

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

**October 20, 2017
State Capitol, Room 307
Santa Fe**

The sixty-third meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Stephanie Garcia Richard, chair, on October 20, 2017 at 9:08 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Stephanie Garcia Richard, Chair
Sen. William P. Soules, Vice Chair
Sen. Craig W. Brandt
Dr. Carl Foster
Rep. Harry Garcia for Rep. Brian Egolf
Kirk Hartom
Sen. Stuart Ingle
Rep. Patricia A. Lundstrom
Antonio Ortiz, designee for Secretary of Public
Education
Richard A. Perea
Mike Phipps
Rep. Dennis J. Roch
Secretary Duffy Rodriguez, Department of
Finance and Administration
Rep. G. Andrés Romero
Eugene Schmidt
Rep. James E. Smith
Sen. Mimi Stewart for Sen. Mary Kay Papen
Sen. Bill Tallman
Alan Webber

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Daniel A. Ivey-Soto
Sen. Howie C. Morales
Sen. Pat Woods

Absent

Rep. Brian Egolf
Greg Ewing
Sen. Mary Kay Papen
T.J. Parks
Stan Rounds
Sen. Benny Shendo, Jr.
Sen. John Arthur Smith
Xochitl Torres Small

Rep. D. Wonda Johnson
Sen. Gay G. Kernan
Sen. Cliff R. Pirtle
Sen. Sander Rue

Staff

Sharon Ball, Drafter/Senior Researcher, Legislative Council Service (LCS)
Jeff Eaton, Research and Fiscal Policy Analyst, LCS
Michelle Jaschke, Researcher, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Friday, October 20

Call to Order and Introductions

Representative Garcia Richard called the meeting to order and welcomed task force members, guests and staff. She recognized David Abbey, chair of the Public School Capital Outlay Council (PSCOC), and introduced the newly hired Public School Facilities Authority (PSFA) director, Jonathan Chamblin. Mr. Chamblin told task force members that he is excited by the opportunity to move the PSFA forward and to work with the PSCOC and the PSCOOTF. Mr. Chamblin noted that he is a licensed architect and has lived in New Mexico since the mid-1990s. He holds a master's degree in architecture from the University of New Mexico and has worked most recently at Architectural Research Consultants in Albuquerque, where he worked with many school districts and higher education institutions. He has been Leadership in Energy and Environmental Design (LEED) certified since 2006. He explained that LEED certification is the most widely used green building rating system in the world. Among his other credentials, Mr. Chamblin noted his certification as a solar energy practitioner and also as a construction contract manager from appropriate certifying organizations.

On behalf of the task force, Representative Garcia Richard welcomed Mr. Chamblin and wished him well.

Approval of September 18, 2017 Minutes

Upon a motion made and duly seconded, the task force approved the minutes of the September 18, 2017 PSCOOTF meeting as presented.

Gathering Information: PSFA Proposed Changes to Systems-Based and Standards-Based Capital Outlay Programs

Mr. Chamblin described the process of gathering information from school districts and stakeholders regarding implementation of proposed changes to public school capital outlay programs. He said that the first step is to contact architects, builders and task force members for ideas about improvements to the PSCOC funding and application process, as well as what the PSFA could do to incentivize participation in systems-based awards. Task force members discussed that the issue currently confronting school districts is whether to make improvements to "small" systems that would "bump down" the district or building in the standards-based rankings and thus "freeze" them out of a larger renovation award.

A member asked what the eligibility cutoff is to apply for a systems-based award. Mr. Chamblin replied that only three awards were made this cycle but that eligibility is open to schools that can demonstrate a potentially significant reduction in a building's Facility Condition

Index (FCI) score. Mr. Abbey added that the PSCOC intends to refine the standards-based awards process and make changes by the beginning of 2018.

A member asked if the lower level of funding available reflects a new reality. Mr. Abbey noted that there are currently two application processes, one for standards-based awards and one for systems-based awards, but that the PSCOC is working to have only one application process. A member asked if the task force needs to be concerned about the FCI creeping back up, given the lower level of funding that has been projected. Mr. Abbey said that he does not foresee that happening.

Discussion ensued regarding issues related to the small systems project process that discourage applications because districts wait until they are eligible for a larger project to apply for funding. Task force members and PSFA staff discussed the possibility of including in the Facility Assessment Database (FAD) more detailed data that will inform decision making overall. Mr. Chamblin reported that the FAD is updated in a three-pronged approach utilizing a staff survey, Facility Master Plan (FMP) updates and PSFA site visits that are conducted on a three-year cycle. Mr. Abbey observed that consideration might be given to replacing the standards-based awards process, which seems to create the expectation that a school district will receive funding for a new school, with a model that focuses on modernization of existing facilities. Members noted the importance of addressing energy efficiency in the selection process and asserted that the impact of planned improvements on utility costs should be weighed in prioritizing projects.

Albuquerque Public School District (APS): Capital Investments and Future Planning for APS-Authorized Charter Schools

Kizito Wijenje, executive director, Capital Master Plan, APS, and Carrie Robin Brunder, director of government affairs and policy, APS, presented an overview of charter school planning processes in their district. They indicated that seven charter schools are currently participating in APS' Capital Master Plan program. Over \$57.8 million has been expended at these schools during the period from 2007 through 2016, with an additional \$58 million estimated to be distributed to charter schools through per membership distributions during the period from 2016 through 2022. Of the 56 charter schools located in APS, 12 are located in public facilities.

APS has memoranda of understanding (MOUs) with the seven charter schools as a pilot program designed to assist charter schools in acquiring suitable facilities. As a requirement of inclusion in the APS Capital Master Plan, the charter schools agree to turn over their distributions under the Public School Buildings Act (also called "HB 33") to APS. In return, the district has assisted charter schools in other ways as well, including, for example, acting as guarantor of a New Mexico Finance Authority (NMFA) loan for the Digital Arts and Technology Academy (DATA) charter school to purchase a facility. DATA could not, on its own, demonstrate that it could meet NMFA requirements for the loan. The panelists outlined a number of additional strategies available to assist charter schools with funding public facility needs.

Criteria for selecting charter schools to become participants in the APS pilot program include the schools':

- district-chartered status;
- demonstrated fiscal responsibility;
- stable leadership;
- continuing school improvement;
- suitability of facilities;
- voluntary entry into an MOU with APS regarding the schools' respective capital outlay funding sources; and
- the schools' retention of all programmatic, human resource and operational financial responsibility/authority unless otherwise agreed to previously by both parties to the MOU.

Observing that capital outlay funding is a limited resource available to all public schools (charter and non-charter alike), APS staff presented three possible ways forward in the face of funding cutbacks:

1. establishing a per membership distribution pool for state capital outlay;
2. establishing a revenue source for locally authorized and state-authorized charter schools; and
3. "carving out" a portion of available public school capital outlay funding to be used exclusively for charter school capital outlay.

A member asked about reasons that the unlikely partnership with charter schools works at APS. Ms. Brunder replied that more than 15,000 students attend charter schools in APS. The need for facilities, dating back to 2008, compelled charter schools to enter into MOUs, even if that meant the schools would have to "wait their turn" in the list of prioritized needs in the school district FMP.

A member commented that the work at APS was commendable, but at the end of the day, APS staff has a fiduciary duty to the school district and the taxpaying members of the district and perhaps risks having discontented parents of APS students in traditional schools if the allocation of resources to charter schools is disproportionate or viewed as disproportionate. The member noted that two percent of the state equalization guarantee (SEG) distribution from the state to charter schools is intercepted by the Public Education Department (PED), regardless of whether the charter school is in an APS facility. Members discussed the need to dedicate that two percent to specific administrative purposes.

A member asked what impact suspension of the lease reimbursement program would have on APS and its pilot project charter schools. Tami Coleman, chief financial officer, APS, replied that suspension of the PSCOC lease reimbursement program would create a financial burden for APS and threaten the viability of the charter school-APS partnership program. Ms. Brunder noted that when a charter school is in partnership with APS, APS receives two percent of the charter school's SEG distribution for its administrative purposes. Ms. Coleman observed

that the mortgage held by APS on behalf of the DATA charter school is paid in part from the school's SEG distributions and in part from PSCOC lease assistance.

A member asked if APS could do without one of those funding sources. Ms. Brunder said that it is important to keep in mind that the two percent of the SEG distribution payment to APS is to pay for administrative costs borne by the district as a result of the charter school being located in the school district. Ms. Brunder said that the school district is monitoring these funds much more closely as a result of an audit report issued by the Office of the State Auditor.

In response to a task force question about responsibility for insuring buildings, Ms. Brunder responded that it is the responsibility of APS. The member expressed concern that if a facility is not maintained properly by a charter school, the liability is assumed by APS. A member asked if any charter school within the APS boundary is eligible to enter into an MOU and partner with APS. Ms. Brunder replied in the affirmative but said that more points in the scoring criteria are awarded to charter schools that are chartered through APS than to state-chartered charter schools.

A member asked how APS has handled the numerous audit findings of years past and the way in which the district is able to reduce the number of audit findings for charter schools. Ms. Coleman responded that the latest financial audit for APS had approximately 10 findings for the school district and approximately two for each charter school, which she noted is an improvement over prior years when the number of findings exceeded 300. She added that the district uses the findings successfully to improve administrative processes.

Members commented that funding "cannibalization", limited resources and traditional school versus charter school competition will lead to financial problems driving policy decisions. This dynamic raises interesting questions that were recognized and articulated in the state auditor's report as "competition versus collaboration". Another member commented that charter schools serve public interests and that the children attending charter schools are a responsibility of the state. Approximately \$181 million is being spent on children attending charter schools across the state. It was noted that up to 30 percent of charter school students return to traditional public schools at APS annually.

Status Report: Broadband Deficiencies Correction Program (BDGP)

Ovidiu Viorica, broadband program manager, PSFA, presented a program status report. Mr. Viorica noted that the definition of "broadband" has changed as technology and demands on data throughput have changed. As recently as five years ago, broadband was defined as four megabits per second (Mbps), while today it is 25 Mbps. Mr. Viorica described telecommunications services, internal equipment and end-user device relationships and elaborated on the background of the federal E-rate program established 19 years ago and administered by the Federal Communications Commission. The E-rate program distributes approximately \$3.9 billion annually. Of this amount, approximately \$750 million is requested by public schools.

Mr. Viorica explained that PSFA dollars are used to match federal E-rate funds. In fiscal year (FY) 2016, the PSFA participated in approximately 60 projects, totaling \$25 million. In FY 2017, the PSFA participated in approximately 50 projects, totaling \$34 million. State funds amounted to approximately 10 percent of the cost, or \$2.5 million and \$3.4 million, respectively, in FY 2016 and FY 2017. A survey conducted by the PSFA in FY 2015 and FY 2016 showed that approximately 90 percent of schools were in need of fiber or equipment upgrades at a cost of approximately \$166 million.

Mr. Viorica testified that approximately 80 percent of schools are already connected to high-speed fiber-optic data connections, even though the costs vary considerably. Internet access costs have been falling steadily, but there are pockets in remote areas of the state where costs remain high, in part because long-term contract rates remain in effect. Mr. Viorica reported that hardware used in delivering internet access typically requires replacement every five years. He also reported that the PSFA is trying to fill the vacant BDCP project manager position but that it is difficult to find and attract qualified candidates because of a lack of resources in this highly competitive market.

Discussion of Legislation for Possible Task Force Endorsement

Ms. Ball presented draft bills for consideration by the task force with the following "202 tracking numbers" and brief descriptions:

1. .208826.1 — provides changes to the state standards-based capital outlay funding formula;
2. .208825.1 — requires the PED to use prior year enrollment data for determining state-district shares of SB 9 funds;
3. .208834.1 — extends the school bus replacement cycle;
4. .208827.1SA — requires county treasurers to distribute certain property tax revenues to charter schools; and
5. .208828.1SA — repeals statutory language requiring the PED to advise school districts regarding the use of capital outlay funding to purchase certain supplies.

Task force members discussed a number of issues related to the measure that would make changes to the public school capital outlay standards-based process statute (.208826.1). Senator Stewart explained that this measure passed during the 2017 regular legislative session but was vetoed by the governor. Senator Stewart added that the veto message indicated that the bill needed to be "vetted" by the PSCOOTF. In response to a question about the possible negative effects of the formula changes on both the Zuni Public School District and the *Zuni* lawsuit, Senator Stewart assured the task force that passage of the bill would not have a negative effect on either the school district or the lawsuit. Discussion included the issue of "have nots" in those districts with little or almost no taxable lands and the reduction in proceeds from the sale of supplemental severance tax bonds compared to "property tax rich" areas that allow for provision of more amenities beyond state standards.

Beginning the discussion on the proposed school bus replacement bill (.208834.1), Representative Roch pointed out that school buses that must travel on unpaved roads in isolated

rural areas wear out faster than buses that operate in more densely populated areas. Mr. Ortiz, transportation director, PED, and the secretary of public education's task force designee, explained that maintenance records are reviewed if a bus replacement request is made earlier than the typical 10-year replacement cycle. If regular maintenance has been performed and the bus still needs to be replaced, the school district is eligible for state bus replacement funds. However, he said, if maintenance is undocumented or proves to be insufficient according to standard industry practices, the school district may not be eligible for state replacement funds. Mr. Ortiz mentioned a possible issue with extending the maximum term that a bus can be used before retirement is the fact that current law stipulates that the school district's transportation contractor "owns" the school buses at the end of the term of the transportation contract or agreed upon useful life of the school bus.

Mr. Ortiz also noted two additional bills the PED requested for PSCOOTF endorsement consideration that were also requested last year. He said that the bill relating to property tax revenue distribution (.208827.1SA) clears up a "glitch" in responsibility for distribution of property tax revenues to charter schools based on SB 9 and HB 33 mill levies. The bill was introduced and amended in the 2017 regular session but did not pass.

Ms. Ball explained that the next bill (.208828.1) was not endorsed by the task force or introduced in the 2017 session. Mr. Ortiz explained that the PED was asking again for endorsement and a sponsor because the bill requires school districts and charter schools to submit proposed purchases with SB 9 funds to the PED for comment. He stressed that the PED has no authority over the way in which the school districts spend these funds and said that completing this task is time-consuming and is for information purposes only; therefore, the PED would like the requirement repealed.

In response to additional comments and discussion, Ms. Ball told the task force that she is working on two more bills for possible endorsement, one that would clarify ownership of charter school facilities under certain circumstances and one that may allow school districts to sell some abandoned school properties without a requirement for comparables. She noted that she was working with the National Conference of State Legislatures to examine relevant statutes in states that have them.

The task force did not endorse any of the proposed legislation so as to allow members time to review draft bills prior to possible endorsement motions to be made at the December 1, 2017 meeting.

Adjournment

There being no further business before the task force, the meeting adjourned at 3:28 p.m.