

SECOND REPORT TO THE GOVERNOR BY THE INTERAGENCY WORKING GROUP FOR SCHOOL CONSTRUCTION

May 17, 2006

INTRODUCTION

This second report by the Interagency Working Group on School Construction presents a summary of actions taken since our initial report on March 15, 2006. It reflects continuing discussion among members of the Working Group as well as consultation with the members of the Citizens Advisory Panel to the Working Group. As described below, the Working Group was assisted by two task forces that were convened to identify possible statutory amendments and to develop a methodology for prioritizing projects. The work of those task forces is summarized in this report.

We find that initiatives at the Schools Construction Corporation and Department of Education have made progress towards the goals of strengthening management capability at the SCC, developing recommendations for statutory amendments, developing a methodology to schedule school construction projects to reflect educational priorities, and to develop an approach for bringing forth a recommendation for the next stage of funding for the schools construction program. Each of these goals is discussed in this report.

While the Working Group believes that additional analyses must be completed during the next few months to produce a solid recommendation for an amount of new funding for this program, we restate our prior finding that there remains a significant number of school facility projects to be built that require additional funding in both Abbott and Non-Abbott districts. In fact, as discussed below, we have identified numerous Abbott district projects that were not included in the 2005 Capital Plan of the SCC that should be restarted as soon as possible. However, a final determination requires additional analyses and discussion between DOE and Abbott districts during the next two to three months.

REFORM EFFORTS AT THE SCC

Reform efforts at the SCC have focused on strengthening management, realigning the organizational structure, developing capital and strategic plans and improving accountability and collaboration. These efforts build a stronger foundation for the SCC to manage its additional responsibilities and accountabilities that accompany any reauthorized funding. Although much remains to be done, we are confident that if the SCC remains on its current reform path, the required management capacity will exist to manage an expanded portfolio of school construction projects.

The SCC is actively recruiting to fill senior management positions. The SCC Board of Directors has engaged an executive recruiting firm to conduct a nationwide search for a permanent CEO. Active recruitment is also underway for a CFO and other senior

executives. Filling these important positions is likely to take several months. Recent hires at the SCC have included an attorney with a strong background in construction and contract management who, in conjunction with the Attorney General's office, is implementing systems to address the recovery of claims, contract management and enforcement, and other project controls.

The SCC has begun to improve communications and collaboration with all of the school construction program's stakeholders in state government and in the community. The SCC and DOE will initiate regular senior-level meetings to discuss strategic and operational issues, and is planning joint meetings with the DOE/SCC and the individual school districts. These are all part of an effort to build more effective working relationships with essential parties in the community – school districts, municipalities, grassroots organizations – all partners necessary for success.

The SCC has begun implementation of new budget, planning and project control functions. For example, a capital planning group will institutionalize activity that was only initiated during the past year and performed by an ad hoc task force drawn from SCC employees with other responsibilities. During the next month, the SCC will initiate other organizational changes to improve accountability and responsiveness in the areas of Contract Administration, Project Controls and Planning. The position of Board Secretary and Governance Officer was established to oversee all corporate compliance, ethics and governance matters. And, pursuant to the Inspector General's January 2006 report, the SCC will sign the Memorandum of Agreement with the Office of the Inspector General to locate IG staff directly at SCC.

In response to the Working Group's March 15 report calling for an enhanced information system to provide timely budget and construction status reports, the SCC has begun implementation of a project management reporting system to provide project budgets that integrate all project-related costs and schedules and monthly updates.

Importantly, the SCC is seeking to reduce the backlog of outstanding invoices and to resolve claims by contractors and vendors. Slow payments not only unfairly burden vendors, but also reduce the number of contractors willing to compete for SCC contracts.

Clearly, much has been accomplished since the March 15 Working Group report. We recognize the progress that has been made and if sustained, these efforts will position the SCC or its successor to be able to manage the construction of additional projects in the future.

DEPARTMENT OF EDUCATION INITIATIVES

As set forth in the Working Group's previous report, the DOE is charged with ensuring that educational priorities drive school construction. The first step was to transfer administrative responsibility to the Division of Abbott Implementation. The next step is to focus DOE attention on two critical areas: the Long Range Facility Plan (LRFP) review process, and analysis of the Facilities Efficiency Standards (FES).

Long Range Facilities Plan Approval

Pursuant to N.J.S.A. 18A:7G-4, each district was required to submit a LRFP by October 2005. The LRFP documents the district's school facilities needs based on enrollment projections and educational needs. Specifically, the LRFP must contain an inventory of all existing school facilities, identification of deficiencies in the current inventory of school facilities, projected enrollment, and the district's plan for future construction and renovation. Thus, the LRFP serves both as a snapshot of the current conditions of facilities in the district as well as a blueprint for future construction.

DOE first examines the LRFP for completeness. The review commences only after all supporting documentation has been received. The DOE review of the 2005 LRFP will apply the educational criteria set forth by the Abbott decisions and the EFCFA: are schools healthy and safe, has the district determined how to provide preschool to all three and four year olds, and will overcrowded classrooms be eliminated, particularly in elementary grades? These priorities must be satisfied before scheduling projects that speak to "educationally adequate" facilities or other criteria. DOE will review enrollment projections made against the actual enrollments certified over the last five years to assess the credibility of projections.

While the LRFP includes projects that will not be undertaken for many years, the purpose of the DOE-district agreement on priorities is to produce a schedule of projects that can be reasonably accommodated over the next five years. As individual projects are approved and construction undertaken, the LRFP will be revised to reflect progress or problems encountered in building the highest priority projects.

As of May 15, 2006, 30 of 31 Abbott districts have electronically submitted their LRFP's; four have yet to provide all required supporting documents. Twenty-two districts have been notified of either incomplete or inaccurate submissions that must be corrected to make their proposed LRFP's complete. The remaining four districts are in review.

Status of Facilities Efficiency Standards Work

In March, DOE Assistant Commissioner MacInnes convened an informal working group of district representatives, the Education Law Center, architects, researchers, and developers to discuss the relevance and effectiveness of the Facilities Efficiency Standards (FES). The FES that will be used to review the 2005 LRFP's were first adopted in 1999. They need to be revised to benefit from EFCFA's first six years to better reflect accepted educational practices, and to be consistent with policy changes anticipated in revisions to EFCFA.

This informal working group opined that the FES are too restrictive and place unreasonable restraints on a district's ability to design schools that meet its individualized needs. In order to provide a framework for possible future modifications of the standards, the Department's Office of Facilities has analyzed historic school construction data in New Jersey and other states, Abbott and non-Abbott school space programs, and school

facilities funding formulas in states with building programs. The Department is currently in the process of using this information to draft recommendations to be presented to the working group.

The Department of Education expects that the revised FES will be available to review individual preliminary project proposals by this summer.

RECOMMENDED STATUTORY CHANGES

As we noted in our initial report, some of the changes that are necessary to improve the schools construction program will require amendments to the Educational Facilities Construction Financing Act (“EFCFA”) or other statutes. Since the issuance of that report, we have convened a task force from the SCC, DOE and Division of Law to identify specific topics for possible legislative changes and to analyze policy and implementation implications. The following are topics that we believe the Legislature should address in making statutory changes.

Corporate Governance

A new authority for school construction should be created to enhance governance and assist the authority to focus solely on the construction of schools. This recommendation is focused on the improvement of the governance of the activities now managed by the SCC. As stated earlier in this report, we believe that an improved management at the SCC can be capable of managing the activities associated with the design and construction of facilities approved by DOE that comprise the school construction program. We also believe that the program will be strengthened by improvements to the governance structure that can be achieved by replacing the current SCC corporate structure and Board of Directors with the activities organized in a State Authority with a new governing board.

Site Acquisition

As has now become clear, one of the greatest challenges faced by the school construction program is the procurement of land in urban areas for the building of schools. Simply put, land in these areas is scarce, property values in many areas have risen dramatically, environmental concerns are often present, and competing interests can encumber a parcel of land that might be suitable for a school. The legislation currently in place does not address these difficult realities, but initiatives clearly are needed to improve and streamline the land acquisition process.

A key area of concern is that land acquisition is made significantly more expensive when a property owner moves forward to obtain municipal approvals or variances to increase the value of the property after the property is identified as a possible school site. One approach worth pursuing is to mimic the statutory provisions governing Department of Transportation land acquisitions for highways, which allow for the preservation of the site for a finite period of time and which give the department the opportunity to acquire the property before any approvals or variances are granted.

Another initiative would be to enhance collaboration between municipalities and the school districts, and between these local entities and the SCC, with respect to the siting of schools. The Working Group is discussing a number of possible approaches, including having districts and municipalities agree on the location of needed school facilities and requiring an inventory of all municipal and district owned land, which would reveal whether any such land would be suitable for school facilities projects.

Prioritization/Enrollment Projections/LRFP's

A clearer prioritization process must be required at the outset of facilities planning. Although EFCFA provides for a system of prioritization by DOE based upon four tiers, this information is insufficient to establish the projects that can realistically be undertaken in the five-year period covered by the Long-Range Facilities Plan (LRFP) because the statute does not require districts to prioritize projects in the LRFP's. The LRFP process should include a requirement that districts designate a list of projects to be undertaken during the five-year period, based upon educational factors and ability to complete them within the time frame. Also, the Legislature should consider statutory changes to better ensure the validity of the projections of student enrollment that are used to prepare LRFP's. Additionally, there is currently no limitation on a district's ability to amend its LRFP at any time. EFCFA should impose limitations on the amendment process, particularly once design is in place or a site has been acquired, subject, of course, to certain necessary exceptions.

Procurement Options

The school construction program has also been hampered by a lack of flexibility in the mechanisms available to construct schools. This is the result of a difficult statutory framework guiding the award of construction contracts, as well as a process that does not contemplate the use of delivery mechanisms other than the standard construction contract. The Working Group has concluded that a palette of procurement options should be available to facilitate the building of schools, including, but not limited to, low-bid awards, "design-build," and "at-risk construction manager" project delivery systems. The availability of these options will provide needed flexibility in the construction of schools.

PROJECT PRIORITIZATION

In response to the recommendations in our last report, the Working Group convened a Project Prioritization Task Force ("Task Force") to address how the 59 projects incorporated in SCC's July 2005 Capital Plan should be prioritized given the funding shortfall. In addition, in order to assess the priorities reflected in the group of unfunded approved projects that are most advanced in design planning the Task Force considered a methodology to prioritize the 97 projects that had been previously approved by DOE and for which design work had commenced but were suspended in July 2005.

Members of the Task Force included representatives from the following: the Governor's Office, the Department of Education (DOE), the Department of Community Affairs (DCA), the Schools Construction Corporation (SCC), the Education Law Center (ELC) and the New Jersey Association of School Administrators (NJASA). The New Jersey Institute of Technology Center for Architecture and Building Science Research (NJIT) serves as coordinator and secretariat for the group. Members of the Working Group were among the members of the Task Force.

The work of the Task Force is ongoing. Final recommendations of prioritization methodologies by the Task Force will be transmitted to the Working Group in approximately 3 months following the completion of DOE consultations with districts concerning the impact of recent LRFPS upon projects in the list of 97 projects for which design work has been suspended. However, the work of the Task Force presents preliminary information, which underscores the importance of providing additional funding to address facility needs that are not included in the current SCC Capital Plan. The preliminary methodology and the implications of its application are summarized in this section of the report.

The work of the Task Force is based on the policy that educational needs should be the primary consideration for prioritization and that the impact of logistical design and construction considerations on a project must be understood in order to develop a strategic plan for the school construction program. The educational needs analysis performed by the Department of Education should serve as the starting point for this process. That analysis must then be integrated with the planning capabilities of the SCC.

In addressing educational needs, the Task Force recognizes that there is a need to ensure that emergent health and safety projects are the first and most immediate priority.

The Task Force recommends that the next two criteria should be (1) a project's contribution to the capacity of a district's early childhood population ('Pre-K') as required by the Abbott decision, and (2) the capacity of any project to relieve existing overcrowding conditions within a specific grade group.

The Task Force considered a number of secondary criteria that concern the site and construction practicalities of implementing a project prioritization process. These secondary criteria include land availability, projected construction Notice To Proceed (NTP) dates, and costs expended to date, by which projects were ranked within their respective category.

Initial Analysis – Findings and Implications

The Task Force applied the above criteria to project-specific data provided by the DOE and SCC for projects either currently in the SCC Capital Plan (the list of 59) as well as projects where design development had been initiated but is presently suspended (the list of 97). Eleven projects from the Capital Plan were considered exempt from

consideration as construction services had already been, or were actively in, the process of being procured.

In considering the application of these criteria, we note that ongoing capital planning must be able to accommodate health and safety projects that arise after the establishment of a capital plan.

The initial results suggested that the majority of projects in the Capital Plan either met the primary educational criteria (overcrowding and Pre-K) or are in construction. The financial and timing implications of the priority ranking of projects have not been finally determined and await the re-forecasting of project budgets and schedules that is scheduled to be completed by the SCC in the next few weeks. However, preliminary information shows that some projects in the capital plan may not commence construction for at least a year and in some cases longer. Understanding the sequencing of these projects provides a basis to manage the current projected shortfall by allocating the existing limited capital plan resources in a manner that will not add additional delay to the construction of projects.

Such sequencing of projects to reflect actual design and construction schedules also introduces the possibility to sequence projects in a manner that permits educational priority projects, not in the current capital plan, to be added without delaying the completion of projects included in the capital plan.

The possibility of such an approach arises from preliminary data showing that at least 25% of the list of 97 projects not in the capital plan would receive a higher priority than the projects currently in the capital plan based on the primary educational criteria. The determination of the precise number of such projects awaits completion of the DOE review of LRFP's with each Abbott district and an analysis of the LRFP's impact upon a district's projects contained among the group of 97 projects. In addition, the SCC and DOE anticipate that some districts will seek to respond to changing demographics, safety conditions, and other factors by seeking approval to eliminate projects in the capital plan and utilize the previously allocated funding for a project on the list of 97 that addresses an educational priority such as overcrowding or pre-K facilities.

This information underscores the need to address the next round of funding at the earliest possible time so that additional much needed priority projects can be incorporated and sequenced within a capital plan so as to achieve maximum educational and construction efficiencies. When additional funding can be anticipated as part of the planning process, projects can be sequenced to reflect educational priorities and development schedules. Without that ability, the SCC must manage the remaining resources by limiting the number of projects that can be actively pursued so as to absorb the result of increasing costs.

NEXT STEPS

In our previous report we anticipated that the Working Group could present in this report a recommended amount of new funding to be authorized for the school construction program. However, the information summarized in this report clearly demonstrates that additional review and data collection is needed before the Working Group can make a specific recommendation about new funding.

The Working Group will focus its activities during the next few months to facilitate the development of a new proposed capital plan for school construction as well as a long-range strategic plan for the program.

The months of June, July and August will be used by the DOE and SCC to actively engage in meetings with districts and other stakeholders to collaborate in the development of the methodology and policies that will lead to the formation of the new strategic and capital plans. In addition to the DOE meetings with districts to review the LRFP's, the Working Group, through its Prioritization Task Force, will be convening a symposium on developing a strategic plan for the school construction program. The symposium, to be held most likely in mid-July, will present the emerging prioritization methodologies and their policy implications for review and evaluation by participants from Abbott districts and other interested parties.

During the summer the Working Group and its task forces will be collaborating with the SCC and DOE to develop: a strategic plan for school construction projects reflecting the sequencing derived from program priorities and development schedules; a capital plan allocating available funding to the strategic plan; and suggested statutory amendments. These three initiatives will provide a foundation for our recommendations for the continuation of the school construction program through the authorization of additional funding.

The Working Group will also continue to evaluate the progress of reform initiatives at the SCC as well as the DOE initiatives regarding long range facility planning.

We anticipate providing you with our recommendations regarding funding for the school construction program during the month of August 2006. We also plan to provide you with a report of observations and recommendations from the July 2006 strategic planning symposium.

CONCLUSION

While noticeable progress has been made toward strengthening the management capability at the SCC, improving the coordination between the SCC and the DOE, and developing a strategic and capital planning process, more work needs to be done before we can make specific recommendations regarding the amount of new funding that is appropriate for the program. The coming months will be devoted to acquiring the

information needed for the analysis through collaboration with school districts, communities and other stakeholders.

Although we cannot at this time specify how much new funding will be needed, it is clear that a pressing need exists today to address the significant number of school facility projects that remain to be built in both Abbott and non-Abbott districts. The Working Group is committed to completing these additional analyses and providing our recommendations by the end of August 2006. We will report on our progress following the July symposium.

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