MINUTES
of the
EIGHTEENTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

September 29, 2008
Room 307, State Capitol
Santa Fe

The eighteenth meeting of the Public School Capitol Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, at 10:10 a.m. on Monday, September 29, 2008, 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
Cecilia J. Grimes
Leonard Haskie
Robbie Heyman
Scott Hughes for Secretary Katherine B. Miller
Rep. Larry A. Larrañaga
Sen. Lynda M. Lovejoy
Rep. Ben Lujan
Kilino Marquez
Dr. John Mondragon
Bud Mulcock
Antonio Ortiz for Secretary Veronica Garcia
Mike Phipps
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith
Ernesto Valdez

Absent
Sen. Timothy Z. Jennings
Dr. Anna Lamberson
Sen. Carroll H. Leavell
Rep. James Roger Madalena
Elizabeth Marrufo
Rep. W. Ken Martinez
Rep. W.C. "Dub" Williams

Advisory
Sen. Stuart Ingle

Staff
Sharon Ball, Legislative Council Service (LCS)
Aldis Philipbar, LCS
Paula Tackett, LCS

Guests

The guest list is in the original meeting file.

<u>September 29</u>

How the Public School Capital Outlay Council (PSCOC) and the Public School Facilities Authority (PSFA) Get the Projects Done — Ongoing Review and Monitoring

Jeffrey Eaton, chief financial officer, PSFA, presented the task force with a chart of all the PSCOC and PSFA projects. He said that the PSFA wants to know the pulse of the projects and that a color coding system is used to gauge the progress of the projects, with links to the meeting minutes. The PSFA produces monthly and quarterly reports for the PSCOC to review. Mr. Eaton then reviewed a few of the projects with the task force, including one at Carlos Rey Elementary School, which showed a funding amount of $6.9 million plus supplemental funding. Mr. Eaton also discussed the Reporting Matrix, which shows the different systems used and provides a record of requests by the districts.

Mr. Eaton, Bob Gorrell, director, PSFA, and Pat McMurray, senior facilities manager, PSFA, answered questions from the task force. In response to a question about why payment to contractors has taken so long, panel members explained that an application is required for payment and that there is a meeting each week for each project during which the payment application is reviewed. Payment is based on the percentage of the project that is completed, but if there is not an agreement between the district and the contractor of the percentage completed, then it takes time to resolve. Panel members said that contractors receive payment from the district and from the PSFA, and they are working on a new system for notifying contractors when the district has paid. Panel members also explained that uncommitted balances occur when the amount of the award is higher than the project costs. However, that balance reverts to the Public School Capital Outlay Fund. They also said that the PSCOC can only participate up to the adequacy standard and that PSFA contracts are very specific and only pay for equipment stored on site.

Mr. McMurray then discussed the process of completing school projects. He said that when a district requests a new school, the PSFA first asks the district to look at its utilization of existing space. He also said that defining the project up front gets better estimates. He said that the PSCOC generally requires projects to be 60 percent complete before the district can ask for more money. Mr. McMurray explained that the SIMS system is used once an architect is brought on, and, as the construction phase begins, different methods are considered. He added that after the walk-through inspection, the building can be occupied while the final touches are completed.

The task force members then brought up some concerns, including the apparent inflexibility of the adequacy standards; academies; and site selection for new schools. Panel members said that the PSCOC does not have condemnation authority, but the district does. The question of whether the same process applies to both small projects and large projects was also raised. Panel members said that a district can bring any issue about a decision made by the PSFA to the PSCOC. Also, adequacy standard issues continue to arise.

School District Capital Funding Sources

Paula Tackett, director, Legislative Council Service (LCS), explained SB 9 funding and restrictions. Antonio Ortiz, general manager, Capital Outlay Bureau, Public Education Department (PED), discussed the FY09 budget with the task force. He also presented a chart showing the 10-year history of SB 9 state matching funds. He pointed out that at one point the state match was 35 percent, but the gap between local funding and state match funding increased with the state putting in less money proportionally until the match is raised.

Sharon Ball, researcher, LCS, explained the purpose of levies, saying they were designed for communities with very large property tax bases. She said that when HB 33 was originally passed, it only allowed the use of 10 mills of HB 33 funds; however, that number grew to 15 mills in 1996. She added that no district has levied 10 mills, and, in fact, no district has levied more than five mills. Ms. Ball said the idea was to have pay-as-you-go capital outlay, but the idea does not work for districts with fast growth, as the Albuquerque Public Schools (APS) found in 1987. Eventually, the district had to go to SB 9 funds and general obligation bonds in addition to HB 33 funds.

Mike Phipps, superintendent, Artesia Public Schools, discussed the use of HB 33 funds in the Artesia public school system. He said that Artesia has had an HB 33 levy for almost 20 years with the purpose of having enough money on a pay-as-you-go basis. He said that Artesia has lots of oil and gas revenue. Mr. Phipps said that with the savings, the district put new roofs on all the schools. Having additional money allows it to plan ahead, and it has not applied for or asked for any additional money. He added that the last building the school district built cost $191 per square foot and that the district is very open and honest with the public on how funds are spent.

In response to questions from the task force, the panel said that HB 33 requests are renewed every six years and that the tax burden is on property owners in the district. Ms. Ball clarified that HB 33 funds are only for building and grounds maintenance and renovation. The panel also said that the biggest difference in new school building costs is the limited competition in the construction industry in New Mexico.

Community Use of Educational Spaces: Liability Issues

Sammy Quintana, executive director, New Mexico Public School Insurance Authority (NMPSIA), said that under the current policy, non-school functions are not covered by the school's insurance. He said that a separate policy could be purchased and would not be very costly (except for high-risk functions like rodeos). Mr. Quintana discussed the current insurance options available, including having the district named as an additional insured party on a user's policy (i.e., Boy Scouts, Lions Club, etc.); having a tenant user liability insurance policy (TULIP); or having an annual liability policy that covers damage to school property and protects the event planner and district from liability. He also discussed HB 19, introduced during the 2008 session, which requires NMPSIA to establish a policy relating to use of volunteers. HB 19 limits liability to $1 million per occurrence and only if a school usage policy is not followed. In addition, HB 19 appropriated $200,000 to buy TULIP for all school districts and charters. Mr. Quintana also suggested revisions to HB 19, including increasing the appropriation to $308,000 to account for APS as 35 percent of the total.

Mr. Quintana and Julie Garcia, Poms and Associates, answered questions from the task force. They said that HB 19 died in the House Appropriations and Finance committee (HAFC).

Implications of Yield Control and Property Tax Limitations on Local Districts' Ability to Raise Public School Capital Outlay Funds

Thomas E. Clifford, Ph.D., vice president and research director, New Mexico Tax Research Institute, said that property taxes currently generate about $1.3 billion in revenue annually from a taxable base of about $47 billion. He explained that the taxable value is one-third of the assessed value less certain exemptions. Dr. Clifford said that rates vary by location, from a low of about 10 mills ($1.00 per $1,000 of taxable value) to a high of about 45 mills, with an average of about 27 mills. Dr. Clifford then reviewed some of the constitutional provisions related to levies. He said that the tax shall be levied against no more than 33.3 percent of the value of the property and that the total tax levy is limited to no more than 20 mills, except for payment of debt service on voter-approved debt issues. He pointed out that the state debt is limited to no more than one percent of the total assessed value, and the school district debt is limited to six percent of the assessed value in the district. He said that most property valuation is done by county assessors. He said that the maximum rates imposed for operating purposes are limited to 20 mills, divided as follows: 11.85 mills by the county, 7.65 mills by a municipality and 0.5 mills by a school district. Dr. Clifford said that residential taxable value has not kept pace with house price inflation, at least in part due to the three-percent limit on annual value growth. He said that yield control means that lower taxable value translates into higher tax rates and the impacts of the value limit on debt service levies depend on voter behavior. The value limit on residential property has driven a wedge between properties that are newly purchased, valuing them much higher than others so that they pay more in debt service and operating tax levies than those held for longer periods. Dr. Clifford also said that the SB 9 levy is subject to yield control, but, because the levy can be renewed after six years, yield-controlled rates are not significantly lower than the rates originally imposed. He said that, after yield control, the average SB 9 levy equals 1.9 mills. He added that the HB 33 levy is subject to yield control, but the limited time of imposition also limits the impacts of yield control.

There being no further business, the task force adjourned at 2:55 p.m.