

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.