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.