L.D. 149 "An Act to Transfer Bureau of General Services School Construction Functions to the Maine Department of Education"

Final Report

To the Joint Standing Committee on Education and Cultural Affairs

Major Capital School Construction

Prepared by
L.D. 149 Task Force
Phil Dionne, Chair

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INTRODUCTION

During the first session of the 121st Legislature, the Joint Standing Committee on Education and Cultural Affairs voted to "carryover" LD 149, An Act to Transfer Bureau of General Services School Construction Functions to the Maine Department of Education (Appendix A). The Committee then asked the State Board of Education to convene a task force to study the question. The Task Force included representatives from the Department of Education, Bureau of General Services, Department of Administrative and Financial Services, Maine School Boards Association, Maine School Management Association, an Assistant Superintendent, and a former member of a school building committee.

The Task Force convened, began its deliberations, and undertook to do the following as directed by the Education Committee:

- Review the oversight roles and responsibilities of state agencies involved in state-supported major capital school construction, including but not limited to the Bureau of General Services and the Department of Education, in an effort to improve coordination and cost-effectiveness of the current system;
- Consider the appropriate roles and relationships among and between state agency personnel and officials representing local school administrative units with respect to the review, approval and completion of state-supported, major capital school construction projects;

In addition, the State Board was asked to establish a technical advisory committee, comprised of the appropriate construction-related stakeholders, to provide assistance to the task force in completing its work. Guest speakers included:

1. Scott Brown, AIA, Department of Education, School Construction Team
2. Rebecca Wyke, Commissioner of the Department of Administrative and Financial Services (DAFS)
3. Patti Hayden, DAFS Risk Management
4. Peter Glasow, DAFS/BGS Professional Services
5. William Laubenstein, Assistant Attorney General
6. Goff French, DAFS/BGS Professional Services
7. Joe Ostwald, DAFS/BGS, Director of Construction
8. Michael Kucsma, Department of Education, School Construction Team

The Task Force held four half-day meetings in an effort to address the charge from the Education Committee (Appendix B). The Education Committee also requested that a final report with recommendations and findings of the Task Force be submitted to the Education and Cultural Affairs Committee by January 15, 2004.

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LD 149, An Act to Transfer
BGS School Construction Functions to DOE

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EXECUTIVE SUMMARY

On November 6, 2003, during an interim report to the Education Committee, the Task Force was asked to provide a recommendation whether school construction services should be transferred from the Bureau of General Services to the Maine Department of Education.

The Task Force has recommended retaining within the Bureau of General Services (BGS) those oversight responsibilities for school construction which the Bureau now exercises. The Task Force notes that the 0.4% fee paid to BGS for oversight services does not fully cover the costs thereof. The Task Force acknowledges the intent of the Commissioners of the Department of Education (DOE) and the Department of Administrative and Financial Services (DAFS) to work to eliminate that fee by FY ’06 and their commitment to explore ways to eliminate the fee on all new projects by FY ’05. The Task Force also recommends a number of steps to improve the overall oversight function as it operates within the Department of Education and the Bureau of General Services.

Furthermore, the Task Force urges continuing collaboration between these two units, working with the State Board of Education, to continue the process of self-assessment and to develop additional recommendations for improving the school construction process. Other recommendations made by the Task Force include:

- An increased level of BGS oversight including attendance at all bid openings;
- Developing a standard construction budget format;
- Modifying the change order process to assure that program and building specifications approved by the State Board of Education at final design are adhered to during the construction phase of the project;
- That BGS and DOE submit to the State Board of Education a timetable for recommended improvements to the oversight process for major capital school construction.

The Task Force also recommends further consideration of the following issues:

- The process under which fees for architectural and engineering services are determined (A/E);
- Whether construction schedules are sometimes too aggressive in an effort to fit with school calendars;
- The role of local building committees during the construction process;
- Providing “access” to designers and contractors with whom the state has no contractual relationship;

- Defining the roles and responsibilities of the various individuals and groups involved in oversight.
- Providing training for owners, school boards, superintendents, and building committees on their oversight responsibilities for the construction phase of a major capital improvement project. The training should be a collaborative effort by Maine School Management Association (MSMA), Department of Education (DOE), and the Bureau of General Services (BGS).

RECOMMENDATIONS

Transfer of School Construction Functions to the Department of Education

School construction is a complex process, involving not only the design and construction industries but also the community, the Department of Education (DOE), the Bureau of General Services (BGS), the State Board of Education (SBE), State Planning Office (SPO), and the Maine Municipal Bond Bank (MMBB).

The Department of Education's role in school construction is focused on the prioritization of projects, approval of projects, establishing budgets and timelines, all of which occur prior to construction. The DOE also ensures that the design meets the program requirements.

The Bureau of General Services, within the Department of Administrative and Financial Services, has many roles and responsibilities that are outlined by statute for all public improvements, including schools. In addition to preconstruction reviews, the Bureau handles appeals and potential litigation during the bidding process. BGS personnel also manage the alternative delivery pilot project.

Combining these functions is not in the best interest of either of the departments, the school construction program, or the efficient delivery of services. The Task Force has determined that finding ways to improve the services provided by both DOE and BGS, and continuing to work in a cooperative manner toward the improvement of the school construction program, will provide benefits to all parties, including the communities which both departments serve.

It is the recommendation of this Task Force that the school construction functions currently provided by BGS not be transferred to DOE. It should be noted that the Task Force reached a strong consensus but not unanimity on this issue.

The Task Force further recommends that BGS and DOE, working with the State Board of Education, continue the self-assessment that has begun with the work of this Task Force and that the departments develop further recommendations to the State Board of Education for improving the school construction process. Some initial recommendations for improvements brought to light in the Task Force discussions are set forth in the report.

Improvements to School Construction Program

1. Selection of Architects and Engineers ("A/E")

   The A/E selection process, which is qualifications-based pursuant to BGS Rules, seems to function well.

   Some members of the Task Force believe that the timing of fee discussions with A/E firms occurs too late, and that the fee should be considered during the A/E selection process; once an A/E has been named, schools have little leverage to negotiate fees.

   The Bureau of General Services' A/E selection procedures are structured to eliminate fee from the qualification based selection process. The Task Force recommends that BGS study this issue and consider whether an A/E's proposed fee be considered as part of the qualification process.

2. Project Approval Process/Schedule Approval

   Major capital school construction projects are reviewed and approved primarily by the Department of Education and the State Board of Education with some participation by BGS. Although there may be some issues with project schedules and timing regarding the school construction approval process, the Task Force concludes that there are no major flaws in the process. Local educational units commonly seek and receive approval for expedited schedules. This is to be expected since construction scheduling is driven by the academic schedule.

   However, the Task Force has identified overly aggressive schedules as having a negative impact on construction projects. In an effort to meet the school calendar year, unrealistic schedules are sometimes imposed on the construction process. Neither designers nor contractors are likely to advise an owner that a schedule cannot be met, due to the risk of not being selected. The Bureau of General Services should have a stronger role in establishing and approving such schedules. More realistic schedules will lead to better pricing, a better process, less disruption locally and fewer delay claims. Additionally, the Task Force recommends that DOE and BGS review the timing of bond issuance by the Maine Bond Bank and its effect on the timing of construction projects.

3. The Team

The Task Force believes that the relationship between Owners (the Local Educational Unit or LEU) and the "State" needs improvement. The State can be viewed by Owners as an "intruder" into local matters. This is especially apparent when approving budgets and change orders.

More frequent contact between Owners and State entities may improve communication and cooperation in school construction projects. The Task Force acknowledges that the State must have a role in monitoring school construction projects as 70-75% of these projects are funded by the State.

The Task Force also acknowledges the important role that local Building Committees can have in providing the community's voice in the process. However, a case study of two construction projects revealed that Building Committee format may not be as effective, once construction has been undertaken. At that time, it is crucial to have one point of contact and one decision maker to ensure timely decisions and minimal conflicting instructions to the architect and general contractor.

4. Construction Process

Construction and project close out were the major focus of the Task Force.

a. Fee

As set forth in Title 5, Section 1742 (7) BGS is allowed to assess the "reasonable costs" of its services. This fee has been set at .4% of the project's construction budget. The fee is paid in part out of the local share, an average of 25 to 30%, with the remaining coming from the State's share of the construction costs. This fee was initially intended to pay for four positions at the Bureau. However, the actual revenue generated by the fee varies depending on the number of construction projects and their cost. Many times BGS supplements the fee from other funding sources to pay for the positions. Additionally, the fee has been a major source of tension between the Owners and Superintendents and BGS. The Task Force has also determined that the Bureau of General Services provides a number of construction services that are split among several positions within the Professional Services Division (the Division within the Bureau that oversees state

construction, asbestos abatement, and indoor air quality assessments, among other items.)

In an effort to ensure that the school construction process remains the main focus of future discussions for the program's improvement, the Commissioner of Administrative and Financial Services in consultation with the Commissioner of Education would seek to eliminate the 0.4% fee by FY 06. The Commissioners will be proposing that every effort be made to find an interim funding source for FY 05 with the goal of a General Fund appropriation of the BGS positions for FY 06. Both Commissioners recognize the value of BGS's experience in overseeing State construction projects and feel strongly that this knowledge, background and training be available for all public improvements.

b. Preconstruction Process and Documents and Construction Process

It is the recommendation of the Task Force that BGS documents be reviewed with particular emphasis on improving the accountability of the designers. Additionally, the errors and omissions insurance requirements should receive more attention from BGS and the Owners. Although the Bureau's documents direct Owners to have their insurance professionals review coverages beyond the recommended minimums, such a review is rarely done. Owners need to review coverages, and BGS needs to encourage this review.

The quality of A/E construction documents needs to be reviewed and improved where necessary.

Several members of the Task Force noted that program requirements often are lost in the design process. Procedures must be developed to assure that the program is incorporated into the design.

BGS needs more time to review construction drawings. It is unclear whether BGS' review comments are given serious consideration or are addressed by the Owner and the Owner's designer. When the Bureau hires its Director of School Construction, that individual will ensure that sufficient time is allowed for review and that each review comment by the Bureau is addressed by the Owner's designer.

Pressure to meet rushed schedules adversely affects the review process. Additionally, the State's review is not always seen as an opportunity to improve the design and protect the Owner from

future construction problems, but as a burden to keeping the project moving. BGS must have sufficient time to address not only design and construction issues, but also energy efficiency and life cycle costs.

BGS' performance also needs to improve in some areas. First, long-term involvement in projects must be a prerequisite. Appearing once a month for a requisition meeting is not meaningful input. BGS personnel, despite inadequate staffing, must find a way to anticipate issues and resolve them in a proactive way before a real dispute erupts.

BGS and DOE should attend all bid openings. Bid openings can be fraught with peril, and they usually require many decisions. The State must be present to assist owners and designers in assessments and decision making. Additionally, bid openings (processes and procedures) need written guidelines for use by Owners and the State.

During construction, performance by the designer's consultants (for example, from mechanical engineers to acoustical, security and design consultants) and by the contractor's subcontractors can cause havoc. The State has no contractual relationship with the designer or its consultants, or the contractor or its sub-contractors. When problems arise BGS needs to have access to these parties. The designer, however, controls this access. The Task Force does not have a solution to this problem, but recommends that it be reviewed by BGS, DOE and the State Board of Education, in consultation with Owners to develop a process for better access and communication.

This issue dovetails with another: how can BGS intercede earlier in disputes? (or how can BGS' participation anticipate and avoid disputes?) It is unclear how proactive BGS is in ferreting out problems. It appears from BGS field reports that some staff members are informed and involved. However, performance seems to depend on the staff person assigned to the project. The Task Force strongly recommends that a uniform field inspection and report system be established.

The Task Force further recommends that a standard budget format be developed for all projects. All local education units (LEU) must be forthright in sharing all project financial information with State representatives.

Construction contingencies must be closely monitored by the State.

The change order process should be reviewed with input from DOE, BGS and Owners. A process must be developed to ensure that changes that have been made in the project by the DOE or State Board cannot be reversed by change order without Board approval. To assist in this effort, the State should maintain a database of these changes.

Next, it appears that some BGS staff approve change orders on the basis of an engineering or architectural evaluation only. All change orders must be screened not only for architectural and engineering impact but for programmatic impact and financial impact.

Architects' invoices often are not reviewed by the State. It is unclear whether they should be. This is an issue that requires additional review by BGS and DOE.

Finally, project closeout needs more attention. This is the most visible and sensitive phase of construction where expectations and performance do not necessarily correlate. Until building commissioning is fully implemented, buildings will be occupied before a "shake down" is complete. Heating and cooling systems may not be balanced. Windows or roof areas may leak. BGS needs to remain active until all systems are in order and the punch list is complete.

5. Roles and Responsibilities

The Task Force has examined the roles of the "Clerk of the Works" or Architects' Field Representative and the Owner's Representative.

First, some Task Force members questioned whether the AIA Clerk of the Works scope is too heavily skewed towards the Architect. Having a Clerk of the Works at all has been questioned in some cases.

Additional questions are whether the Clerk of the Works and Owner's Representative scopes can be combined; whether either a Clerk or Owner's Representative is needed for Alternative Delivery projects; how many hours per week an Owner's Representative is required; how the Clerk, Owner's Representative and BGS Field Representative interface and overlap.

The same combination of oversight may not be required for each project. To eliminate confusion and improve communication, a

preconstruction team meeting should be held to decide roles and responsibilities for everyone involved in the process, including the Owner and School Construction Committee. The State Board of Education should consider making the team meeting a part of the State Board's project approval. In the meantime, it is the Task Force's recommendation that DOE and BGS continue to work in this area and further outline roles and responsibilities for all parties to the school construction process.

6. Training Workshops

   The construction phase of a major capital improvement project needs to be "demystified." The Owner should be educated about the process, including construction budgets, insurance requirements, schedules, and the impact of delayed decisions. Training in these areas (perhaps through Maine School Management in cooperation with DOE and BGS) would provide Owners with the necessary background to evaluate and make better decisions throughout the construction project. Additionally, Owners also need to be more informed about building systems selected during the programming phase to help avoid problems at the point of construction.

REVIEW AND OVERSIGHT BY STATE BOARD OF EDUCATION

The Task Force concluded that there should be closer and more frequent communications between the Bureau of General Services and the State Board on school construction matters, and the opportunity to form a partnership was viewed as beneficial to both entities and to the program.

The recommended improvements outlined in the above section will be submitted to the State Board for comment, review, and approval.

The Task Force recommends that a work plan and timetable be established for submission of “recommended improvements” to the State Board and for final action as to these improvements. The “recommended improvements” should be regularly scheduled as agenda items at the State Board’s meetings so that issues may be discussed, and feedback obtained from all parties.

By February 2004, the Bureau should submit a timetable to the State Board for its consideration. The State Board will then report back to the Education Committee by the end of February 2004 with a timetable, and a work plan, culminating in a final report by January 2005.

RESOURCES

1. Case Studies of Two Construction Projects
2. Construction Documents
3. Department of Education Process Charts
4. Field Inspection Reports
5. Financial Information – History of .4% Fee and Anticipated Receipts
6. Insurance Requirements
7. State Statutes Addressing Public Improvements
8. Surveys of Superintendents

APPENDICES

Appendix A – LD 149, An Act to Transfer the Bureau of General Services School Construction Functions to the Maine Department of Education

Appendix B – Education Committee Letter