

**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.