

Absent

Cecilia J. Grimes
Lisa Grover
Leonard Haskie
Robbie Heyman
Sen. Timothy Z. Jennings
Elizabeth Marrufo
Don Moya for Veronica Garcia
Bud Mulcock
Sen. John Arthur Smith

Staff

Sharon Ball, Legislative Council Service (LCS)
Tim Berry, Public School Facilities Authority (PSFA)
Robert Gorrell, PSFA
Frances Maestas, Legislative Education Study Committee (LESC)
Aldis Philipbar, LCS
Paula Tackett, LCS

Guests

The guest list is in the original meeting file.

Friday, December 11

On a motion by Senator Asbill, seconded by Representative Larrañaga, minutes from July, August and September were approved.

Adequacy Funding Formula: History and Necessary Components

Dr. Silvio Flaim, economist, Los Alamos National Laboratory, explained the history and the necessary components of the funding formula and the way in which any changes to it might affect the judge's order in the *Zuni* lawsuit. He said that the new formula was developed to be easy to understand and to be viewed as fair by the court. Dr. Flaim said that differences in tax capacity are the primary reason for establishment of a formula. He noted that the PSCOOTF in 2001 agreed that relative assessed value per member is a valid measure of tax capacity and that it should be a core factor in the state capital outlay funding formula. He noted that the PSCOOTF also recognized the importance of local efforts in the funding of school capital projects, both in terms of sharing the financial burden with the state and retaining local involvement and pride in school facilities. He explained that in 2001, the formula did not include a mechanism to take into account other revenues available to a school district for capital outlay projects, such as direct legislative appropriations. The report of the special master, however, which the district court adopted in 2002, found that direct legislative appropriations conflict with the state constitutional provision that requires the state to provide a sufficient uniform system of education.

In 2002, then, Dr. Flaim explained, the PSCOOTF endorsed legislation to establish a formula that would continue to rely primarily on the relative wealth of a school district as measured by assessed property tax value per student; however, the method of calculating this factor was changed to a more sophisticated method that better reflected the relative disparity in assessed value per student across school districts. Also, the formula was changed so that the maximum state share of the poorest districts could equal 100 percent. Under the previous formula, a 75 percent weighting applied to the assessed value factor so that the maximum a district could receive based solely on its relative assessed value was 75 percent.

Dr. Flaim explained that the change to the formula was to replace the bonded indebtedness of a district to measure "local tax effort" with a factor that measures the total mill levy applicable to residential property of the district for education purposes, including bond levies, educational technology levies and HB 33 (Public School Buildings Act) levies. This factor applies as a bonus, with those school districts that have exceeded the statewide average mill levy for education receiving a greater state share of funding of up to five percent.

In terms of offsets for direct appropriations, Dr. Flaim said that the offset was based on the state share formula and equals 100 percent minus the state share percentage calculated by the formula times the amount of the legislative appropriation. He explained that this methodology has less impact on reducing the total amount of funds going to public school facilities than a 100 percent offset and reinforces the equity aspect of the formula by allowing poorer school districts to keep more of their direct appropriations. At this time, direct legislative appropriations for capital improvement projects were separated from those for educational technology, with a separate offset applied against distributions from the Educational Technology Fund for education. Ms. Ball, researcher, LCS, added that educational technology direct appropriations are no longer taken against PED educational technology distributions but are taken against any Public School Capital Outlay Council (PSCOC) grants in the same way that other direct appropriations produce an offset.

Dr. Flaim also said that when the original bill to change the formula was written, the local economic impact of investing in schools was not considered; so he suggested that the task force

may want to take a look at this issue. He said that the funds have an effect on communities as soon as the money is spent, with a multiplier effect of about 2.5. Task force members expressed concern over making any changes to the current formula given the current economic outlook. Mr. Gorrell, director, PSFA, said that the PSFA can track where revenues from school construction go and pointed out that many small communities do not see as much benefit from investments in their schools because they have to buy supplies from bigger cities.

Dr. Flaim pointed out that the formula can be changed to account for those discrepancies and that the economic models would account for where workers come from, which is important for communities that do not have an adequate work force. He added that the task force may wish to revisit the formula because of the current state of the economy and could warrant quarterly, rather than annual, updates. Ms. Tackett, director, LCS, said that the task force needs to move forward in the same manner as the court wants and suggested that the task force consider looking at the disparity between valuations. Dr. Flaim added that the driving force behind establishing the new formula was the *Zuni* lawsuit, and, so, the concern was with those districts with low assessed valuation per student. He noted that, perhaps now, the focus should be shifted to the districts with higher property tax valuations per student because the current methodology is a disincentive for districts at a 90 percent match to participate. He suggested that if the task force decides to increase the local share, the effect on those districts should be evaluated.

PSCOC Award Contingencies: A Discussion

Mr. Berry, deputy director, PSFA, said that the purpose of contingencies is to prevent funds from sitting unused because the project for which the grant award is made is not yet ready to begin. He said that some contingencies apply to the early stages of a project while others apply to phase 2 (the construction phase) of a project. Mr. Berry then reviewed some of the contingencies with the task force. In response to a task force question, Ms. Tackett explained that a completed audit shows that a local match is in place for the project. In response to discussion by task force members, Ms. Tackett explained that the law does not require contingencies to be approved by the PSCOOTF, but, perhaps, the practice of adding them to PSCOC awards should be reviewed. Mr. Berry added that some of the contingencies emerged from issues brought to the task force. In response to a discussion about requiring districts to complete audits to fund a project, Secretary Miller said that the law requires audits to be submitted by a certain time and that it is the responsibility of the PSCOC to make sure that a district is financially solvent enough to handle a project. Discussion continued about the role that the PSCOC and the PSCOOTF should play with regard to contingencies, and the task force requested periodic updates on any changes made to the contingencies.

Roadblocks to Program Implementation

Mr. Gorrell reviewed roadblocks to standards-based program implementation with the task force. He said that these roadblocks include a lack of adequate funding from the state, which results in the loss of economic benefits to the state and local communities; uncertainty over local share bond elections; and a lack of local funding for necessary infrastructure. Other roadblocks include the entry of unqualified contractors in the school/commercial market; flawed use of the qualifications-based procurement process; funding issues regarding maintenance and sustainability of existing schools; and increased liquid waste requirements in rural areas.

Update from Work Group: Subcontractor Bonding Requirements and Developing a Process for Pre-Qualified Bidders

Steve Crespin, executive director, Mechanical Contractors Association of New Mexico, reviewed some of the discussion of the subcontractor work group, which met on September 17 and November 9, 2009 (see attached meeting agendas and membership list). He stated that, according to his calculations, the subcontractor bonding requirement does not add 1.5 percent to the cost of construction, as asserted by the PSFA. Jeep Gilliland, AFL-CIO, said that a pre-qualified bidder list of subcontractors and general contractors would save the state money on construction and, with a valid list, would nullify the need for subcontractor bonding. Norm Gabel, Jaynes Corporation, added that the work group is looking at a pre-qualified bidder term of one to two years. He also added that the current bonding capacity of \$125,000 is pretty stringent and could be doubled. He emphasized that general contractors need more protection than is currently available. In response to a question from a task force member, Mr. Crespin noted that while no bonds have been called due to a lack of performance, the state has put \$9 million into subcontractor bonding for bonds that are not going to be called. He also said that many insurance companies are tightening requirements because, given the current economic downturn, many unqualified contractors are bidding on public projects. Mr. Gorrell added that the PSFA has not seen any increase in the quality of construction with subcontractor bonding and that a pre-qualified bidder list could help the level of quality. Ms. Tackett noted that the work group has a number of additional issues that need to be resolved before repealing the subcontractor bonding requirement. She said that the work group should continue to meet during the 2010 interim to attempt to resolve this issue. Mr. Gilliland agreed with Ms. Tackett and said that he would like to see a pre-qualified bidder list in place now, but that working out the details and the rulemaking process will take more time than the group had during the 2009 interim.

Legislation for the 2010 Session: Discussion

The task force discussed the following legislation for possible endorsement:

- enact new legislation to require energy efficiency standards for new buildings of 3,000 or more square feet;
- amend the Public School Capital Outlay Act (PSCOA) to eliminate funding to demolish buildings;
- amend the PSCOA to allow for adjustments for school facilities in certain remote areas;

- amend the PSCOA to extend the time period for roof repairs from 2012 to 2015;
- amend the PSCOA to clarify the definition of "preventive maintenance";
- amend the PSCOA to require that funds distributed to the Construction Industries Division of the Regulation and Licensing Department and the state fire marshal must be used to supplement, rather than supplant, appropriations to those entities;
- amend the PSCOA to require the PSFA to administer procurement for certain emergency projects;
- amend the Charter Schools Act to require that, on or after July 1, 2010, a new charter school cannot open and an existing charter school cannot relocate if the facilities of the new charter school or the facilities into which the existing charter school will relocate receive a rating lower than the average New Mexico condition index (NMCI) rating for all New Mexico public schools for that year; and
- amend the Charter Schools Act and the school construction code to require local school boards and governing bodies of charter schools to obtain approval of a lease agreement

or lease-purchase agreement from the PSFA director by providing the director assurances that the building meets applicable statewide adequacy standards and the educational occupancy standards under the New Mexico construction codes or that the building can be, at a reasonable cost, brought to those standards and the building ranks at or above the current average NMCI score for all public school facilities statewide.

Following the discussion, task force members agreed by consensus to have staff draft discussion versions of the bills and to establish a subcommittee to meet the Sunday before session, January 17, 2010, to decide on specific legislation for PSCOOTF endorsement. The co-chairs indicated that all members of the task force were welcome to participate on the subcommittee.

There being no further business, the task force adjourned at 3:37 p.m.

TENTATIVE AGENDA
for the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE (PSCOOTF)

Work Group to Study the Costs and Benefits of the Statutory Requirement for the Bonding of Subcontractors on Public Works Building Projects and To Develop a Process for Determining a Prequalified Preferred Bidder List

September 17, 2009
State Capitol, Room 307
Santa Fe

Thursday, September 17

- 10:00 a.m. Welcome and Introductions
 —Paula Tackett, Esq., Vice Chair, Public School Capital Outlay Council
- 10:10 a.m. **Purpose and Background of the Work Group**
 —Senator Vernon D. Asbill
- 10:30 a.m. **Work Group Meeting**
 —Paula Tackett, Moderator
- **Overview of Bonding Statutes**
 —Mike Menicucci, Esq., Calvert Menicucci
 —Mo Chavez, Superintendent of Insurance
 - **Impetus for Introduction and Passage of 2005 Subcontractor Bonding Legislation**
 —"Jeep" Gilliland
- 12:00 noon **Lunch (on your own)**
- 1:00 p.m. • **Cost of Bonding for K-12 Public School Projects**
 —Tim Berry, Deputy Director, Public School Facilities Authority
- **Discussion: Quality, Value, Risk, Employee Coverage for the General Contractor, the Subcontractor and the State and Political Subdivisions**
 - **Possible Alternative or Modification of Current Policy in Statute — Possible Options, Implementation and Funding of Options**
- 3:30 p.m. **Recap of Discussion and Possible Recommendations to the PSCOOTF — Set Next Meeting Date**
- 4:00 p.m. **Adjourn**

TENTATIVE AGENDA
For the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE (PSCOOTF)

Work Group To Study the Costs and Benefits of the Statutory Requirement for the Bonding of Subcontractors on Public Works Building Projects and To Develop a Process for Determining a Prequalified Preferred Bidder List

November 9, 2009
State Capitol, Room 307
Santa Fe

Monday, November 9

- 9:00 a.m. **Introductions**
—Paula Tackett, Esq., Vice Chair, Public School Capital Outlay Council
- 9:10 a.m. **Recap of Discussion, September 17 Meeting**
—Sharon Ball, Legislative Council Service Staff
- 9:30 a.m. **Work Group Meeting**
— Paula Tackett, Moderating
- What Works: Current Subcontractor Bonding Statute
 - Possible Changes or Modifications
- 12:00 noon **Lunch (on your own)**
- 1:15 p.m. **Reconvene**
- Alternatives or Modification of Current Policy in Statute: Possible Options, Implementation and Funding of Options
- 3:30 p.m. **Recap of Discussion and Possible Recommendations to the PSCOOTF**
- Adjourn**

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

Work Group To Study the Costs and Benefits of the Statutory Requirement for the Bonding of Subcontractors on Public Works Building Projects and To Develop a Process for Determining a Prequalified Preferred Bidder List

Ardist Allen, New Mexico Roofing Contractors
Senator Vernon D. Asbill
Mo Chavez, State Insurance Superintendent
Roberta Chavez, ABE of NM
Lisa Cooley, Associated General Contractors, Centennial Contractors
Steve Crespino, Mechanical Contractors of New Mexico
Norm Gabel, Jaynes Corp.
Representative Keith J. Gardner
Jeep Gilliland, AFL-CIO
Ronda Gilliland, AFL-CIO
Clay Gooden, Star Construction
Fred Gorentz, Gerald Martin Construction
Maria Granone, National Electrical Contractors Association, NM Chapter
Representative Larry A. Larrañaga
Speaker Ben Lujan
Dave McCoy, New Mexico Sheet Metal Contractors Association
Mike Menicucci, Calvert Firm
Representative Rick Miera
Larry Miller, General Services Department
Don Moya, Public Education Department (PED)
Bud Mulcock, New Mexico Coalition of School Administrators, PSCOOTF Member
Senator Cynthia Nava
Grace Philips, New Mexico Association of Counties
Mark Shumate, Shumate Construction

Staff:

Sharon Ball, Legislative Council Service (LCS)
Tim Berry, Public School Facilities Authority (PSFA)
Robert Gorrell, PSFA
Aldis Philipbar, LCS
Paula Tackett, LCS
Ovidiu Viorica, PSFA
Antonio Ortiz, PED

**TENTATIVE AGENDA
for the
FIRST MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
LEGISLATION SUBCOMMITTEE**

**January 17, 2010, 4:00 p.m.
State Capitol, Room 318
Santa Fe**

Sunday, January 17

- 4:00 p.m. **Call to Order**
—Senator Cynthia Nava, Co-Chair
—Representative Rick Miera, Co-Chair
- 4:05 p.m. **Review of Legislation and Recommendations**
—Subcommittee Members and Staff
- 6:00 p.m. **Adjourn**

**UNAPPROVED MINUTES
of the
FIRST MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
LEGISLATION SUBCOMMITTEE**

**January 17, 2010
State Capitol, Room 318
Santa Fe**

The first meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) Legislation Subcommittee was called to order by Senator Cynthia Nava, co-chair, at 4:15 p.m. on Sunday, January 17, 2010, in Room 318 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Sen. Vernon D. Asbill
Rep. Keith J. Gardner
Lisa Grover
Rep. Larry A. Larrañaga
Rep. Ben Lujan
Dr. John Mondragon
Don Moya for Secretary of Public Education Veronica Garcia
Sen. Sander Rue

Staff

David Abbey, Legislative Finance Committee (LFC)
Sharon Ball, Legislative Council Service (LCS)
Tim Berry, Public School Facilities Authority (PSFA)
Gary Carlson, LCS
Bob Gorrell, PSFA
Frances Maestas, Legislative Education Study Committee (LESC)
Aldis Philipbar, LCS
Paula Tackett, LCS
Peter Van Moorsel, LESC

Guests

The guest list is in the meeting file.

Sunday, January 17

Review of Legislation and Recommendations

Ms. Tackett, director, LCS, reviewed the legislation for the PSCOOTF endorsement with the subcommittee. She explained that the first bill, 202.179306.4, amends the Qualified School

Construction Bonds Act to clarify the methodology for allocation of bonding authority in case requests for bonding authority exceed the authority available. In response to a question from an audience member, Ms. Ball, researcher, LCS, clarified that language in the bill does allow for

cost savings through the combination of refunding bonds and reissuing bonds. The bill was approved for endorsement, and Representative Miera agreed to carry it.

Ms. Tackett explained that the next bill, 202.180239.4, requires cost savings through energy efficiency standards for certain new public buildings and certain additions and renovations to existing public buildings. She noted that the bill had been brought to the subcommittee for its information rather than for endorsement because it does relate to all buildings funded by supplemental severance tax bonds, not solely school buildings. Mr. Gorrell, director, PSFA, informed the subcommittee that many schools are already meeting these standards but that this bill would help schools to continue to move in the right direction. There was some discussion and concern expressed about whether the PSFA would have to abide by the Department of Environment rules under this legislation and whether that would be effective. In response to a subcommittee question, Ms. Ball said that the Sierra Club, endorsers of the bill, had been in contact with the governor and expected to get a message for the session.

The next bill Ms. Tackett addressed was the omnibus bill, 202.180594.1. She explained that it amends the Public School Capital Outlay Act to allow rather than require funding for Construction Industries Division inspections, extends the time line for roof repairs, eliminates the use of public school capital outlay funds for demolishing abandoned school buildings, allows for a rural tax credit, allows the PSFA to administer the procurement for certain emergency projects and repeals the measure passed during the first special session to allow \$29.0 million from the Public School Capital Outlay Fund to be used to pay school district property insurance.

After subcommittee discussion, on a motion by Representative Gardner, seconded and unanimously approved, the demolition language was removed from the omnibus bill discussion draft. There was discussion and there was concern expressed about the \$29 million disparity issue, but Ms. Tackett explained that it could be resolved through the funding formula. Mr. Moya, deputy secretary, Public Education Department (PED), noted that if the \$29 million is not repealed, the PED would need language in law to redistribute the funding. The bill was approved for endorsement, and Representative Miera agreed to carry it.

Ms. Tackett explained that the final bill, 202.180595.2, amends the Charter Schools Act to require that on or after July 1, 2010, a new charter school cannot relocate if the facilities of the new or relocating charter school do not receive a rating at or above the average New Mexico condition index average rating for all New Mexico public schools for that year. In addition, she said, the bill amends the Charter Schools Act and the school construction code to require local school boards and charter school governing bodies to obtain approval of a lease agreement or lease-purchase agreement from the PSFA director by providing the director assurances that the building meets applicable statewide adequacy standards and the educational occupancy standards under New Mexico construction codes, or that the building can be, at a reasonable cost, brought to those standards and the building ranks at or above the current average New Mexico condition index score of all public school facilities statewide. In response to the subcommittee, Ms. Tackett clarified that the Public School Capital Outlay Council will develop rules regarding the "reasonable time" and "reasonable cost" language in the bill. Senator Nava suggested addressing the issue of requiring State Board of Finance approval for charter school leases that exceed \$25,000 over a five-year period. The bill was approved for endorsement, and Senator Rue agreed to carry it.

There being no further business, the subcommittee adjourned at 5:45 p.m.

Appendix E

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

2010 ENDORSED LEGISLATION