

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

May 19, 2010
State Capitol, Room 307
Santa Fe

The twenty-sixth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator Cynthia Nava, co-chair, at approximately 1:45 p.m. on Wednesday, May 19, 2010, 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
Dr. Lisa Grover
Leonard Haskie
Robbie Heyman
Rep. Larry A. Larrañaga
Sen. Lynda M. Lovejoy
Kilino Marquez
Rep. W. Ken Martinez
Sec. Katherine B. Miller
Dr. John Mondragon
Don Moya
Mike Phipps
Sen. Sander Rue
Rep. Henry Kiki Saavedra

Absent

Sen. Timothy Z. Jennings
Rep. Ben Lujan
Elizabeth Marrufo
Bud Mulcock
Sen. John Arthur Smith
Ernesto Valdez

Staff

Legislative Council Service (LCS)

Paula Tackett
Sharon Ball
Leslie Porter

Public School Facilities Authority (PSFA)

Tim Berry
Martica Casias
Bob Gorrell
Pat McMurray
Mark Williams

Public Education Department (PED)

Willie Brown
Antonio Ortiz
Arlene Strumor

Election of Co-Chairs

Task force members agreed by consensus with the New Mexico Legislative Council's appointment of Representative Miera and Senator Nava to serve as co-chairs for the 2010 interim.

Brief Review of 2009 Task Force Work and Summary of 2010 Legislation

Ms. Tackett and Ms. Ball provided a brief overview of the work of the task force during the 2009 interim and task force-endorsed legislation for the 2010 session. Ms. Ball directed task force members' attention to their respective copies of the PSCOOTF 2009 annual report and summarized some of the activities, including the work of the PSCOOTF on 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. She also reported that the working group on issues related to subcontractor bonding met during the 2009 interim, and while members believed they had made progress in establishing a dialogue, more work needed to be done. Ms. Ball noted that the task force-endorsed "omnibus" bill included language requiring continuation of that task force.

Ms. Tackett directed members' attention to the three bills included in their respective folders, specifically House Education Committee Substitute for House Bill 68, the so-called "omnibus" bill, which was passed and signed into law by the governor. Among its provisions, the bill, as it passed, would have:

1. extended the time period for necessary roof repairs;
2. determined that money distributed from the Public School Capital Outlay Fund to the state fire marshal or the Construction Industries Division of the Regulation and Licensing Department pursuant to the Public School Capital Outlay Act (PSCOA) be used to supplement, rather than supplant, appropriations to those entities;
3. allowed for the Public School Capital Outlay Council (PSCOC) grant adjustments for certain facilities in remote rural areas; and
4. allowed the PSFA to administer the procurement for certain school district emergency projects.

Ms. Tackett noted that, using his line-item veto authority, the governor had vetoed the language related to potential PSCOC grant adjustments for certain facilities in remote rural areas, stating in his message that he believes this particular provision would compromise the integrity of the standards-based process.

Ms. Ball discussed House Education Committee Substitute for House Bill 145, which amended the Qualified School Construction Bonds Act, enacted in 2009, to provide statutory language that would allow school districts to take advantage of provisions of the federal American Recovery and Reinvestment Act of 2009 (ARRA) in a way that would be more cost-effective for those districts wishing to take advantage of provisions allowing for tax-free bonds. In response to a task force question, Ms. Ball stated that this legislation has not and does not have an effect on Albuquerque Public Schools' authorization for ARRA tax-free bonds.

Ms. Tackett reminded task force members that they had also endorsed a bill (Senate Bill 140) that would have, among its provisions, required the application of standards for certain charter school facilities and would have required approval before entering into a lease agreement or lease-purchase agreement for school facilities or before applying for a grant for lease payments. She explained that the bill did not receive a message from the governor and therefore was not germane for the 2010 session.

PSCOC/PSFA Annual Report

Ms. Casias, directed task force members' attention to the PSCOC/PSFA 2009 annual report. She walked members through the report, pointing out that, in 2009, the PSCOC awarded \$188.9 million in total funding to 112 school construction and facilities needs throughout the state, including the following:

- \$131 million for standards-based awards to 24 projects in 15 school districts;
- \$8.1 million for facility leasing assistance to 69 charter schools and eight public schools in 21 districts;
- \$1.2 million from the Charter School Capital Outlay Fund for demolition of facilities in two projects in two districts; and
- \$48.58 million reserved for possible out-of-cycle awards to nine projects in eight districts.

Ms. Casias noted that award funding had increased by 28 percent over the 2008 award funding cycle with 34 new and newly renovated schools opening their doors in 2009. She said that the combined Facility Condition Index, the overall measure of the condition of New Mexico school buildings, continued to improve. Pointing out various graphs in the report, she said that school capital outlay is being deployed rapidly, with 73 percent of award funds now under contract within 15 months — a 300 percent improvement since 2006.

Mr. McMurray discussed the importance of educational specifications in the construction process. He referenced Crownpoint Elementary School in the Gallup-McKinley County School District as an example of the way in which educational specifications are developed, ensuring that the students' needs, the community's values, the instructional strategies and technology-aided classrooms are combined to develop a plan for the construction or renovation of a public school facility.

He noted that the PSFA had developed a two-phase process for ensuring efficiency and adequacy of the design and of the funding request from the legislature. He explained that Phase I is the planning and design of the space needed for the students, which ensures that the most efficient model is being used for each project. He explained that a significant aspect of Phase I is utilization studies, which ensure that existing public school space is being used most efficiently, and if it is not, solutions are then sought. He offered an example of three wings being taken down in Los Alamos High School in the Los Alamos district. When rebuilt, he said, the facilities are designed to be a more efficient use of space with a smaller footprint.

He said that Phase II is the request for funding. With the education specifications and utilization process having been accomplished, the PSCOC is very confident of the accuracy of the amount of grant funding being requested. Once allocated, he explained, the money starts flowing into the projects within four to six weeks.

Mr. Williams referred to page five of the annual report, which states that "19 percent [of PSCOA grant funds] were transferred out of the fund by the legislature to assist in mitigating the state budget deficit". Mr. Gorrell added that \$125 million will be needed simply to hold public school facilities' conditions where they are now, emphasizing that this estimate does not include what is needed for improvements. He also noted that, because reverted funds can be used to fund other projects in the standards-based process, \$8.7 million has been reverted back from completed projects as a result of the cost being less than anticipated.

Mr. Gorrell discussed using the new geographic information system (GIS), endorsed by the PSCOOTF and approved in the 2009 session. He explained the significance of the colored dots on the maps that members were examining. He used Roswell as an example of a district that, by closing some schools and remodeling others, has achieved a high level of classroom space utilization. Mr. Gorrell stated that his staff would provide a more in-depth demonstration of the GIS at a subsequent task force meeting during the 2010 interim.

Task force members expressed concern that some districts apparently claim to be under the pressure of high growth and appear to have schools that are underutilized. In response, Mr. Gorrell noted that work is continuing on refining the data but that PSFA staff and others working on the project have had difficulty getting student addresses included in the database from some school districts.

Task force members expressed concern that some districts may be building new schools when older ones could be renovated. Mr. Gorrell explained the "60 percent rule", whereby the cost of renovation must exceed 60 percent of the cost of replacement in order to build a new facility using PSCOC grant money.

Some task force members also expressed concern that some districts are building new schools or acquiring old buildings to renovate for new schools when simple redistricting would accommodate all students. Other task force members, many of whom have experienced school-

attendance area redistricting firsthand, indicated that moving children from one school to another can be a very emotional issue in a community. Some task force members expressed concern about choices some school districts make when allocating funds within a district, noting that the task force makes difficult decisions and that it is the legislature's constitutional duty to appropriate funding. The task force has the ability to propose changes to the laws while looking the "big picture", i.e., the state as a whole.

Task force members had a discussion on the importance of safe, quality facilities to help improve student performance. Mr. Gorrell concluded that the PSCOC needs to identify and quantify the numerous variables involved.

Zuni Lawsuit

Ms. Strumor explained that the current *Zuni* lawsuit involves the state's being able to take credit for 75 percent of locally generated funds, including certain Federal Impact Aid funds, particularly the "non-categorical funds" appropriated to provide relief to districts that are highly affected by the presence of federal lands within a school district. She explained that because New Mexico does not use locally generated property taxes to fund school districts, as is the case in most of the United States, New Mexico annually requests permission from the U.S. Department of Education to take the credit as local funds. She said that the current *Zuni* lawsuit seeks injunctive relief from the U.S. Department of Education that would not allow the district to take the credit for the current fiscal year. She indicated that New Mexico continues to meet the U.S. Department of Education disparity standards that allow the state to claim equalized funding and thereby take the credit. In response to a task force question, Mr. Moya stated that the credit usually amounts to between \$50 million and \$60 million in funding relief to the state equalization guarantee. Mr. Brown explained that the Zuni, Gallup-McKinley County and Grants-Cibola County school districts had filed a lawsuit against the U.S. Department of Education in 1999 that was finally resolved in the department's favor by the U.S. Supreme Court in 2007. He said that New Mexico asserts that it continues to meet federal disparity standards that qualify it to take credit for the non-categorical Federal Impact Aid funds. He noted, however, that the state does not take credit for categorical Indian set-aside funds and special education funds for all qualifying districts.

Task force members discussed the importance of maintaining equity among the state's 89 school districts because some districts, particularly those located in oil- and mineral-rich areas, contribute more to the funding formula than do those districts without that advantage. Other task force members noted that other districts also contribute more to the general fund through their local income and gross receipts taxes.

Some task force members expressed concern about the expense of a lawsuit for a school district and wondered how financially strapped districts can afford to fund legal action. Mr. Moya stated that the decision to do so is a local one by statute and that the PED, through its annual budget hearings, does not have the ability to "drill down" to specific line items in each category in a local district.

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

Ms. Tackett explained the work plan. She noted that, besides its statutory duties of monitoring the progress and effectiveness of programs administered under the PSCOA and maintaining adequate sources of long-term funding for public school capital outlay projects, the task force, along with the working group, will examine issues related to performance-based procurement for public school capital outlay projects. She also noted that the task force will continue examining issues related to funding charter school facilities.

Task force members discussed the minimum \$125 million that would be required to maintain even current building conditions, a situation that would eventually result in school districts losing ground in their efforts to maintain facilities in difficult fiscal times.

Task force members had an extended discussion about possible implementation of House Joint Memorial 22 from the 2010 session, which was passed by both houses. The memorial requests that the PSFA, under guidance of the PED's Mathematics and Science Bureau, conduct a study for revamping public high school science laboratories in accordance with the recommendations of New Mexico Project 2012, which is a proposal to develop a thorough plan for revamping public high school science laboratories. In response to task force discussions and questions, Mr. Gorrell explained that the PSFA estimated a cost of conducting the study at more than \$1 million in staff time and expenses and that the PSCOC had been concerned about conducting the study before the Mathematics and Science Bureau finishes its revamping of public school science facility standards.

The task force then discussed a number of issues relating to the recent proliferation of legislative memorials, especially simple memorials, and their extraordinary cost for agencies to implement. One task force member expressed concern that while many memorials are quite costly, they almost never get referred to either chamber's respective finance committee, and, therefore, the cost goes unnoticed and memorial requests continue. A task force member noted that it is often tempting in dire financial times to ask for a study of something rather than proposing sometimes costly legislation to move toward accomplishing a goal.

Task force members agreed by consensus to adopt the proposed work plan, allowing staff to make nonsubstantive technical corrections if necessary.

Having no further business, the task force adjourned at approximately 4:15 p.m.