

MINUTES
of the
SIXTY-EIGHTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

October 16, 2018
State Capitol, Room 322
Santa Fe

The sixty-eighth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator William P. Soules, vice chair, on October 16, 2018 at 9:18 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Sen. William P. Soules, Vice Chair
Sen. Craig W. Brandt
Carl Foster
Rep. Harry Garcia, designee for Speaker
 Brian Egolf
Sen. Stuart Ingle
Antonio Ortiz, designee for Secretary of
 Public Education Christopher
 Ruszkowski
Sen. Mary Kay Papen
Rep. Dennis J. Roch
Rep. Debbie A. Rodella
Debbie Romero, designee for Secretary of
 Finance and Administration Duffy
 Rodriguez
Sen. Benny Shendo, Jr.
Sen. John Arthur Smith

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Gay G. Kernan
Sen. Mimi Stewart

Absent

Rep. Stephanie Garcia Richard, Chair
Martha "Marty" Braniff
Dr. Greg Ewing
Kirk Hartom
Rep. Rick Little
Rep. Patricia A. Lundstrom
T.J. Parks
Richard A. Perea
Mike Phipps
Rep. G. Andrés Romero
Stan Rounds
Eugene Schmidt
Harry Teague

Sen. Daniel A. Ivey-Soto
Rep. D. Wonda Johnson
Sen. Howie C. Morales
Sen. Cliff R. Pirtle
Sen. Sander Rue
Sen. Pat Woods

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Jeff Eaton, Fiscal Analyst, LCS
Michelle Jaschke, Researcher, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of handouts are in the meeting file and are posted online.

Tuesday, October 16**Public School Capital Outlay Council (PSCOC) Financial Plan**

Denise Irion, chief financial officer, Public School Facilities Authority (PSFA), provided an update on the projected capital outlay awards scenarios for fiscal year (FY) 2019 through FY 2023 and reported on current fund balances. In answer to members' questions, Ms. Irion noted that changes made by the PSCOC in the number of awards made (for example, including the top 100 ranked projects instead of the top 70 projects) impact the projected averages for awards over the years. Ms. Irion also provided information on the \$16 million in awards for security systems included in House Bill 306 and Senate Bill 239 from the 2018 legislative session.

Members discussed award delays related to charter school lease assistance and the mandate for charter schools to be located in public buildings, as well as building design process issues. Ms. Irion reported that there is generally an 18-month to 24-month design period for new construction that is intended to be inclusive of all stakeholders. She noted that roughly 10% of the overall project cost for a new construction project is allocated toward design.

2018 PSCOC PSFA Annual Report

Jonathan Chamblin, director, PSFA, reviewed the organizational structure of the PSCOC and provided a range of operational data related to award dollars currently under contract, lease assistance payments and the PSFA operational budget. He presented information on specific school projects and fundable projects and systems, including progress made since 2005 in improving facilities and replacing building systems. Mr. Chamblin also reported on the top five security threats identified in statewide workshops and surveys and the range of responses needed to address those threats. In addition, he emphasized the benefits of implementing strong preventive maintenance programs and offered options for improving those programs.

In response to members' questions, Mr. Chamblin reported that the average lifespan of a new building should approach 50 years but that in some older buildings, that span may only reach 30 years. Senator Smith observed that poor maintenance efforts on the part of a district may result in an additional tax burden on the general public to replace buildings and systems. He requested information on maintenance efforts in older buildings, including a breakdown of problem areas that may be evident in the years since 2005.

FY 2020 PSFA Budget Request

Ms. Irion presented the FY 2020 PSFA budget request, noting that it remains flat over the FY 2019 budget request. She observed that supplemental severance tax bond proceeds that feed

the Public School Capital Outlay Fund (PSCOF) have been diverted for special appropriations for school buses, broadband expansion projects, pre-kindergarten classrooms and solvency measures over the past four years. However, Ms. Irion reported, current estimates indicate that the fund will rebound and register an estimated increase of around 28% by FY 2023.

Task force members discussed:

- state and local share formula changes and the impact of those changes on district budgets;
- the equitability of including federal impact aid district payments in the state equalization guarantee formula;
- the impact of new science standards and instructional materials needs on state and district budgets; and
- options for restoring funding that is scheduled to be eliminated from school budgets as a result of solvency measures enacted in 2016 and 2017.

FY 2019 Security Awards and Pre-Kindergarten Awards Update

Mr. Chamblin described the processes that the PSFA used to establish the new security systems awards program and provided comprehensive lists of the 2018-2019 security system awards made by the PSCOC, including a breakdown of the required local match and applicable offsets. He reported that applicant campuses were assessed and scored based on observable existing conditions in three general categories identified by industry standard best practices as key to school security: (1) site access control; (2) building interior; and (3) building exterior. Of the 47 applicant districts, 46 received awards for 222 school campuses at an average awarded total project cost of \$144,947 per campus. According to Mr. Chamblin, the PSFA also analyzed the variables driving costs in different districts to arrive at a reasonable range of cost for specific items and systems.

The next steps for the program include formalizing the award agreements with applicant schools and implementing projects beginning in mid-December. Mr. Chamblin stated that the PSFA will be tracking the program to provide findings and recommendations for the PSCOC for next year's program. Members complimented Mr. Chamblin and his staff on having implemented the security systems program effectively in such a short period of time. Task force members also discussed the importance of including adequate and up-to-date security systems in new construction, as well as the need to provide appropriate human resources, including counselors and behavioral health professionals, in the schools to mitigate security risks.

Mr. Chamblin reviewed the history of pre-kindergarten classroom construction projects since 2005 and observed that pre-kindergarten classrooms are not included in the adequacy standards and therefore may not be funded from the PSCOF. The PSFA is now administering pre-kindergarten classroom construction projects that had been administered by the Public Education Department (PED). The PSFA is requesting \$25 million for pre-kindergarten classrooms for FY 2020 through FY 2024. In response to members' concerns about the adequacy

of the \$5 million annual appropriations, Mr. Chamblin reported that the PSFA is working with the PED, the Legislative Finance Committee and the Legislative Education Study Committee to assess statewide needs in that regard.

Update on Changes to Statewide Adequacy Standards

Martica Casias, deputy director, PSFA, reported on the results of a series of stakeholder input and adequacy standards workshops held by the PSFA across the state to gather ideas for potential changes to the current standards. The adequacy standards are used by the PSFA to measure and evaluate existing school buildings and to ensure that every school has at least the minimum type and number of spaces and system performance levels. She reviewed the existing space standards associated with various classroom, administrative and special use areas.

According to Ms. Casias, the "New Mexico Public School Adequacy Planning Guide" (APG) associated with the adequacy standards is a best-practices guide based on local and national planning criteria. The APG is used to help schools and school districts maximize their design goals. Ms. Casias noted that changes in science and other classroom standards may require changes in the adequacy standards and the APG. Senator Smith asked if any final determination regarding the standards has been requested from the district court overseeing the *Zuni* lawsuit. It was noted that the lawsuit is ongoing.

Minutes

On a motion duly made and seconded, the minutes of the meeting of September 21, 2018 were approved without objection.

Update on Charter School Processes and Procedures

Mr. Chamblin stated that the objectives of the PSFA's recent examination of charter school processes and procedures are to:

- ensure compliance with statutes related to charter schools;
- improve and clarify the charter school lease assistance processes and procedures; and
- improve collaboration between the PSFA, the PED, the Public Education Commission, the New Mexico Coalition for Charter Schools and charter schools regarding facility needs and leases.

In early November, the PSFA will kick off a series of meetings designed to:

- provide a venue for charter schools to discuss their unique facility issues with the PSFA and the PED;
- allow the PSFA to describe the processes and requirements for obtaining lease assistance; and
- build consensus for a uniform process to validate square footage and space utilization.

Mr. Chamblin noted that 20% of lease assistance applications had lease deficiencies in the past funding cycle and that better coordination is needed between the PED and the PSFA regarding approval of lease-to-purchase arrangements. Some leases contained onerous provisions for the charter schools, resulting in insurance liability and indemnification issues. Arrangements between charter foundations and third-party lessors are not transparent and appear to be passing on finance costs. The intent of the meetings is to identify and begin to formulate potential lease improvements that will benefit all parties.

In addition, Mr. Chamblin provided the following recommendations for the FY 2020 lease assistance cycle:

- maintain a database to track Facilities Master Plan dates, E-occupancy certificates, Weighted New Mexico Condition Index scores and validated square footage;
- develop a process for charter school notification to the PSFA of relocation to a new facility or additions to existing facilities;
- clarify what can and cannot be funded by lease assistance; and
- validate facility square footage by the end of January each year.

Next steps for the program include development of an online application for lease assistance; scheduling regional charter school workshops in Las Cruces, Albuquerque, Santa Fe and Taos; developing an online survey for charter schools to support the statewide workshops; and presenting lease assistance program improvements to the PSCOC and the PSCOOTF.

Powers and Duties of the PED and the PSFA as They Relate to Charter School Facilities and Charter School Facilities Leases

Ms. Casias reviewed the educational occupancy standards and the average condition standards applicable to charter schools as well as the statutory powers and duties of the PSFA and the PED with respect to charter schools. She noted that neither the PSFA nor the PED has authority to enforce the requirement that charter schools be located in public facilities. Ms. Casias also addressed lease assistance payment processes and lease-to-purchase agreement requirements. Lease-to-purchase agreements must be approved by the PED.

Using Standardized Leases — Benefits, Obstacles, Requirements and Recommendations

According to Ms. Casias, the Public School Capital Outlay Act authorizes the PSCOC to reimburse school districts and charter schools for lease payments. The PSFA reviews PSCOC lease assistance applications. The application for lease assistance requires that the applicant provide a copy of the lease for review for statutory compliance by the PSFA. Ms. Casias reported that the leases are unique, with little or no uniformity due to a variety of factors.

In 2012, a PSCOOTF work group was formed to address the issue of standardizing lease agreements. The group recognized then, as now, that the lack of a standardized lease results in a lack of consistency and transparency, according to Ms. Casias. As an outcome of the work group, the PSFA hired a legal consultant to prepare a standardized lease. The standardized lease

is very lengthy and attempts to address multiple lease scenarios and has proven to be too cumbersome to be useful. Use of a standardized lease is not mandatory for charter schools.

The PSFA is now working to develop templates that may be used to streamline the lease agreement process. The benefits of this approach include:

- ease of use for districts and schools;
- elimination of onerous terms and reduction of risk for the lessee;
- clear definitions of "gross square footage" and "classroom space";
- a clear definition of "terms and conditions"; and
- identification of responsibility for all operating costs.

Ms. Casias observed that the lessons of the past indicate that a "one-size-fits-all" approach will not work. Therefore, the recommendation is to provide templates for the four most common types of leases entered into by charter schools:

- (1) a lease between a charter school or charter foundation and a private owner;
- (2) a lease between a charter school or charter foundation and a public entity;
- (3) a lease with an option to purchase between a charter school or charter foundation and either a private or public entity; and
- (4) a lease purchase arrangement between a charter school or charter foundation and either a private or public entity.

Use of the templates will address the concerns raised in using a standardized lease, and the availability of the templates will prevent reliance on a landlord's lease documents, which may not serve a school's best interests.

Public School Lease Purchase Act Explained

Mona Martinez, counsel, PSFA, provided information on the Public School Lease Purchase Act. In 2006, the Constitution of New Mexico was amended to allow school districts and charter schools to enter into financing agreements to lease a building or other real property. These financing agreements are not considered debts as long as there is no legal obligation for the school district or charter school to continue the lease from year to year or to purchase the real property or if the lease is terminated if sufficient money is not available to meet the current lease payments.

The act uses the terms "lease purchase arrangement" and "financing agreement" interchangeably. The terms are defined as an agreement for the leasing of a building or other real property with an option to purchase for a reduced price, composed of principal and interest paid to the holder of the agreement. The Public School Lease Purchase Act requires a governing board or body that elects to acquire a building or property through a lease purchase arrangement to conduct a public forum. Further, school districts and charter schools are authorized to include the state's pledge in their lease purchase arrangements that the state will not limit or alter the

rights vested in school districts or charter schools to fulfill the terms of any lease purchase arrangement or in any way impair the rights and remedies of the holders of lease purchase arrangements.

Members discussed a range of issues related to lease assistance payments, including the legality of lease-to-purchase arrangements that involve private foundations. Senator Soules asked that the PSFA clarify information related to the number of lease purchase agreements and that the issue of lease assistance be revisited at the upcoming November meeting. Members requested that proposed legislation from the 2018 legislative session that was intended to clarify ownership issues surrounding lease-to-purchase arrangements be revisited at that time as well.

Adjournment

There being no further business before the task force, the PSCOOTF adjourned at 3:08 p.m.