

Public School Capital Outlay Oversight Task Force

2011 ANNUAL REPORT

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***PUBLIC SCHOOL CAPITAL OUTLAY
OVERSIGHT TASK FORCE***

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**REPORT
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

Introduction

As the "direct descendent" of several task forces that were created as a result of the 1999 *Zuni* lawsuit (*The Zuni Public School District et al. v. The State of New Mexico et al.*, CV-98-14-11), the Public School Capital Outlay Oversight Task Force (PSCOOTF) is the entity charged by statute to monitor the implementation of the standards-based process established in provisions of the Public School Capital Outlay Act, the Public School Capital Improvements Act and the Public School Buildings Act; to monitor the revenue streams that fund the standards-based process; to oversee the work of the Public School Facilities Authority (PSFA); and to make annual recommendations related to the implementation of the standards-based public school capital outlay process to the legislature and the executive before the beginning of each legislative session.

The legislature established the standards-based public school capital outlay process in response to the judge's order in the *Zuni* lawsuit that found the state to be in violation of the Constitution of New Mexico uniformity clause (Article 12, Section 1)¹. Filed by parents on behalf of their children in the Zuni public schools, and later joined by parents in the Gallup-McKinley County and Grants-Cibola County public schools, the *Zuni* lawsuit successfully challenged the constitutionality of New Mexico's process for funding public school capital outlay that was in effect at the time. In 1999, Judge Joseph L. Rich, Eleventh Judicial District, gave the state until July 28, 2000 to correct past inequities and to establish and to implement a uniform system of funding for future public school capital improvements. Later, the court extended the deadline in order to evaluate the legislation recommended by a task force established in 2000 and subsequently created by law in 2001.

The current task force consists of 25 members, including members of the legislature and the executive; certain designated public members, some of whom have expertise in finance and education; and superintendents of school districts or their designees, two of whom must be from districts that receive federal impact aid grants. Appendix A provides a listing of the members who served during the 2011 interim.

Previous reports of the public school capital outlay task forces created by Laws 2001, Chapter 338 and re-created by Laws 2004, Chapter 125 provide details related to the background and development of the statewide standards-based public school capital outlay process that is now in its ninth year of implementation. While this report focuses primarily on the work of the task force during the 2011 interim, the following background information is provided for perspective on the issues before the task force.

¹"A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained." (Article 12, Section 1, Constitution of New Mexico).

Background

The earliest work that addressed public school capital outlay funding discrepancies was performed by a task force established by the State Department of Public Education (now the Public Education Department) in 1998 and co-chaired by Representative Ben Lujan and Senator Linda M. Lopez. This task force contracted with a nationally known consulting firm, MGT of America, Inc., to conduct a comprehensive review of issues concerning New Mexico public school capital outlay, including conducting a sampling assessment of public school facilities in 35 school districts.

The first legislatively created task force was established in 2000 in Senate Joint Memorial 21 by the Forty-Fourth Legislature, Second Special Session, in response to an order by *Zuni* lawsuit Judge Rich giving the state until July 28, 2000 to correct past inequities and establish and implement a uniform system of funding for future public school capital improvements. Many of this first Public School Capital Outlay Task Force's recommendations, issued in December 2000, were adopted in Laws 2001, Chapter 338, including statutory authorization to continue its work.

These recommendations, which were enacted in Laws 2001, Chapter 338, focused on establishment of a transitional three-pronged framework for public school capital outlay that:

- 1) corrected past inequities by providing 100 percent state funding for immediate remediation of health and safety deficiencies identified in a one-time initial assessment of every public school throughout the state;
- 2) continued to fund the substantial backlog of critical capital outlay needs of school districts that had substantially used up their own resources for public school capital improvements; and
- 3) implemented a long-term public school capital improvement process based on the development of adequacy standards.

In addition, this measure increased the Public School Capital Improvements Act (also called "SB 9" or "the two-mill levy") state guarantee from \$35.00 per mill per unit (the first such increase in almost 30 years) to \$50.00 per mill per unit and designated supplemental severance tax bonds as the permanent revenue source for public school capital outlay.

In April 2001, Judge Rich appointed the Honorable Dan McKinnon, former state supreme court justice, as a special master to review the progress the state had made in correcting past inequities and in developing and implementing the new capital outlay process. In his report, Justice McKinnon concluded "that since 1998 the state has made a substantial effort to rectify the disparities..." in funding for school facilities and that "... at this time the state is in good faith and with substantial resources attempting to comply with the requirements of Judge Rich's previous directions.". Adopting the report of the special master in May 2002, Judge Rich reserved the

right to hold status conferences to monitor and review the state's progress in addressing issues raised by the *Zuni* lawsuit.

The special master's report emphasized the importance of mitigating the disequalizing effect of direct legislative appropriations to individual schools for capital outlay purposes and directed that these appropriations be taken into account in the funding formula that was to go into effect after September 1, 2003. In response to this directive, the 2003 legislature amended the funding formula (Laws 2003, Chapter 147) to provide an offset against state grant awards for public school capital outlay equal to a percentage of any funds received by a school district as a direct legislative appropriation using the local/state-share formula. At the time, the offset provision also applied to legislative appropriations for educational technology, with the reduction credited against the school district's annual distribution under the Education Technology Equipment Act.

Legislation enacted in 2004 made a number of improvements to the capital outlay process and provided \$57 million of additional funding for deficiency correction and continuation projects (Laws 2004, Chapter 125). It enacted many of the recommendations of the task force from the 2003 interim, including a recommendation to extend the life of the task force for an additional year, and added provisions relating to what are called "recalcitrant districts". These provisions would allow the Public School Capital Outlay Council (PSCOC) to bring a court action against a school district if it determines that a school district's facilities are below the minimum standard required by the constitution and that the district has consistently failed to take action. The court action could result in the imposition of a property tax in the school district to pay the district's required share of the costs of bringing the school facilities up to the adequacy standards. The task force considered the enactment of these "recalcitrant district" provisions as another important step for ensuring that the new process will comply with the directives of the court in addressing the *Zuni* remedies.

Legislation enacted in 2005 (Laws 2005, Chapter 274) added a number of refinements to the standards-based awards process as a result of experience gained during the pilot year, including many of the recommendations of the task force from the 2004 interim. Among those recommendations was completion of the deficiencies correction program with specific emphasis on the correction of serious roof deficiencies. In addition, this legislation created a separate two-year roof repair and replacement initiative and allocated up to \$30 million per year for fiscal years 2006 and 2007 for this initiative. The lease assistance program enacted in 2004 was modified to increase the maximum grant award from \$300 per member to \$600 per member and to extend this lease assistance to charter schools in their initial year of operation. In response to the task force's focus on improving maintenance of public school buildings, the SB 9 guarantee amount was increased from \$50.00 per mill per unit to \$60.00 per mill per unit with automatic yearly increases based upon the consumer price index. The legislation also established a framework to allow the PSCOC to waive all or a portion of the local share when funding a project if the district meets certain criteria.

The 2005 legislation also required new charter schools to meet educational occupancy standards before being chartered and established guidelines to assist in the transition of charter schools to public facilities by 2010 (later amended to 2015).

During the 2005 interim, the first full year of the task force's existence in its current iteration, the members reviewed the statewide assessment of school facilities; the deficiencies correction program; the roof deficiency correction program; PSCOC awards; lease payment awards; the development of educational technology adequacy standards as directed by HB 511 from the 2005 legislature; and a number of issues related to charter schools. The task force also explored a number of new subjects, including high-growth districts and schools; issues related to rural and very small schools; alternative capital financing options, including tax increment financing and industrial revenue bonds; and opportunities for energy-efficient school buildings.

Acting on the recommendations of the PSCOOTF, the 2006 legislature passed and the governor signed into law Laws 2006, Chapter 95, p.v., amending the Public School Capital Outlay Act to:

- increase distributions for lease payments owed by schools, including charter schools, from \$600 to \$700;
- provide for partial state funding to school districts for the development of five-year facilities master plans, including full funding for some of the smaller districts;
- allow the use of state funding for demolition of abandoned school buildings;
- create a process to identify and correct serious outstanding deficiencies at the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf if additional funding is provided;
- exempt all PSFA staff from provisions of the Personnel Act; and
- create a program for advancing to a school district the local matching share otherwise required if the money is for a "qualified high priority project", which is defined as a project in a high-growth area (also defined in the legislation). The legislation provides that, once a school district receives an advance of the local share, it is no longer eligible to receive state funding for future projects until the amount advanced is fully recouped by the amounts that would otherwise have been granted by the state.

Additional legislation passed and signed into law:

- requires districts to submit a five-year facilities plan to the PSFA before beginning any PSCOC project;
- eases restrictions on the limits on school district cash balances and allows the balances to be used for the local match required for PSCOC grant awards;
- creates a New School Development Fund to provide funding for school districts for one-time expenditures associated with the opening of new schools;
- amends the Procurement Code to allow the PSFA to be its own central purchasing office;
- appropriates funding to continue the development and implementation of the facility

information management system (FIMS) program, a uniform web-based system to manage maintenance for school district facilities; and

- allocates funding to improve the indoor air quality of public schools.

During the 2006 interim, the task force heard testimony about the continuing statewide implementation of the FIMS and school district facilities master plans; revision of current PSFA oversight and review responsibilities, as well as concerns about a perceived PSFA staff focus on regulation rather than assistance; cooperation among school districts, counties and municipalities regarding issues related to growth; energy-efficient school buildings; factors affecting construction costs; an update on development and implementation of educational technology adequacy standards as required in HB 511, passed by the 2005 legislature; and concerns about offsets for direct appropriations.

PSCOOTF endorsements for legislation for the 2007 session addressed testimony that the task force heard during the 2006 interim, particularly the effects and some unintended consequences of legislation enacted over the previous six or seven years. Recommendations in the task force "omnibus" bill that were enacted and signed into law (Laws 2007, Chapter 366, p.v.) included the following:

- exemption from PSFA approval of school construction projects costing \$200,000 or less;
- the following amendments to the Public School Capital Outlay Act:
 - reduction of offsets from future projects awards for special appropriations by 50 percent if the special appropriation is for a project that ranks in the top 150 projects statewide;
 - transfer of the offset against a local school district for special appropriations for state-chartered charter schools from the school district to the state-chartered charter school;
 - allowance of PSCOC grant assistance to purchase a privately owned facility that is already in use by a school district if the facility meets specified requirements;
 - provision for additional time to correct outstanding deficiencies in the remaining deficiencies correction process, including some roofing projects;
 - an increase in lease reimbursement payments from \$600 to \$700 per MEM with yearly increases for inflation; and
 - an extension of time for the lease payments to 2020 and an allowance for limited leased administrative space to qualify for the lease reimbursement;
- an amendment to the Public School Capital Improvements Act (SB 9) to increase the state guarantee from \$60.00 to \$70.00 per mill per unit with additional annual increases for inflation;
- amendments to the Public School Buildings Act (HB 33) to:
 - allow a percentage of revenues to be used for project management;
 - increase the period for which a tax may be imposed from five to six years to track with SB 9 and other school district elections;
 - require that future local board bond resolutions contain the capital needs of charter

- schools based upon the appropriate five-year plans; and
 - require that the proportionate revenue from future HB 33 taxes approved by voters be distributed directly to charter schools;
- amendments to state statute to assist with implementation of the constitutional amendment approved by voters in the 2006 general election whereby lease-purchases are not considered debt in the constitutional sense, allowing school districts to enter into lease-purchase agreements without the leases being subject to voter approval; and
- amendments to the Procurement Code to provide for a contractor-at-risk mechanism for construction of education facilities.

Since 2003, when all districts became eligible to apply for public school capital outlay funds and the adequacy standards were made operational, the task force has heard testimony that some students live in school districts that may never have a large enough property tax base to be able to finance the building of facilities that can ever go above adequacy standards. The governor vetoed language in the "omnibus" bill that would have established a process to allow a school district to be eligible for an additional "beyond-adequacy" award if the PSCOC determined that:

1. the school district is otherwise eligible to apply for a grant under the Public School Capital Outlay Act;
2. the state share for existing grants under the act is 70 percent or greater;
3. the district's voters have approved a total school property tax rate of at least nine mills over the past three years;
4. at least 70 percent of the students in the district are eligible for free or reduced-fee lunches; and
5. for the next four years, because any local resources of the school district will be spent as the local match for projects, the school district will have no available resources from the state to exceed statewide adequacy standards.

The vetoed legislation would have equaled an amount from 10 to 25 percent of the original project cost and would have been funded through a five-year reversion of 20 percent of all unreserved, undesignated reverting balances to the Public School Facility Opportunity Fund; and by "shaving" three percent of all special legislative appropriations and depositing the proceeds into the fund. In his veto message, the governor requested further study of the funding sources and selection process.

PSCOOTF recommendations to the 2008 legislature resulted in the passage of an "omnibus" measure (Laws 2008, Chapter 90, p.v.) that proposed to amend the Public School Capital Outlay Act to allow the PSCOC to make awards above adequacy to qualifying school

districts in addition to their standards-based funding. This section of the legislation was vetoed by the executive and did not become law. Other provisions of the bill that managed to avoid the veto pen include provisions to reduce the offset from a PSCOC grant award for direct appropriations made for joint use with another governmental entity; to provide an increased grant award to districts with a demonstrable exemplary record of preventive maintenance; to reauthorize continuation of FIMS funding; and to appropriate funding to the already established New School Development Fund for FY 2009 and subsequent fiscal years for distributions to school districts for equipment and other nonoperating costs unique to the first year of a new school's operation.

Other PSCOOTF recommended legislation did not receive executive messages and therefore were not considered by the 2008 legislature. They included measures (1) to repeal the current statutory requirement for bonding of subcontractors; (2) to allow for out-of-cycle transfer of charter school chartering authority from the local district to the state or vice versa if appropriate and (3) to amend the Public School Insurance Authority Act to provide for limited coverage in certain circumstances such as the community use of a public school building.

PSCOOTF recommendations to the 2009 legislature reflected the task force's focus on an examination of the ramifications of the Charter Schools Act's requirement that charter schools be located in public facilities by 2010 and other charter school facility issues; policies to encourage the joint use of school facilities by other governmental, community and certain private entities; the relationship of funding to provide adequacy and space flexibility; and costs related to revisions to the statewide adequacy standards.

Legislation based on PSCOOTF recommendations that passed the 2009 legislature and were signed into law by the governor include the following in CS/SB 378 (Laws 2009, Chapter 258):

- amendments to the Charter Schools Act to extend to 2015 the deadline for charter schools to be located in public buildings;
- amendments to the Public School Capital Outlay Act to:
 - ▶ provide \$10 million to be awarded for expenditure in FY 2010 through FY 2012 for a roof repair and replacement initiative;
 - ▶ limit lease payment assistance for lease-purchase arrangements to charter school facilities;
 - ▶ remove the limit on the amount of lease payment assistance funds that may be awarded; and
 - ▶ require federal funds received by a school district or charter school for nonoperating costs be included in the district's or charter school's offset; and
- amendments to the Public School Capital Improvements Act to:
 - ▶ expand the definition of "capital improvements";
 - ▶ require bond resolutions to include charter school capital improvements; and
 - ▶ require proportional distributions of bond proceeds and state match dollars to

charter schools.

The governor vetoed language in this measure that would have provided Public School Capital Outlay Act funding to pay for lights and bleachers for athletic fields at certain rural high schools and authorized an increase in grant assistance for qualifying rural high schools. The governor vetoed similar legislative language allowing an increase in grant assistance for certain rural high schools that passed in the 2008 session.

In response to testimony heard during the 2008 interim regarding difficulties with implementation of the Public School Lease Purchase Act, the task force endorsed a measure (Laws 2009, Chapter 132) that amended the legislation passed in 2007 including the following:

- amendments to public school general obligation bond statutes to eliminate general obligation bond proceeds as a source of funding for lease-purchase agreements;
- amendments to the Public School Lease Purchase Act to:
 - ▶ extend the lease-purchase time to 30 years;
 - ▶ limit the interest to the amount determined by the Public Securities Act;
 - ▶ allow a school district to require the owner to pay the current market value in excess of the outstanding principal due at the time of termination;
 - ▶ allow property acquired in a lease-purchase to be considered public property;
 - ▶ require a local school board to comply with the Open Meetings Act when it enters into a lease-purchase agreement; and
 - ▶ require a local school board to include the tax revenue needed by a charter school if the charter school's charter has been renewed at least once.

Other legislation that passed the 2009 legislature and was signed into law includes the following:

- amendments to the Public School Insurance Authority Act to allow for insurance for joint use of school buildings (Laws 2009, Chapter 198);
- a measure that appropriates \$575,000 from the Public School Capital Outlay Fund to develop and implement a geographic information system (Laws 2009, Chapter 115);
- amendments to the Public School Capital Outlay Act to add the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf in the statewide deficiency corrections program (Laws 2009, Chapter 37); and
- new legislation to enact the Qualified School Construction Bonds Act to provide statutory language to implement the "qualified school construction bonds" program included in the federal American Recovery and Reinvestment Act of 2009.

During the 2009 interim, the task force heard testimony about, among other issues, the costs associated with subcontractor bonding, public school capital outlay project planning (development and implementation of education specifications), the effects of the broad economic decline that began in 2008, charter school facility issues and the positive effects of passage of the

federal American Recovery and Reinvestment Act of 2009 that have saved the state from massive budget cuts. Legislation that passed in 2010 and was signed into law includes the following:

- amendments to the Public School Capital Outlay Act (Laws 2010, Chapter 104, p.v.) to:
 - extend the roof repair and replacement initiative sunset date from 2012 to 2015;
 - require that money distributed from the Public School Capital Outlay Fund (PSCOF) to the state fire marshal or the Construction Industries Division of the Regulation and Licensing Department be used to supplement, rather than supplant, appropriations to those agencies;
 - allow the PSFA to manage procurement for certain emergency school projects;
 - require the PSCOOTF to continue the work group studying performance-based procurement issues for public school capital outlay projects and report findings to the legislature and the executive before the 2011 legislative session; and
 - repeal sections of the law passed during the Forty-Ninth Legislature, Second Session, that appropriated \$29.9 million from the PSCOF directly to the Public School Insurance Authority to pay property insurance premiums and charter schools (including Albuquerque Public Schools); and
- amendments to the Qualified School Construction Bonds Act to clarify the methodology for allocation of bonding authority (Laws 2010, Chapter 56).

The 2010 interim addressed several issues, including, but not limited to:

- Albuquerque Public Schools's (APS) Capital Master Plan and APS's current policy regarding charter school facilities;
- the geographic information system, developed by PSFA in collaboration with the University of New Mexico's Earth Data Analysis center as the result of legislation endorsed by the PSCOOTF for the 2009 session;
- progress on the implementation of PSFA's FIMS and on equipment inventories and school district preventative maintenance plans;
- monitoring the implementation of the standards-based capital outlay program to ensure continued success toward achieving the goal of bringing all schools up to the adequacy standards and working to keep them there;
- the adequacy of the current permanent revenue streams;
- the effect of the current economy on the revenues to fund the current round of Public School Capital Outlay Council (PSCOC) grants and capital outlay funding resources and requirements for charter schools; and
- Public School Facility Authority (PSFA) audit reports on state sources of funding.

Key issues the PSCOOTF addressed were charter school facility issues, and were discussed at almost every meeting. The task force heard testimony that legislation passed in 2006 requires districts to share Public School Buildings Act (HB 33) funds with charter schools and that legislation passed in 2009 with the same requirement for the Public School Capital

Improvements Act ("two-mill levy" or "SB 9"). Representatives from charter schools and from the Public Education Department (PED) told the task force that several districts recently had HB 33 elections that did not include charter schools in the proclamation. PSFA staff presented information regarding a potential "incubator process" for charter school startups. The task force co-chair requested staff to work on the issue during the 2011 interim and to bring a more fully developed plan to both the PSCOC and the PSCOOTF for consideration for legislation for the 2012 session. The task force also spent time at several meetings discussing issues related to PSFA and/or PSCOC approval of leases and lease-purchase agreements.

During the course of the interim, PSCOC and PSFA staff determined that enough funding would be available from supplemental severance tax bonds to allow for the awarding of special short-cycle, standards-based planning grants to qualify districts among the top 60 in the NMCI rankings. The task force heard a presentation from the PSCOC chair and the PSCOC Awards Subcommittee chair on the funding for grant awards, criteria for making grant awards and potential grant award recipients.

The 2010 recommendations of the PSCOOTF continued the work of the task force in terms of monitoring the continuing implementation of the standards-based process established in the Public School Capital Outlay Act while continuing to be mindful of the state's commitments related to the *Zuni* lawsuit and the standards-based process for allocating PSCOC funds.

For the past four years, the task force has endorsed legislation, which did not pass, to eliminate or modify the statutory requirements for the bonding of subcontractors for public school projects. In response to continued concerns and a requirement in the "omnibus" bill, the task force continued and expanded the work group to examine the cost and benefits of bonding subcontractors on public school projects. The working group included task force members as well as representatives from the General Services Department, the PSFA and various representative groups from the construction industry. The group met on August 30 and again on October 7 and was facilitated by a contract professional to bring forth recommendations to the task force.

Members who were present at the last meeting of the task force work group agreed upon the following recommendations:

- Legislation: Increase the subcontractor bonding threshold from \$125,000 to \$250,000;
- Rule changes: Make wording changes in the New Mexico Administrative Code to modify proposal submission requirements and the resident preference; and
- Process changes for PSFA: (1) develop a standardization template for submission of requests for proposals for construction, with detailed instructions; (2) develop a web-based training module for contractors and subcontractors; and (3) develop a process for web-based training for evaluation of committee members and require members to acknowledge completing it.

A complete list of members, minutes from both meetings and recommendations are included in Appendix D.

PSCOOTF endorsed-legislation for the 2011 legislature that was signed into law included:

- HB 113 Amends the Public School Capital Improvements Act (SB 9) and the Public School Buildings Act (HB 33) to require charter schools to report anticipated and actual expenditure of distributions made pursuant to those acts (Laws 2011, Chapter 11).
- HB 283 Amends the Public School Capital Outlay Act to require that, on or after July 1, 2011, a new charter school cannot open or an existing charter school cannot relocate unless the facilities of the new or relocated school have an NMCI rating equal to or better than average for all New Mexico public schools for that year and provides 18 months for charter schools to achieve this rating. The bill also exempts a school district leasing facilities to a charter school from State Board of Finance approval and requires PSFA approval before entering into a lease agreement or lease-purchase agreement for school facilities or before applying for a grant for lease payment (Laws 2011, Chapter 69).

The work of the task force during the 2010 interim was assisted by a team of professional staff from the Legislative Council Service, the Legislative Education Study Committee, the Legislative Finance Committee, the Department of Finance and Administration, the Public Education Department and the PSFA. The task force expressed its appreciation for the assistance of the staff in furthering its work.

WORK DURING THE 2011 INTERIM

The task force held its statutorily determined four, one-day meetings in Santa Fe in addition to its June 10 organizational meeting. Full task force meetings were held on July 28, September 2, October 5 and December 19. The task force also held two meetings of a subcommittee with membership from the task force and the construction industries community appointed by the task force co-chairs. The subcommittee meetings were held on October 17 and November 10 in Santa Fe pursuant to language in Laws 2010, Chapter 104 (p.v.), which states, in pertinent part, that the task force "shall continue...studying issues relating to performance-based procurement for public school capital outlay projects."

The task force began its eighth year of overseeing the implementation of the public school capital outlay standards-based process with a brief review of the work of the 2010 interim, a review of the *Zuni* lawsuit, a review of the Public School Capital Outlay Council (PSCOC) 2010 annual report and a summary of the status of task force-endorsed legislation. By consensus, the task force approved the New Mexico Legislative Council's appointment of Representative Rick Miera and Senator Cynthia Nava to serve as co-chairs.

Two of the task force's policy recommendations were enacted by the 2011 legislature and signed into law by the governor:

- Laws 2011, Chapter 11, Sections 1 and 2 (HB 113) amends the Public School Capital Improvements Act (also called SB 9) and the Public School Buildings Act (also called HB 33) to require all locally chartered or state-chartered charter schools expecting a state distribution of property taxes to report to the Public Education Department (PED) and its chartering authority, no later than December 1 of each calendar year, the purposes for which the expected distribution will be expended, and report again, by January 31 of the following calendar year, the purposes for which the distribution was expended and the amounts expended for each purpose.
- Laws 2011, Chapter 69 (HB 283) amends several sections of law relating to public school capital outlay to exempt school districts from seeking State Board of Finance approval when leasing facilities to a charter school, to prohibit new charter schools from opening and existing charter schools from relocating to a facility that does not have a facilities condition index of at least average condition for all New Mexico public schools for that year and to prohibit the PSCOC from making lease-purchase grants to charter schools without approved lease-purchase agreements in place.

Two other PSCOOTF-endorsed bills did not pass: one that would have increased the minimum contract amount for which a subcontractor must be bonded from \$125,000 to \$250,000 and another that would have clarified rate determination on a construction manager-at-risk construction contract.

For the past five years, the task force endorsed various pieces of legislation, none of which passed, to eliminate or modify the statutory requirement for the bonding of subcontractors

on public school projects. In response to both continued concerns and a section of the 2010 PSCOOTF "omnibus" bill, the task force co-chairs appointed a subcommittee consisting of task force members, representatives from the General Services Department and the PSFA, legislative staff and representatives from a variety of construction industries. The subcommittee met on October 17 and November 10 in Santa Fe to bring forth recommendations for the task force's consideration.

Members who were present at the final meeting of the subcommittee agreed upon a number of recommendations, only one of which requires legislative action: amending the Procurement Code to clarify the use of "best and final offer" in relation to requests for proposals for construction, maintenance services and repairs (Section 13-1-115 NMSA 1978). Other recommendations related to changes in PSFA guidelines and the New Mexico Administrative Code, neither of which requires legislative action. Task force members agreed to follow up on these changes during the 2012 interim.

As has been the case in each interim since the establishment of the task force's immediate predecessor in 2001, charter school facility issues were a topic of discussion at every task force meeting; however, the majority of the November 29 meeting was devoted to this issue. The task force heard from PED officials, representatives from the New Mexico Coalition for Charter Schools and a member of the Public Education Commission about specific concerns. In response to these concerns, the task force considered two bills dealing with charter school facility issues: (1) a proposed bill that would continue the existence of the statutory Charter School Capital Outlay Fund and clarify that it is a nonreverting fund; and (2) a proposed bill to amend the Public School Buildings Act to allow mill levy proceeds to be used to meet local match requirements for Public School Capital Outlay Act grants.

Making the New Mexico School for the Blind and Visually Impaired (NMSBVI) and the New Mexico School for the Deaf (NMSD) eligible for grants and the conditions for their eligibility for Public School Capital Outlay Act grants were agenda topics at the July 28, September 2, October 5 and December 19 meetings. Task force members made it clear during the 2011 interim that the task force was in support of the development of adequacy standards to determine funding requirements for these two constitutional special purpose schools throughout the 2011 interim. Working on an accelerated schedule and working together with legislative staff and appropriate staff members from the two schools, PSFA staff members were able to provide the task force the opportunity to review and comment on proposed statutory and rule changes that will eventually make the NMSBVI and the NMSD eligible to participate in the standards-based process. The task force also voted to allow the PSCOC to allocate approximately \$12 million in deficiency correction funds to take care of immediate health and safety issues at both schools. In terms of proposed legislation, the task force considered endorsement of a bill that would allow the two constitutional special purpose schools to be a part of the standards-based process.

The final meeting of the task force, held on December 19, coincided with extreme weather conditions throughout the Southwest that kept the task force from having a quorum for

its final meeting and from endorsing bills. Representative Miera proposed that the task force, acting as a subcommittee, discuss the proposed legislation and make subcommittee recommendations for endorsement. He then requested that, before the legislative session, staff forward copies of the subcommittee-approved legislation to members not present at the December 19 meeting and poll these members about endorsement of these bills. The bills endorsed by the task force acting as a subcommittee include the following:

1. amend the Public School Capital Outlay Act to repeal the 2012 repeal of the Charter School Capital Outlay Fund and repeal the language regarding reversion of unencumbered balances in the fund;
2. amend the Public School Capital Outlay Act to make the NMSBVI and the NMSD eligible to participate in the Public School Capital Outlay Act standards-based process and provide for funding sources for the two schools to meet local match requirements;
3. amend the Public School Buildings Act to allow mill levy proceeds to be used to meet local match requirements for Public School Capital Outlay Act grants; and
4. amend the Procurement Code to clarify the use of "best and final offer" as it relates to requests for proposals for construction, maintenance services and repairs.

Highlights of Recommendations and Proposed Legislation

The 2011 recommendations of the PSCOOTF continued the work of the task force in terms of monitoring the continuing implementation of the standards-based process established in the Public School Capital Outlay Act while continuing to be mindful of the state's commitments related to the *Zuni* lawsuit and the standards-based process for allocating PSCOC funds.

PSCOOTF endorsements for the 2012 legislature included 5 bills that propose the following:

- .188084.1 repealing the delayed repeal of the charter school capital outlay fund; repealing the reversion of unencumbered balances;

- .187790.6 making the facilities at the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf eligible for public school capital outlay act funding; exempting these institutions from the required share of project funding under certain conditions; and

- .188168.4 clarifying circumstances under which a best and final offer price may be negotiated.

Appendix A

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

MEMBERSHIP, 2011 INTERIM

**PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
2011 INTERIM MEMBERSHIP**

Representative Rick Miera, Task Force Co-Chair	House Education Committee Chair
Senator Cynthia Nava, Task Force Co-Chair	Senate Education Committee Chair
Senator Timothy Z. Jennings	Senate President Pro Tempore
Representative Ben Lujan	Speaker of the House
Representative Henry "Kiki" Saavedra	House Appropriations and Finance Chair
Senator John Arthur Smith	Senate Finance Committee Chair
Senator Vernon D. Asbill	Senate Minority Member
Senator Lynda M. Lovejoy	"Impact Aid" District Senator
Senator Sander Rue	Senate Minority Member
Representative Donald E. Bratton	House Minority Member
Representative Larry A. Larrañaga	House Minority Member
Representative W. Ken Martinez	"Impact Aid" District Representative
Senator George K. Munoz	Indian Affairs Committee Representative
Paul Aguilar/Antonio Ortiz	Designees, Secretary of Public Education
Tom Clifford	Secretary of Finance and Administration
Mike Phipps	Superintendent, Artesia Public Schools
Vacant	Superintendent, Peñasco Independent Schools
Kilino Marquez	Superintendent, Grants-Cibola County Schools
Leonard Haskie	Assistant Superintendent, Support Services Gallup-McKinley County Schools
Carl Foster, Ph.D.	Adjunct faculty, New Mexico Highlands University, Rio Rancho campus
Cecilia Grimes	Retired public school teacher, public member with experience in education and finance
Lisa Grover, PhD	Consultant, Building Charter School Quality
Lilliemaë Ortiz	Public member with expertise in education & finance
Robbie Heyman	Bond counsel, public member with expertise in education & finance
Judy Rabon	Entrepreneur, public member, Alamogordo Public Schools

Appendix B

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

2011 STATUTORY AUTHORITY AND DUTIES

22-24-7. Public school capital outlay oversight task force; creation; staff. (2008)

Statute text

A. The "public school capital outlay oversight task force" is created. The task force consists of twenty-five members as follows:

- (1) the secretary of finance and administration or the secretary's designee;
- (2) the secretary of public education or the secretary's designee;
- (3) the speaker of the house of representatives or the speaker's designee;
- (4) the president pro tempore of the senate or the president pro tempore's designee;
- (5) the chairs of the house appropriations and finance committee, the senate finance committee, the senate education committee and the house education committee or their designees;
- (6) two minority party members of the house of representatives, appointed by the New Mexico legislative council;
- (7) two minority party members of the senate, appointed by the New Mexico legislative council;
- (8) a member of the interim legislative committee charged with the oversight of Indian affairs, appointed by the New Mexico legislative council, provided that the member shall rotate annually between a senate member and a member of the house of representatives;
- (9) a member of the house of representatives and a member of the senate who represent districts with school districts receiving federal funds commonly known as "PL 874" funds or "impact aid", appointed by the New Mexico legislative council;
- (10) two public members who have expertise in education and finance appointed by the speaker of the house of representatives;
- (11) two public members who have expertise in education and finance appointed by the president pro tempore of the senate;
- (12) three public members, two of whom are residents of school districts that receive grants from the federal government as assistance to areas affected by federal activity authorized in accordance with Title 20 of the United States Code, appointed by the governor; and
- (13) three superintendents of school districts or their designees, two of whom are from school districts that receive grants from the federal government as assistance to areas affected by federal activity authorized in accordance with Title 20 of the United States Code, appointed by the New Mexico legislative council in consultation with the governor.

B. The chair of the public school capital outlay oversight task force shall be elected by the task force. The task force shall meet at the call of the chair, but no more than four times per calendar year.

C. Non-ex-officio members of the task force shall serve at the pleasure of their appointing authorities.

D. The public members of the public school capital outlay oversight task force shall receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 NMSA 1978].

E. The legislative council service, with assistance from the public school facilities authority, the department of finance and administration, the public education department, the legislative education study committee and the legislative finance committee, shall provide staff for the public school capital outlay oversight task force.

History

History: Laws 2001, ch. 338, § 12; 2004, ch. 125, § 16; 2005, ch. 274, § 10; 2007, ch. 366, § 11; 2008, ch. 90, § 5.

Annotations

The 2005 amendment, effective April 6, 2005, changed the name of the task force to the public school capital outlay oversight task force and the number of members from twenty to twenty four in Subsection A; deleted the dean of the university of New Mexico school of law or the dean's designee as a member in Subsection A; added in Subsections A(3), (4) and (9) respectively, the speaker of the house of representatives or the speaker's designee, the president pro tempore of the senate or the president pro tempore's designee, and a member of the interim legislative committee charged with the oversight of

Indian affairs as members of the task force; provided in Subsection A(9) that the member who is a member of the committee charged with Indian affairs shall rotate annually between a senate member and a house of representatives member; deleted the former requirement in Subsection A(10) that three members be public members who have expertise in education and finance; provided in Subsection A(12) that two of the public members must reside in school districts that receive federal grants as assistance to areas affected by federal activity; provided in Subsection A(13) that two superintendents must be from school districts that receive federal grants as assistance to areas affected by federal activity; provided in Subsection B that the task force shall meet no more than four times per calendar year; deleted the former provision of Subsection C that members shall serve through June 30, 2005 and that the task force is terminated on July 1, 2005; and provided in Subsection C that non-ex-officio members shall serve at the pleasure of their appointing authorities.

Temporary provisions. — Laws 2007, ch. 366, § 24, provided that during the 2007 interim the public school capital outlay oversight task force shall continue to work toward an equitable and fair system that addresses the inequities between public school facilities among various school districts in this state.

Toward that end, the task force shall assess the current statewide adequacy standards, the need for changing those standards and the effect upon school districts of any proposed change in the standards.

The 2007 amendment, effective July 1, 2007, changed the number of members of the public school capital outlay oversight task force to twenty-six and added Paragraph (10) of Subsection A to provide new legislative members representing PL 874 school districts.

The 2008 amendment, effective May 14, 2008, in Subsection A, changed the number of members from twenty-six to twenty five and deleted the state investment officer or the state investment officer's designee.

Temporary provisions. — Laws 2010, ch. 104, § 5 provided that during calendar year 2010, the public school capital outlay oversight task force shall continue the working group studying issues relating to performance-based procurement for public school capital outlay projects, and shall report its findings and recommendations no later than December 15, 2010 to the governor and the legislature.

22-24-8. Public school capital outlay oversight task force; duties. (2005)

Statute text

The public school capital outlay oversight task force shall:

- A. monitor the overall progress of bringing all public schools up to the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act;
- B. monitor the progress and effectiveness of programs administered pursuant to the Public School Capital Outlay Act and the Public School Capital Improvements Act [22-25-1 NMSA 1978];
- C. monitor the existing permanent revenue streams to ensure that they remain adequate long-term funding sources for public school capital outlay projects;
- D. oversee the work of the public school capital outlay council and the public school facilities authority as they perform functions pursuant to the Public School Capital Outlay Act, particularly as they implement the statewide-based process for making grant awards;
- E. appoint an advisory committee to study the feasibility of implementing a long-range planning process that will facilitate the interaction between charter schools and their school districts on issues relating to facility needs; and
- F. before the beginning of each regular session of the legislature, report the results of its analyses and oversight and any recommendations to the governor and the legislature.

History

History: Laws 2001, ch. 338, § 13; 2004, ch. 125, § 17; 2005, ch. 274, § 11.

Annotations

The 2005 amendment, effective April 6, 2005, added Subsection A to provide that the task force shall monitor the progress of bringing public schools up to the statewide adequacy standards; deleted the former requirement in Subsection B that the task force review the condition index and the methodology used for ranking projects; provided in Subsection C that the task force monitor revenue streams to ensure

that they remain adequate; provided in Subsection D that the task force oversee the work of the council and the authority; added Subsection E to provide that the task force appoint an advisory committee to study the feasibility of a long-range planning process to facilitate interaction between charter schools and school districts.

Temporary provisions. — Laws 2009, ch. 37, § 2 provided that during calendar year 2009, the public school capital outlay oversight task force shall study reasonable alternatives for determining the local matching funds to be required from the New Mexico school for the blind and visually impaired and the New Mexico school for the deaf for a grant award pursuant to the Public School Capital Outlay Act and shall report its findings and recommendations to the second session of the forty-ninth legislature.

Appendix C

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

APPROVED 2011 INTERIM WORK PLAN

**2011 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

Membership

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Sen. Vernon D. Asbill
Rep. Donald E. Bratton
Carl Foster
Cecilia J. Grimes
Lisa Grover
Leonard Haskie
Robbie Heyman
Sen. Timothy Z. Jennings
Rep. Larry A. Larrañaga
Sen. Lynda M. Lovejoy
Rep. Ben Lujan
Kilino Marquez

Rep. W. Ken Martinez
Sec. Richard May
Sen. George K. Munoz
Lilliemae Ortiz
Mike Phipps
Judy Rabon
Sen. Sander Rue
Rep. Henry Kiki Saavedra
Sec. Hanna Skandera
Sen. John Arthur Smith
[Superintendent of Impact Aid District —
New Mexico Legislative Council and
governor]

Background

Created by Laws 2005, Chapter 274, Sections 10 and 11, the public school capital outlay oversight task force serves as the permanent entity overseeing the implementation of the work of the public school capital outlay council and the public school facilities authority as they implement the state's standards-based public school capital outlay funding methodology. The task force consists of 25 members, including the respective secretaries of public education and finance and administration; the speaker of the house of representatives; the president pro tempore of the senate; the respective chairs of the house appropriations and finance, house education, senate finance and senate education committees; four minority party members, two from each house; a member of the Indian affairs committee, annually alternating between the senate and house; a member of the house and a member of the senate, each of whom represents districts that include federal impact aid districts; seven public members, two appointed by the speaker, two appointed by the president pro tempore and three appointed by the governor; and three school superintendents, two of whom must be from federal impact aid districts, appointed by the New Mexico legislative council in consultation with the governor.

Proposed Work Plan

Pursuant to statute, the task force will focus on the following activities:

1. monitoring the progress and effectiveness of programs administered pursuant to the Public School Capital Outlay Act and the Public School Capital Improvements Act and including a brief review of the history of and the judge's orders related to the *Zuni* lawsuit;
2. examining existing permanent revenue streams to ensure that they remain adequate long-term funding sources for public school capital outlay projects;

3. monitoring the overall progress of continuing to bring all public school facilities to the statewide adequacy standards developed pursuant to provisions in the Public School Capital Outlay Act;
4. monitoring the progress of the development of adequacy standards and consideration of funding requirements for the New Mexico school for the deaf and the New Mexico school for the blind and visually impaired, including, but not limited to, the unique constitutional nature of these schools and their historical nature;
5. overseeing the work of the public school capital outlay council and the public school facilities authority as they perform functions pursuant to the Public School Capital Outlay Act, particularly as they continue to implement the statewide standards-based process for making grant awards;
6. examining issues related to charter school facilities, including increases in lease assistance from the state, utilization of public school buildings and other public buildings to accommodate charter schools, charter schools and the use of lease-purchase agreements and defining facility needs and cost requirements prior to final approval of a charter;
7. reviewing the qualifications-based procurement process and construction manager at risk statutes, examining best practices and making recommendations to improve communications;
8. examining public school transportation capital outlay issues;
9. hearing testimony on large (greater than 10,000 students) public school real property holdings; and
10. reviewing provisions of the Public School Capital Outlay Act as necessary.

The task force will report the results of its analyses and oversight, together with any recommendations, to the governor and the legislature before the start of the 2012 regular legislative session.

2011 Approved Full Task Force Meetings

<u>Date</u>	<u>Location</u>
July 28	Santa Fe
September 2	Santa Fe
October 5	Santa Fe
November 10	Santa Fe

2011 Approved Subcommittee Meetings

<u>Date</u>	<u>Location</u>
August 23	Santa Fe
October 17	Santa Fe

Appendix D

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

2011 MEETING AGENDAS, MINUTES OF MEETINGS SUBCOMMITTEES AGENDAS, MINUTES AND RECOMMENDATIONS

Revised: June 7, 2011

**TENTATIVE AGENDA
for the
THIRTY-FIRST MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**June 10, 2011
Room 322, State Capitol
Santa Fe**

Friday, June 10

- 9:00 a.m. **Call to Order**
- 9:05 a.m. **Election of Co-Chairs**
- 9:10 a.m. **Brief Review of 2010 Task Force Work and Summary of 2011 Legislation**
—Raúl E. Burciaga, Director, Legislative Council Service (LCS)
—Sharon Ball, LCS
—Antonio Ortiz, Director, Capital Outlay Bureau, Public Education Department
- 9:30 a.m. **Review of the *Zuni* Lawsuit**
—Raúl E. Burciaga, Director, LCS
—Sharon Ball, LCS
- 10:00 a.m. **Public School Capital Outlay Council/Public School Facilities Authority (PSFA) Annual Report**
—Tim Berry, Deputy Director, PSFA
—Harold Caba, Communications Officer, PSFA
—Martica Casias, Planning Design Manager, PSFA
—Pat McMurray, Senior Facilities Manager, PSFA
—Mark Williams, Communications and Strategic Planning Manager, PSFA
- 11:00 a.m. **Discussion of Work Plan, Items for Future Agendas and Other Organizational Business**
—Task Force Members and Staff
- 12:00 noon **Adjourn**

**MINUTES
of the
THIRTY-FIRST MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**June 10, 2011
Room 322, State Capitol**

The thirty-first meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, on June 10, 2011 at 9:20 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Mr. Leonard Haskie
Sen. Timothy Z. Jennings
Rep. Larry A. Larrañaga
Rep. Ben Lujan
Rep. W. Ken Martinez
Secretary Richard May
Mr. Antonio Ortiz
Ms. Lilliemae G. Ortiz
Mr. Mike Phipps
Sen. Sander Rue
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith

Absent

Sen. Cynthia Nava, Co-Chair
Sen. Vernon D. Asbill
Rep. Donald E. Bratton
Ms. Cecilia J. Grimes
Dr. Lisa Grover
Mr. Robbie Heyman
Sen. Lynda M. Lovejoy
Mr. Kilino Marquez
Ms. Elizabeth Marrufo
Mr. John Mondragon
Sen. George K. Munoz

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Sharon Ball, Senior Researcher, LCS
Leslie Porter, Research Assistant, LCS
Tom Pollard, Legislative Fiscal Analyst, LCS
Frances Ramírez-Maestas, Director, Legislative Education Study Committee (LESC)
Peter B. van Moorsel, Senior Fiscal Analyst, LESC
David Abbey, Director, Legislative Finance Committee (LFC)

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Friday, June 10

Representative Miera welcomed the task force members. Noting the lack of a quorum and the election of the co-chairs, Representative Miera indicated that the work plan will be

delayed until a quorum is present. He suggested that he assume the role of co-chair unless an objection was voiced. There being none, Representative Miera assumed the role of co-chair.

Brief Review of 2010 Task Force Work and Summary of 2011 Legislation

Ms. Ball explained that the PSCOOTF 2010 Annual Report was not printed because of budget considerations but is available online and upon request. She directed task force members' attention to the PSCOOTF section of the LCS publication, "Beyond the Roundhouse", which provides a brief summary of 2010 task force work and recommendations for legislation.

House Bill 113

Ms. Ball explained that HB 113 (Laws 2011, Chapter 11) is one of the two 2011 PSCOOTF-endorsed bills that passed. It amends the Public School Capital Improvements Act (also called "SB 9") and the Public School Buildings Act (also called "HB 33") to require all locally chartered or state-chartered charter schools expecting a state distribution of property taxes to report to the Public Education Department (PED) and its chartering authority no later than December 1 of each year the purposes for which the expected distribution will be expended, and report again by January 31 of the following year the purposes for which the distribution was expended and the amount expended for each purpose.

By way of background, Mr. Ortiz, director, Capital Outlay Bureau, PED, explained that statute requires each county treasurer to transfer to its local school districts and to each locally chartered or state-chartered charter school funding on a per-MEM, pro rata basis. He said that for Albuquerque Public Schools (APS), concern arose over the lack of control the local district has over the funds sent to the charter schools and the potential damaging effect on the district's annual audit, which includes exceptions for all locally chartered charter schools. Therefore, APS requested the task force to consider the reporting requirement for endorsement. The PED also endorsed the legislation.

Explaining the legislation, Mr. Ortiz stated that by December 1 of each year, the public school district will provide the PED a report on the anticipated distribution of funds. The PED will then provide a non-binding opinion on the appropriateness of the proposed expenditures. By January 31 of each year, the public school districts will submit a follow-up report on how the funds were actually dispersed in prior years, and the PED will issue another opinion. Mr. Ortiz explained that the PED is gathering guidelines on the appropriate uses of Section 22-26-2 NMSA 1978 (the definition of "capital improvements" as stated in the Public School Buildings Act), and he mentioned the difficulty of doing so because most charter schools are not currently in public buildings. Therefore, they cannot erect or remodel their facilities. He mentioned that charter schools are able to purchase equipment for the schools, and they do submit a list of requests to the PED for which the PED provides an opinion.

Expressing support of this safeguard, task force members asked if there is a mechanism in place for school districts to deal with the accountability of state-chartered charter schools for audit findings and misuse of state funds. Mr. Ortiz reminded the task force that the PED does not have an enforcement mechanism and that the report is advisory only, but he said that this safeguard is in place to reduce the number of audit findings for misuse of capital outlay funds.

In response to an inquiry about the effect of passage of this legislation on school district and charter school capital outlay funding, Mr. Ortiz said he would provide per-MEM funding information, and he explained that some charter schools receive enough funding to purchase a new building rather than inhabit a building leased from a private source or occupy a building that does not meet adequacy standards. Ms. Ball added that charter schools are allowed to go to the Public School Capitol Outlay Council (PSCOC) to request funding to remodel a privately owned facility.

In response to a question about the number of years a charter school must be chartered before being able to secure enough funding to build a facility, Tim Berry, deputy director, Public School Facilities Authority (PSFA), said that a charter school must complete its first five-year chartering cycle before requesting standards-based dollars. He added that if a facility is built by a locally chartered charter school and the school closes, the property is reverted to the school district, and if it is a state-chartered charter school, the property is reverted to the state.

In response to a question about who determines what facilities charter schools can occupy, Mr. Berry responded that with implementation of HB 283, the PSCOC and PSFA can approve a facility that meets statewide adequacy standards or can reach adequacy standards within 18 months. Mr. Berry also stated that if a new locally chartered charter school facility is built and funded by the PSCOC, the old public facility will be demolished and a change of title will be done to make sure the demolished property is off the district's property roll and will not have to be maintained or insured. He assured the task force that when school districts request to keep old facilities, the Facilities Condition Index (FCI) is implemented, and if the FCI is not met, the district will no longer receive funding to upgrade that facility.

Regarding the involvement of the PSCOC and PSFA with the rebuilding of Del Norte High School (DNHS) in Albuquerque and the proposed new magnet school to be co-located on the Del Norte site, task force members expressed concern that APS may be over-building facilities that this district may not be able to afford to operate, given diminishing general fund dollars, because these facilities are being built entirely with local funds. Mr. Berry said that the PSFA has authority over all school construction regardless of PSCOC-approved funding and that the PSF approves the adequacy of the facility and that a building permit will not be issued without it. He added that he has limited knowledge of the magnet school, but he said that parents are responsible for transportation to the magnet school if the students live outside of the DNHS district. Mr. Ortiz added that the PED will vet the charter school transportation issue next session. Ms. Ball expressed concern about the influence of high school alumni on policy decisions about closing high schools that have low enrollment. She noted that at the time APS considered shutting down DNHS or selling the property, the alumni were so vocally opposed to it that the district had to relinquish the idea. Mr. Berry added that the magnet school was built due to the need for it and that co-locating it with DNHS is beneficial because both schools can share the gym and cafeteria and build only classrooms.

Task force members expressed concern about public school transportation costs and a lack of formula language to encourage school districts to keep transportation costs under control. Expressing support for the magnet school concept, task force members opined that magnet schools and charter schools can be laboratories for best teaching practices that can then be implemented in other public schools.

House Bill 283

Ms. Ball explained that HB 283 (Laws 2011, Chapter 69) makes several amendments to different sections of law relating to public school facilities. She said that the bill exempts school districts from seeking State Board of Finance approval when leasing facilities to a charter school; prohibits new charter schools from opening, and existing charter schools from relocating, into a facility that receives an FCI rating below the average condition for all New Mexico public schools for that year; and prohibits the PSCOC from making grant awards to school districts or charter schools without approved lease-purchase awards.

In response to a task force discussion, Mr. Berry explained that when a charter school is applying for new facility to open, that facility must at least meet the statewide FCI, which is now 29.3. As an aside, he noted that 75 percent of current charter schools are located in facilities better than the statewide average, and as the PSCOC moves forward, any new charter school will require PSFA approval of the facility with a physical assessment and a demonstration that, within 18 months, the charter school has the funding to bring that facility at or above the FCI. He explained that both the PSFA and PED will be reviewing lease-purchase agreements. The PSFA then must approve all school construction, which also includes lease-purchase agreements approval. The PSFA must also approve moving charter schools into old facilities. Mr. Berry clarified that when the PSFA has approval authority on lease payments and when a charter school purchases a school under a lease-purchase, when the charter school applies for lease-payment assistance, a charter school will be denied reimbursement.

In response to task force discussion and questions, Mr. Berry indicated that while each district's facilities master plan references real property facilities not being used as schools, the PSFA does not inventory facilities not being used as schools.

Ms. Ball directed members' attention to a document included in their meeting folders entitled "A Primer of Public School Capital Outlay Funding in New Mexico", which was requested by the PSFA for inclusion in one of its publications. She pointed out that the document provides a brief description of each of New Mexico's public school capital outlay funding mechanisms.

Election of Co-Chairs

Task force members agreed by consensus to the New Mexico Legislative Council's appointment of Representative Miera and Senator Nava to serve as co-chairs for the 2011 interim.

Review of *Zuni* Lawsuit

Mr. Burciaga explained the outcome of the *Zuni* lawsuit, that the U.S. Supreme Court mandated creation of the PSCOOTF, the PSCOC and the PSFA. He stated that since their creation, the three entities have worked together to produce significant results and improvements in the realm of public school capital outlay.

Ms. Ball directed task force members' attention to the PSCOC/PSFA annual report for 2010 and referred the task force to a brief time line on page 10 that includes a description of major events, including the filing of the lawsuit in January 1998, the judge's finding that New Mexico was in violation of the constitutional provision in 1999 and the special master's finding

regarding the disequaling effect of direct appropriations. She noted that since implementation of the standards-based process, the PSCOC has awarded more than \$1 billion in project funding.

PSCOC/PSFA

Mr. Berry directed members' attention to materials distributed regarding the PSCOC/PSFA annual report. He noted that the increase in the price of oil and gas, coupled with a decrease in construction costs, resulted in significant savings that can be reallocated. In addition, he said that 2010 allowed for 2011 early awards for design for 19 schools in seven districts based on the applications submitted for the top 60 New Mexico FCI rank list. Also, sufficient funding is available for approximately 10 new roofs. He believes that revenue stream projections for the next three to four years will improve. He said that the PSCOC has received the final applications, and in two weeks it will see presentations from applicant districts in which there are 19 project proposals. He noted that \$10 million should be available to move those projects forward.

Mark Williams, communications and strategic planning manager, PSFA, discussed the annual report in detail. He highlighted five new schools; seven major renovations; 31 new roofs; and 86 lease-payment assistance packages to charter schools. He explained the current funding level of \$86.7 million and that it has steadily been trending downward since the peak in 2005 of about \$225 million. He stated that since the Deficiencies Correction Program began in 2002, the legislature has allocated a total of \$1.5 billion into the projects, and the number is trending upward. Currently, there are fewer projects with more funding allocated to each project. He explained that the trend line of the FCI has steadily improved since 2003-2004, essentially cutting the number from 2003-2004 in half, although the number is still not desirable. He discussed the forecast of how much money needs to be allocated to facility repair to sustain the money at its current level with a state match at 39 percent. He reported that over the next five years, the state will need to contribute about \$100 million to sustain the current level of facilities maintenance and keep it constant.

Mr. Williams said that metrics within the management system are slowly improving. He noted that most funds are spent on field operations. He also stated that the PSFA's operational budget is currently 3.2 percent, which is well below the statutory limit of five percent of the total capital outlay award allocations.

In addition, he reported the following amounts and metrics relating to the first quarter of the 2011 calendar year:

- \$13.3 million was reverted back to the fund in 2010;
- 56 districts have maintenance prevention plans, which is up 53 percent;
- 87 percent of award dollars are under contract;
- \$52 million in projects funds have been awarded; and
- plan review processing time has been reduced from 12 days to eight days from the second quarter of 2010 to the first quarter of 2011.

Mr. Williams also noted that 67 randomly selected respondents to a survey said that the PSFA has had a positive impact on improving public school facilities and facilities funding in New Mexico, which is up from last year. He also reported that the number of negative responses

went down, which he believes means that the partnership with the school districts is working well.

Mr. Williams and Harold Caba, communications officer, PSFA, briefly discussed the launching of the biweekly PSCOC e-newsletter, which will be archived on the PSCOC web site. They mentioned that it is distributed to school district staff members who are on the PSCOC master database, as well as to policymakers and people in the construction industry.

Representative Miera congratulated the PSCOC and PSFA on their accomplishments and requested that the PSCOOTF be added to the newsletter database.

Senator Rue expressed his appreciation for the quarterly customer satisfaction mechanism and inquired about preventive maintenance. Pat McMurray, planning design manager, PSFA, explained that the PSFA's work order system helps districts align their resources and efforts to perform preventive maintenance and that more districts have become proactive instead of reactive and are making progress. He explained that districts are trained to use the system and share their best practices with the rest of state. Mr. Berry added that as part of contractual requirements when conducting building renovations or when erecting a new building, a contractor is required to provide a list of equipment and components and input that information into the system, and the system will automatically notify the district when maintenance needs to be done.

Regarding the FCI, Senator Smith asked if an index of zero is realistic and attainable. Mr. Williams assured Senator Smith that an index of zero is indeed unrealistic. He explained that the PSCOC has not set an index number as the goal, but that an index of 20 is realistic. Mr. Berry explained that the PSCOC is focusing on preventive maintenance and stated that a ranked list of the schools is available on the PSCOC web site. Mr. McMurray added that the state is getting more for the dollar now and that reducing a school footprint aids the operational costs in the future, so erecting a new facility is not always negative. Senator Smith asked about the PSCOC's involvement in the siting process for a new facility. Mr. McMurray responded that the PSCOC is available to advise on, but does not contribute to, funding for school sites. Mr. Berry added that the statewide Geographic Information System has the ability to geocode where students reside, and it is available to advise.

Senator Smith, Mr. Williams and Mr. Berry briefly discussed subcontractor bonding and the prevailing wage. Mr. Berry stated that if the project is a PSCOC project, the wage decision is required to be in the bid documents when they go out.

Speaker Lujan asked about oversight on construction of new schools. Mr. Berry reiterated that the PSCOC and PSFA review the plans to the extent that adequacy standards and building codes are met and that decisions to renovate and construct new schools are 100 percent local.

Representative Miera asked how many students the new classrooms are meant to hold. Martica Casias, planning design manager, PSFA, responded that the rooms are meant to hold 25 students.

Discussion of Work Plan, Items for Future Agendas and Other Organizational Business

Ms. Ball directed members' attention to the proposed work plan. She noted that, in addition to its statutory duties to monitor the progress and effectiveness of programs administered under the Public School Capital Outlay Act and maintain adequate sources of long-term funding for public school capital outlay projects, the task force will consider issues related to charter school facilities. She noted that the proposed task force work plan includes establishment of a subcommittee to examine issues related to performance-based procurement for public school capital outlay projects.

Task force members discussed continuing concerns regarding inclusion of the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf in the PSCOC ranked list of school buildings and requested that the issue be included in the 2011 interim work plan.

Members of the task force also requested inclusion of public school transportation capital outlay issues and school district real property holdings in the work plan.

Task force members agreed by consensus to adopt the proposed work plan, allowing staff to make technical corrections as necessary.

Adjournment

There being no further business before the committee, the thirty-first meeting of the PSCOOTF for the 2011 interim adjourned at 12:50 p.m.

**TENTATIVE AGENDA
for the
THIRTY-SECOND MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**July 28, 2011
Room 322, State Capitol
Santa Fe**

Thursday, July 28

- 9:00 a.m. **Call to Order**
- 9:05 a.m. **Approval of June Minutes**
- 9:10 a.m. **Brief Review of Legislative Council-Approved 2011 Task Force Work Plan**
—Raúl E. Burciaga, Director, Legislative Council Service (LCS)
—Sharon Ball, LCS
- 9:15 a.m. **Update on Progress of the Development of Adequacy Standards and
Consideration of Funding Requirements for the New Mexico School for the
Deaf (NMSD) and the New Mexico School for the Blind and Visually
Impaired (NMSBVI)**
—Robert Gorrell, Director, Public School Facilities Authority (PSFA)
—Richard Romero, Facilities Specialist, PSFA
—Linda Lyle, Superintendent, NMSBVI
—Ronald Stern, Ph.D., Superintendent, NMSD
- 10:45 a.m. **School District Real Property Ownership**
—James Barfoot, Assistant Superintendent of Operations, Farmington Municipal
Schools
—Brad Winter, Ed.D., Chief Operations Officer, and Don Moya, Chief Financial
Officer, Albuquerque Public Schools
—Dane Kennon, Associate Superintendent for Operations, Las Cruces Public
Schools
—Melville Morgan, Ph.D., Deputy Superintendent, Santa Fe Public Schools
—Senator Cynthia Nava, Ph.D., Superintendent, Gadsden Independent Schools
—Ray Arsenault, Superintendent, Gallup-McKinley County Public Schools
- 12:00 noon **Lunch**

- 1:00 p.m. **Public School Capital Outlay Standards-Based Awards Process: Ongoing Public School Capital Outlay Oversight Task Force Review and Monitoring**
—Robert Gorrell, Director, PSFA
- 3:00 p.m. **Statewide Adequacy Standards: Update on Modifications and Additions**
—Martica Casias, Planning and Design Manager, PSFA
- 4:00 p.m. **Adjourn**

**MINUTES
of the
THIRTY-SECOND MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**July 28, 2011
Room 322, State Capitol
Santa Fe**

The thirty-second meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, on July 28, 2011 at 9:00 a.m. in Room 322, State Capitol.

Present

Rep. Rick Miera, Co-Chair
Sen. Vernon D. Asbill
Dr. Carl Foster
Ms. Cecilia Grimes
Dr. Lisa Grover
Mr. Leonard Haskie
Sen. Timothy Z. Jennings
Sen. Lynda M. Lovejoy
Rep. Ben Lujan
Mr. Kilino Marquez
Secretary Rick May
Sen. George K. Munoz
Ms. Lilliemae Ortiz
Mr. Mike Phipps
Sen. Sander Rue
Rep. Henry Kiki Saavedra

Absent

Sen. Cynthia Nava, Co-Chair
Rep. Donald E. Bratton
Mr. Robbie Heyman
Rep. Larry A. Larrañaga
Rep. W. Ken Martinez
Mr. Antonio Ortiz
Ms. Judy Rabon
Sen. John Arthur Smith

Guest Legislator

Sen. Nancy Rodriguez

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Sharon Ball, Senior Researcher, LCS
Leslie Porter, Research Assistant, LCS
Tom Pollard, Legislative Fiscal Analyst, LCS
Frances Ramirez-Maestas, Director, Legislative Education Study Committee (LESC)
Peter B. van Moorsel, Senior Fiscal Analyst, LESC
David Abbey, Director, Legislative Finance Committee

Guests

The guest list is in the meeting file.

Handouts

Copies of handouts and other written testimony are in the meeting file.

Thursday, July 28

Representative Miera welcomed the task force members. Noting the lack of a quorum, he indicated that the approval of the June minutes would be delayed until a quorum is present. Members of the task force introduced themselves.

Brief Review of New Mexico Legislative Council-Approved 2011 Task Force Work Plan

Mr. Burciaga briefly explained that the PSCOOTF proposed work plan had been approved as submitted to the New Mexico Legislative Council. Ms. Ball noted that some council members had expressed several concerns about issues related to charter school facilities, particularly school district rental of property. She said that the work plan covers that issue in item #6: "...examining issues related to charter school facilities, including increases in lease assistance from the state, utilization of public school buildings and other public buildings to accommodate charter schools, charter schools and the use of lease-purchase agreements and defining facility needs and cost requirements prior to final approval of a charter; ...".

Update on Progress of the Development of Adequacy Standards and Consideration of Funding Requirements for the New Mexico School for the Deaf (NMSD) and the New Mexico School for the Blind and Visually Impaired (NMSBVI)

By way of background, Ms. Ball explained that, during the 2005 legislative interim, the PSCOOTF heard testimony from the Higher Education Department (HED) and representatives from the NMSD and NMSBVI requesting the task force to consider allowing these two constitutional schools to qualify for funding under the standards-based process in the Public School Capital Outlay Act (PSCOA) for the state's 89 school districts in response to the judge's findings in the *Zuni* lawsuit in 2000. The 2006 legislature enacted PSCOOTF-endorsed legislation that included both special schools in the deficiencies correction program (DCP).

Continuing, Ms. Ball explained that the 2009 legislature passed additional amendments to the PSCOA to clarify NMSBVI and NMSD inclusion in the DCP and to request the PSCOOTF to study "reasonable alternatives for determining local matching funds" for both special schools. After hearing testimony from the Public School Facilities Authority (PSFA) staff regarding the necessity for the Public School Capital Outlay Council (PSCOC) to establish adequacy standards for these two special schools, Ms. Ball said that there was an agreement to begin a formal study of the issue of a local match, but it requested staff to begin to examine this issue for later task force consideration.

In the meantime, Ms. Ball said, the legislature made a total of \$16.2 million in capital outlay appropriations to the NMSBVI, including \$8.8 million for the NMSBVI preschool in Albuquerque, and \$21.6 million to the NMSD, most of which was designated for deficiencies corrections projects. Ms. Ball also pointed out a table showing a total of more than \$20 million in direct appropriations from the legislature from 2005 through 2010. She pointed out, however, that more than \$6 million in general obligation funds were not approved by the voters in 2010. In response to a task force question, Ms. Ball explained that the funding for the two special schools was included in the higher education question on the ballot that was defeated because of public concerns about several higher education issues rather than a desire to withhold funding from the two special schools.

Ms. Ball went on to explain that the 2011 legislature considered a measure (SB 441), sponsored by PSCOOTF Co-Chair Nava, to exempt the NMSBVI and NMSD from the PSCOA requirement of a local match on the part of each school.

Task force members expressed a number of concerns about the long delay in getting adequacy standards established for these two special schools. In response, Robert Gorrell, director, PSFA, directed task force members' attention to a document titled "Special Purpose Schools Adequacy Standards Project History". Noting that in-house work had begun in May 2009, Mr. Gorrell said that the first meeting with staff from the special schools was held in October 2009.

In response to task force comments and questions, Linda Lyle, superintendent, NMSBVI, explained that the school administration searched for nationwide adequacy standards data but found none and had compiled information about the NMSBVI and NMSD to establish adequacy standards for the special schools. Mr. Gorrell added that these special schools have various additional facilities requirements, such as more room for wheelchairs and better lighting for the visually impaired, all of which require additional costs.

Representative Miera noted that the *Zuni* lawsuit did not address the two special schools since they were created separately under the Constitution of New Mexico. Mr. Gorrell responded that he believes a set of standards must be set for the NMSBVI and NMSD, and he requested help from the task force to address this issue.

In regard to special constitutional schools' standards development, Ms. Ball explained the history of the funding process for the NMSBVI and NMSD. She said that during the 2005 interim, the PSCOOTF heard from the HED, NMSD and NMSBVI about allowing these two constitutional schools to qualify for funding under the standards-based process established in the PSCOA for the 89 public school districts. She said the 2006 legislature enacted Laws 2006, Chapter 95, a PSCOOTF-endorsed measure to include the NMSBVI and NMSD in the DCP. Continuing, she explained how the 2009 legislature passed additional amendments to the PSCOA to include the NMSBVI and NMSD in the DCP and requested the PSCOOTF to study alternative methods for determining local matching funds for the schools. She said that after the PSCOOTF heard testimony from the PSFA about establishing the mentioned adequacy standards for these two schools, the PSCOOTF decided to wait for the PSFA's report on the subject. The legislature appropriated \$16.2 million in capital outlay to the NMSBVI and \$21.6 million to the NMSD, Ms. Ball said, designated for the DCP. In 2011, the legislature considered a measure to exempt the NMSBVI and NMSD from the PSCOA requirement of a local match from each school. The legislation did not pass. Ms. Ball stated that this interim, the PSCOOTF is monitoring the progress of this dilemma.

In response to task force questions about facilities funding for other similar schools nationally, Ms. Lyle stated that schools for the blind around the country generally receive funds from their respective legislatures. In response to a question about the availability of federal funds for the two schools, Ms. Lyle clarified that no federal capital funding is available. Ms. Lyle thanked the task force for continuing to work with the schools to find a viable solution. She

emphasized that 80 percent of working-age individuals who are blind are unemployed or underemployed because society is scared of blindness.

In response to additional task force discussion, Ms. Lyle added that the NMSBVI and NMSD will do what needs to be done to develop adequacy standards. Dr. Ronald Stern, superintendent, NMSD, agreed with her comments. He added that the schools take adequacy standards seriously, and he is particularly concerned that perhaps the PSFA may be trying to "fit a square peg in a round hole" by attempting to measure the special schools against standards for the state's public schools. He said that these schools serve as more than simply schools because they serve the public schools around the state in helping to meet IDEA (federal special education) requirements, have a residential component and provide professional development services. In response to further task force discussion and questions, Dr. Stern said that the NMSD's first capital outlay priorities include the infirmary and the dining hall. He expressed concern that proposed adequacy standards deadlines will not allow for response and input to the proposed standards.

Senator Rodriguez thanked the task force for the work done thus far and explained that she has experience with the NMSD because she had a daughter who was deaf and benefited greatly from her attendance at the school. She explained that she has been the president of the NMSD board of regents and that she offers her home to graduates of the NMSD who have no place to go. She explained that deaf children live in a silent world that is designed for the hearing and that many of the children are orphans. She mentioned that the NMSBVI and NMSD are in limbo due to the uncompleted adequacy standards process and her main concern is that the schools may be left behind. She expressed concern that little or no progress has been made.

Some task force members expressed concern about the fiscal consequences of adding the special schools to the standards-based process when there are not currently enough resources for the 89 public school districts. Having noted that the top needs of the NMSD are the dining hall and the infirmary, which are needs no other regular public school has, task force members asked about potential costs for these projects. Dr. Stern said that \$20 million is needed to upgrade the NMSD campus. Ms. Lyle said that at least \$10 million is needed for the education center, with an additional \$10 million needed to renovate the dormitory. In response to a task force question about sources for matching funds, Ms. Lyle said that since neither school has bonding capacity, matching funds must come from another source.

Representative Miera declared that this issue must be dealt with as soon as possible and expressed confusion because Dr. Stern said that the October 2011 deadline is too soon but also said that funding is needed now. Dr. Stern clarified that the schools do indeed want to move forward as quickly and as responsibly as possible for both schools, but that they simply want the opportunity to give feedback on the adequacy standards established by the PSFA. Richard Gorman, project manager, NMSD, explained that the process as currently defined requires that the developed adequacy standards go directly from the PSFA to the PSCOOTF and the schools want to assess those standards to ensure that they address the complexities of their needs. In response, Mr. Gorrell assured Mr. Gorman that both schools will be involved in the process.

Speaker Lujan suggested either a special or separate allocation of general obligation bonds dedicated for both schools available under the Department of Finance and Administration

or the Public Education Department for the schools' local match requirements and also suggested consideration of a direct mill levy to be established for the special schools.

In response to a task force question about making the special schools school districts, Mr. Gorrell responded that, because the schools are established through the Constitution of New Mexico, voters would have to approve a change to the state constitution.

Task force members discussed the importance of having students in the "least restrictive environment". Dr. Stern explained that, for deaf children, sometimes a school for the deaf is the least restrictive environment. Other task force members discussed the importance of professional development for teachers to provide the most effective services to students in regular public school classrooms. Ms. Lyle added that the schools reintegrate the students back into their public schools appropriately and that the least restrictive environment must be considered given the importance of growing up in a family and a community.

School District Real Property Ownership

Albuquerque Public Schools (APS)

Brad Winter, Ed.D., chief operations officer, APS, said that the district is constantly looking to the future for use of currently owned land and for use of land possibly acquired. Directing members' attention to handouts provided by the district, Dr. Winter noted that the district owns a total of 329 acres of vacant property with an approximate current value of \$21.3 million and an approximate future value of \$40.3 million. He said that none of this vacant property includes any vacant buildings.

Don Moya, chief financial officer, APS, stated that it is important to note that all of the revenue from the sale of a land parcel can be used only for capital expenses and is put into a land acquisition fund. He said that in order to keep costs low, acquisitions are generally considered for areas in which the district anticipates growth. He stated that in the 1950s, APS gave up a parcel of land where the School for the Deaf in Albuquerque is and gained a parcel that now handles a few schools and added that this exchange would not have been possible without the purchase 60 years ago with anticipation of growth.

Marty Eckert, real estate director, APS, pointed out that the Albuquerque metropolitan area is currently depressed and the current estimated values are significantly lower now than they were at the peak of the real estate market several years ago. He explained that most of the APS vacant parcels are located in partially developed neighborhoods that have the potential for future growth that will likely require future school facilities to be constructed. He directed members' attention to the map provided by the district that shows the location of each vacant parcel. He said that the APS board believes that the district should retain the vacant parcels that are in the path of future growth until such time as the neighborhoods surrounding the parcels fully develop and the board determines that the property will not be needed for a school site. He opined that, if APS disposes of these parcels now, it will likely need to purchase replacement parcels in the same areas for the future, likely at a substantially higher price.

Dr. Winter said that the APS capital master plan has budgeted \$35 million for future land purchases for charter schools, magnet schools, K-8 schools and high schools. For example, he said, the district has several possibilities for existing and new APS properties, including building

a new school on vacant land, converting property from office use to school use, converting property from school use to office use, banking property for future use, selling or leasing properties and buying property.

In response to task force discussion regarding the Mesa del Sol development and school sites, Dr. Winter explained that APS is currently working with the developer, but that the land does not belong to APS. Mr. Eckert added that the land was a state trust that was occupied by the University of New Mexico and the State Land Office and that the two entities have entered into an agreement with the developer.

In response to questions and comments about APS land management, Mr. Eckert explained that he manages the acquisition and sales of property for schools, memoranda of understanding, joint use agreements and the physical maintenance of the properties. He added that because APS does not pay property taxes, the district has few holding costs. In response to questions and comments about the source of APS capital outlay funding, Mr. Moya explained that the district uses three funding mechanisms: general obligation bonds, HB 33 direct levy funds and SB 9 direct levy funds. He added that the \$33 million will address APS needs for the next 20 years. Senator Rue expressed his appreciation for what APS has done because in a short amount of time, APS has accomplished a herculean task of meeting the needs of Albuquerque's students. He asked for the value of the land held by APS. Mr. Eckert responded that APS is actively pursuing the purchasing of property, is currently negotiating with developers on the west side of Albuquerque and had a \$35 million bond issue.

In response to a question about water rights on vacant APS property, Dr. Winter said that the district has water rights and is working diligently on how to use those rights. Mr. Eckert clarified that APS is working with consultants to identify and protect those rights. In response to task force concerns that the Office of the State Engineer can confront APS for not using those rights, Mr. Eckert gave an example of what APS has done in the past in regard to trading property. He said that in 1950, APS purchased 440 acres for under \$400 per acre and traded some of the land and received 70 acres for Volcano Vista High School. In 2008, APS traded an 11-acre parcel to the State Land Office and received 65 acres on the west side for a soccer complex and two schools. He said that APS does not want to dispose of any property today that may be needed in the future.

Las Cruces Public Schools (LCPS)

Dane Kennon, associate superintendent for operations, LCPS, said that LCPS has 140 acres of vacant land with no immediate plans for utilization. He said some land is rented to the City of Las Cruces for \$1.00 per year, and that the city rents it to a charter school. Task force members expressed concern that the city may be earning a profit from state lease dollars provided to the charter school.

In response to questions about water rights on vacant land, Mr. Kennan replied that mineral rights are more of an issue. Mr. Kennan added that the district is in the process of installing sprinklers on one 40-acre parcel with an eye to leasing the land for farming. He also noted that the land in question is not in the anticipated direction of population growth in Las Cruces.

Farmington Municipal Schools (FMS)

James Barfoot, assistant superintendent of operations, FMS, explained that a 160-acre lease from the Bureau of Land Management (BLM) expires in 2012 and that FMS will reapply to retain this property even though it has not pursued the construction of a school on that land. Mr. Barfoot said that FMS has a good working relationship with the BLM, but FMS and the BLM have differing ideas on property planning, and the BLM is limiting FMS to a 10-year lease while paying \$8,000 in fees and development. Mr. Barfoot directed members to the handouts and explained the locations of the vacant land and the construction plans.

Representative Miera stated that the PSCOOTF and the legislature have assumed that there is a great deal of money associated with that land and that FMS is sitting on hundreds of acres. He opined that the deals with the BLM are good.

Senator Rue said that plans seem to be contingent on FMS's relationship with the BLM, which does not apply to APS, and he noted that this agreement is significant and flexible. Janelle Ryan, superintendent, FMS, mentioned that having the ability to not have to purchase land when FMS wants to move or establish a new school is a huge advantage.

In response to a question about the benefits of having oil wells on school property, Mr. Barfoot said that the oil wells help the mill levies and that without the wells, FMS would have to seek other sources of funding.

Gallup-McKinley County Public Schools (GMCPS)

Johnty Cresto, maintenance director, GMCPS, explained to the task force that the district has 5,000 acres of land with only 55 acres of vacant land. He said that the district traded forest land to acquire land for the middle school, which was fortunate. He said that due to the nature of the land in the district, there is not a lot of free acreage, specifically in Gallup, where the town is landlocked by tribal, forest or BLM land. He said that the district works diligently with the aforementioned entities to acquire the property needed for schools, and he opined that the district is in a good position.

Mr. Haskie, assistant superintendent, GMCPS, and task force member, explained that most of the schools are on tribal lands. He elaborated on the acreage and location of the used and vacant land in the district.

In response to a question about the district's planning for two schools prior to securing building sites, Mr. Cresto said that funds will not be allocated until locations are acquired.

Rio Rancho Public Schools (RRPS)

Al Sena, executive director of facilities, RRPS, reminded the task force about Rio Rancho's infrastructure challenges and said that the district is coordinating school sites with the capital plan in order to make the process easier.

In response to issues of developer donation of land, Mr. Sena said that he is not aware of a statutory requirement but that in the past, developers have provided tracts for potential school site locations, some of which are not suitable for houses or schools.

Task force members discussed a new effort under way by solar energy companies to lease air around school districts from the school districts that is beneficial for schools because they are able to raise money and gain electricity. In response, Mr. Gorrell added that there are many opportunities surrounding this issue, such as tax credits.

Public School Capital Outlay Standards-Based Awards Process: Ongoing PSCOOTF Review and Monitoring

Tim Berry, deputy director, PSFA, reported that 73 percent of actual project awards were for either planning and design or for actual construction. Looking forward to fiscal year 2012, he said that project funding will be close to 90 percent of the awards at \$319 million. He explained that the dollar amount is larger due to previously funded projects for planning and design that are returning for construction funds. Mr. Berry emphasized that data he would be providing today will not be approved by the PSCOC until its awards meeting tomorrow, but he directed members' attention to the spreadsheet illustrating the 2011-2012 standards-based capital outlay applications. He said that 13 districts had applied for a total of \$170.6 million, \$166.7 million of which would address adequacy standards. He said that, given each district's local match and some districts' offsets from direct appropriations in the past, the PSCOC plans to award \$5.4 million in net state awards to 18 schools in 12 districts. In response to task force discussion, he noted that the PSFA is predicting the out-year costs for these projects will amount to approximately \$79.1 million, with total cost to adequacy at \$153.9 million (including \$74.8 million in district matching funds).

Mr. Berry also directed members' attention to the 2011-2012 standards-based roof applications spreadsheet. He noted that the council would award a total of \$6.7 million to 17 schools in 11 districts. Regarding lease assistance awards, Mr. Berry said that 83 charter schools and seven districts had applied for approximately \$10.8 million in awards.

Pat McMurray, senior facilities manager, PSFA, said that there are currently 18 projects funded in 12 districts, with most projects being in the planning and design phase. In response to a task force question, Mr. McMurray said that when the PSFA conducts site visits, it divides into three teams and verifies what is being asked for.

Mr. Berry said that schools are given New Mexico Conditions Index (NMCI) rankings for the year, and, from these rankings, the PSCOC sets the funding. He highlighted three facilities: Central and two in west Las Vegas. He said that those projects were funded in a previous awards cycle and when the district chose to close a school, the kids were moved to three other schools. The request this year was that the dollars follow those kids and have improvements made at the other three schools. The PSCOC asked the schools to reapply. Regarding renovation of those facilities for the new kids, Mr. McMurray said that the PSFA's share would be \$4.7 million. Mr. Gorrell added that the renovations would lower the operating costs.

Mr. Berry highlighted projects in Rio Rancho, explaining that those schools rank higher on the NMCI due to the high growth and overcrowding in the area, regardless of the new status that resulted in building a new school.

Mr. Gorrell discussed the roof applications. He said that the legislature allowed \$10 million a year for the roof repairs. He said that there were not as many applications as the pool

allowed because many schools do not have the local match requirement. He added that, unfortunately, the problem is getting worse. Speaker Lujan requested a list of roofs that have been repaired in the past nine years, and Mr. Gorrell said he would provide that for him.

Mr. Haskie observed that some schools anticipate an early start on the projects but that they are paralyzed by the paperwork. Mr. Gorrell said that any district that sees a problem with the process should write the PSFA a letter because the PSCOC has given Mr. Gorrell the authority to grant additional time for the application process.

Regarding the facility master plan (FMP) assistance awards, Mr. Berry said that for the 2010-2011 awards, state-chartered charter schools are also granted awards.

Members of the task force discussed specific school projects with Mr. Gorrell and Mr. Berry.

Representative Miera asked why some schools do not have an FMP and then complain about funds not being granted to them. Mr. Berry clarified that the FMP could have just expired. Representative Miera asked which schools do not have FMPs, and Mr. Gorrell said that the PSFA will provide that information for him.

Dr. Grover asked if there is a process in place to assure that locally chartered charter schools are included in this process. Martica Casias, planning and design manager, PSFA, said that the locally chartered charter schools must be included in the process, and, if they are not, the FMP is not approved. President Pro Tempore Jennings asked if there are assurances that a locally chartered charter school is not penalized for being just that. Mr. Gorrell assured President Pro Tempore Jennings that this was fixed last year.

Dr. Foster asked about the consequences of not having an FMP but needing services. Mr. Berry responded that the PSCOC has the ability to assist districts with the FMP, but that awards are given to those districts with state and local matches.

Chris Aguilar, facilities database manager, PSFA, said that traveling to the schools is the single best method to input the data into the database. He said that he does an in-house plan review of projects, and, even though this occurs, the main onus is on the schools. He said that the PSFA attempts to engage the schools but that some of the districts are nonresponsive. He said that a total of \$602 million must be pumped into public school facilities or the state will slip back to where it came from, in terms of facility management. Concerning the 20-year modeling of funding, he noted that the dollar amount rises the farther the projection goes due to a construction bubble, so as the facilities age, they must be fixed. One hundred twenty million dollars is needed to maintain the facilities and when stretched out, a total of \$5 billion is needed to maintain all school facilities.

Martin Montaña, maintenance and operations support manager, PSFA, said that school facilities should last well over 30 years with proper maintenance and that these investments must be protected. He clarified that even though the dollar amount for these facilities has increased over the years, an increase in maintenance has not been seen. He emphasized that for every dollar spent on preventative maintenance, \$3.00 is saved from reactive maintenance. He said that

state statute (Section 22-24-5.3 NMSA 1978) requires the PSFA to audit maintenance but said that the PSFA does not have a tool to do this right now, nor does any other entity in the nation. Mr. Gorrell stated that a pilot project has been conducted and the PSFA is looking to improve the process.

Statewide Adequacy Standards: Update on Modifications and Additions

Ms. Casias reiterated that the adequacy standards are the basis for equally ranking the facilities. She elaborated, explaining that the standards include aspects such as minimum sizes of teaching space and proper heating and cooling systems. She said that the standards were set in 2002, and in 2008, the documents were completed and are updated as needed. She added that the standards were updated between 2008 and 2010, and the feedback received is that the standards are too particular. Ms. Casias also explained the post-occupancy examination. She offered an example of V. Sue Cleveland High School and the negative feedback received, being that the school is too linear, which results in students being late to class and a lack of natural light available in the school.

Regarding the NMSD and NMSBVI, Representative Saavedra expressed concern about how long the process of establishing adequacy standards for the NMSBVI and NMSD has taken and noted the lack of staff at those schools to manage the facilities. Richard Romero, facilities specialist, PSFA, said that the NMSBVI hired an architect and planner on contract who is aiding the school in the process. Mr. Romero said that when the process began it took a while due to the nature of the work at hand. He said that the schools and the PSFA were in agreement that the similarities of the plans were stronger than the differences between them, and all parties decided to proceed with one standard for both schools.

Mr. Gorrell, Ms. Casias and task force members discussed the characteristics of what defines an alternative school versus an alternative program, and staff offered a checklist developed to clarify the definition.

Adjournment

There being no further business, the thirty-second meeting of the PSCOOTF adjourned at 3:30 p.m.

TENTATIVE AGENDA
for the
THIRTY-THIRD MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

September 2, 2011
Room 322, State Capitol
Santa Fe

Friday, September 2

- 9:00 a.m. **Call to Order**
- 9:05 a.m. **Approval of July Minutes**
- 9:10 a.m. **Fiscal Year 2012 Revenue Projections**
—Elisa Walker-Moran, Chief Economist, Legislative Finance Committee (LFC)
—Leila Burrows, Economist, LFC
—Stephanie Schardin Clarke, Interim Director, State Board of
Finance
- 10:00 a.m. **Update on Progress of Adequacy Standards Development for the New
Mexico School for the Deaf and the New Mexico School for the Blind and
Visually Impaired**
—Robert Gorrell, Director, Public School Facilities Authority (PSFA)
—Richard Romero, Facilities Specialist, PSFA
- 10:30 a.m. **Public School Facilities Ranking Methodology and Field Assessments**
—Christopher Aguilar, Facilities Database Manager, PSFA
—Dennis Schneider, Facilities Assessment Database Field Assessor, PSFA
- 12:00 noon **Lunch**
- 1:00 p.m. **Facilities Maintenance Assessment Reports**
—Martín Montaña, Maintenance Manager, PSFA
—Les Martinez, Maintenance Specialist, PSFA
—Larry Tillotson, Maintenance Specialist, PSFA
- 3:00 p.m. **Public School Capital Outlay Council (PSCOC) Standards-Based Capital
Outlay, Lease Assistance and Roof Grant Awards, 2011-2012**
—Joe Guillen, Chair, Awards Subcommittee, PSCOC
—David Abbey, Chair, PSCOC
- 4:00 p.m. **Adjourn**

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

**September 2, 2011
Room 322, State Capitol
Santa Fe**

The thirty-third meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, on September 2, 2011 at 9:50 a.m. in Room 322, State Capitol.

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Rep. Donald E. Bratton
Secretary-Designate Tom Clifford
Dr. Carl Foster
Ms. Cecilia J. Grimes
Dr. Lisa Grover
Mr. Leonard Haskie
President Pro Tempore Timothy Z. Jennings
Rep. Larry A. Larrañaga
Mr. Antonio Ortiz
Ms. Lilliemae Ortiz
Mr. Mike Phipps
Ms. Judy Rabon
Sen. Sander Rue
Rep. Henry Kiki Saavedra

Absent

Mr. Paul Aguilar
Sen. Vernon D. Asbill
Mr. Robbie Heyman
Sen. Lynda M. Lovejoy
Speaker Ben Lujan
Mr. Kilino Marquez
Sen. George K. Munoz
Rep. W. Ken Martinez
Sen. John Arthur Smith

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Sharon Ball, Senior Researcher, LCS
Leslie Porter, Research Assistant, LCS
Tom Pollard, Legislative Fiscal Analyst, LCS
David Abbey, Director, Legislative Finance Committee (LFC)
Eilani Gerstner, Senior Fiscal Analyst I, LFC
Rachel Gudgel, Senior Fiscal Analyst, LFC

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Friday, September 2

Representative Miera welcomed the task force members. Noting the lack of a quorum, he indicated that the approval of the July minutes would be delayed until a quorum is present. Members of the task force introduced themselves.

Fiscal Year 2012 Revenue Projections

Elisa Walker-Moran, chief economist, LFC, discussed the July 2011 consensus revenue estimates. She said that fiscal year 2011 (FY11) recurring revenue exceeds appropriations by \$111 million from the December forecast, which includes post-session revisions. She explained that the reserves are projected to reach a total of \$367 million, or seven percent of appropriations at the end of FY11. Ms. Walker-Moran stated that FY11 disaster allotments from the Appropriation Contingency Fund were increased to \$24 million from a projection of \$11 million due to recent wildfires and that the remaining balance is \$52.7 million, with \$47.1 million dedicated to education spending. In addition, she said the July 2011 consensus forecast projects revenues to exceed appropriations by \$120.4 million in FY12, with a nine percent reserve ratio. She said that this forecast assumes a continuation of current cost-savings measures.

Ms. Walker-Moran continued, stating that Section 13 of the General Appropriation Act of 2011 authorizes the governor to transfer up to \$50 million from the operating reserve to the appropriation account in FY11 or FY12 if revenues are insufficient to meet appropriations. She also pointed out that recurring growth is forecast at 9.9 percent in FY11 and 4.9 percent in FY12. Roughly one-third of the FY11 increase is due to revenue enhancement legislation passed in the 2010 session, she said, and that absent this legislation, FY11 growth would be forecast at 6.1 percent.

Concerning forecast reversions, Ms. Walker-Moran stated that energy-related revenues were increased due to oil prices and volumes being higher than projected in the December 2010 estimate. She added that natural gas prices have been adjusted up slightly from the December forecast. Regarding educational reversions, she said the FY11 appropriation to the state equalization guarantee assumed \$59.4 million in credits for the local 0.5 mill levy, federal impact aid and federal forest reserve funds. She stated that actual credits received by the state total \$73.5 million, resulting in an estimated reversion of \$14.1 million to the general fund. She added that personal income tax (PIT) was unchanged from the December estimate and the corporate income tax was revised down from the December 2010 estimate due to the higher-than-anticipated film credit refunds, but it is above the July 2010 estimate.

Ms. Walker-Moran explained the risks to the economic forecast, including the U.S. economic recovery, which is vulnerable to weakness in the housing market, currency volatility, financial sector weakness and federal fiscal imbalance. She said the natural gas prices remain vulnerable to increased supplies from productivity improvements.

Clinton Turner, chief economist, Taxation and Revenue Department, offered an executive summary of the July 2011 consensus general fund revenue estimates, stating the July forecast

revisions increase FY11 revenue by \$110.1 million, FY12 revenue by \$120 million and FY13 revenue by \$164.8 million. After this update, he said, the general fund revenue will grow by almost five percent per year in FY12 and FY13. He noted that the growth of almost 10 percent in FY11 was due in part to tax increases passed in 2010. Mr. Turner explained that the primary legislative change from the 2011 session was the reduction of film production tax credits, and, although this change will increase revenue by about \$20 million per year beginning in FY12, a sharp increase in film credit claims reduced FY11 revenue by \$40 million. He added that the FY11 and FY12 increases are primarily due to gross receipts tax (GRT) and oil and gas revenues and that the increase in FY13 is due to higher corporate income tax and oil and gas revenues. Finally, he stated that natural gas is expected to average \$5.60 per 1,000 cubic feet in FY12 and \$6.20 per 1,000 cubic feet in FY13, up from \$5.20 per 1,000 cubic feet in FY11. He noted that the oil is forecast at \$87.80 per barrel in FY12 and \$89.50 per barrel in FY13.

Discussing recent developments affecting the revenue outlook, Mr. Turner said that several economic reports published since early July indicate a slower-growing economy. He said that although these reports are clearly a cause for concern, the July forecast was conservative in the outlook for major revenues. He said the FY12 growth rate for GRT was only 3.6 percent, while the PIT forecast growth was only 3.8 percent. In addition, energy prices appear to have stabilized, he said, and assuming normal growth from seasonal factors and even with a slowly recovering economy, the current level of prices is only slightly below that included in the July forecast.

Concerning the general fund financial summary, Mr. Turner stated that, thanks to the increased revenue forecast, revenue will exceed spending in FY11 by \$110.5 million and in FY12 by \$123.1 million and that these amounts will increase total reserves to \$489.9 million at the end of FY12, which represents nine percent of recurring appropriations. Mr. Turner said that although this is a dramatic improvement, there is still \$52.9 million that may be needed to reimburse the federal government for past Medicaid payments, and these amounts would be on recurring appropriations. Finally, Mr. Turner stated that although there are many uncertainties in this revenue outlook, the fact that the state is seeing a return of revenue growth means the focus of budget negotiations will shift to how that growth is managed. He reported that Governor Martinez's administration will be focused on three major priorities in budget policy: restrained spending growth that prioritizes critical needs; tax reform to stimulate growth of the private sector; and maintaining adequate reserves to ensure the financial viability of the state.

Stephanie Schardin Clarke, interim director, State Board of Finance (BOF), said that the general obligation bonds (GOB) are backed by the state property tax mill. She noted that the 2010 legislature passed a bill that would have resulted in issuing \$180 million in GOB. She said the GOB capacity is one percent of the tax base, and as the base of property tax grows, the amount of GOB increases as well. Ms. Clarke explained that GOB projects require approval from the voters and that the \$150 million for higher education institution projects did not pass muster with the voters, and, since this GOB issue failed, the GOB issue was lowered. She added that the available GOB capacity doubled due to the failure of the GOB issue and can be used for higher education, health facilities, library acquisitions, classrooms and senior centers with subsequent voter approval.

Leila Burrows, economist, LFC, discussed severance tax bond capacity. In summary, she said that Senate Finance Committee Substitute for Senate Bill 218, which would have approved \$237.8 million in capital projects, failed to pass in the 2011 legislative session, and, as a result, the \$57.7 million that was set aside for senior sponge bonds was made available for supplemental sponge bonds, bringing the total issuance for public school capital outlay in FY11 to \$206.1 million. She said that the BOF and the LFC estimate senior long-term bonding capacity of \$192.3 million in FY12, and, as in previous years, this amount was calculated to ensure that, given current revenue assumptions, the same amount can be issued in each of the next 10 fiscal years. She stated that given this amount of long-term capacity, the senior sponge bond capacity will be \$73.7 million and the supplemental sponge bond capacity will be \$147.7 million for FY12. After subtracting capacity earmarked for the Water Project Fund, the Tribal Infrastructure Project Fund and the Colonias Infrastructure Project Fund, estimated net senior bond capacity is \$212.7 million and supplemental bond capacity is \$147.7 million, for a total of \$360.4 million, she explained.

Concerning senior capacity, Ms. Burrows said that senior long-term capacity is determined as the amount that can be issued each year for 10 years, assuming the total debt service in each year does not exceed 50 percent of severance tax revenue. She explained that the typical maturity is 10 years to correspond to the expected life of the capital project. Senior severance tax bonds are tax exempt, she stated, which means the cost of borrowing is lower than that of taxable bonds. She explained that short-term senior capacity for sponge notes is calculated as 50 percent of deposits to the Severance Tax Bonding Fund less senior debt service due in that fiscal year. The bonds are sold to the state treasurer, she explained, and then repaid within a short period, usually one to two days. She clarified that sponge notes are essentially a means to access earmarked revenues and are taxable, but because they are short term, the interest costs are immaterial.

Task force members asked for points of clarification regarding various issues discussed by the presenters and engaged in conversation with the presenters about those points, including uses for senior severance tax bonds and supplemental severance tax bonds.

Update on Progress of Adequacy Standards Development for the New Mexico School for the Deaf (NMSD) and the New Mexico School for the Blind and Visually Impaired (NMSBVI)

Robert Gorrell, director, Public School Facilities Authority (PSFA), reminded the task force members that adequacy standards for these special schools have not yet been developed. He noted that the resolution for the procedure for completion of deficiency correction projects at the NMSD and the NMSBVI has been sent to the PSFA and school staff. He emphasized the magnitude of the project and stated that good progress has been made, even though some deadlines have been missed. Mr. Gorrell stated that since the last PSCOOTF meeting, the schools and the PSFA have established a schedule that includes completion of the projects in early 2012. He added that other states are looking to New Mexico's handling of establishment of standards for these special schools.

Concerning the adequacy standards for the NMSD and the NMSBVI, Mr. Gorrell explained that the general classrooms should be three times as large as classrooms in traditional

schools but clarified that the PSFA must still document these needs. He said there are spaces within the special schools that are similar to traditional schools that will allow the established adequacy standards to be applied. He identified the outreach programs and the housing units as areas that still lack adequacy standards. Mr. Gorrell drew the task force members' attention to a graph illustrating the Facilities Condition Index (FCI) of each building within the special schools' campuses and highlighted that two-thirds of the facilities are worse than the average condition of the schools in the state.

Richard Romero, facilities specialist, PSFA, informed the task force that within the next month, the PSFA, the NMSD and the NMSBVI will be drafting assumption criteria and anticipate providing those draft standards to the task force at the October meeting. He said those standards will be coupled with various mechanics for review by the NMSD, the NMSBVI and the PSFA and then presented to the Public School Capital Outlay Council (PSCOC). Finally, he said the completed standards will be provided at the PSCOOTF's November meeting.

Task force members expressed concern about the lack of consensus on the 50 percent match being proposed for funding NMSD and NMSBVI facility improvements. In response, Mr. Gorrell clarified that this aspect has yet to be worked out and suggested that the legislature might determine what, if any, match should be required. Members of the task force, Mr. Gorrell and Ms. Ball discussed the conversation that took place at the previous meeting on this topic. Task force members once again expressed concerns about the slow progress of this process and stressed the importance of establishing standards by the end of the 2011 calendar year. Members also affirmed the task force's commitment to addressing facility needs at both the NMSD and the NMSBVI.

Mr. Abbey, chair, PSCOC, stated that adopting standards as the project proceeds is linked to the NMSD's and the NMSBVI's master plan, and he said the next step is to identify what projects are the most significant, and then the PSCOC will balance the funding needs to make reasonable progress on the standards while ensuring that the progress does not hinder progress for other schools.

PSCOC Standards-Based Capital Outlay, Lease Assistance and Roof Grant Awards, 2011-2012

Mr. Abbey told the task force that since the PSCOC standards-based process is now entering its eighth year, he would discuss the overall effectiveness of the program, as well as some of the remaining challenges.

He noted that surveys and feedback indicate that the program is perceived as a fair and equitable one by the people it serves. He explained that an overall improvement in facilities, evidenced by a 50% reduction in the FCI since implementation of the standards-based process, correlates directly to the higher level of public school infrastructure since 2001. He noted that funding levels have been declining since 2006 but remain well above average annual levels in the 25 years that preceded implementation of the process.

He also explained that the program has been effective in turning investment into completed projects, noting that 1,189 projects have been completed since 2001, at a total investment of \$1.6 billion in state capital outlay.

In terms of assisting New Mexico's sluggish economy, Mr. Abbey explained that roughly 28 direct and indirect jobs are created and funded for each \$1 million in expenditures on school construction, according to research cited by the University of New Mexico Bureau of Business and Economic Research. He noted that school construction and renovation, especially since 2008, have been a primary driver of jobs in New Mexico's rural areas.

Mr. Abbey went on to explain that, as annual severance tax revenue levels have varied, the standards-based program has evolved from initially funding entire schools to a more cost-effective, phased "just-in-time" funding process that allocates capital outlay funding only at the moment it is needed. He explained that just-in-time funding has been effective in significantly reducing project development duration — 87 percent of funds are now encumbered within 15 months of project awards.

He also touted the programs that the PSCOC has in place to encourage good fiscal management, good project development and good maintenance. He noted that PSCOC award funding requires that districts have current facilities master plans, current preventative maintenance plans and current financial audits, as well as other requirements. Overall, he said, he believes that these requirements have improved the quality of public school facilities funding and management across the state.

Mr. Abbey also touted this program's success to leverage other state infrastructure sectors. He said the legislature has used this process to incubate potentially better ways to manage infrastructure development and capital funding. He noted, in particular, that the PSCOC's greatest needs database and the PSCOC membership structure have proven to be effective, and it may be good policy to roll these out to other agencies that oversee capital outlay.

Mr. Abbey said the PSCOC challenges include such issues as the required level of funding to maintain facilities in their current condition. He noted that current unfunded public school facilities needs total about \$4.05 billion. He said that the FCI bottomed out in 2010 at 36.13 percent but has since increased to 37.93 percent — the first increase since this program was created. He noted that the increase is a result of a reduction in funding over the past few years, which has been lower than the break-even level needed to keep the state average FCI from increasing. He explained that to maintain the FCI at its current level would require average funding over the next five years of \$343 million per year. The state share of that cost would be about \$134 million per year. At lower funding levels, degradation exceeds renovation repair, and facilities conditions decline.

Mr. Abbey also noted the long-term financial impact on an increasing FCI. He said that as the FCI increases, the conditions of facilities worsen and repair costs go up, meaning that reducing facilities funding over the short term imposes increasing costs in the future. He explained that for every one percent in the FCI, there would be an increase in facilities maintenance and repair costs in future years of about \$180 million.

Mr. Abbey noted that public school facilities have been relatively well-funded over the past eight years. He said that some policymakers have discussed the possibility of declaring victory and reallocating some of the funding that has been dedicated to school facilities. He noted that, within that discussion, the cost of maintaining the FCI at current levels as well as the cost of not maintaining the FCI at current levels would need to be considered.

Joe Guillen, chair, Awards Subcommittee, PSCOC, pointed out that with the just-in-time funding, the PSCOC makes standards-based awards throughout the year rather than on one specific date as in the past. He noted that the standards-based awards made in July include \$5.37 million in award funding to 18 schools in 12 districts — all 18 awards were for planning and design or for reallocations to planning. He noted that the corresponding potential out-of-cycle awards may total an additional \$79.09 million. He clarified that total project costs to school adequacy for these projects are \$153.93 million. He said that the district share of these costs would total about \$74.8 million. He explained that these standards-based awards were funded down through the top 60 schools on the New Mexico Condition Index (NMCI) ranked list of school needs. Schools that applied for funds within the top 60 schools received an award.

Regarding the standards-based roof awards, Mr. Guillen noted that a total of \$6.68 million was awarded to 17 schools in 11 districts. He explained that funds were awarded only to those schools that had local matching funds available and that were prepared to complete the projects for which they applied within one year. In response to task force comments about the fact that \$10 million had been approved for these awards, Mr. Guillen noted that the contingencies may have limited the number of applications.

Mr. Guillen also discussed the lease assistance awards, which gave \$10.7 million to 90 schools, including 83 charter schools. He stated that the maximum allowable lease assistance award is \$733 per student. He also addressed the concept of replacement versus renovation, the challenge of improving schools with declining enrollments, the financial ability of schools to match funds and the consolidation of facilities in rural areas.

Several task force members inquired about charter school lease assistance awards. In response, Mr. Abbey explained that at times, school districts have excess space and lease that space to charter schools. Mr. Gorrell assured the members that the state is not "double paying" on any same square footage, meaning that a school district is not leasing facilities that the taxpayers are paying for to charter schools, which are then asking for lease assistance awards to pay the school district.

With respect to the topic at hand, Dr. Grover stated that Senate Bill 446 (2011), a charter school contract bill, passed and holds charter schools to the highest academic, fiscal, educational and lease standards. She said that there is leeway to look at lease standards and at how laws on the books can support facility needs of charter schools. She also reminded the task force that House Bill 283 (2011) cleans up charter school facility issues. She said that underutilization of facilities is prevalent, and those facilities should be made available to the charter schools at no extra cost. She also suggested analyzing the charter school renewal threshold to more easily assist charter schools with their facilities. Discussion ensued among Dr. Grover and PSFA staff

regarding these issues. Dr. Grover requested the names of the charter schools that have allegedly turned down the opportunity to move into available public school facilities.

Other task force members inquired about facility master plans from public schools and the number of public schools that have completed master plans that include charter and magnet schools. Mr. Gorrell responded that all school districts are required to include this information in their master plans. Further discussion took place in regard to concerns about defining the terminology of "charter school", "magnet school" and "specialty school".

Some task force members opined that charter schools are a tool for public schools to use to develop alternate teaching methods and said that charter schools were conceived as an incubator for research and development for public schools, and the purpose is to disseminate good ideas.

Public School Facilities Ranking Methodology and Field Assessments

Christopher Aguilar, facilities database manager, PSFA, offered an overview of the facilities ranking methodology, beginning with the facilities assessment database, stating that it is the tool used to create standards-based prioritization for funding public school facilities through the PSCOC. He said the database combines building repair cost and system life-cycle analysis with New Mexico educational adequacy standards to create the NMCI. He said this index enables the comparison of all the public schools in the state to determine the greatest need for funding the correction of school deficiencies. He added that through tracking building repair cost and system life-cycle data within a school, the PSFA is able to score the school following the industry standard concept of the FCI, which is a tool used to rate school facilities in comparison to others and is a ratio of needed repairs divided by replacement value. Mr. Gorrell elaborated on the weighted NMCI, explaining that it is calculated from the base formula for FCI and includes the cost to correct deficiencies based on the state educational adequacy standards. He stated that systems requiring immediate repair due to a health or safety threat will be weighted at the highest weight of 3.5 to ensure that those schools get treated with the greatest priority.

Concerning the life-cycle analysis, Mr. Aguilar explained that the physical site assessment is the first step in the process, and, upon completion of the assessment, the life span for each system is determined. He explained that a roof is considered 100 percent used 20 years after it is installed. He said that a life-cycle renewal requirement exists when a system is in use beyond the recommended life of the item. He said that if a system has been determined not to function effectively, it is moved higher on the list. Mr. Aguilar said the ranking also captures degradation costs of building systems that are still in their natural life cycle. To determine the percentage that a system has degraded, the current age of the system is squared and divided by the system life expectancy squared and thus creates the PSFA's degradation curve, illustrating a non-linear graph with back-end loading, he explained. Mr. Aguilar stated that the PSFA attempts to plan ahead by observing the population growth trends, using the growth factor used as an additional multiplier, which is computed and assigned to each school.

Dennis Schneider, facilities assessment database field assessor, PSFA, explained that after the data are gathered and compiled, the data are given to Mr. Aguilar and entered into the database. At the beginning of the ranking system, the PSFA generally looks at the top 100

schools for the first awards cycle. He said that since November 2008, evaluation of 312 schools has been completed.

Concerning the field assessments, Mr. Schneider explained that he takes 500 to 600 photos of each school, including every system, room, sidewalk, the roof and the safety of the environment of the pick-up and drop-off areas. He said that he also measures the rooms for square footage and measures the walls, the flooring, the halls and all mechanical areas but subtracts the empty space within the doorways. He added that he works with the district administration on the site assessment and that every district has been cooperative when he has been in the field thus far. He clarified that no photos of students or staff are taken. Once Mr. Schneider compiles the data, he said that data are given to Mr. Aguilar and a notice is then sent to the district asking it to review the data. He stressed that the PSFA considers the collected data to be property of the district.

Some members of the task force asked how a school is able to increase its ranking on the register. Mr. Aguilar responded that every school is in a position relative to other schools, and so the largest jump is due to the completion of projects. Mr. Schneider explained that a school in need of new windows or doors changes the ranking factor. He said that school reassessments can also cause a change in ranking.

Facilities Maintenance Assessment Reports

Mr. Gorrell offered two reasons for the importance of effective school maintenance, explaining that first, schools last longer and are more cost-effective for the districts and the community. He elaborated, stating that good, consistent maintenance can double the useful life of a school and can drastically cut operating costs. Second, he explained, schools perform better as safe and effective learning environments. He noted that studies conducted by the Council for Educational Facilities International have indicated that students attending adequate school facilities that are well-maintained can perform an average of one letter grade better than those in less adequate facilities.

Martin Montaña, maintenance manager, PSFA, explained that New Mexico has many well-maintained facilities but said that many are lacking and are at the opposite end of the spectrum. He said the problem goes beyond funding, for the PSFA has increased direct maintenance funding, and still not enough progress has been made. He said that over the past 10 years, SB 9 funding has increased from \$35.00 per mill per unit to \$70.00 per mill per unit and has shown minimal impact to improved facility maintenance. He said that the PSFA recognizes the basic problem: an objective measure of good maintenance is lacking. He said that the PSFA is proposing a Facility Maintenance Assessment Report (FMAR) that will provide the PSFA and the school districts with a measurement of effective maintenance and a benchmark for the entire nation in equitable capital delivery.

Les Martinez, maintenance specialist, PSFA, explained that the FMAR is a standards-based process for maintenance. He said it is a tool that allows the PSFA to rank the school in two specific categories: the facility maintenance conditions and the maintenance management functions required by statute. He said the facility maintenance conditions are divided into four categories: site, building exterior, building interior and building equipment and systems. He

explained that the maintenance conditions include the evaluations of the preventative maintenance plan, facility information management system, safety, maintenance staff development, contractor oversight and facility master plan alignment. He continued, stating that the FMAR and standardized criteria aid the districts by putting a different set of eyes on the facilities to help identify issues and problems. Mr. Martinez said that being proactive and identifying these opportunities for improvement and best practices can reduce the costs and liability risks on an ongoing basis at schools. He said the district will still have the autonomy to prioritize these identified concerns and address them accordingly. He added that the report is deductive in nature, allowing each district to begin with a perfect score.

A few task force members asked for points of clarification and requested information regarding the age of the schools given as examples. Mr. Gorrell said he would provide those data.

Larry Tillotson, maintenance specialist, PSFA, presented the key benefits of the FMAR that would be provided to schools: improved efficiency in the limited time frame for maintenance because the reports are designed to focus on the greatest challenges; a simplified way to leverage best maintenance practices; and an effective means to eliminate disincentives of penalizing school districts that conduct great maintenance.

Mr. Montaña added that school district leadership may have concerns with implementing a new program that will require start-up time and that will impact staff. Alternatively, he said the PSFA envisions that the FMAR will allow the district to make more use of its existing resources. He said that the school districts have the authority to decide what they want to address first, not the state, and he said this is an unfunded mandate.

Mr. Gorrell explained that more than 100 schools must have site assessments conducted each year, which requires two to three additional field assessors. He explained that the PSFA currently has staff vacancies available to cover this. Mr. Gorrell added that the cost to build this benchmark system and to conduct the initial assessments is \$500,000. He said the second option for contractors is \$250,000 for the first two years, and then it would be sustained by the PSFA's operational budget thereafter.

Representative Miera reminded task force members that the issue of preventative maintenance has been discussed and emphasized by the current task force as well as its predecessor, the Public School Capital Outlay Task Force, prior to this discussion. He noted that task force members have always been in agreement about the issue's merit but expressed concern that increasing the size of the PSFA maintenance staff while school districts are reducing the size of their respective maintenance staffs sends an inappropriate message from the task force and the PSCOC to districts. He suggested that the PSFA continue to work on the issue using existing fiscal and personnel resources.

Some task force members expressed concerns that coordinated preventative maintenance programs are important, not only for older facilities, but also for school facilities of all ages.

Public Comment

Ed Marquez, director of operations, Central Consolidated School District, offered a perspective on maintenance, stating that good maintenance is driven by leadership oversight and that it is difficult for a school principal to understand the total maintenance picture because the principal's training focuses on children's education. He suggested that if \$500,000 will be spent, periodic scheduled maintenance for all districts should be developed. He expressed concern that the FMAR appears to be an additional layer of bureaucracy and the maintenance is not being completed.

Approval of July Minutes

Upon a motion made by Representative Saavedra and seconded by Dr. Foster, the July minutes were approved.

Adjournment

There being no further business before the task force, the thirty-third meeting of the PSCOOTF adjourned at 3:30 p.m.

Revised: October 4, 2011

**TENTATIVE AGENDA
for the
THIRTY-FOURTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**October 5, 2011
Room 322, State Capitol
Santa Fe**

Wednesday, October 5

- 9:00 a.m. **Call to Order**
- 9:05 a.m. **Update on Progress of Adequacy Standards Development for the New Mexico School for the Deaf and the New Mexico School for the Blind and Visually Impaired**
—Robert Gorrell, Director, Public School Facilities Authority (PSFA)
—Martica Casias, Planning and Design Manager, PSFA
—Richard Romero, Facilities Specialist, PSFA
- 9:30 a.m. **Charter School Facilities: Where We Are and How We Got Here**
—Sharon Ball, Staff
- 10:00 a.m. **Charter School Facility Issues: Public Education Department (PED)**
—Patty Matthews, J.D., Director, Choices for Parents, PED
—Antonio Ortiz, Director, Capital Outlay Bureau, PED
- 11:30 a.m. **Charter School Lease Agreement Concerns**
—Eugene Gant, Secretary, Public Education Commission
- 12:15 p.m. **Lunch**
- 1:15 p.m. **Charter School Facilities Issues: New Mexico Coalition for Charter Schools (NMCCS)**
—Tony Monfiletto, Principal, ACE Leadership High School, Albuquerque
—Caryl Thomas, Principal, Cesar Chavez Community School, Albuquerque

2:15 p.m. **Albuquerque Public Schools (APS) and Charter Schools: Working to Meet Capital Needs**

—Diego Gallegos, Ed.D., Assistant Superintendent for School and Community Support, APS

—Brad Winter, Ed.D., Chief Operations Officer, APS

—Carrie Robin Menapace, Policy Analyst, APS

3:30 p.m. **Other Business**

4:00 p.m. **Adjourn**

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

**October 5, 2011
Room 322, State Capitol**

The thirty-fourth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, on October 5, 2011 at 9:15 a.m. in Room 322, State Capitol.

Present

Rep. Rick Miera, Co-Chair
Mr. Paul Aguilar
Sen. Vernon D. Asbill
Rep. Donald E. Bratton
Dr. Carl Foster
Ms. Cecilia Grimes
Dr. Lisa Grover
Mr. Leonard Haskie
Mr. Robbie Heyman
Senate President Pro Tempore Timothy Z.
 Jennings
Sen. Lynda M. Lovejoy
Mr. Mike Phipps
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith

Absent

Sen. Cynthia Nava, Co-Chair
Tom Clifford, Secretary of Finance and
 Administration
Rep. Larry A. Larrañaga
Speaker of the House Ben Lujan
Mr. Kilino Marquez
Rep. W. Ken Martinez
Sen. George K. Munoz
Ms. Lilliemae Ortiz
Ms. Judy Rabon
Sen. Sander Rue

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Sharon Ball, Senior Researcher, LCS
Leslie Porter, Research Assistant, LCS
Tom Pollard, Legislative Fiscal Analyst, LCS
Rachel Gudgel, Senior Fiscal Analyst, Legislative Finance Committee (LFC)
Frances Ramirez-Maestas, Director, Legislative Education Study Committee

Guests

A copy of the guest list is in the meeting file.

Handouts

Copies of the handouts and other written testimony are in the meeting file.

Wednesday, October 5

Representative Miera welcomed the task force members. Noting the temporary lack of a quorum, he indicated that the task force would convene as a subcommittee so the meeting could begin.

Update on Progress of Adequacy Standards Development for the New Mexico School for the Deaf (NMSD) and the New Mexico School for the Blind and Visually Impaired (NMSBVI)

Robert Gorrell, director, Public School Facilities Authority (PSFA), reported that the NMSD, the NMSBVI and the PSFA are on schedule according to the previously proposed schedule for establishment of adequacy standards discussed at prior PSCOOTF meetings. He attributed the progress to the hard work and committed participation on behalf of both special schools.

In response to a task force question, Mr. Gorrell explained that a charrette is an intensive planning session in which citizens, design experts and others collaborate on a vision for development of a construction project. He said it provides a forum for ideas and offers the unique advantage of giving immediate feedback to the design professionals. He added that, more importantly, the charrette process allows everyone who participates to be a mutual author of the plan. He said that through brainstorming and design activity, many goals are accomplished during a charrette.

1. Everyone who has a stake in the project develops a vested interest in the ultimate vision.
2. The design team works together to produce a set of finished documents that address all aspects of design.
3. Because the input of all the players is gathered at one event, it is possible to avoid the prolonged discussions that typically delay conventional planning projects.
4. The finished result is produced more efficiently and cost effectively because the process is collaborative.

Mr. Gorrell explained aspects of the NMSBVI and NMSD analytical charrette process, including: the observation of existing schools currently in operation; the review of existing information; and the definition of the functional drivers of typical school spaces and of additional space required for accommodations. He said these special purpose schools have three space drivers: (1) impairment accommodations; (2) low student-teacher ratios; and (3) a low student enrollment. He elaborated, saying that an eight-to-one student-teacher ratio is ideal, but the low student enrollment makes consistent ratios sometimes disproportionate. Additionally, he stated that the facilities need diagnostic, outreach and community support function space, as well as space for the student residential program. Mr. Gorrell told the task force that these are spaces that are lacking in traditional schools and therefore their existence presents a challenge.

Martica Casias, planning and design manager, PSFA, discussed the gross square footage requirements per student. She pointed out examples of various classroom and laboratory types, including general, preschool, science, art, music, technology, career preparation, culinary and life skills, industrial arts and a broadcast studio. She also pointed out the school administration rooms, including the nursing and health center, student dormitory, student housing common spaces, individual instruction spaces and the offices. She said the gross square footage per student becomes a footprint, and, in this case, when looking at the NMSD with 128 students, the data illustrate a need for 968 square feet per student and a total school footprint of 96,000 square feet. She explained that inside of that footprint, the school will add what is required, as long as it

is not below the minimum standards created. Mr. Gorrell added that the lower the student-to-teacher ratio, the greater the square footage per student.

Richard Romero, facilities specialist, PSFA, discussed the draft standards for the NMSD and the NMSBVI. He said the PSFA is hopeful that by using traditional standards in comparison to regular public schools, the NMSD and the NMSBVI buildings can be ranked among the traditional schools. He added that the fewer departures the specialty schools have from traditional schools, the better. He stated that the document provided to the task force explains how the PSFA arrived at the standards for the various spaces. Mr. Gorrell clarified that the term "expanded core curriculum", found within Item F on the first page of the draft for adequacy standards, is a new term. He said that instead of students going directly to science and math classes, they may attend a shop class with tools, which would fall into this category.

A few members of the task force asked what the NMSD and the NMSBVI need to reach basic adequacy standards and how the standards for students required to live on-site are separated from those who live at home. Finally, there was a question about funding progress. In response, Mr. Gorrell explained that the students attending the school are counted, as are the students living on-site, and the standards are applied to both groups. He said that the schools are ranked in regard to those standards and receive a funding percentage that is comparable to that of a traditional school. He clarified that the PSFA has decided to review each building and see if it can compete against an entire traditional school campus. Initially, he said the legislature approved deficiency correction funding of up to \$8 million.

Representative Miera asked that it be made clear whether or not all parties involved in this process have reached agreement.

As a point of clarification, Richard Gorman, project manager, NMSD, said that it is his understanding that the \$8 million allocated for the projects is to be shared between the two schools, and receiving the funds is contingent on whether the buildings involved fail to meet adequacy standards. He expressed concern that, by participating in the standards-based process, the two special schools will experience further delays in receiving grants for projects whose needs have been defined and demonstrated. He reminded the task force that because the NMSD and the NMSBVI are under the purview of the Higher Education Department (HED) and that the general obligation bond question failed on the November general election ballot, the two schools have not been granted funding. He emphasized that the schools are falling behind and said he hopes funding can be secured to deal with the immediate needs. He said that he is optimistic that adequacy standards will be developed by December but made clear that the square footage issues had not been presented to the schools until the day prior to this meeting, so the schools have not had the opportunity to review the standards. He noted that the standards-based assessment criteria have not been completed. He said the PSFA has been straightforward, and he thinks the assumptions involved will be close to accurate.

Julie Walleisa, principal, Dekker/Perich/Sabatini, and contract architect for the NMSBVI, said the schools are encouraged by the process and that involved parties are on the right path, which will allow the schools to make good decisions regarding the existing facilities. She estimated that the NMSBVI has about \$14 million in deficiency corrections work to be done; however, she expressed concern about the assumptions being built into the standards.

In response to the comments regarding the \$8 million designated for the special schools, Mr. Gorrell stated that the purpose of that funding is to provide "backstop" funding for the schools, so they could count on at least that level of funding.

Several task force members asked if the NMSD and the NMSBVI could be shifted to the Public Education Department (PED) from the HED. Ms. Ball responded that the special schools were created in the state constitution, just like universities, and they answer to their respective boards of regents, which are appointed by the governor and approved by the senate. She said a constitutional amendment is required for the schools to be accountable to the PED. She also noted that both of the special schools have indicated a preference to continue administratively under the HED. She added, however, that the special schools' problem has always been having to compete with the other institutions under the HED for capital outlay funding.

Members of the task force inquired about project readiness, considering there is approximately \$4 million for each school. Mr. Gorman explained that the schools have two projects ready for design, and he is waiting on the authorization from the Public School Capital Outlay Council (PSCOC) to do so. He said \$4 million will complete only the second phase of one project, but \$6 million would cover two projects. Tim Berry, deputy director, PSFA, added that fiscal year 2012 has \$200 million available for funding for school projects, but he explained that due to obligated funding, only about \$98 million is available. Task force members requested a quantified amount for each school's project completion. Mr. Gorrell stated that it is possible for the council to authorize the design phases of these projects at its November 5 meeting. Representative Miera reminded Mr. Gorrell that the PSCOOTF's role is to oversee the PSCOC, and the PSCOOTF is sending the message for the PSCOC and the PSFA to move in the direction of funding the schools' projects in a timely manner.

Upon a motion by Senator Smith, seconded by Representative Saavedra, the task force unanimously agreed to request that the PSCOC allocate, at a minimum, by December 31, 2011, the PSCOC funds already approved for the special schools to continue with the deficiencies corrections work at both schools and to finish with establishment of adequacy standards for the special schools as soon as the rulemaking process makes it possible.

Regarding the failure of the higher education general obligation bond question on the ballot (which included funding for the NMSBVI and NMSD projects), task force members agreed that funding for these two schools should be in a question that is separate from the rest of the higher education projects on future general election ballot questions.

Charter School Facilities — Where We Are and How We Got Here

Representative Miera explained that, because of the length of the NMSBVI and the NMSD discussion, the above-named agenda item will be addressed at a subsequent PSCOOTF meeting.

Charter School Facility Issues — PED

Antonio Ortiz, director, Capital Outlay Bureau, PED, offered proposed changes to the Public School Buildings Act and the Public School Capital Improvements Act. Referring to Sections 22-25-3 and 22-26-3 NMSA 1978 (the authorization for local school boards to submit questions of capital improvements tax imposition), he suggested having a concrete date instead

of the term "timely", as it is currently phrased. This language will ensure that both the charter schools and the school district are bound, he said. He gave an example, stating that a school district usually passes a resolution that the school board approves in December, and the election takes place the following February. He stated that with the suggested change, the school board will pass a resolution for the future public school improvements funding in July. Second, Mr. Ortiz recommended that the term "local school districts" replace the term "department" in Sections 2-25-11 and 22-26-10 NMSA 1978 (expenditures by charter schools; reporting to the department). He said this statute requires two reports to be submitted to the PED by the charter schools; the first report is due in December and the second in January. The December report details the intent of the expenditure of local dollars, and the second report addresses the dollars spent the previous calendar year. He explained that the language change provides safeguards to the school district and the PED from audit findings.

Discussion ensued among the task force members, and points of clarification were asked regarding the two term changes. Representative Miera requested that Ms. Ball analyze this language to determine the process to alter the language, through statute or that rule.

In response to a question concerning audit issues and charter school auditors, Mr. Ortiz explained that the PED wishes to shift the responsibility back to the school districts because the mill levy funds allocated to the locally chartered charter schools are not state funds. He said that the PED is hearing different interpretations of statute and that some capital dollars are being used for operational costs to purchase items that the PED would not allow to be purchased; whereas, for example, Albuquerque Public Schools' (APS) interpretation of the statute does indeed allow these purchases.

Representative Miera noted that this issue will be discussed at the Legislative Education Study Committee meeting.

Patricia Mathews, Esq., director, Options for Parents, PED, briefly discussed public facilities available to charter schools. She said the issue is the lack of teeth in the provisions and said it needs clarification to support charter schools in their attempts to relocate into public buildings. If the state is trying to place charter schools into available public spaces, charter schools need to be able to leverage other funds and take action when space is available, she said. Ms. Mathews stated that the PED is making progress in placing charter schools into public facilities but that a question has been left unanswered — whether, in fact, some of the private leases might comply with statute, meaning whether a private landlord has provided an adequate facility and if the landlord has agreed to maintain the building. She stated that Mr. Berry reminded her of the expiration of Section 22-8B-4.1 NMSA 1978 (whether or not state-chartered charter schools have a state match). She said that there is approximately \$1.1 million in that fund now and that not many charter schools have tried to access those funds.

Conversation ensued between members of the task force and Ms. Mathews concerning charter schools moving into public facilities that are not adequate and money being spent on upgrading those facilities when it might have been cheaper to build new facilities. Dr. Grover suggested following statutes from best practice states as an example of how to amend New Mexico's statutes to fix this issue, and how to define "underutilized". She suggested research be

conducted on how to put more teeth into this law. She said this statute has been in place since 1999 and it can work better for both charter schools and school districts.

Charter School Facility Lease Agreement Concerns

Eugene E. Gant of the Public Education Commission (PEC) and former member of the Las Cruces Board of Education discussed concerns relative to the lease agreements between owners of facilities and charter schools. He said it is understood that these leases need to be in the best interest of the charter school, the taxpayers, the property owners and the students. He stated that for the 2011-2012 school year, New Mexico will pay \$10.8 million in lease assistance for 83 charter schools. He said that 12 additional charter schools have been approved by the PED or school districts. Based on the number of students planned for the start of the 2012-2013 school year, an additional \$1.8 million may be added to the total lease payments, he explained.

Mr. Gant expressed several concerns regarding several lease arrangements. He emphasized that the lease agreements are legal but may not be in the best interest of all parties involved. For example, he said that a foundation supporting a charter school currently receives the lease payments for a school facility that it does not actually own. The facility is owned by the school district and leased to the city, which in turn leases the facility to the foundation, he explained. He questioned why the school districts should not be receiving the lease assistance funds and what the foundation is doing with the funds received from the lease assistance. In addition, he stated that a charter school is paying as much as \$64,000 per year in addition to the lease payments received from the state. He said the question is not necessarily the amount of the lease but rather what operational funds are being used to cover the additional costs for the lease and what programs are not being provided to the students due to the operational dollars being used.

Mr. Gant opined that the problem is the lack of public facilities that will meet the schools' educational needs. He said that HB 283 has established facility standards that were long overdue; however, he said that requirements of the legislation may require a property owner to renovate a facility that would then drive up the cost of the lease. Therefore, he recommended the establishment of a standardized lease agreement for all charter schools to follow.

Discussion ensued among the task force members, Mr. Gant and Ms. Mathews about charter school leases. In response to the discussion, Mr. Gant stated that the information he presented is the official opinion of the PEC.

Charter School Facilities Issues — New Mexico Coalition for Charter Schools (NMCCS)

Tony Monfiletto, principal, Architecture, Construction and Engineering (ACE) Leadership High School, Albuquerque, said the school is in a partnership with Associated General Contractors and Vertical Construction. He said he has worked with the contractors to develop curricula for the students so they may adapt to the work force. He said the goal of the school is to transition the students either to college or to an apprenticeship, and he emphasized that ACE Leadership is not a vocational school. Mr. Monfiletto explained that the school serves students between the ages of 14 and 24, with a large number of young people who are high school dropouts and without other prospects. He said many of the students have children of their

own, and many of them do not speak English. He concluded by stating that a goal of the school is to grow to 425 students.

Caryl Thomas, principal, Cesar Chavez Community School, Albuquerque, said the school opened in July 2004 as a locally chartered charter school within APS and was renewed as a state-chartered charter school. She stated that the school serves 185 students, with about 96% of them living in poverty. She said many of the students' academic skills scored as being sixth grade or below in math, and 68% of them were below ninth grade in reading. Ms. Thomas stated that through self-reporting and transcript review, the school conducted research on the history of the students and the results show that 86.6% of the students experienced: failing at least one class during their freshman year; earning fewer than two high school credits; and attending multiple high schools or dropping in and out of high school. She explained that the original mission of the school is to offer non-traditional hours. She said that feedback from the parents and students indicates that they appreciate the high level of support from teachers. A staff mentorship program exists in which every staff member has a caseload of 10 students and their families, which results in a 90% attendance rate of parents at the parent-teacher conferences, she reported. Lastly, she said the school graduated 43 students in the last academic year, with all of them registered either at the University of New Mexico, Central New Mexico Community College or the police academy. Concerning the school's facility, she said the charter school has moved into a private facility that the school considers to be its permanent home. She stated that, due to the timing of the school's charter renewal and the switch to being a state-chartered charter school, the school has not received Public School Buildings Act funding at this time.

Members of the task force inquired about the student needs at ACE, to which Mr. Monfiletto responded that some of the students have special needs. Discussion ensued about alternate placement of those students in other schools. Concern was expressed by various members of the task force about the age disparity of the students at ACE, which ranges from 14 to 24. Task force members were also concerned about the pressure these additional students (those above the age of 18) put on the funding formula unit value and expressed interest in acquiring other funding sources for these adult students.

Mr. Monfiletto explained that the 14-year-old and 24-year-old students are not in the school at the same time, and the school uses the facility as efficiently as it can to run the classes, day and night.

APS and Charter Schools — Working to Meet Capital Needs

Carrie Robin Menapace, legislative liaison and policy analyst, APS, briefly discussed the number of charter schools in Albuquerque. She said that there are 21 APS Board of Education-authorized charter schools (locally chartered charter schools) and 34 PEC-authorized charter schools (state-chartered charter schools), with five of those opening in the fall of 2012. Concerning the facility standards statutes that affect charter schools, she said that Section 22-8B-4.2 NMSA 1978 stipulates that charter school facilities must meet the same educational occupancy standards that traditional schools meet. She explained that charter schools that have been renewed at least once are eligible for grants pursuant to the Public School Capital Outlay Act and are evaluated the same way traditional schools are. She added that those grants may be used for lease assistance payments to the lessor for improvements made.

Ms. Menapace explained that by 2015, state statute requires that all charter schools be in public buildings or be in a building that is subject to a lease-purchase arrangement that has been entered into and approved, according to requirements of the Public School Lease Purchase Act. She continued, stating that if a charter school is not housed in one of the described facilities, the charter school must demonstrate that the facility the school is in meets the statewide adequacy standards and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or to the state. In addition, in order to not be in a publicly owned facility by 2015, public buildings must not be available, or if publicly owned facilities are available, the charter school must prove that the facility does not meet the educational program needs of the charter school.

Mark Tolley, director, Charter and Magnet Schools, APS, discussed SB 446, passed by the 2011 legislature, explaining that it outlines the requirements of performance contracts for charter schools only. He said the statutory changes did not specifically affect the requirements for charter school facility standards, the requirements of a school district to provide capital to charter schools within its geographic boundary or the per-membership distribution of the Public School Capital Improvements Act (SB 9) or the Public School Buildings Act (HB 33) money to charter schools.

Brad Winter, Ed.D., chief operations officer, APS, highlighted several facility designs, including the co-location of charter schools with public schools, as done with the Native American Community Academy and Wilson Middle School; a new charter modular facility, as done with Robert F. Kennedy High Charter School; and the purchase of an existing private facility, as done with Montessori of the Rio Grande Charter School.

Ms. Menapace explained the APS Board of Education resolution adopted on September 20, 2011. She said that the resolution states that charter school statutes need clarification regarding capital responsibilities, per-membership distribution of funds, local district responsibilities to provide capital resources to state-authorized charter schools and prioritization in the authorizer's capital master plan. She added that the resolution states that a charter school should not affect the authorizing school district's audit when significant findings are levied against the charter school and that authorizing school districts should have the right to determine and execute a formal process of suspending the authority of a charter school's governing body for failing to meet provisions of state law or its charter, rather than moving to immediate revocation of the charter school.

Ms. Menapace explained that APS has established a memorandum of understanding (MOU) with six of its locally chartered charter schools to provide assistance for their facility needs. She said that each charter school agrees to: (1) pay its PSCOC lease-assistance funds to APS for the purchase of land, buildings and construction; (2) pay six percent of the school's state equalization guarantee operational funds to the district for maintenance and utilities costs; and (3) collaboratively spend the school's HB 33 funding on design costs, technology and small fixed asset purchases. In return, the district will provide a facility for the charter school that is constructed and managed by APS. She said that, currently, \$34 million of the district's capital master plan is dedicated to the establishment of charter school facilities.

Ms. Menapace noted that challenges arise from charter schools that do not sign the MOU. Offering background information, she explained that APS does not have control over how many charters are authorized in Albuquerque, but APS is responsible for the charter school facilities and the money involved with the facilities. She said that APS does not currently have vacant square footage, but APS does have bonding capacity, and the question is how to provide the needed square footage. She stated that if one thinks about the fact that charter schools are supposed to be in public facilities by 2015, but that APS must include all schools in their bond issue, APS does not have the bonding capacity to provide facilities to all charter schools and maintain the traditional schools as well. She emphasized that the school board is concerned about this issue.

Martin R. Esquivel, chair, APS Finance and Audit committees, stated that the message APS is receiving from the legislature on these issues is to work with the charter schools and not against them. He said that, often, rhetoric becomes too hot, and APS is seen as having a lot of conflict with the charter schools, which is not true, and he would like to erase the perception that APS does not have sympathy for charter schools. He emphasized that there are significant legal inconsistencies that cause problems, such as what do to in terms of clarification of per-membership. Mr. Esquivel said that by keeping charter schools in APS's capital master plan and spending \$13 million above what charter schools are contributing places the school board in a difficult position because these dollars are taken from traditional schools' facilities needs. He stated that the statute is not clear about the authority APS has in this situation and that the lack of clarification is negatively affecting traditional schools. Finally, Mr. Esquivel said that SB 446 does provide more methodology in terms of spending on charter schools, but clarification is still needed about the relationship between the district board and the charter schools' respective governing boards. He said that he has found that the governing boards lack the legal and accounting sophistication needed to run a school.

Mr. Esquivel presented several questions for discussion. He stated that local school districts are responsible for capital needs for all traditional public schools, all locally authorized charter schools and all state-authorized charter schools. He asked if the districts have the capacity to meet those needs. Second, he asked if it is reasonable for school districts to require MOUs to provide adequate facilities. He posed the question of how prioritization of state-authorized charter schools affect a district's capital master plan. Finally, he asked if the per-membership distribution of funds is adequate to provide facilities to charter schools.

In response to a question from a task force member about school district responsibility for charter schools and the district's bonding capacity, Paula Maes, APS Board of Education president, confirmed that the school district is indeed responsible for the charter school funding as long as the charter school submits the necessary information to the school district in a timely manner. She clarified that all of the charter schools in Albuquerque are included in APS's capital master plan, but the difference is whether or not they are funded. She added that SB 446 will aid in the arena of disciplining charter schools for misuse of funds and that APS would like the ability to revoke the authority of a charter school's governing board instead of revoking the charter, allowing the charter school to be run by APS for a year.

Task force members inquired whether or not APS has a procedure in place for a deficiencies correction process. Ms. Menapace responded that it is dependent upon the

deficiencies. During annual visits, the difference is whether the school has one or two minor infractions on which APS can work with the governing body versus major issues in audit findings. She stated that there is tension in the interpretation of the law because the charter school's governing council is autonomous and does not have to follow the advice APS offers it. She then said that APS's only choice is to revoke the charter.

Dr. Grover added that SB 446 states that the term of the contract will have a deficiencies correction process with a 30-day limit for each party to respond. She suggested that APS implement SB 446 early because it is a law that is aligned with national best practices. She added that revoking a charter is difficult, and authorizers are typically hesitant to do this.

Other Business

Representative Miera appointed members to the qualifications based subcommittee.

Adjournment

There being no further business, the task force adjourned at 3:40 p.m.

**TENTATIVE AGENDA
for the
THIRTY-FIFTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**December 19, 2011
Room 322, State Capitol
Santa Fe**

Monday, December 19

- 9:00 a.m. **Call to Order**
- 9:05 a.m. **Approval of September and October Minutes**
- 9:10 a.m. **Bonding Capacity Available for Authorization, December 2011 Estimate**
—Leila Burrows, Economist, Legislative Finance Committee
- 9:45 a.m. **Update on Progress of Adequacy Standards Development for the New Mexico School for the Deaf and the New Mexico School for the Blind and Visually Impaired**
—Robert A. Gorrell, Director, Public School Facilities Authority (PSFA)
—Richard Romero, Facilities Specialist, PSFA
- 11:00 a.m. **Report: Public School Capital Outlay Oversight Task Force (PSCOOTF) Subcommittee on Request for Proposals Procurement**
—Robert A. Gorrell, Director, PSFA
—Dotty McKinney, Contracts Administrator, PSFA
- 12:00 noon **Lunch**
- 1:00 p.m. **Discussion of Proposed PSCOOTF-Endorsed 2012 Legislation**
—PSCOOTF Members and Staff
- 3:00 p.m. **Adjourn**

UNAPPROVED MINUTES
of the
THIRTY-FIFTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

December 19, 2011
Room 322, State Capitol
Santa Fe

The thirty-fifth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, on December 19, 2011 at 9:15 a.m. in Room 322, State Capitol.

Present

Rep. Rick Miera, Co-Chair
Sen. Vernon D. Asbill
Dr. Carl Foster
Ms. Cecilia Grimes
Mr. Leonard Haskie
President Pro Tempore Timothy Z. Jennings
Rep. Larry A. Larrañaga
Speaker Ben Lujan
Mr. Antonio Ortiz

Absent

Sen. Cynthia Nava, Co-Chair
Secretary-Designate Tom Clifford
Rep. Donald E. Bratton
Dr. Lisa Grover
Mr. Robbie Heyman
Sen. Lynda M. Lovejoy
Mr. Kilino Marquez
Rep. W. Ken Martinez
Sen. George K. Muñoz
Ms. Lilliemae Ortiz
Mr. Mike Phipps
Ms. Judy Rabon
Sen. Sander Rue
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith

Staff

Sharon Ball, Senior Researcher, Legislative Council Service (LCS)
Leslie Porter, Research Assistant, LCS
Tom Pollard, Legislative Fiscal Analyst, LCS
Lisa Sullivan, Staff Attorney, LCS
Rachel Gudgel, Senior Fiscal Analyst, Legislative Finance Committee (LFC)
Frances Ramirez-Maestas, Director, Legislative Education Study Committee (LESC)

Guests

A copy of the guest list is in the meeting file.

Monday, December 19

Bonding Capacity Available for Authorization, December 2011 Estimate

Leila Burrows, economist, LFC, said the State Board of Finance (BOF) and the LFC staffs have updated the fiscal year 2012 (FY12) severance tax bond capacity estimates to reflect the December 2011 consensus revenue estimates as well as capital projects approved during the 2011 special session. She said the BOF and the LFC estimate a senior long-term capacity of

\$187.7 million in FY12. She said that this amount was calculated to ensure that — given current revenue assumptions — the same amount can be issued in each of the next 10 fiscal years. Given this long-term capacity, she said the senior sponge capacity will be \$76.5 million and the supplemental sponge capacity will be \$148.7 million. She reminded task force members that, during the 2011 special session, Senate Bill 10 authorized \$81 million in capital projects to be funded through senior bond proceeds and that of this amount, \$15 million was authorized for the Aamodt and Navajo Nation water rights settlements in short-term sponge bond notes and approximately \$51 million was issued as long-term senior bonds. She noted that the \$13.6 million authorized for a new human services information technology system was not issued because the project is not ready. She said that, after subtracting authorized but unissued capacity earmarked for the Water Project Fund, the Tribal Infrastructure Project Fund and the Colonias Infrastructure Project Fund, the estimated net senior bond capacity is \$130.3 million with a supplemental bond capacity of \$148.7 million for a total net capacity of \$279.1 million.

In response to comments and questions from task force members, Ms. Burrows said that the BOF and the LFC used the following assumptions to calculate the FY12 capacity estimates:

- calculation of severance tax revenue using December 2011 consensus revenue estimates;
- recent rises in price estimates for oil have increased severance tax revenue estimates;
- severance tax revenue is projected to decline in the "out" years;
- senior long-term capacity remains relatively consistent with the October 2011 estimate. The failure to pass capital outlay legislation in the 2011 session created lower debt service, minimizing the impact of declining long-term revenue;
- the interest rate was lowered to 2.75% to account for current market conditions and future expectations; and
- debt issuance remains level.

Ms. Burrows explained that, because SB 218, which would have approved \$237.8 million in capital projects, failed to pass the 2011 legislative session, there may be an opportunity to boost FY12 tax bonding capacity above the traditional estimate. She said that the executive and legislative staffs will need come to agreement on capacity estimates before the 2012 session.

In response to questions about possible general obligation bonding capacity for voter approval during the 2012 general election, Ms. Burrows explained that current capacity is approximately \$298 million.

Update on Progress of Adequacy Standards Development for the New Mexico School for the Deaf (NMSD) and the New Mexico School for the Blind and Visually Impaired (NMSBVI)

Robert A. Gorrell, director, Public School Facilities Authority (PSFA), told the task force that because the draft standards had just been completed during the previous weekend, he has not thoroughly reviewed them.

Ms. Ramirez-Maestas complimented the PSFA and the special schools for the work done. She said these standards, once finalized, will serve as a model for the country, because New Mexico is at the forefront of this.

Richard Gorman, project manager, NMSD, expressed his gratitude to the PSCOOTF and the PSFA. He said the draft standards are fair and equitable in comparison to how public schools are treated. He explained that only 35% of NMSD and NMSBVI facilities are eligible for the PSFA financing, meaning that 65% of the facilities must obtain funding from other sources. He said this fact is his primary concern, since the special schools have no bonding capacity.

PSCOOTF members discussed the unique funding situation in that the special schools treat students who are eventually sent back to public schools. Mr. Gorman clarified that the NMSD students are full-time students who live on campus. Mr. Gorrell clarified that the draft standards account for the students who attend the facility on a full-time basis.

Members of the task force, the PSFA and Mr. Gorman discussed whether or not the land grant funding received by the special schools can be used for anything other than operational costs. Mr. Gorman stated that those funds are strictly used for operational costs. The determination was that the funds could be allocated to other uses but have not been. Ms. Ball explained to the task force that state statute requires that a public school district must demonstrate that those funds have met the district's operational needs before those funds may be used for anything but that purpose.

The discussion shifted to charter schools and their use of those funds to pay rent. Ms. Ramirez-Maestas stated that there will be 84 charter schools in New Mexico in the upcoming school year. Task force members discussed the difference between state-chartered and locally chartered charter schools. The task force discussed the ability for state-chartered charter schools to request funding from a local school district and the likelihood of this situation not occurring. The policy challenges surrounding virtual charter schools, including the one operating out of Farmington, and the challenges facing state-chartered charter schools who draw students from around the state were discussed.

Conversation shifted back to the special schools and the costs of financing all of the projects on both campuses. Mr. Gorrell stated that this would cost \$40 million to \$50 million, and if the Public School Capital Outlay Council (PSCOC) were to fund everything, with no local share for the support spaces, that cost would be about 15% to 20% of available PSCOC capital funds for all public schools. Mr. Gorrell also said that if the special schools developed a method to collect the 50% local match requirement, the impact of PSCOC capital funds would be reduced to less than 5%.

Report: PSCOOTF Subcommittee on Request for Proposals Procurement

Robert A. Gorrell, Director, PSFA

Dotty McKinney, contracts administrator, PSFA, explained that the following items to be heard were addressed by the subcommittee, and were concerns brought forth to the PSFA with respect to the request for proposals (RFP) process. She and Tim Berry, assistant director, PSFA, introduced, offered a brief background and explained the subcommittee's recommendations on the following items:

- I. web-based RFP for construction procurement system;
- II. weighting and scoring;

- III. interviews versus discussion, scoring of interviews, "local 'local'" preference;
- IV. qualifications of potential committee members and access;
- V. subcontractor qualification and local preference logistics;
- VI. best and final offer; and
- VII. protest period.

Ms. Ball brought forth specific concerns of the General Services Department and of the Associated General Contractors (AGC) of America, which were elaborated on at the November 19, 2011 meeting of the PSCOOTF subcommittee, emphasizing a concern about statutes and rules governing implementation of the Procurement Code. Addressing these concerns, Mike Puelle, director of public policy and government relations, AGC, stated that his client's objection is to the term "markets your firm", and feels it should be eliminated, for it is too limiting. In response, Mr. Berry said that the PSFA will work on the language and that the intent is not to eliminate all forms of marketing on behalf of the contractors. Discussion ensued concerning this language, including a discussion about whether a contractor who buys a cup of coffee for a PSFA staff member is giving a gift to the agency or one or more of its staff or if a contractor is considered to be giving a gift to the PSFA or to the selection committee on a particular project. Mr. Gorrell clarified that the PSFA's intent is to minimize activities such as repeated golf games purchased to benefit a project owner. Jeep Gilliland, lobbyist, National Electrical Contractors, suggested enacting a price floor as to when this would go into effect. He said this issue needs deeper research conducted. He and Steve Crespin, electrical contractors' union representative, suggested guidelines be developed for the "local 'local'" preference. Mr. Berry stated that this definition would be well-defined by each procurement on what the project owner considers that to be. Mr. Crespin said he supports the AGC's letter.

Extensive conversation took place among task force members and PSFA staff concerning the subcommittee recommendations.

Discussion of Proposed PSCOOTF-Endorsed 2012 Legislation

Noting the lack of a quorum, Representative Miera suggested the task force operate as a subcommittee and asked staff to poll PSCOOTF members on any decisions made by the task force functioning as a subcommittee.

Bill Draft #1: *Repealing the delayed repeal for the Charter School Capital Outlay Fund; and*
Bill Draft #2: *Delaying the repeal date of the Charter School Capital Outlay Fund; repealing the reversion of unencumbered balances*

Ms. Ball explained the bill drafts. She said the 5.8% of the average market value price will automatically be repealed in FY12 and the distribution will go down to 5.5% through FY 16. In response to task force discussion and questions, Mr. Berry stated that statute prohibits the PSFA from funding state-chartered charter schools until their first renewal cycle, which is five years after their creation. Mr. Ortiz explained that the fund was created by the PSCOOTF to give state-chartered charter schools the equivalent of their local match for the completion of their master plans. Mr. Berry added that if there are no state-chartered charter schools eligible for this fund, as is now the case due to the five-year renewal cycle, its funds can be used to aid locally chartered charter schools.

Upon a motion by Mr. Ortiz, seconded by Dr. Foster, and with none opposed, Bill Drafts #1 and #2 were endorsed by the subcommittee. Ms. Ball clarified that Bill Draft #1 will repeal the repeal to maintain the fund.

Bill Draft #3: Making the NMSD and the NMSBVI eligible for Public School Capital Outlay Act funding; exempting these institutions from the required local share of project funding; and
Bill Draft #4: Making the facilities at the NMSD and the NMSBVI eligible for Public School Capital Outlay Act funding; exempting these institutions from the required share of project funding under certain conditions.

Ms. Ball explained the proposed legislation. Task force members and PSFA staff discussed the options. Ms. Ball noticed a technical fix to be done on Bill Draft #4, should it be endorsed. Mr. Gorman stated that Bill Draft #3 is a simple approach and raises issues of inequity and said that Bill Draft #4 allows the legislature to have more flexibility in dealing with the local match issue and better addresses equity.

Upon a motion made by Speaker Lujan, seconded by Senator Asbill, and with none opposed, Bill Draft #4 was endorsed by the subcommittee, with the technical fix and other necessary editorial corrections.

A motion to endorse Bill Draft #3 was not made.

Bill Draft #5: Amending the Public School Buildings Act to allow mill levy proceeds to be used for the purpose of meeting local match requirements for Public School Capital Outlay Act grants.

Ms. Ball explained the legislation and its origination. Points of clarification were made and discussion ensued among task force members and staff.

Upon a motion made by Speaker Lujan, seconded by Mr. Haskie, and with Senator Asbill, President Pro Tempore Jennings and Representative Larrañaga voting in the negative, the subcommittee endorsed Bill Draft #5.

Bill Draft #6

Ms. Ball suggested an additional piece of legislation, not prepared for today's meeting, to address the RFP issues. She said the task force would have to request that the governor include this in her call for the upcoming session, since 30-day sessions are typically strictly for budget issues and the items on the governor's call.

Upon a motion made by Dr. Foster, seconded by Ms. Grimes, and with none opposed, the suggestion to draft Draft Bill #6 was endorsed by the subcommittee.

Approval of September and October Minutes

Upon a motion made by Senator Asbill, seconded by Representative Larrañaga, and with none opposed, the minutes from the September and October meetings of the PSCOOTF and the October and November minutes of the PSCOOTF subcommittee were adopted.

Adjournment

There being no further business before the task force, the thirty-fifth meeting of the PSCOOTF adjourned at 12:10 p.m.

***PUBLIC SCHOOL CAPITAL OUTLAY
OVERSIGHT TASK FORCE***

**SUBCOMMITTEE STUDYING REQUEST
FOR PROPOSALS PROCUREMENT FOR
PUBLIC SCHOOL CAPITAL OUTLAY
PROJECTS**

Agendas, Minutes and Recommendations

October 12, 2011

File No. 205.194-11

FIELD(1)

FIELD(2)

FIELD(3)

FIELD(4)

Dear FIELD(5):

For the 2011 interim, the Public School Capital Outlay Oversight Task Force included in its work plan a review of the qualifications-based procurement process and construction manager at risk statutes to make recommendations about best practices and improvement in communications. The task force has established a subcommittee of interested persons to take on this task and to make recommendations.

You are receiving this letter because either: (1) you were a member of the 2010 interim work group; or (2) you have been recommended for or have expressed an interest in participating in the 2011 subcommittee.

We have scheduled two meetings for the subcommittee this interim: October 17 and November 10. Both meetings will be held in Santa Fe in Room 322 of the State Capitol and will begin at 9:00 a.m. The October agenda will be devoted to discussion and parsing of concerns, while the November 10 meeting will examine possible solutions, particularly, but not exclusively, legislative solutions, to be recommended to the full task force on November 29.

I hope you will be able to attend one or both of these meetings. If you have questions, please either email me at sharon.ball@nmlegis.gov or call me on my direct line: (505) 986-4607.

Yours truly,

SHARON S. BALL
Research and Committee Staff

SSB:ar

**Public School Capital Outlay Oversight Task Force Work Group Studying Performance-Based Procurement for Public School Capital Outlay Projects
2011 Membership**

Representative Rick Miera, Work Group Chair	House Education Committee Chair
Andy Benson	Director of Business Development, Van H. Gilbert Architect, PC
Lemoyne F. Blackshear	Staff Architect, Property Control Division, General Services Department
Representative Donald E. Bratton	House Minority Leader
Sean Calvert, Esq.	Calvert Meninucci, PC
Lisa Cooley	Centennial Contractors Enterprises, Inc.
Steve Crespin	
Carl Foster, Ph.D.	Adjunct Faculty, New Mexico Highlands University, Rio Ranch Campus
Jeep Gilliland	Registered Lobbyist, KL House
Jason Harrington	President and CEO, HB Construction
Shad S. James	Executive Vice President, Jaynes Corporation Albuquerque Operations
Representative Larry A. Larrañaga	House Minority Members
David M. McCoy	Executive Director, Sheet Metal and Air Conditioning Contractors' National Association
Aaron McKinney	Superintendent, Tucumcari Municipal School District
Patricia Miller	Superintendent, Fort Sumner Public School District
Kirk McWethy	Shumate Constructors, Inc.
Joel Shirley	Superintendent, Clovis Municipal School District
Mark Shumate	President, Shumate Constructors

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE (PSCOOTF)
SUBCOMMITTEE STUDYING REQUEST FOR PROPOSAL (RFP) PROCUREMENT
FOR PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS

Background: Where We Are and How We Got Here

For the past five legislative sessions (2008 through 2011), the PSCOOTF endorsed legislation to eliminate or modify the statutory requirement for the bonding of subcontractors for public school projects that was enacted in 2005. Except for an amendment to increase the bonding threshold from \$50,000 to \$125,000, which was enacted in 2007, none of the PSCOOTF-endorsed legislation passed.

During the 2009 interim, the task force put together a work group (now a subcommittee) consisting of task force members, representatives of trade unions, representatives from construction industries, the state superintendent of insurance, a General Services Department representative and other interested parties to study the costs and benefits of the statutory requirement that all subcontractors on public works projects of more than \$125,000 be bonded and to develop a process for determining a prequalified preferred bidder list. During the 2010 interim, the work group suggested raising the requirement from \$125,000 to \$250,000. This legislation also failed to pass.

Member representatives from the PSCOOTF during the 2011 interim included the following: Representative Rick Miera, Speaker Ben Lujan, Representative Donald E. Bratton, Representative Larry A. Larrañaga, PED Secretary-Designate Antonio Ortiz and Dr. Carl Foster. Raúl Burciaga, Sharon Ball and Bob Gorrell served as staff. Representatives from unions, contractors' organizations and contractors were also invited (see previous page for a complete list of participants).

Meetings of the subcommittee took place on October 17 and November 10, 2011. Discussion surrounded such issues as e-procurement, the weighting of price in the RFP scoring formula, inconsistent methods used in the RFP formula, "local-local" subcontractor preference, "best and final offer" procedures and evaluation committee member qualifications. Subcommittee members agreed on several solutions and sent those recommendations to the PSCOOTF. Subcommittee members also agreed that significant progress was made during this 2011 interim.

**TENTATIVE AGENDA
for the
FIRST MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
SUBCOMMITTEE ON REQUEST FOR PROPOSALS PROCUREMENT**

**October 17, 2011
Room 322, State Capitol
Santa Fe**

Monday, October 17

- 9:00 a.m. **Call to Order**
—Representative Rick Miera, Co-Chair, Public School Capital Outlay Oversight Task Force (PSCOOTF)
- 9:05 a.m. **Welcome and Introductions**
—Representative Rick Miera, Co-Chair, PSCOOTF
- 9:10 a.m. **Background and Goals of Subcommittee**
—Sharon Ball, PSCOOTF Staff
- 10:00 a.m. **Issues and Concerns**
—Public School Facilities Authority (PSFA) Staff
- 11:00 a.m. **Questions and Discussion**
—Subcommittee Members and Staff
- 12:00 noon **Lunch**
- 1:00 p.m. **Continue Discussion**
—Subcommittee Members and Staff
- 3:00 p.m. **Consideration of Possible Recommendations and Further Work**
—Subcommittee Members and Staff
- 3:45 p.m. **Other Business — Next Meeting to Make Recommendations: November 10, 2011**
- 4:00 p.m. **Adjourn**

**MINUTES
of the
FIRST MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
SUBCOMMITTEE ON REQUEST FOR PROPOSALS PROCUREMENT**

**October 17, 2011
Room 322, State Capitol**

The first meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) Subcommittee on Request for Proposals Procurement was called to order by Representative Rick Miera, chair, on October 17 at 9:15 a.m. in Room 322, State Capitol.

Present

Rep. Rick Miera, Co-Chair, PSCOOTF

Andy Benson, Director of Business Development, Van H. Gilbert Architect, PC

Lemoyne F. Blackshear, Staff Architect, Property Control Division, General Services Department (GSD)

Rep. Donald E. Bratton, PSCOOTF Member

Sean Calvert, Esq., Calvert Menicucci, PC

Steve Crespin

Dr. Carl Foster, PSCOOTF Public Member

Jeep Gilliland, Registered Lobbyist, KL House

Jason Harrington, President and CEO, HB Construction

Shad S. James, Executive Vice President, Jaynes Corporation Albuquerque Operations

Rep. Larry A. Larrañaga, PSCOOTF Member

Dave McCoy, Executive Director, Sheet Metal and Air Conditioning Contractors' National Association

Aaron McKinney, Superintendent, Tucumcari Public School District

Patricia Miller, Superintendent, Fort Sumner Municipal School District

Joel Shirley, Superintendent, Clovis Municipal School District

Mark Shumate, President, Shumate Constructors

Staff

Sharon Ball, Senior Researcher, Legislative Council Service (LCS)

Leslie Porter, Research Assistant, LCS

Robert Gorrell, Director, Public School Facilities Authority (PSFA)

Tim Berry, Deputy Director, PSFA

Dotty McKinney, Contracts Administrator, PSFA

Martica Casias, Planning and Design Manager, PSFA

Ovidiu Viorica, Construction Manager, PSFA

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Monday, October 17

Welcome and Introductions

Representative Miera welcomed the subcommittee members and invited LCS staff members, PSFA staff members and subcommittee members to introduce themselves.

Background and Goals of Subcommittee

Ms. Ball provided background information on the establishment of the subcommittee. She said members of the subcommittee were appointed by the PSCOOTF to examine the specific issue of requests for proposals (RFP) procurement. She clarified that the law applies only to public education buildings and briefly discussed other pieces of legislation in effect, including RFP qualifications-based contractors. Before enactment of the RFP for construction statutes, contractors were awarded projects based strictly on the lowest bid, a practice that did not always provide the most cost-effective method of completing projects, Ms. Ball explained. She said the RFP has been in effect for a number of years, and concerns have been brought forth by both legislators and people involved in the construction industries. She explained that the subcommittee's task is to analyze the process and determine its effectiveness and develop solutions to the process if the subcommittee decides the process is faulty. She explained that the PSCOOTF endorsed legislation and can do so for this situation, but rule changes and establishment of guidelines are also an option.

Issues and Concerns

Mr. Gorrell explained that, prior to today's meeting, the PSFA met with general contractors to identify several areas of concern with the current value-based procurement. Mr. Gorrell emphasized the fact that the PSFA is not asserting that the GSD rules surrounding value-based procurement are flawed, but consideration of their application would be helpful. The concerns regarding the value-based procurement, as identified by general contractors, include the following: the weighting of price in the formula; the inconsistent methods used in the scoring formula; the qualification of selection committee members; the access that one has to the entire process; subcontractor qualification and local preference logistics; the lack of consistency in requiring interviews; and "best and final offer" procedures.

PSFA staff and the subcommittee discussed the weighting of price points. Mr. Gorrell explained that the price component of the formula is held aside until the technical score is completed. He said the price points can range from zero to 70 percent of the total points allocated for evaluation of the solicitation. He offered comparisons of the ways in which various ranges for technical, price and interview points affect the ranking of the contractors, and subcommittee members discussed various price weights. The subcommittee members who are owners of a project discussed whether or not they conduct interviews. Contractor members of the subcommittee discussed the interview process from their perspective and the desire to understand the consistency of the way in which price points are awarded.

Within the scope of weighting price points, Mr. Gorrell led the discussion regarding the concept of "local preference" points. Mr. Gorrell stated that local jurisdictions within the state prefer to see local craft labor and subcontractors on their projects. He said that current law requires that five percent of the available points be applied to an in-state offeror when competing with an out-of-state offeror. He explained that the intent of the statute is to provide opportunities for all New Mexico businesses, not simply those within a local jurisdiction within the state. He

said that the PSFA recommends that if a preference for local jurisdiction subcontractors is included, the points in the technical component should be at least five percent of the total points available. Members of the subcommittee discussed this issue and the definition of a "local-local" subcontractor as one that is within a to-be-determined area surrounding a given project.

The scoring and the formula were the next topics of discussion. Mr. Gorrell stated that a perception exists that the evaluation tools — the technical proposal, the price proposal or the interview — can be overemphasized, resulting in too few points allocated to price that, in turn, may dramatically affect the outcome of the procurement. He said the methodology for scoring evaluation criteria and price is set in rule and allows the owner to determine the importance of the weights assigned to the evaluation criteria. He stated that if a project is extremely complicated, the technical proposal may carry more weight than the price proposal.

Mr. Gorrell added that the concern of member scoring bias has been brought to his attention, and he offered potential solutions. First, he suggested easy, online training for selection committee members. The training would review the ethics and government conduct codes, the RFP document, the terms and conditions, the scope of the project, etc., with a test conducted at the end of the training to determine whether or not a person has gained the appropriate knowledge. He also suggested developing a pool of qualified evaluators in the local community or region. Mr. Gorrell added that if a statewide electronic RFP system were put into place, a selection committee member could be drawn from anywhere in the state, a practice that could broaden the pool of qualified evaluators. In response to subcommittee members' discussion and comments, Mr. Gorrell stated that the PSFA's preference is that a member of the design team should always be an advisory member on the selection committee, rather than a voting member, due to a conflict of interest.

The qualifications of selection committee members was discussed. Mr. Berry offered a brief background stating that with the inclusion of potential members such as a teacher, a parent or a school board member, a school district may assign people to the selection committee who lack sound knowledge of the construction industry with the intent to be inclusive of key people involved in the project. He said the well-intentioned inclusion of unqualified selection committee members can sometimes inadvertently affect the fairness of the evaluation, and the best value offeror may not be selected. Mr. Berry expanded on the issue, stating that state rules require a minimum of three members to be on the selection committee who are appointed by the procuring agency's management. Offering solutions to this dilemma, he said that the teacher or parent could be assigned as a nonvoting member to observe the process, and a school board member should be recused from discussions with fellow board members regarding the selection committee's recommendation for award. The second solution offered is that a team of experienced evaluators with a construction background could be tapped to advise or sit on a committee similar to the professional technical advisory board for the selection of engineers, architects, landscape architects and surveyors. The third solution offered is that a knowledgeable person from the local community who is not submitting a proposal could be invited to advise the selection committee.

Subcommittee members inquired about selection committee member orientation on a specific project. The resistance of including the design manager as a voting member on the selection committee to provide the needed technical knowledge was also discussed. Mr. Gorrell responded that school districts are their own governments and they are free to make these

decisions as they see fit. Ms. Blackshear informed the subcommittee that the GSD typically has the architect serve as an advisory member to the selection committee and said the architects do a very good job in reviewing some of the technical proposals and bringing knowledge to the selection committee. She emphasized that this is not in rule, but a best practice. Subcommittee members discussed the possibility of including this idea about putting this concept into rule.

The topic of training selection committee members arose. Mr. Gorrell stated that the PSFA policy supports continuing to require the sound training that the state is required to provide. Ms. McKinney noted that she is currently teaching the basics of the RFP process and added that it requires constant travel. She said that the e-learning training system the PSFA is developing will be significantly helpful in delivering this service.

Mr. Gorrell expanded on the technical point scoring as related to the qualification of the selection committee members. He said there is a concern that the selection committee may overgeneralize the detailed information provided in a proposal, and he explained that best practices require the four basic criteria for evaluation to be broken down into subfactors and have points assigned to those categories so the selection committee has a means to score the individual parts of the proposal. He said the subfactor points would be added together to determine a score for a core criterion. Subcommittee discussion continued about the issue of the training of selection committee members.

The access one has to the entire RFP process was brought forth. Mr. Gorrell discussed form versus content, stating that although proposals have a set number of tabs and pages published in the solicitation, they are submitted in a wide variety of packages. He said the selection committee might be impressed by the outward appearance of a proposal and not weigh the content of it. To remedy this, Mr. Gorrell explained that the PSFA has researched web-based invitation for bid and RFP procurement software, developed by BidSync, that would allay this concern. He said each offeror's proposal would be evaluated based on the content, not the presentation. The selection committee would score the proposals online, and, once the evaluations are complete, the committee would convene to review the scores, rank the offers, determine if interviews will be held and then award the contract.

Elaborating on the system, Mr. Gorrell said the system allows contractors to submit their information, which will be date-stamped upon receipt, but the marketing package would be submitted electronically at a later date. He informed the subcommittee that the idea to utilize this system arose from complaints that members of selection committees are unqualified. He said this practice allows for a more diverse selection committee because the members would not be required to be in the same physical location while reviewing the materials. In addition, he presented the challenge of who qualifies the selection committee members. He added that the use of this system will ensure transparency throughout the entire RFP process.

In response to several questions posed by subcommittee members, Ms. McKinney discussed the security of the web-based system. She said that BidSync has 3,000 customers using this methodology, and it is as secure as any bank account. She said the procurement manager controls the input and the output of the information within the system. She said that the contractor, the subcontractors and each member of the selection committee would receive a personal login. The documents uploaded by the subcontractors are date-stamped upon receipt and put onto a CD that can be sent every month to the party who uploaded the data, she

explained. She said the files are also stored electronically for seven years. Once the deadline has been reached, Ms. McKinney explained, the general contractor has the ability make the final decisions on subcontractors within minutes and then send the decisions to the procurement manager. Also upon the deadline, the procurement officer can access the RFPs to check for mandatory requirements, she said. Upon the contractor's decision and upon the procurement officer's audit, she stated, the selection committee views the data and the files are then closed.

Mr. Berry stated that all of the scores would be published; however, all of the proposals would not be. Ms. McKinney clarified this, stating that the PSFA recommends that the selection committee members be assigned a number, as opposed to the given score being published with their names. She said there will be a list of the selection committee names, but one would not be able to discern which evaluator gave which score. A few subcommittee members requested access to the proposals.

Discussion arose referring to the selection committee members' notes. The subcommittee suggested that if the members of the selection committee are volunteers, the documents are not public whereas if they are paid, then the documents are public documents.

In response to inquiries regarding the cost of the program, Ms. McKinney responded with \$54,000, which she noted is inexpensive, and she said the program will not require an additional employee. In the event that the system should fail, the receipt date of the RFPs would be pushed back by 24 hours, Ms. McKinney stated. She assured the subcommittee that BidSync has stated that this occurrence has happened only twice in the past five years.

Members of the subcommittee requested information regarding the use of the system in other states. Mr. Gorrell agreed to provide this information to the subcommittee.

Mr. Gorrell mentioned that some offerors may purchase gifts and meals for the PSFA or to RFP requesters to gain a potential advantage over other competitors. He said that PSFA staff members do not accept gifts or meals in any form, and he opined that since the selection of a contractor is a determination based upon material, the PSFA encourages that this standard be applied to all parties involved in the process.

Concerning transparency in the RFP process, Mr. Gorrell emphasized that the PSFA suggests the development of a clear and concise set of guidelines of expectation for owners to follow and said the web-based system would aid this.

Ms. McKinney talked about subcontractor qualifications and local preference logistics. She said local jurisdictions often see the local subcontractors excluded from a project. Local jurisdictions could be encouraged through the award of points or a percent of the overall points awarded when the subcontractor listing form includes local companies. She pointed out a section of the scoring criteria termed "value add", used to add points for the contractors who are using local subcontractors. She explained that a value could be added to each local subcontractor craft labor used. In response to comments from subcommittee members, Mr. Gorrell stated that the PSFA believes that this "value add" should not be more than five percent of the total points and that the terms "local" and "local-local preference" would need to be defined.

PSFA staff and subcommittee members discussed the possibilities and concerns related to requiring interviews. Subcommittee members discussed the following concerns: the technical proposal scores being fixed prior to or adjusted after the price scoring; the publication of standardized interview questions; the need for flexibility in the questions; and a rule change to consider the interview points as a fixed aspect versus extra, optional points as they are now. Mr. Gorrell said that all contractors would like the opportunity to be interviewed, but if there is a large gap between the first-rated offer and the lowest offer, why drag the contractors into an interview when there is not a chance of them receiving the contract? PSFA staff and subcommittee members continued with a thorough discussion about these issues. Contractors and subcontractors sitting on the subcommittee said that if they were allowed to view their score up to the point of a potential interview, they would be able to make the decision whether or not they should accept an offered interview, meaning that they would not waste their time if they knew the interview points allocated would not affect the outcome.

Mr. Gorrell talked about the "best and final offer", explaining that the appropriate use of this term is often misunderstood in the RFP for construction process. He explained that the short-list offerors may be asked to better their price without a reason to do so, creating a perception that the owner is bid shopping. He said asking for a best and final offer is allowed, but it is not intended to put short-listed offerors in a bidding war for the contract. He explained that the process is designed to allow the owner to ask potential winners to clarify their proposals if needed, and changes in the proposed price can be negotiated prior to the award. He noted that this is typically used when a significant difference is present between the first and second bids, and while it is allowed by the Procurement Code, he is not sure this process works very well for construction.

Ms. McKinney explained that administrative rule allows for discussions with responsive, responsible offerors if clarifications are needed, but the discussions are not required. She added that negotiations may be held among short-listed offerors to promote understanding of proposals; to facilitate arriving at a contract that will be most advantageous to the owner; and in negotiations of the relevant terms and conditions as well as any other important factors in an RFP prior to award of a contract. She asked the subcommittee to think about what the best and final offer is in relation to an RFP for construction and when it should be used. Ms. McKinney pointed out in statute (Section 13-1-105 NMSA 1978) the section that discusses a ceiling and states that if a bid comes in within 10 percent of the budget, it may be negotiated without the scope of the work being altered. She opined that if a conflict is present, there is no clear direction that answers those questions. Subcommittee members discussed concerns about the sensitivity of this issue, for often owners place contractors in a compromised position of being told to lower the price without modifying anything in the plan. Other members stated that the only way contractors can lower the bid by five to 10 percent is by affecting the subcontractors, which is not fair.

Ms. McKinney drew the subcommittee's attention to examples of how to score RFPs. Detailed discussion ensued among subcommittee members and PSFA staff regarding the weight of the point categories. Mr. Gorrell explained that in order to alter the point requirements or allocation, a rule change is needed.

Consideration of Possible Recommendations and Further Work

A suggestion was made by a subcommittee member to change the process of point allocation to technical proposal, price proposal, then the interview instead of technical proposal, interview, then price proposal. Mr. Gorrell responded that this change may create a bias based on the lowest bid, which is what is trying to be avoided. It was mentioned that some owners prefer to go into the interview without knowledge of an offered price. Discussion took place about the impact of the interview on the overall point system as well as what is allowed in certain interviews, such as elaborate presentations, which may confuse the selection committee, as previously discussed. A suggestion was made to hide the price offer until the interview has been conducted. Consensus was not reached on the matter. Ms. Blackshear stated that the GSD will continue to work with the PSCOOTF on a potential rule change, and she asked the subcommittee to please not tie the hands of agencies that have the expertise and the experience in this arena.

Other Business — Next Meeting to Make Recommendations: November 10, 2011

Representative Miera encouraged subcommittee members to contact Ms. Ball regarding the issues discussed throughout the meeting and consider any procedural, rule or statute changes.

Adjournment

There being no further business before the subcommittee, the meeting was adjourned at 3:20 p.m.

**TENTATIVE AGENDA
for the
SECOND MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
SUBCOMMITTEE ON REQUEST FOR PROPOSALS PROCUREMENT**

**November 10, 2011
Room 322, State Capitol
Santa Fe**

Thursday, November 10

- 9:00 a.m. **Call to Order**
—Representative Rick Miera, Co-Chair, Public School Capital Outlay Oversight Task Force (PSCOOTF)
- 9:05 a.m. **Welcome and Introductions**
—Representative Rick Miera, Co-Chair, PSCOOTF
- 9:10 a.m. **Approval of Draft Minutes, October 17 Meeting**
- 9:15 a.m. **Recap of Direction to Staff from October 17 Meeting**
—Sharon Ball, PSCOOTF Staff
- 9:30 a.m. **Staff Responses to Issues and Concerns**
—Public School Facilities Authority Staff
- 11:00 a.m. **Questions and Discussion**
—Subcommittee Members and Staff
- 12:00 noon **Lunch**
- 1:00 p.m. **Continue Discussion**
—Subcommittee Members and Staff
- 3:00 p.m. **Consideration of Recommendations to the PSCOOTF**
—Subcommittee Members and Staff
- 4:00 p.m. **Adjourn**

**MINUTES
of the
SECOND MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
SUBCOMMITTEE ON REQUEST FOR PROPOSALS PROCUREMENT**

**November 10, 2011
Room 322, State Capitol
Santa Fe**

The second meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) Subcommittee on Request for Proposals (RFP) Procurement was called to order by Representative Rick Miera, chair, on November 10, 2011 at 9:15 a.m. in Room 322, State Capitol.

Present

Rep. Rick Miera, Co-Chair, PSCOOTF
Andy Bensen, Director of Business Development, Van H. Gilbert Architect, PC
Lemoyne Blackshear, Staff Architect, Property Control Division, General Services Department (GSD)
Sean Calvert, Esq., Calvert Menicucci, PC
Lisa Cooley
Steve Crispin
Dr. Carl Foster, PSCOOTF Public Member
Jason Harrington, President and CEO, HB Construction
Shad S. James, Executive Vice President, Jaynes Corporation Albuquerque Operations
Rep. Larry A. Larrañaga, PSCOOTF Member
Dave McCoy, Executive Director, Sheet Metal and Air Conditioning Contractors' National Association
Aaron McKinney, Superintendent, Tucumcari Public School District
Patricia Miller, Superintendent, Fort Sumner Municipal School District
Kirk McWethy, Shumate Construction

Staff

Sharon Ball, Senior Researcher, Legislative Council Service (LCS)
Leslie Porter, Research Assistant, LCS
Robert Gorrell, Director, Public Schools Facilities Authority (PSFA)
Tim Berry, Deputy Director, PSFA
Dotty McKinney, Contracts Administrator, PSFA
Martica Casias, Planning and Design manager, PSFA
Ovidiu Viorica, Construction Manager, PSFA

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, November 10

Welcome and Introductions

Representative Miera welcomed the subcommittee members and invited LCS staff members and subcommittee members to introduce themselves.

Approval of Minutes

Upon a motion made by Representative Larrañaga, seconded by Dr. Foster, and with none opposed, the minutes from the previous meeting were approved.

Recap of Direction to Staff from October 17 Meeting

Ms. Ball informed the subcommittee that consensus needs to be reached on recommendations from the PSFA that will be discussed.

Update on BidSync

Jeffrey S. Nayer, regional sales director, BidSync, offered a brief background on BidSync, explaining that BidSync is a private company, founded in 1999, and is one of the fastest-growing companies in the United States. He said the company offers a transparent, web-based and automated purchasing program. He said the automatic purchasing simplifies the process, is "green" (i.e., environmentally friendly), reduces order times by 50 percent, accelerates the workflow by 10 times and offers a rapid roll-out. Concerning data security, Mr. Nayer said the program complies with federal government security and has the same encryption that is used by national banks. He added that the bids are sealed. Regarding the cost of the program, he said \$45,000 a year includes unlimited customer and vendor support and a three-year contract, and he mentioned a one-time charge of \$9,000. He said customizations to the program can be done within 24 hours and are done with no additional charge. Mr. Nayer said that BidSync has received more than 16,000 solicitations within the past 12 months and currently has 472 clients in 20 states.

Representative Miera clarified that the subcommittee is not responsible for making a decision regarding doing business with BidSync.

In response to an inquiry, Mr. Nayer said vendors using the program can register within a certain region to access solicitations from state agencies that use the program from that region. He said online training is provided to customers and can also be done on a "train-the-trainer" approach to allow individuals in rural New Mexico without internet access to learn the program. Mr. Nayer stated that the training and customer service is available Monday through Friday from 6:00 a.m. to 6:00 p.m. Some concern was raised by a subcommittee member that training is not available 24 hours a day, seven days a week.

Discussion ensued regarding the cost of the program beyond the pilot. Mr. Gorrell said that school districts have expressed willingness to aid in the purchasing of the project.

Further discussion took place about the specifics of the program. Mr. Nayer said that the program allows the same process as the paper process, simply in electronic form. He said the program can be tailored for specific agencies.

Subcommittee members brought up the topic of whether or not the rights have been issued to allow e-bidding, and whether or not the rules as written exclude it. Ms. Blackshear said she will take this concern to the GSD. Ms. Ball added that this is an issue of establishing a rule allowing e-bidding.

Staff Response to Issues and Concerns

Mr. Berry offered a summary of qualifications-based procurement recommendations.

The "*Web-Based RFP for Construction Procurement System*" was discussed first. Mr. Berry said the system is allowed via statute and will improve recordkeeping, transparency and accountability. He said the PSFA has entered into an agreement with BidSync to pilot a construction project for the Clovis Municipal School District. He said the PSFA recommends a PSFA guideline to fully implement this system, as opposed to a rule or law change.

"Weighting and Scoring" within the RFP for the construction process was the second issue. Mr. Berry explained that points given to the price component should not be so great that qualifications become inconsequential. The purpose of the RFP for construction is to obtain the "best value", and that may not be the bid with the lowest price. He added that the weighting of the technical proposal must be sufficient to ensure quality and that highly skilled contractors and subcontractors will perform the work. The PSFA recommended:

1. creating a sliding scale for allocation of points for technical proposal and price, based on the size and complexity of the school project within rule limitations;
2. allocating a minimum of 50 percent of available points to the price component without a change to the rule; and
3. changing NMAC 1.4.8.15 A (4) *Health and Safety* to a yes/no requirement to increase availability of points for "additional evaluation factors" that would eliminate the duplication of safety requirements.

"Interviews Versus Discussion, Scoring of Interviews, 'Local' Preference" was the third topic. Offering background on the issue, Ms. McKinney said interviews are currently held and scored in an inconsistent manner, but neither NMAC 1.4.1 nor NMAC 1.4.8 specifies that this is allowed. She said this score may alter the outcome and these points may reduce the significance of points applied to the price. The PSFA recommended:

1. directing the PSFA to add clarifying language to the PSFA RFP for construction template regarding the conduct of "interviews" in relation to the Educational Facility Construction Manager At Risk Act and "proposal discussions" per NMAC 1.4.8 per reference to NMAC 1.4.1;
2. allocating points to discussions in lieu of changing technical proposal scores to determine a winner, if discussions are held; and

3. adding clarifying language to the RFP for construction template indicating that a short-listed offeror has the right to decline discussions if it is apparent that the offeror cannot overcome its current ranking.

"Qualifications of Potential Committee Members and Access" was the fourth issue. Mr. Berry explained that evaluation committee members may not have a construction background; design professionals are not consistently asked to advise the committee; and firms may be marketing to districts applying for or that have received Public School Capital Outlay Council funds. The PSFA recommended:

1. naming a design professional to serve on the selection committee in an advisory capacity;
2. requesting approval of the list of proposed evaluation committee members that includes a description of their construction experience and capabilities;
3. creating a pool of qualified evaluators to be drawn from districts that do not have access to experienced construction personnel;
4. requiring potential evaluation committee members to submit a conflict of interest form, a campaign contribution form and a confidentiality form to alleviate outside influence of the evaluation;
5. disqualifying any potential offerors that market their firm or offer gifts or lunches prior to or during the procurement process and adding language to the contract to prevent gifts or lunches after the procurement process;
6. requiring the PSFA approval of points applied to the technical and price components and if applicable, proposal discussions per type and complexity of project;
7. developing an online, mandatory RFP for construction class for the procurement manager and the potential evaluation committee;
8. providing a certificate of completion for the RFP for construction call;
9. developing an online informative presentation for potential contractors and/or subcontractors new to the RFP for construction process; and
10. per statute, adding language to the RFP procurement templates clarifying that all or part of the RFP may be submitted on recordable media in PDF format in lieu of hard copies.

The fifth point is **"Subcontractors Qualification and Local-Local Preference Logistics"**. Mr. Berry said that New Mexico preference benefits in-state, and not local jurisdiction, businesses and said that adding a "local-local" preference may cause problems since the evaluation committee would have to separate a trade and bid from the RFP and project. The PSFA recommended assigning points to RFP evaluation criteria under the "added value" factor to contractors proposing to hire locally for self-performed work or subcontracting.

"Best and Final Offer" was the sixth point discussed. Ms. McKinney informed the subcommittee that some jurisdictions are using this to put short-listed offerors in a price bid shopping scenario. The PSFA recommends clarifying the use of "best and final offer" in relation to NMAC 1.4.8 and remove the reference in NMAC 1.4.8 to NMAC 1.4.1 regarding the use of this.

The seventh issue discussed was the "**Protest Period**". Ms. McKinney said confusion exists as to when the protest period begins in relation to the award cycle of the project. She said the PSFA recommended that it be given direction to add clarifying language to the RFP for construction template regarding the prevailing statute and regulations and to provide training to procurement managers regarding the process.

Questions and Discussion

Mr. Harrington summarized his proposal for resolving the best value and low price concern. He said both the technical and price proposals would be submitted simultaneously. He said the technical proposal would be presented in a format similar to what contractors are currently required to provide. He said the PSFA and the school districts reserve the right to conduct interviews with the top four scoring contractors to confirm that the contractors are the most highly qualified firms prior to opening the price proposals. He said that after the qualifications and interview are scored by an evaluation committee, the scores are zeroed out and the next step begins with the opening of a price proposal from the top four scoring contractors. He stated the winning contractor is the one with the lowest price. He said this method addresses the following issues:

1. the PSFA and the school district will still have the advantage of working with a highly qualified contractor while providing security of the taxpayer's and owner's interest;
2. members of the evaluation committee are disconnected from the actual award of the contract and are prevented from being exposed to improper benefits;
3. evaluation committee concerns, such as qualifying or qualification of members, strict oversight and criticism of the committee, are reduced since the committee is not responsible for awarding the project to one contractor, but is responsible for selecting which contractors are the most qualified; and
4. the method eliminates bid shopping.

Concern was voiced regarding the reduction in the safety component in the RFP for construction process, as proposed by the PSFA. Statements were made that a recommendation to change the safety component to issue the full 20 points is not sufficient. Subcommittee members said construction is a very dangerous activity and that keeping the health and safety point allocation at 20 percent is critical. Members said that differences in contractors' safety programs exist, as evidenced via site visits. In addition, a history of a safe work environment is crucial and is as important as experience, members emphasized. Mr. Berry clarified that the PSFA is not attempting to diminish the importance of safety, but it is attempting to eliminate duplicity. Further discussion ensued between subcommittee members and the PSFA. Concerning this issue, the qualification of evaluation committee members was brought forth once again. A subcommittee member suggested removing the health and safety component from the NMAC 1.4.8.15 A (1) (2) *Past Performance Plan and Management*, resulting in all safety points being in NMAC 1.4.8.15 A (4) *Health and Safety* and leaving points being available for past performance.

Subcommittee members reiterated that evaluation committee training should be implemented to ensure that committee members are adequately qualified. Mr. Gorrell noted that "one size does not fit all" as far as this issue is concerned. He said the PSFA thinks this could be vetted through industry and owner standards.

Discussion ensued regarding the "best and final offer". Responding to an inquiry, Mr. Gorrell said that the best and final offer is allowed, and that the use of it at the end of the process is not announced by the owner of a project in the beginning of the process. He said PSFA staff recommend that it be eliminated altogether. Various subcommittee members opposed this recommendation, explaining that the state has used the best and final offer with construction, has laid it out in the beginning of the project, that it has been useful in certain situations and that it should remain in place. Other subcommittee members advocated its elimination in this process.

A few subcommittee members discussed the "local-local" preference, saying it would hurt small contractors outside of Albuquerque, for many travel to Albuquerque to bid.

Members of the subcommittee agreed with the intent of the language change concerning gifts from contractors to project owners, but said the language should exclude "marketing your firm", for kickbacks are the problem.

Consideration of Recommendations to the PSCOOTF

Subcommittee members determined consensus on the PSFA recommendations.

"Web-Based RFP for Construction Procurement System"

Representative Miera told the subcommittee that staff will research the need for a rule change or a rule addition. There being no objection from subcommittee members, he said this issue will be taken to the PSCOOTF.

"Weighting and Scoring"

There being no opposition from the subcommittee, Representative Miera said the recommendations will be brought forth to the PSCOOTF. Mr. Berry clarified that points should be no less than 50 percent of the points. Mr. Gorrell said the PSFA will use the solution suggested by the subcommittee and leave it in NMAC 1.4.8.15 A (4) *Health and Safety*.

"Interviews Versus Discussions, Scoring of Interviews, 'Local-Local' Preference"

Based upon a subcommittee consensus, the recommendations for all three will be brought forth to the PSCOOTF.

"Qualifications of Potential Committee Members and Access"

Consensus was reached that the architect should serve in an advisory capacity on the evaluation committee and the recommendation will be brought to the PSCOOTF.

Based upon subcommittee consensus, the proposed PSFA guideline change and recommendations will be heard by the PSCOOTF.

"Subcontractors Qualification and Local Preference Logistics"

Based upon subcommittee consensus, the proposed PSFA guideline change and recommendation will be heard by the PSCOOTF.

"Best and Final Offer"

Representative Larrañaga made a motion to have the PSCOOTF look at this issue, and with Dr. Foster in opposition, the issue will be examined by the PSCOOTF.

"Protest Period"

Upon a motion made by Ms. Miller, seconded by Representative Larrañaga, and with none opposed, the proposed PSFA guideline change will be heard by the PSCOOTF; however, the issue, as it will be forwarded, will only change and not add limitations to the construction template as to protest time. The issue of training will be advanced to the PSCOOTF.

Adjournment

There being no further business before the subcommittee, the meeting adjourned at 12:30 p.m.

Appendix E

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

2012 ENDORSED LEGISLATION

Appendix F

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

1998-2011 *Zuni* Lawsuit Time Line (Long Version)

TIME LINE OF KEY EVENTS RELATED TO THE *ZUNI* LAWSUIT

January 1998	<i>Zuni</i> lawsuit filed.
March 1998	Public Education Department (formerly State Department of Public Education) appoints a task force to study public school capital outlay issues.
1999 Regular & Special Sessions	State reduces impact aid credit; increases funding for critical capital outlay program; creates supplemental severance tax bonds & limits their issuance to 62.5% of previous year severance tax revenues; and authorizes \$100 million of bonds for public school capital improvements. (Laws 1999, Chapter 275 & Laws 1999 (1st S.S.), Chapter 6)
October 1999	District court rules that current public school capital outlay funding system is unconstitutional.
2000 Regular & Special Sessions	State increases the limit for issuance of supplemental severance tax bonds to 87.5% of previous year severance tax revenues; authorizes an additional \$475 million of bonds for public school capital improvements; and creates a new Public School Capital Outlay Task Force (PSCOTF).
March 2000	District court holds status conference.
2001 Session	State adopts new statewide capital outlay system based on adequacy standards and a state-share formula to determine state grant amounts as the basis for a long-term funding system and appropriates funds for a statewide assessment of all school facilities to be used to rank schools against the adequacy standards. Establishes a short-term deficiency corrections program; appropriates \$200 million to fund it; and creates a new state agency to administer it. Additional funding for maintenance is provided by increasing the state guarantee amount under SB 9 from \$35.00 to \$50.00 per unit and the existing critical capital outlay program without the need for annual legislative approval. (Laws 2001, Chapter 338)
May 2001	District court appoints a special master to review the state's progress in developing a uniform system for funding public school capital improvements.
October 2001	Special master holds hearing.
January 2002	Special master issues a report finding that the state "is in good faith and with substantial resources attempting to comply with the requirements" of the court. The report also finds that "because the use of direct appropriations necessarily removes substantial funds from the capital outlay process where merit and need on a priority basis dictate how funds are to be distributed, the state should take into account in its funding formula these appropriations as an element thereof."

May 2002	District court adopts the report of the special master and agrees to continue to review the state's progress.
September 2002	Public School Capital Outlay Council (PSCOC) adopts newly developed adequacy standards.
2003 Session	State revises state-share formula and provides for an offset against state grant awards for direct appropriations for non-operating purposes. The offset amount is calculated based on the local share percentage of the district, so that wealthy districts have a greater offset percentage than poorer ones. Additional funding for maintenance is provided by adding a \$5.00 per mill per unit minimum distribution to districts through the SB 9 program; up to \$40 million in additional funds are appropriated for the deficiencies correction program; and a new permanent Public School Facilities Authority (PSFA) is created to implement the standards-based process. (Laws 2003, Chapter 147 & Laws 2003, Chapter 238)
October 2003	PSCOC implements standards-based funding process for grant award requests.
2004 Session	State increases the limit for issuance of supplemental severance tax bonds from 87.5% to 95% and provides \$67.0 million of additional funding for projects begun under the critical capital outlay program but not yet completed and for the deficiencies correction program. (Laws 2004, Chapter 147 & Laws 2004, Chapter 126)
October 2004	PSCOC provides \$198.9 million in first year standards-based grant awards.
2005 Session	State provides for a permanent Public School Capital Outlay Oversight Task Force (PSCOOTF) and a provides \$62 million of additional funds for roof repair and replacement as part of the deficiencies correction program and as part of the standards-based process. The SB 9 guarantee is increased from \$50.00 to \$60.00 per mill per unit. The state-share formula is modified to allow the local share to be reduced or eliminated in certain circumstances. (Laws 2005, Chapter 274)
October 2005	PSCOC provides \$255.6 million in grant awards under the second year of the standards-based program.
2006 Session	State creates a new "high-priority" program for projects meeting specified criteria in high-growth areas and provides an additional \$90 million for these projects. The high-priority projects are subject to the same standards and procedures as other projects but are eligible for advanced funding of the local share amount with the requirement that this advanced funding be recouped by future grant offsets. (Laws 2006, Chapter 95)
March 2006	District court holds status conference. Parties agree to an evidentiary hearing to

	be held in October 2006.
October 2006	PSCOC provides \$137.4 million in third year standards-based grant awards.
October 2006	<i>Zuni</i> plaintiffs present concerns to the PSCOOTF, which sets up a work group to seek responses to those concerns.
2007 Session	Legislature passes legislation to allow a reduction of 50% of offsets from future project awards for direct legislative appropriations that are designated for school building projects that rank among the top 150 projects statewide; to exempt direct appropriations to state-chartered charter schools from offsets against the district in which the school is located; to increase lease reimbursement payments from \$600 to \$700 per MEM and allow administrative space to qualify for the reimbursement; to increase the state SB 9 guarantee from \$60.00 to \$70.00 per mill per unit with yearly increases based upon the Consumer Price Index; to increase the period for which a HB 33 tax may be imposed from five to six years to track with biennial school district elections; to require that, upon termination of the charter of a state-chartered charter school, the facility must revert to the local school district rather than to the state if any proceeds from local bond issues were used to finance the facility; and to add two members to the PSCOOTF (bringing the total number of members to 26) to include both a senator and a representative who represent impact aid school districts. (Laws 2007, Chapter 366)
August 2007	PSCOC provides \$212.2 million in grant awards for the 2006-07 standards-based awards cycle.
2008 Session	Legislature passes legislation to amend the Public School Insurance Authority Act to allow for insurance for joint use of school buildings. (Laws 2009, Chapter 198) Other legislation amended the Public School Capital Outlay Act to reduce the offset for direct appropriations from a PSCOC grant award made for joint use with another governmental entity; to authorize funding to continue the development and implementation of the Facility Information Management System (FIMS), a uniform, web-based system to manage maintenance for school district facilities; to provide an increased grant award to districts with a demonstrable exemplary record of preventive maintenance; and to eliminate the state investment officer as a member of PSCOOTF, bringing membership to 25. (Laws 2008, Chapter 90, p.v.)
August 2008	PSCOC provides \$93.4 million for the 2008-09 funding cycle. PSCOC changes from a one-time annual funding cycle to an ongoing examination of project readiness to make grant awards only when project is able to make expeditious use of the funds. Albuquerque Public Schools reduces its advances and offsets by \$75.6 million through applications in the standards-based process.

2009 Session	Legislature passes legislation to amend the Charter Schools Act to extend to 2015 the deadline for charter schools to be located in public buildings (Laws 2009, Chapter 198); amend the Public School Capital Outlay Act to remove the limit on the amount of lease payment assistance funds that may be awarded (Laws 2009, Chapter 258, p.v.); and to allow for funding to develop a geographic information system for use by the PSFA and other state governmental agencies. (Laws 2009, Chapter 115).
2010 Session	Legislature passes legislation to amend the Qualified School Construction Bonds Act to clarify the methodology for allocation of bonding authority (Laws 2010, Chapter 56); to amend the Public School Capital Outlay Act to require PSFA to administer procurement for certain emergency projects; and to extend the time limit for roof repairs from 2012 to 2015. (Laws 2010, Chapter 104, p.v.)
January 2011	Scheduled: Award of roof project grants and short cycle standards-based grant awards.

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SENATE BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
AND THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO CERTAIN EDUCATIONAL FACILITIES; MAKING THE
FACILITIES AT THE NEW MEXICO SCHOOL FOR THE BLIND AND VISUALLY
IMPAIRED AND THE NEW MEXICO SCHOOL FOR THE DEAF ELIGIBLE FOR
PUBLIC SCHOOL CAPITAL OUTLAY ACT FUNDING; EXEMPTING THESE
INSTITUTIONS FROM THE REQUIRED LOCAL SHARE OF PROJECT FUNDING
UNDER CERTAIN CONDITIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 22-24-3 NMSA 1978 (being Laws 1975,
Chapter 235, Section 3, as amended) is amended to read:

"22-24-3. DEFINITIONS.--As used in the Public School
Capital Outlay Act:

A. "constitutional special schools" means the New
Mexico school for the blind and visually impaired and the New
Mexico school for the deaf;

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1 B. "constitutional special schools support spaces"
2 means all facilities necessary to support the constitutional
3 special schools' educational mission that are not included in
4 the constitutional special schools' educational adequacy
5 standards, including, but not limited to, performing arts
6 centers, facilities for athletic competition, school district
7 administration and facility and vehicle maintenance;

8 ~~[A.]~~ C. "council" means the public school capital
9 outlay council;

10 ~~[B.]~~ D. "fund" means the public school capital
11 outlay fund; and

12 ~~[G.]~~ E. "school district" includes state-chartered
13 charter schools and the constitutional special schools."

14 SECTION 2. Section 22-24-5 NMSA 1978 (being Laws 1975,
15 Chapter 235, Section 5, as amended) is amended to read:

16 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
17 APPLICATION--GRANT ASSISTANCE.--

18 A. Applications for grant assistance, approval of
19 applications, prioritization of projects and grant awards shall
20 be conducted pursuant to the provisions of this section.

21 B. Except as provided in Sections 22-24-4.3,
22 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
23 govern grant assistance from the fund for a public school
24 capital outlay project not wholly funded pursuant to Section
25 22-24-4.1 NMSA 1978:

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1 (1) all school districts are eligible to apply
2 for funding from the fund, regardless of percentage of
3 indebtedness;

4 (2) priorities for funding shall be determined
5 by using the statewide adequacy standards developed pursuant to
6 Subsection C of this section; provided that:

7 (a) the council shall apply the
8 standards to charter schools to the same extent that they are
9 applied to other public schools; ~~and~~

10 (b) the council shall adopt and apply
11 adequacy standards appropriate to the unique needs of the
12 constitutional special schools; and

13 ~~(b)~~ (c) in an emergency in which the
14 health or safety of students or school personnel is at
15 immediate risk or in which there is a threat of significant
16 property damage, the council may award grant assistance for a
17 project using criteria other than the statewide adequacy
18 standards;

19 (3) the council shall establish criteria to be
20 used in public school capital outlay projects that receive
21 grant assistance pursuant to the Public School Capital Outlay
22 Act. In establishing the criteria, the council shall consider:

23 (a) the feasibility of using design,
24 build and finance arrangements for public school capital outlay
25 projects;

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1 (b) the potential use of more durable
2 construction materials that may reduce long-term operating
3 costs;

4 (c) concepts that promote efficient but
5 flexible utilization of space; and

6 (d) any other financing or construction
7 concept that may maximize the dollar effect of the state grant
8 assistance;

9 (4) no more than ten percent of the combined
10 total of grants in a funding cycle shall be used for
11 retrofitting existing facilities for technology infrastructure;

12 (5) except as provided in Paragraph (6), (8),
13 [~~or~~] (9) or (10) of this subsection, the state share of a
14 project approved and ranked by the council shall be funded
15 within available resources pursuant to the provisions of this
16 paragraph. No later than May 1 of each calendar year, a value
17 shall be calculated for each school district in accordance with
18 the following procedure:

19 (a) the final prior year net taxable
20 value for a school district divided by the MEM for that school
21 district is calculated for each school district;

22 (b) the final prior year net taxable
23 value for the whole state divided by the MEM for the state is
24 calculated;

25 (c) excluding any school district for

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1 which the result calculated pursuant to Subparagraph (a) of
2 this paragraph is more than twice the result calculated
3 pursuant to Subparagraph (b) of this paragraph, the results
4 calculated pursuant to Subparagraph (a) of this paragraph are
5 listed from highest to lowest;

6 (d) the lowest value listed pursuant to
7 Subparagraph (c) of this paragraph is subtracted from the
8 highest value listed pursuant to that subparagraph;

9 (e) the value calculated pursuant to
10 Subparagraph (a) of this paragraph for the subject school
11 district is subtracted from the highest value listed in
12 Subparagraph (c) of this paragraph;

13 (f) the result calculated pursuant to
14 Subparagraph (e) of this paragraph is divided by the result
15 calculated pursuant to Subparagraph (d) of this paragraph;

16 (g) the sum of the property tax mill
17 levies for the prior tax year imposed by each school district
18 on residential property pursuant to Chapter 22, Article 18 NMSA
19 1978, the Public School Capital Improvements Act, the Public
20 School Buildings Act, the Education Technology Equipment Act
21 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978
22 is calculated for each school district;

23 (h) the lowest value calculated pursuant
24 to Subparagraph (g) of this paragraph is subtracted from the
25 highest value calculated pursuant to that subparagraph;

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1 (i) the lowest value calculated pursuant
2 to Subparagraph (g) of this paragraph is subtracted from the
3 value calculated pursuant to that subparagraph for the subject
4 school district;

5 (j) the value calculated pursuant to
6 Subparagraph (i) of this paragraph is divided by the value
7 calculated pursuant to Subparagraph (h) of this paragraph;

8 (k) if the value calculated for a
9 subject school district pursuant to Subparagraph (j) of this
10 paragraph is less than five-tenths, then, except as provided in
11 Subparagraph (n) or (o) of this paragraph, the value for that
12 school district equals the value calculated pursuant to
13 Subparagraph (f) of this paragraph;

14 (l) if the value calculated for a
15 subject school district pursuant to Subparagraph (j) of this
16 paragraph is five-tenths or greater, then that value is
17 multiplied by five-hundredths;

18 (m) if the value calculated for a
19 subject school district pursuant to Subparagraph (j) of this
20 paragraph is five-tenths or greater, then the value calculated
21 pursuant to Subparagraph (l) of this paragraph is added to the
22 value calculated pursuant to Subparagraph (f) of this
23 paragraph. Except as provided in Subparagraph (n) or (o) of
24 this paragraph, the sum equals the value for that school
25 district;

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1 (n) in those instances in which the
2 calculation pursuant to Subparagraph (k) or (m) of this
3 paragraph yields a value less than one-tenth, one-tenth shall
4 be used as the value for the subject school district;

5 (o) in those instances in which the
6 calculation pursuant to Subparagraph (k) or (m) of this
7 paragraph yields a value greater than one, one shall be used as
8 the value for the subject school district;

9 (p) except as provided in Section
10 22-24-5.7 NMSA 1978 and except as adjusted pursuant to
11 Paragraph (6), (8), [~~or~~] (9) or (10) of this subsection, the
12 amount to be distributed from the fund for an approved project
13 shall equal the total project cost multiplied by a fraction the
14 numerator of which is the value calculated for the subject
15 school district in the current year plus the value calculated
16 for that school district in each of the two preceding years and
17 the denominator of which is three; and

18 (q) as used in this paragraph: 1) "MEM"
19 means the average full-time-equivalent enrollment of students
20 attending public school in a school district on the eightieth
21 and one hundred twentieth days of the prior school year; 2)
22 "total project cost" means the total amount necessary to
23 complete the public school capital outlay project less any
24 insurance reimbursement received by the school district for the
25 project; and 3) in the case of a state-chartered charter school

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1 that has submitted an application for grant assistance pursuant
2 to this section, the "value calculated for the subject school
3 district" means the value calculated for the school district in
4 which the state-chartered charter school is physically located;

5 (6) the amount calculated pursuant to
6 Subparagraph (p) of Paragraph (5) of this subsection shall be
7 reduced by the following procedure:

8 (a) the total of all legislative
9 appropriations made after January 1, 2003 for nonoperating
10 purposes either directly to the subject school district or to
11 another governmental entity for the purpose of passing the
12 money through directly to the subject school district, and not
13 rejected by the subject school district, is calculated;
14 provided that: 1) an appropriation made in a fiscal year shall
15 be deemed to be accepted by a school district unless, prior to
16 June 1 of that fiscal year, the school district notifies the
17 department of finance and administration and the public
18 education department that the district is rejecting the
19 appropriation; 2) the total shall exclude any educational
20 technology appropriation made prior to January 1, 2005 unless
21 the appropriation was on or after January 1, 2003 and not
22 previously used to offset distributions pursuant to the
23 Technology for Education Act; 3) the total shall exclude any
24 appropriation previously made to the subject school district
25 that is reauthorized for expenditure by another recipient; 4)

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1 the total shall exclude one-half of the amount of any
2 appropriation made or reauthorized after January 1, 2007 if the
3 purpose of the appropriation or reauthorization is to fund, in
4 whole or in part, a capital outlay project that, when
5 prioritized by the council pursuant to this section either in
6 the immediately preceding funding cycle or in the current
7 funding cycle, ranked in the top one hundred fifty projects
8 statewide; 5) the total shall exclude the proportionate share
9 of any appropriation made or reauthorized after January 1, 2008
10 for a capital project that will be jointly used by a
11 governmental entity other than the subject school district.

12 Pursuant to criteria adopted by rule of the council and based
13 upon the proposed use of the capital project, the council shall
14 determine the proportionate share to be used by the
15 governmental entity and excluded from the total; and 6) unless
16 the grant award is made to the state-chartered charter school
17 or unless the appropriation was previously used to calculate a
18 reduction pursuant to this paragraph, the total shall exclude
19 appropriations made after January 1, 2007 for nonoperating
20 purposes of a specific state-chartered charter school,
21 regardless of whether the charter school is a state-chartered
22 charter school at the time of the appropriation or later opts
23 to become a state-chartered charter school;

24 ~~[(b) the total of all federal money~~
25 ~~received by the subject school district for nonoperating~~

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1 purposes pursuant to Title XIV of the American Recovery and
2 Reinvestment Act of 2009 is calculated; provided that: 1)
3 unless the grant award is made to the state-chartered charter
4 school or unless the federal money received was previously used
5 to calculate a reduction pursuant to this paragraph, before the
6 charter school became a state-chartered charter school, the
7 total shall exclude federal money received for nonoperating
8 purposes of a specific state-chartered charter school,
9 regardless of whether the charter school is a state-chartered
10 charter school at the time of receiving the federal money or
11 later opts to become a state-chartered charter school; and 2)
12 the total shall exclude federal money distributed through the
13 fund as grant awards pursuant to the Public School Capital
14 Outlay Act;

15 ~~(c)~~ the value calculated pursuant to
16 Subparagraph (a) of this paragraph is added to the value
17 calculated pursuant to Subparagraph (b) of this paragraph;

18 ~~(d)~~ (b) the applicable fraction used
19 for the subject school district and the current calendar year
20 for the calculation in Subparagraph (p) of Paragraph (5) of
21 this subsection is subtracted from one;

22 ~~(e)~~ (c) the value calculated pursuant
23 to Subparagraph ~~(e)~~ (a) of this paragraph for the subject
24 school district is multiplied by the amount calculated pursuant
25 to Subparagraph ~~(d)~~ (b) of this paragraph for that school

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1 district;

2 ~~[(f)]~~ (d) the total amount of reductions
3 for the subject school district previously made pursuant to
4 Subparagraph ~~[(g)]~~ (e) of this paragraph for other approved
5 public school capital outlay projects is subtracted from the
6 amount calculated pursuant to Subparagraph ~~[(e)]~~ (c) of this
7 paragraph; and

8 ~~[(g)]~~ (e) the amount calculated pursuant
9 to Subparagraph (p) of Paragraph (5) of this subsection shall
10 be reduced by the amount calculated pursuant to Subparagraph
11 ~~[(f)]~~ (d) of this paragraph;

12 (7) as used in this subsection:

13 (a) "governmental entity" includes an
14 Indian nation, tribe or pueblo; and

15 (b) "subject school district" means the
16 school district that has submitted the application for funding
17 and in which the approved public school capital outlay project
18 will be located;

19 (8) the amount calculated pursuant to
20 Subparagraph (p) of Paragraph (5) of this subsection, after any
21 reduction pursuant to Paragraph (6) of this subsection, may be
22 increased by an additional five percent if the council finds
23 that the subject school district has been exemplary in
24 implementing and maintaining a preventive maintenance program.
25 The council shall adopt such rules as are necessary to

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1 implement the provisions of this paragraph;

2 (9) the council may adjust the amount of local
3 share otherwise required if it determines that a school
4 district has used all of its local resources. Before making
5 any adjustment to the local share, the council shall consider
6 whether:

7 (a) the school district has insufficient
8 bonding capacity over the next four years to provide the local
9 match necessary to complete the project and, for all
10 educational purposes, has a residential property tax rate of at
11 least ten dollars (\$10.00) on each one thousand dollars
12 (\$1,000) of taxable value, as measured by the sum of all rates
13 imposed by resolution of the local school board plus rates set
14 to pay interest and principal on outstanding school district
15 general obligation bonds;

16 (b) the school district: 1) has fewer
17 than an average of eight hundred full-time-equivalent students
18 on the eightieth and one hundred twentieth days of the prior
19 school year; 2) has at least seventy percent of its students
20 eligible for free or reduced-fee lunch; 3) has a share of the
21 total project cost, as calculated pursuant to provisions of
22 this section, that would be greater than fifty percent; and 4)
23 for all educational purposes, has a residential property tax
24 rate of at least seven dollars (\$7.00) on each one thousand
25 dollars (\$1,000) of taxable value, as measured by the sum of

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1 all rates imposed by resolution of the local school board plus
2 rates set to pay interest and principal on outstanding school
3 district general obligation bonds; or

4 (c) the school district: 1) has an
5 enrollment growth rate over the previous school year of at
6 least two and one-half percent; 2) pursuant to its five-year
7 facilities plan, will be building a new school within the next
8 two years; and 3) for all educational purposes, has a
9 residential property tax rate of at least ten dollars (\$10.00)
10 on each one thousand dollars (\$1,000) of taxable value, as
11 measured by the sum of all rates imposed by resolution of the
12 local school board plus rates set to pay interest and principal
13 on outstanding school district general obligation bonds; ~~and~~

14 (10) the local match for the constitutional
15 special schools shall be set at fifty percent for projects that
16 qualify under the educational adequacy category and one hundred
17 percent for projects that qualify in the support spaces
18 category; provided that the council may adjust or waive the
19 amount of any direct appropriation to or local share required
20 for the constitutional special schools if an applicant
21 constitutional special school has insufficient or no local
22 resources available; and

23 [~~(10)~~] (11) no application for grant
24 assistance from the fund shall be approved unless the council
25 determines that:

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1 (a) the public school capital outlay
2 project is needed and included in the school district's
3 five-year facilities plan among its top priorities;

4 (b) the school district has used its
5 capital resources in a prudent manner;

6 (c) the school district has provided
7 insurance for buildings of the school district in accordance
8 with the provisions of Section 13-5-3 NMSA 1978;

9 (d) the school district has submitted a
10 five-year facilities plan that includes: 1) enrollment
11 projections; 2) a current preventive maintenance plan that has
12 been approved by the council pursuant to Section 22-24-5.3 NMSA
13 1978 and that is followed by each public school in the
14 district; 3) the capital needs of charter schools located in
15 the school district; and 4) projections for the facilities
16 needed in order to maintain a full-day kindergarten program;

17 (e) the school district is willing and
18 able to pay any portion of the total cost of the public school
19 capital outlay project that, according to Paragraph (5), (6),
20 (8) or (9) of this subsection, is not funded with grant
21 assistance from the fund; provided that school district funds
22 used for a project that was initiated after September 1, 2002
23 when the statewide adequacy standards were adopted, but before
24 September 1, 2004 when the standards were first used as the
25 basis for determining the state and school district share of a

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1 project, may be applied to the school district portion required
2 for that project;

3 (f) the application includes the capital
4 needs of any charter school located in the school district or
5 the school district has shown that the facilities of the
6 charter school have a smaller deviation from the statewide
7 adequacy standards than other district facilities included in
8 the application; and

9 (g) the school district has agreed, in
10 writing, to comply with any reporting requirements or
11 conditions imposed by the council pursuant to Section 22-24-5.1
12 NMSA 1978.

13 C. After consulting with the public school capital
14 outlay oversight task force and other experts, the council
15 shall regularly review and update statewide adequacy standards
16 applicable to all school districts. The standards shall
17 establish the acceptable level for the physical condition and
18 capacity of buildings, the educational suitability of
19 facilities and the need for technological infrastructure.
20 Except as otherwise provided in the Public School Capital
21 Outlay Act, the amount of outstanding deviation from the
22 standards shall be used by the council in evaluating and
23 prioritizing public school capital outlay projects.

24 D. The acquisition of a facility by a school
25 district or charter school pursuant to a financing agreement

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1 that provides for lease payments with an option to purchase for
2 a price that is reduced according to lease payments made may be
3 considered a public school capital outlay project and eligible
4 for grant assistance under this section pursuant to the
5 following criteria:

6 (1) no grant shall be awarded unless the
7 council determines that, at the time of exercising the option
8 to purchase the facility by the school district or charter
9 school, the facility will equal or exceed the statewide
10 adequacy standards and the building standards for public school
11 facilities;

12 (2) no grant shall be awarded unless the
13 school district and the need for the facility meet all of the
14 requirements for grant assistance pursuant to the Public School
15 Capital Outlay Act;

16 (3) the total project cost shall equal the
17 total payments that would be due under the agreement if the
18 school district or charter school would eventually acquire
19 title to the facility;

20 (4) the portion of the total project cost to
21 be paid from the fund may be awarded as one grant, but
22 disbursements from the fund shall be made from time to time as
23 lease payments become due;

24 (5) the portion of the total project cost to
25 be paid by the school district or charter school may be paid

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1 from time to time as lease payments become due; and

2 (6) neither a grant award nor any provision of
3 the Public School Capital Outlay Act creates a legal obligation
4 for the school district or charter school to continue the lease
5 from year to year or to purchase the facility.

6 E. In order to encourage private capital investment
7 in the construction of public school facilities, the purchase
8 of a privately owned school facility that is, at the time of
9 application, in use by a school district may be considered a
10 public school capital outlay project and eligible for grant
11 assistance pursuant to this section if the council finds that:

12 (1) at the time of the initial use by the
13 school district, the facility to be purchased equaled or
14 exceeded the statewide adequacy standards and the building
15 standards for public school facilities;

16 (2) at the time of application, attendance at
17 the facility to be purchased is at seventy-five percent or
18 greater of design capacity and the attendance at other schools
19 in the school district that the students at the facility would
20 otherwise attend is at eighty-five percent or greater of design
21 capacity; and

22 (3) the school district and the capital outlay
23 project meet all of the requirements for grant assistance
24 pursuant to the Public School Capital Outlay Act; provided
25 that, when determining the deviation from the statewide

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1 adequacy standards for the purposes of evaluating and
2 prioritizing the project, the students using the facility shall
3 be deemed to be attending other schools in the school district.

4 F. It is the intent of the legislature that grant
5 assistance made pursuant to this section allows every school
6 district to meet the standards developed pursuant to Subsection
7 C of this section; provided, however, that nothing in the
8 Public School Capital Outlay Act or the development of
9 standards pursuant to that act prohibits a school district from
10 using other funds available to the district to exceed the
11 statewide adequacy standards.

12 G. Upon request, the council shall work with, and
13 provide assistance and information to, the public school
14 capital outlay oversight task force.

15 H. The council may establish committees or task
16 forces, not necessarily consisting of council members, and may
17 use the committees or task forces, as well as existing agencies
18 or organizations, to conduct studies, conduct surveys, submit
19 recommendations or otherwise contribute expertise from the
20 public schools, programs, interest groups and segments of
21 society most concerned with a particular aspect of the
22 council's work.

23 I. Upon the recommendation of the public school
24 facilities authority, the council shall develop building
25 standards for public school facilities and shall promulgate

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1 other such rules as are necessary to carry out the provisions
2 of the Public School Capital Outlay Act.

3 J. No later than December 15 of each year, the
4 council shall prepare a report summarizing its activities
5 during the previous fiscal year. The report shall describe in
6 detail all projects funded, the progress of projects previously
7 funded but not completed, the criteria used to prioritize and
8 fund projects and all other council actions. The report shall
9 be submitted to the public education commission, the governor,
10 the legislative finance committee, the legislative education
11 study committee and the legislature."

12 SECTION 3. Section 22-24-5.6 NMSA 1978 (being Laws 2006,
13 Chapter 95, Section 6, as amended) is amended to read:

14 "22-24-5.6. OUTSTANDING DEFICIENCIES AT CERTAIN STATE
15 EDUCATIONAL INSTITUTIONS.--

16 A. In consultation with the higher education
17 department and the applicable board of regents, and after
18 reviewing the existing five-year facilities plan and the
19 facilities condition assessment, the public school facilities
20 authority shall verify the assessed outstanding health, safety
21 or infrastructure deficiencies at the [~~New Mexico school for~~
22 ~~the blind and visually impaired and the New Mexico school for~~
23 ~~the deaf] constitutional special schools and shall develop a
24 plan to correct the deficiencies.~~

25 B. The council may approve allocations from the

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1 fund and, working with the higher education department and the
2 applicable board of regents, enter into construction contracts
3 to correct the deficiencies.

4 C. The council shall establish oversight functions
5 for the public school facilities authority and such other
6 guidelines and conditions as it deems necessary to ensure that
7 the allocations from the fund pursuant to this section are
8 expended in the most prudent manner possible and consistent
9 with the original purpose.

10 D. As used in the Public School Capital Outlay Act,
11 "public school capital outlay project", "capital outlay
12 project" or "project" includes a program for the correction of
13 deficiencies at the [~~New Mexico school for the blind and~~
14 ~~visually impaired or at the New Mexico school for the deaf]~~
15 constitutional special schools pursuant to this section.

16 [~~E. As used in Sections 22-24-5.1, 22-24-5.3 and~~
17 ~~22-24-5.5 NMSA 1978 and in Paragraph (10) of Subsection B of~~
18 ~~Section 22-24-5 NMSA 1978, "school district" includes the New~~
19 ~~Mexico school for the blind and visually impaired and the New~~
20 ~~Mexico school for the deaf.]"~~

21 SECTION 4. A new section of the Public School Capital
22 Outlay Act is enacted to read:

23 "[NEW MATERIAL] ADEQUACY STANDARDS--CONSTITUTIONAL SPECIAL
24 SCHOOLS.--Until July 1, 2018, the council may apply the
25 adequacy standards to the constitutional special schools on a

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1 building-by-building basis rather than the entire campus.
2 After that time, the adequacy standards rankings shall be based
3 on the facilities condition of the entire campus."

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HOUSE BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
AND THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

REPEALING THE DELAYED REPEAL OF THE CHARTER SCHOOL CAPITAL
OUTLAY FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. REPEAL.--Laws 2007, Chapter 214, Section 4 is
repealed.

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SENATE BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PUBLIC PROCUREMENT; CLARIFYING CIRCUMSTANCES UNDER WHICH A BEST AND FINAL OFFER PRICE MAY BE NEGOTIATED.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Procurement Code is enacted to read:

"~~[NEW MATERIAL]~~ COMPETITIVE SEALED PROPOSALS--RECEIPT AND ACCEPTANCE OF PROPOSALS--NEGOTIATIONS.--

A. Proposals shall be unconditionally accepted for consideration for award without alteration or correction, except as authorized in the Procurement Code. In addition to the requirement for the prime contractor and subcontractors to be registered with the division as provided in Section 13-4-13.1 NMSA 1978, proposals shall be evaluated based on the requirements set forth in the request for proposals, which

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1 requirements may include criteria to determine acceptability
2 such as inspection, testing, quality, workmanship, delivery and
3 suitability for a particular purpose. Those criteria such as
4 discounts, transportation costs and total or life-cycle costs
5 that will affect the bid price shall be objectively measurable,
6 which shall be defined by rule. The request for proposals
7 shall set forth the evaluation criteria to be used. No
8 criteria shall be used in the proposal evaluation that are not
9 set forth in the request for proposals. A proposal submitted
10 by a prime contractor that was not registered as required by
11 Section 13-4-13.1 NMSA 1978 shall not be considered for award.
12 A proposal submitted by a registered prime contractor that
13 includes any subcontractor that is not registered in accordance
14 with that section may be considered for award following
15 substitution of a registered subcontractor for any unregistered
16 subcontractor in accordance with Section 13-4-36 NMSA 1978.

17 B. If the highest ranked offeror has otherwise
18 qualified, and if there is no change in the original terms and
19 conditions, the highest ranked offeror may negotiate with the
20 purchaser for a lower total price in order to avoid rejection
21 of all proposals for the reason that the lowest price was up to
22 ten percent higher than budgeted project funds. Such
23 negotiation shall not be allowed if the price in the highest
24 ranked proposal was more than ten percent over budgeted project
25 funds."

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