

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

September 18, 2009
Room 307, State Capitol

The twenty-fourth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, at 10:20 a.m. on Friday, September 18, 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
Cecilia J. Grimes
Leonard Haskie
Robbie Heyman
Rep. Larry A. Larrañaga
Sen. Lynda M. Lovejoy
Rep. Ben Lujan
Kilino Marquez
Dr. John Mondragon
Bud Mulcock
Antonio Ortiz for Secretary Veronica Garcia
Sen. Sander Rue
Ernesto Valdez

Absent

Sen. Timothy Z. Jennings
Dr. Anna Lamberson
Secretary Katherine B. Miller
Mike Phipps
Rep. Henry Kiki Saavedra
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
Aldis Philipbar, LCS
Paula Tackett, LCS

Guests

The guest list is in the original meeting file.

Friday, September 18

Facilities Conditions Index (FCI) and the New Mexico Conditions Index: History, Status and Targets

Ms. Tackett, vice chair, Public School Capital Outlay Council (PSCOC), told task force members that she and Robert Desiderio, dean emeritus, University of New Mexico School of Law, and chair of the PSCOOTF from 1999 to 2005, would take them on a trip down memory lane — particularly for the new members — discussing the history of the Facilities Condition Index (FCI), where it is now and how it got there. She said that while the state district court in the *Zuni* lawsuit had adopted the court-appointed special master's report regarding the state's system for funding public school capital outlay, both the court and the special master had expressed serious concerns about the disequalizing effect of special legislative appropriations to schools and districts. She reported that even though the court indicated the state had moved forward in this area, a part of the court's order required the state to correct past inequities.

Mr. Desiderio said that the *Zuni* lawsuit was behind the creation of the adequacy standards and that every school should meet a certain standard of adequacy. He said that the state looked at methodologies to rate schools objectively and teamed with professional consultants, 3-D International (3DI), to develop a rating system. Mr. Desiderio said the process began by evaluating every school facility; then a standard was developed based on national BOMA standards and the lifecycle of the facility for every school building in the state. He said that as the state had developed the adequacy standards, it had to go beyond the many national standards to include issues such as space requirements. He noted that the FCI was developed by 3DI on national standards and that the New Mexico Condition Index (NMCI) developed by the PSCOC incorporated the state adequacy standards, which included New Mexico-specific issues such as space. He also added that 3DI developed a very sophisticated computer program in order to maintain the ongoing FCI database.

Mr. Gorrell described the PSFA's process for evaluating schools, including renovations, new construction and maintenance.

The panel then answered questions from the task force. There was some discussion surrounding the use of SB 9 funds for some operational costs. Mr. Gorrell was requested to look at the PSFA's records to see which, if any, schools are in danger of not opening for the 2010 school year because of a shortage of general fund operating revenues. In response to a question from a task force member, Tanya DeLara, PSFA, said that the PSFA needs \$307 million per year (state and local share) in order to remain at 36% of NMCI. Ms. Tackett explained that funding for the state share of PSCOC grants comes from supplemental severance tax bonds (SSTBs).

Mr. Heyman, public member, explained that the SSTB program was developed and supported by the original Public School Capital Outlay Task Force in 2001 and 2002.

He said that the first PSCOC bonds were long term, but reliance on long-term bonds changed over time when "sponge" capacity became more important. He noted that, currently, the importance is now shifting back to long-term bonds. He also expressed some concern with

the constitutional provision of the SSTB program. Ms. Tackett then explained the FCI graph provided by the PSFA, stating that the graph shows growth from 28% of New Mexico schools meeting national standards in 2005-2006 to 45.5% now. Some discussion about formula issues came up because some believed that the state was putting in more than its 50% share, but Ms. DeLara explained that the PSCOC is contributing only an average of 39% per year over the last four years for all school construction, which includes PSCOC and other school projects.

Update from Work Group to Examine Costs and Benefits of Statutory Subcontractor Bonding Requirements and to Develop a Process for Determining a Pre-Qualified Bidder List

Ms. Tackett reviewed who was in attendance at the work group meeting. She said that discussion surrounded such issues as bond rating, hard bids, sureties and raising the bonding limit. She said that everyone was concerned about cost and quality, protecting employees and hiring locally. She added that staff was asked to look at Massachusetts, the University of New Mexico Hospital (UNMH) and the General Services Department to come up with a viable mechanism for pre-qualification. Ms. Tackett said that the work group agreed on the positive effect of raising the state standard and that there would be no limit on the number of those involved as long as they met the standard. She noted that the work group would like to continue to meet.

The task force then engaged in some discussion about the work group meeting. Concerns were expressed about rural contractors being cut out if standards are set too high. It was also noted that the state has spent \$9 million on subcontractor bonding, but no bonds have been called.

On a motion made by Representative Gardner and seconded by Senator Asbill, the task force approved an extra meeting for the work group.

PSCOC Projects Under Contract

Jeff Eaton, chief financial officer, PSFA, said that the PSFA is expecting \$20 million per month in awards in 2010 and that there are 89 active projects statewide. He said that the PSFA has been able to move quickly on the projects because the PSCOC awards have come in phases. He said that a district has to have funding in place in order to actually receive an award. Mr. Eaton reviewed a chart with the task force and pointed out projects that were awarded in July 2009. He explained that the PSCOC makes awards and then certifies to the State Board of Finance the need for funding for projects. Mr. Gorrell explained that the awards are based on forecasts of available revenue from severance tax bonds. Mr. Eaton said that after being notified of an award, an award recipient enters into a contract and then pays when specified stages of work are completed.

Mr. Gorrell and Mr. Eaton then answered questions from task force members. Mr. Eaton explained that "project award not accepted by district" on the table means that the project may not have local funding. In response to a question from a task force member, Mr. Berry said that bonds are often sold with contingencies. Mr. Eaton said that about \$12 million in project

balances have been recycled. Mr. Gorrell explained that schools that do not pass bonds do not lose their place in the queue. In response to a question about the state putting in less of a percentage, Mr. Gorrell said it would be difficult to replace state funding with local funding. He also explained that if an SB 9 vote fails, it usually means that the community is making a statement about a larger issue, but, despite the economy, most districts have been doing a good job of passing bonds. Mr. Gorrell said that the PSFA has to look at charter schools alongside all other schools for equity, but that it also has to take the charter's mission into consideration. Ms. DeLara said that all schools have been surveyed, but that the queue may seem skewed because schools that were built prior to the implementation of the adequacy standards may still look good but do not meet the educational adequacy standards.

Potential Legislation for 2010 Session: Preliminary Discussion

Ms. Tackett and Ms. Ball recapped issues that have been identified for potential bill drafts, including:

- subcontractor bonding;
- qualified school construction bonds, including raising the limit to \$250,000;
- use of SB 9 for maintenance and insurance for two years;
- rural tax credit;
- lease-purchase for "useful life" of portables for charter schools; and
- language that would allow the Public Education Department to deny a charter if its proposed facility does not meet adequacy standards.

Mr. Ortiz expressed concerns about the issue of requiring districts to include charters in their HB 33 proposals.

There being no further business, the task force adjourned at 2:30 p.m.