



NEW MEXICO LEGISLATURE

**PUBLIC SCHOOL
CAPITAL OUTLAY
OVERSIGHT TASK FORCE**

2016 INTERIM FINAL REPORT

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INTERIM SUMMARY

Public School Capital Outlay Oversight Task Force 2016 Interim Summary

State statute allows the Public School Capital Outlay Oversight Task Force (PSCOOTF) to hold a maximum of four meetings during each interim in addition to one organizational meeting. In 2016, meetings were scheduled to be held in Santa Fe at the State Capitol on June 10, July 22, September 19, October 4 and November 14, with Senator John M. Sapien as chair and Representative Dennis J. Roch as vice chair.

During the June 10 organizational meeting, members approved a work plan for the 2016 interim for approval by the New Mexico Legislative Council. In addition to the task force's statutory duties, members agreed to include the following issues:

- the continuing *Zuni* lawsuit, including information about the upcoming district court hearing;
- an examination of the cost of ownership and operation of school facilities;
- charter school facilities;
- progress on implementation of the Broadband Deficiencies Correction Program;
- an assessment of the efficacy of the public school capital outlay funding formula; and
- cost-effective disposal of unused or under-used public school facilities.

The task force also heard testimony during the June meeting from economists from the University of New Mexico's Bureau of Business and Economic Research regarding their assessment of the efficacy of the public school capital outlay funding formula, which was conducted in late 2015 and early 2016. The report concluded that the current formula works as it was designed to work, with some differences between urban and rural school districts that are skewing equity data. The economists suggested continuing the study with certain deliverables at a cost of about \$100,000. Ultimately, the task force determined that legislative staff would be able to continue examination of the study and make suggestions for changes for the 2017 legislative session.

Other items on the June organizational meeting agenda included: presentations on the effect of passage of legislation in 2016 to increase the share of severance taxes to the Severance Tax Permanent Fund, thereby reducing funds dedicated to Public School Capital Outlay Council (PSCOC) standards-based projects; a Broadband Deficiencies Correction Program update; and the PSCOC and Public School Facilities Authority (PSFA) fiscal year 2015 annual report.

At its July 22 meeting, the task force heard an update on the status of the *Zuni* lawsuit from the assistant attorneys general assigned to defend the state in the lawsuit. They reported that many depositions have been taken, but the discovery process is still active and is expected to continue into 2017.

The superintendent and facilities director from the Gallup-McKinley County School District (GMCS D), one of the litigant districts, explained that the district is seeking a judicial review of the progress made toward remedying what the district sees as a lack of uniformity in the funding of public school capital improvements. Among other issues, they reported that the GMCS D continues to struggle with what they described as a significant gap between the state's

adequacy standards and educational specifications, particularly in regard to meeting the needs of pre-kindergarten and "at-risk" student populations and addressing mandates to provide Navajo language and culture classes and Title IX athletic facilities for female students. Noting that only 20 percent of the land within the boundaries of the district is taxable because of the federal presence on 80 percent of the land, the presenters indicated that the biggest disparity the district wants to see addressed is that property-tax-wealthy school districts are able to build public schools significantly above adequacy standards without taxing themselves to the extent that the GMCSD voters tax themselves simply to meet requirements for the state match.

Because of scheduling issues and the governor's call for a special legislative session, the remainder of the task force's scheduled meetings had to be adjusted. The September meeting was canceled; the October 4 meeting was moved to October 20; and the November 14 meeting was moved to December 1.

Due to the compressed time schedule for the remainder of the interim, the task force was able to address fewer issues than called for in the work plan. Among issues examined in the final two meetings, members heard testimony from Katie McEuen, PSFA research and policy analyst, about the cost of ownership of public school facilities. Among its conclusions, the study indicates that the recurring annual cost to maintain a school facility is between one and three percent of the total cost of the building, including site costs, and the replacement cost is approximately \$320 per square foot. Ms. McEuen noted that major challenges the state faces include a lack of sufficient maintenance funding, increasing replacement costs and the effectiveness — or lack of effectiveness — of facility maintenance. She also noted that her study shows no relationship between the level of assessed valuation and the overall wealth of the district's patrons. She said that, for example, poverty in a school district is not a statistically significant indicator of capital spending on a per student basis and that many districts with low assessed property tax valuations have facilities that are in as good, or better, condition than facilities in school districts with higher assessed valuations.

The task force also heard additional testimony on charter school facilities issues, including: compliance with the 2015 deadline for charter schools to be in publicly owned facilities; an update on the *Zuni* lawsuit from the assistant attorneys general indicating that the lawsuit is proceeding slowly and that several Legislative Council Service and Legislative Education Study Committee staff members had been called to testify before the district judge in Gallup; and an update from the state investment officer on the PSCOC revenue stream, in which he indicated that the state's investment performance continues to be below investment targets and that seven- to 10-year macroeconomic and financial market outlooks are challenging.

At its final 2016 interim meeting, the task force endorsed two pieces of legislation:

- .204819.2 proposed to change the current Public School Capital Improvements Act to allow the PED to use prior year data for calculations and distributions of school district allocations; and
- .204821.3 proposed to amend the Public School Capital Outlay Act and the Public School Capital Improvements Act to require school districts to distribute certain revenue shares to charter schools.

BACKGROUND

Background

As the "direct descendent" of several task forces that were created as a result of the 1998 *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 School District, and later joined by parents in the Gallup-McKinley County School District (GMCS) and Grants-Cibola County School District, 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 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 PSCOOTF 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 2015 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 thirteenth year of implementation.

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)

1998 - 2003

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 (PED)) 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 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 PSCOOTF'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 "Senate Bill (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, a 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 disqualifying 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.

2004 Legislation

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 state 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.

2005 Legislation

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 school 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).

2005 Interim and 2006 Legislation

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 House Bill (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, partial veto (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 (NMSBVI) and the New Mexico School for the Deaf (NMSD) 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 the 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.

2006 Interim and 2007 Legislation

During the 2006 interim, the task force heard testimony about the continuing statewide implementation of the FIMS program 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 membership (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 (commonly known as 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 school 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 based it on certain qualifications, including a state share of 70 percent or greater, voter approval of at least nine mills in property taxes for schools and eligibility for free or reduced-fee lunches of 70 percent or greater.

2007 Interim and 2008 Legislation

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 fiscal year (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, including measures to repeal subcontractor bonding requirements, to allow charter schools to transfer chartering authorities at any time and to expand Public School Insurance Authority coverage to include community use of a public school building.

2008 Interim and 2009 Legislation

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 Laws 2009, Chapter 258 (p.v.):

- 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 that 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.

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 (PSCOF) to develop and implement a geographic information system (Laws 2009, Chapter 115);
- amendments to the Public School Capital Outlay Act to include the NMSBVI and the NMSD 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 (ARRA).

2009 Interim and 2010 Legislation

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 ARRA 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 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).

2010 Interim and 2011 Legislation

Key issues that the PSCOOTF addressed were charter school facility issues, which 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. Representatives from charter schools and from the 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 2010 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 New Mexico Condition Index (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.

During the previous four years, the task force 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 work 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 changes in the New Mexico Administrative Code to modify proposal submission requirements and the resident preference; and
- process changes for the PSFA: develop a standardization template for submission of

requests for proposals for construction, with detailed instructions; develop a web-based training module for contractors and subcontractors; and develop a process for web-based training for evaluation of members and require members to acknowledge completing it.

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

- Laws 2011, Chapter 11 (HB 113), in which the Public School Capital Improvements Act and the Public School Buildings Act were amended to require charter schools to report anticipated and actual expenditure of distributions made pursuant to those acts; and
- Laws 2011, Chapter 69 (HB 283), which 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 which provides 18 months for charter schools to achieve this rating. The bill also exempts a school district that leases facilities to a charter school from State Board of Finance approval, and it 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.

2011 Interim and 2012 Legislation

The PSCOOTF addressed several key issues during the interim, including modifying statutory requirements for the bonding of subcontractors on public school projects. A subcommittee was appointed 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 present at the final meeting of the subcommittee agreed on several recommendations, only one of which required 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. Other changes were administrative and related to changes in PSFA guidelines and the New Mexico Administrative Code.

The PSCOOTF also spent time considering issues unique to the NMSD and the NMSBVI. 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 would make the NMSBVI and the NMSD eligible to participate in the standards-based process.

One of the task force's policy recommendations was enacted by the 2012 legislature but

was vetoed by the governor: the bill to allow the PSCOC to make optional or adjust the automatic Consumer Price Index rate for the lease-assistance program. Laws 2012, Chapter 53 (SB 196) allows the NMSBVI and the NMSD to participate in the Public School Capital Outlay Act standards-based process. Both of these special schools, which are established by the Constitution of New Mexico, have their own boards of regents and are overseen by the Higher Education Department, even though they are pre-kindergarten through twelfth grade schools. Enactment of this measure provides an additional source of funding for the capital outlay needs of these two historic institutions.

2012 Interim and 2013 Legislation

At the task force's request, the PSFA developed a series of policy briefs for task force members to use as resources for their 2012 interim policy discussions. These in-depth policy briefs provided background material on issues related to the statutory lease-assistance program, including standardizing language in lease documents, a policy review of the Public School Capital Outlay Act, capital outlay funding formula issues and charter school facilities issues. The briefs also provided policy options in each of these areas, some of which required legislative change and others that required changes to the New Mexico Administrative Code or PSCOC guidelines.

After discussion throughout the 2013 interim, the task force endorsed legislation to: (1) allow an annual distribution from the PSCOF for building systems repair, remodel or replacement; (2) allow the PSCOC more flexibility to determine local match waiver eligibility; (3) allow the PSCOC to make optional or adjust the automatic Consumer Price Index rate for the lease-assistance program; (4) provide a separate appropriation from the PSCOF to increase availability of funding for deferred maintenance; (5) amend the Public School Capital Outlay Act to reestablish the Charter School Capital Outlay Fund, which was repealed July 1, 2012, and to reestablish criteria for grant awards from that fund; and (6) amend the Charter Schools Act to allow the PSCOC to recommend suspension, nonrenewal or revocation of a charter based on the charter school's facility condition.

Two other task force-endorsed bills did not pass — one that would have delayed the repeal of the Charter School Capital Outlay Fund and one that would have made more consistent the language in the Procurement Code that addresses competitive sealed proposals.

2013 Interim and 2014 Legislation

With a record 18 new members (including, for the first time, nine advisory members), the task force began its tenth year of overseeing the implementation of the public school capital outlay standards-based process with discussion of a number of basic issues at its first two meetings of the interim, including staff presentations on interim committee procedures, a primer and brief background review of the task force's purpose and history and a review of the *Zuni* lawsuit. The task force also heard presentations from the state investment officer and his deputy

on the Public School Capital Outlay Act funding stream, which is the Severance Tax Permanent Fund, and issuance of severance tax bonds; a report on the current PSCOC awards; and a presentation from the New Mexico Finance Authority on other sources of funding to finance school-related buildings outside Public School Capital Outlay Act provisions.

The task force spent time at each meeting discussing concerns about the availability of facilities for charter schools to meet the statutory requirement that all charter schools be in public buildings by 2015, which is always a topic of concern. PSFA staff provided presentations on PSCOC finances, funding allocations and the Facilities Condition Index, as well as on utilization and maintenance issues related to public school facilities. PSFA staff also provided an update on the current status of the development of a standardized lease form as well as an update on the status of charter schools already in public buildings. School district staff and PSFA staff provided a presentation on opportunities to lease public spaces that local districts had been using.

Once again, the task force endorsed a bill to provide funding for building systems, and, once again, the bill did not pass. However, the bill to allow the PSCOC to provide allocations to purchase educational technology to meet assessments requirements of the common core currently adopted and being implemented by the PED did pass and was signed into law by the governor.

2014 Interim and 2015 Legislation

One of the areas that the task force considered during the 2014 interim focused on several possibilities for reprioritizing the current distribution of proceeds from the sale of supplemental severance tax bonds. Task force members heard testimony from PSFA staff regarding a solution that would not result in degradation of public school facilities while allowing for rebuilding of the Severance Tax Permanent Fund. Task force members agreed that achieving a balance between the two policy issues would be difficult but also agreed that some action must be taken.

During the first meeting of the interim, task force members learned that the Gallup-McKinley County School District (GMCS D) had requested from the Eleventh Judicial District judge in the *Zuni* lawsuit a status conference on the district's concerns with implementation of the standards-based process over the past 12 years. The district was granted the status conference in March. Several times during the interim, the task force took testimony from GMCS D representatives regarding the possibility of addressing the district's concerns with the standards-based process through administrative solutions. The task force was provided a presentation from the PSCOC and the PSFA explaining that about half of the GMCS D concerns would require legislative solutions, including funding of teacherages, implementation of provisions of Title IX of 1972 federal legislation that mandated equal opportunities in athletics for male and female athletes, construction of concession stands and other amenities for high school playing fields, facilities for Navajo language instruction, additional funding for facilities maintenance and state match requirements for PSCOC grant awards.

Besides hearing testimony from the PSCOC, PSFA and invited presenters on its statutory

duties, the task force heard testimony on the continuing development of standardized lease agreements, the Office of the State Auditor's report on the agency's risk review of four charter schools that resulted in the Federal Bureau of Investigation raids on the schools, the availability of public facilities for charter schools by the 2015 deadline and potential and actual conflicts of interest inherent in some charter school operating models.

At the task force's final meeting of the interim, members agreed to endorse for the third year in a row potential legislation to allow the PSCOC to provide temporary annual allocations to address building systems needs in existing buildings.

2015 Interim and 2016 Legislation

Task force work during the 2015 interim focused on several issues in addition to statutory requirements, including updates on reopening of the *Zuni* lawsuit; continued implementation of the Broadband Deficiencies Correction Program; implementation of the systems-based grant request program; maintenance, together with "right-sizing" the state's school buildings; charter school facilities issues; and an in-depth look at the public school capital outlay funding formula.

After having been endorsed by the task force and considered by the legislature for three consecutive years, a bill to allow for PSCOC funding for school districts to address building systems needs for existing school buildings finally passed and was signed into law. The new law allows the PSCOC to use Public School Capital Outlay Act funds to address systems needs without having to fund an entire, full-fledged building project.

PSCOOTF members spent a great deal of time discussing the availability of public facilities for charter schools, almost always a topic of concern and discussion at task force meetings, to meet the statutory requirement that charter schools be in public buildings by July 1, 2015. Staff and charter schools representatives testified that the 2015 deadline had come and gone without critical problems housing students in public buildings because of flexibility in statutory exceptions and phased-in implementation. PSCOOTF members noted concerns about conflicts of interest that seem to be inherent in some charter school operating models.

The task force authorized an in-depth study of the capital outlay funding formula and its performance as an "equalizing" mechanism since its implementation during the 2004 funding cycle, as well as the formula's effect on two disequalizing realities: (1) the political process for direct appropriations; and (2) that reliance on assessed valuation per student as a factor in the funding calculation creates some disequity. The task force established a subcommittee to study these issues and work with a contractor, the University of New Mexico's Bureau of Business and Economic Research (BBER). The BBER contractors were unable to finish the study during the 2015 interim but did report on possible standardization of the data collection process for reporting data.

By the end of the interim, the task force reached consensus on the following issues

related to school district property tax bases and the funding formula:

- in rural areas, private range land and crop land may provide substantial taxable value that is not necessarily indicative of the capacity of rural landowners to pay for school facilities;
- property valuations are subject to significant variability in districts in which oil and gas extraction comprise a significant share of property valuation;
- even though property valuations may be high in certain urban areas, they may not be indicative of the local population's ability to pay for school improvements; and
- the way in which the funding formula addresses overlapping school systems.

Legislation enacted in 2015 will have the longest-term effect on the public school capital outlay standards-based funding capacity. It amends the Severance Tax Bonding Act to phase in reductions in the statutory limits of supplemental severance tax bonds, the primary funding stream for the standards-based process. Beginning in fiscal year 2019, the funding stream's tax capacity will be reduced by 1.6 percent, and when fully phased in, revenue available to finance issuance of supplemental severance tax bonds to support the standards-based process will be reduced by 6.4 percent.

MEMBERSHIP, 2016 INTERIM

**PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
MEMBERSHIP, 2016 INTERIM**

Senator John M. Sapien, Chair	Senate Education Committee Chair
Representative Dennis J. Roch, Vice Chair	House Education Committee Chair's Designee
Senator Mary Kay Papen	Senate President Pro Tempore
Glenn Walters, Designee for Representative Don L. Tripp	Speaker of the House of Representatives
Representative Larry A. Larrañaga	House Appropriations and Finance Committee Chair
Senator John Arthur Smith	Senate Finance Committee Chair
Representative W. Ken Martinez	House Minority Member
Representative James Roger Madalena	House Minority Member
Representative Yvette Herrell	Interim Indian Affairs Committee Member
Senator Sander Rue	Senate Minority Member
Senator Stuart Ingle	Senate Minority Member
Representative Sharon Clahchischilliage	"Impact Aid" District Representative
Senator Benny Shendo, Jr.	"Impact Aid" District Senator
Paul Aguilar	Secretary of Education's Designee
Duffy Rodriguez	Acting Secretary of Finance and Administration
James P. White	Public member with expertise in education and finance
Randall Earwood	Public member with expertise in education and finance
Mike Phipps	Retired educator, public member with expertise in education and finance
Stan Rounds	Public member with expertise in education and finance
Carl Foster, Ed.D.	Retired educator, public member with expertise in education and finance, "impact aid" district

Vacant	Public member with expertise in education and finance, "impact aid" district
Kirk Hartom	Public member, non-"impact aid" district
T.J. Parks	Superintendent, non-"impact aid" district (Hobbs Municipal School District)
Vacant	Public member, "impact aid" district
Vacant	Superintendent, "impact aid" district (Bernalillo Public School District)

ADVISORY MEMBERS, 2016 INTERIM

Representative Eliseo Lee Alcon

Senator Daniel A. Ivey-Soto

Representative D. Wonda Johnson

Senator Howie C. Morales

Senator Cliff R. Pirtle

Representative Patricia Roybal Caballero

Representative Patricio Ruiloba

Senator John C. Ryan

Senator William E. Sharer

Representative James E. Smith

Senator William P. Soules

Senator Mimi Stewart

Senator Pat Woods

STAFF, 2016 INTERIM

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

Raúl E. Burciaga, Esq., Director, LCS

Michelle Jaschke, Researcher, LCS

Jeff Eaton, Legislative Fiscal Analyst, LCS

STATUTORY AUTHORITY AND DUTIES

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

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 through 10-8-8 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.

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

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 [Chapter 22, Article 25 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.

WORK PLAN AND MEETING SCHEDULE

**2016 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

Members

Sen. John M. Sapien, Chair	T.J. Parks
Rep. Dennis J. Roch, Vice Chair	Mike Phipps
Deputy Sec. Paul Aguilar	Acting Sec. Duffy Rodriguez
Rep. Sharon Clahchischilliage	Stan Rounds
Randy Earwood	Sen. Sander Rue
Carl Foster	Sen. Benny Shendo, Jr.
Kirk Hartom	Sen. John Arthur Smith
Rep. Yvette Herrell	Rep. Don L. Tripp
Sen. Stuart Ingle	James P. White
Rep. Larry A. Larrañaga	Gov. Appointee, Public Member
Rep. James Roger Madalena	Pro Tem Appointee, Public Member
Rep. W. Ken Martinez	Speaker Appointee, Public Member
Sen. Mary Kay Papen	

Advisory Members

Rep. Eliseo Lee Alcon	Sen. John C. Ryan
Sen. Daniel A. Ivey-Soto	Sen. William E. Sharer
Rep. D. Wonda Johnson	Rep. James E. Smith
Sen. Howie C. Morales	Sen. William P. Soules
Sen. Cliff R. Pirtle	Sen. Mimi Stewart
Rep. Patricia Roybal Caballero	Sen. Pat Woods
Rep. Patricio Ruiloba	

Background

Created in statute in 2005 (Sections 22-24-7 and 22-24-8 NMSA 1978), the Public School Capital Outlay Oversight Task Force oversees 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. Task force membership consists of 25 members (or their respective designees). State statute allows for a total of five meetings each interim.

Work Plan

The task force will focus on the following activities during the 2016 interim:

1. monitoring the progress and effectiveness of programs administered pursuant to the Public School Capital Outlay Act and the Public School Capital Improvements Act in terms of the continued implementation of the district court's order in the *Zuni* lawsuit;

2. monitoring existing permanent revenue streams to determine whether they remain adequate long-term funding sources for public school capital outlay projects, particularly in light of implementation of Laws 2015, Chapter 63 (Section 7-27-14 NMSA 1978) and the judge's order in the *Zuni* lawsuit;
3. monitoring the overall progress of bringing all public school facilities to the statewide adequacy standards developed pursuant to provisions in the Public School Capital Outlay Act, including examination of the original intent of establishment of the standards-based process and its evolution as it has been implemented;
4. examining the cost of ownership and operation of the state's public school facilities;
5. examining issues relating to charter school facilities, including:
 - A. progress in utilization of public buildings and compliance with the 2015 statutory deadline requiring charter schools to be in public buildings;
 - B. accountability for charter school and school district use of state-funded lease payments, including ongoing lease payment expenses versus capital outlay needs;
 - C. operational fiscal effects related to additional statewide square footage of charter schools; and
 - D. adequacy standards waivers for charter schools;
6. consideration of inclusion of teacherages in the standards-based process;
7. continuing to monitor the progress of implementation of the broadband deficiencies correction program;
8. reviewing provisions of public school capital outlay legislation and related administrative rules and making recommendations for changes as necessary;
9. continuing to monitor the inclusion of the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf in the standards-based process; and
10. examining issues related to public school district disposal of abandoned real property or real property that is no longer suitable for the school district's use as classroom spaces for students.

**Public School Capital Outlay Oversight Task Force
2016 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
June 10	Santa Fe
July 22	Santa Fe
September 19	Santa Fe
October 4	Santa Fe
November 14	Santa Fe

AGENDAS AND MINUTES

Revised: June 9, 2016

**TENTATIVE AGENDA
for the
FIFTY-SIXTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**June 10, 2016
Room 322, State Capitol
Santa Fe**

Friday, June 10

- 10:00 a.m. **Call to Order and Introductions**
—Senator John M. Sapien, Chair
—Representative Dennis J. Roch, Vice Chair
- 10:05 a.m. (1) **[An Assessment of New Mexico's Public School Capital Outlay Funding Formula](#)**
—Senator Mimi Stewart, Chair, Public School Capital Outlay Oversight Task Force (PSCOOTF) Funding Formula Subcommittee
—Jeffery Mitchell, Economist and Director, University of New Mexico Bureau of Business and Economic Research
- 11:30 a.m. (2) **[Standards-Based Funding Stream: Effect of Passage of Laws 2015, Chapter 63 \(House Bill 236\) on Program Funding Adequacy](#)**
—David Abbey, Chair, Public School Capital Outlay Council (PSCOC); Director, Legislative Finance Committee (LFC)
—Jeff Eaton, Legislative Fiscal Analyst, Legislative Council Service (LCS)
- 12:30 p.m. **Lunch**
- 1:30 p.m. (3) **[PSCOC and Public School Facilities Authority \(PSFA\) Fiscal Year 2015 Annual Report](#)**
—Robert Gorrell, Director, PSFA
- 2:30 p.m. (4) **[Broadband Deficiencies Program Update](#)**
—Ovidiu Viorica, Broadband Program Manager, PSFA
—Representatives from Governor's Office, Department of Information Technology and Public Education Department (Invited)
- 3:30 p.m. (5) **[Brief Review: PSCOOTF 2015 Interim](#)**
—Sharon Ball, Researcher III, LCS, PSCOOTF Staff

3:45 p.m. (6) [Proposed 2016 Interim Work Plan and Meeting Schedule](#)
—PSCOOTF Members and Staff

4:30 p.m. **Adjourn**

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

**June 10, 2016
Room 322, State Capitol
Santa Fe**

The first meeting of the Public School Capital Outlay Oversight Task Force was called to order by Senator John M. Sapien, chair, on June 10, 2016 at 10:09 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Sen. John M. Sapien, Chair
Rep. Dennis J. Roch, Vice Chair
Sen. Stuart Ingle
Rep. Larry A. Larrañaga
Rep. James Roger Madalena
Sen. John Arthur Smith
Antonio Ortiz (designate for Paul Aguilar)
Duffy Rodriguez
Carl Foster
James P. White
Randall Earwood

Absent

Rep. Sharon Clahchischilliage
Rep. Yvette Herrell
Rep. W. Ken Martinez
Sen. Mary K. Papen
Sen. Sander Rue
Sen. Benny Shendo, Jr.
Rep. Don L. Tripp
Kirk Hartom
T.J. Parks
Mike Phipps
Stan Rounds
Jerry Stagner

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Howie C. Morales
Sen. Cliff R. Pirtle
Rep. Patricia Roybal Caballero
Rep. James E. Smith
Sen. William P. Soules
Sen. Mimi Stewart
Sen. Pat Woods

Sen. Daniel A. Ivey-Soto
Rep. D. Wonda Johnson
Rep. Patricio Ruiloba
Sen. John C. Ryan
Sen. William E. Sharer

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Sharon S. Ball, Researcher/Drafter, LCS
Jeff Eaton, Research and Fiscal Policy Analyst, LCS
Michelle Jaschke, Researcher, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are available on the website and in the meeting file.

Friday, June 10

Welcome and Introductions

The meeting was called to order at 10:09 a.m. Senator Sapien welcomed everyone and asked members and staff to introduce themselves.

An Assessment of New Mexico's Public School Capital Outlay Funding Formula

Dr. Jeffery Mitchell, economist and director, University of New Mexico Bureau of Business and Economic Research (BBER), presented a summary of the full report of a study conducted last interim by the BBER under a contract with the LCS. The purpose of the study was to collect the data in the formula independently, to reproduce and validate the calculations that are published annually by the Public Education Department (PED) and to make recommendations on steps that may need to be taken to improve the formula.

In the review, the BBER determined that the way the PED is applying the formula's calculations is correct and that the formula is being applied correctly. However, Dr. Mitchell stated that, even so, the study finds reasonable concerns that the formula does not make the most effective use of state resources and does not provide the predictability necessary for long-term planning. Dr. Mitchell provided several specific examples of differences between school districts in terms of construction costs; one being location, such as isolated rural areas versus densely populated urban areas; another is low enrollment levels in more rural school districts that cause the cost per student to be higher. Dr. Mitchell specifically pointed out the inherent volatility in some districts that rely on oil and gas production severance taxes. Because the formula weighs the property values very heavily, these districts experience very large swings due to the volatility in the oil and gas market.

Dr. Mitchell concluded that the current formula works as it was designed to work. He commented that differences between urban and rural school districts may be skewing equity and a restructuring of the formula may be needed to address this concern. He also suggested that at the core of the issue is the definition of what "ability to pay" means, noting that this definition may need to be more clearly defined apart from the structural components of the formula. Dr. Mitchell proposed that the BBER could, over a nine-month period, provide the task force and staff with interactive spreadsheets to look at the effects of various formula factors. This work could be done for under \$100,000.

Dr. Mitchell also suggested that access to the source data of the formula be made more accessible and transparent.

Responding to questions regarding issues related to rural districts, Dr. Mitchell discussed rural districts' possible recalcitrance in applying for Public School Capital Outlay Council (PSCOC) grant awards. He suggested that some rural school districts may not be taking advantage of state match funding in the standards-based process because of the reluctance of their taxpayers to commit themselves to the debt associated with approval of bond issues. He noted that some landowner taxpayers are "land rich" but cash poor. Task force members continued the discussion, noting especially "land rich" and "property tax poor" districts like Corona and Vaughn. Dr. Mitchell said that he is not suggesting two different formulas, one for rural school districts and one for urban school districts, but rather one funding formula that addresses the particulars that make the current formula appear inequitable.

Discussing the possibilities of changing the current formula, some members expressed concern that changes might bring about litigation and suggested a refinement of the definition of adequacy. Acknowledging the difficulty of defining adequacy, Dr. Mitchell acknowledged that defining adequacy well is central to the efficient and equitable expenditure of funds but that it is a difficult topic to define. The definition of adequacy, and differences among stakeholders about what constitutes adequacy, makes reaching consensus difficult. Dr. Mitchell and task force members also discussed problems with "adequacy creep"; i.e., districts with a property tax base sufficient to combine local funding with state funding to go beyond adequacy.

Some members expressed concerns about school districts with extensive federal lands that do not generate property taxes and the continuing concern about the state's crediting school districts with the amount of their respective federal impact aid allocations.

In response to continued member discussion about the possible adjustments to the formula, Dr. Mitchell mentioned several ways to work with the existing formula. Dr. Mitchell reiterated that the current computation is being appropriately executed but that it measures only two factors to capture ability to meet the required state match. He also discussed a possible total restructuring of the formula. He stated that, at a minimum, the formula study should look at adding more factors to capture ability to pay, such as income levels and per-student cost differences based on geography.

Members briefly discussed public-private partnerships as a possible way to bring more funding to public school construction. Dr. Mitchell said that more funding would help but that he was not familiar with the use of public-private partnerships. He noted, however, that there may be constitutional problems in forging such partnerships, given the current definition of "public" school.

Some members commented that perhaps another area in need of analysis is the difference between the cost of private sector construction and public sector construction.

Standards-Based Funding Stream: Effect of Passage of Laws 2015, Chapter 63 (House Bill (HB) 236) on Program Funding Adequacy

David Abbey, chair, PSCOC, and director, Legislative Finance Committee, provided background on the PSCOC and how the expenditure of more than \$2.5 billion dollars over the last 15 years improved or replaced the worst schools in the state and said that, overall, most of the schools in the state are in fairly good condition and that, going forward, most projects will be renovations of existing facilities and systems replacement rather than completely new facilities because of the progress that has been made so far.

Mr. Eaton presented the fiscal impacts of HB 236, passed by the 2015 legislature to reduce the amount of supplemental severance tax bonds available for distribution through the standards-based process. He explained that, prior to the *Zuni* lawsuit, the distribution of severance tax revenue to the Severance Tax Permanent Fund (STPF) was 50 percent of revenue collections. This distribution to the corpus of the fund was reduced over a period of six years (1999-2004) to five percent. The other 45 percent of severance tax bond proceeds provides funding for the PSCOC's programs. Because of the reduction in revenue inflows, the STPF corpus and resulting distributions to the state general fund have remained flat. Mr. Eaton testified that HB 236, when fully phased in during fiscal year (FY) 2022, will increase the distribution to the STPF to 13.8 percent, which will increase the corpus of the STPF more rapidly with resulting annual increases in distributions to the state general fund.

Mr. Eaton explained that, as introduced, HB 236 reduced funding designated for legislative capital projects, education (PSCOC), water projects, colonias infrastructure projects and tribal infrastructure projects, resulting in an increase in the percentage of contributions into the STPF. The bill phased in the reductions across all programs over four years (FY 2016-FY 2019). Changes were made to the bill, and the final draft signed into law delays the impacts on education capital until FY 2019 and makes adjustments to the capacity earmarked for tribal infrastructure and colonias infrastructure projects to hold these beneficiaries nearly harmless.

Mr. Eaton went on to explain the different reductions to the various programs and the phasing, indicating that, while the greatest reduction was to the PSCOC program from 45 percent to 38.6 percent, the impact to the PSCOC program is delayed until FY 2019. He said that reductions in funding are phased in gradually over four years (fully implemented in FY 2022) to take into account the fact that many projects were previously awarded and that the immediate reductions in funding would have a negative impact on projects already awarded.

Mr. Abbey provided an overview of bonding capacity, indicating that capacity has fallen by 40 percent over the last two years. He said that, even with the fewer revenues, the Facilities Condition Index (FCI) statewide is at 35 percent. He noted that strategies being developed will be used to maintain this FCI average, even with minimal funding caused by oil falling from \$95.00 per barrel to \$39.00 per barrel.

Mr. Abbey guided the task force through the PSCOC financial plan, highlighting the fixed program costs and the amount remaining for PSCOC awards. He noted that, because of the falling revenues, the PSCOC is considering only those schools ranked in the top 40 of the weighted New Mexico Condition Index for this year's award cycle. He added that very few schools outside this funding pool are in very poor condition, so the state is in a good position to have a much smaller awards program. Mr. Abbey indicated that awards may be made in October but expects minimal demand for new schools. He said that the timing is right to start making systems repair and replacement awards, which the PSCOC will pilot this year.

Mr. Abbey continued presenting the PSCOC detailed project schedule, which coincides with the timing of current and future bond sales so the awards that are made are "right-sized" for the current and available bonding capacity.

Task force members asked about funding for pre-kindergarten facilities and school buses in the PSCOC financial plan, noting that, in the out years it appears there is no funding in the plan for those line items. Mr. Abbey indicated that the Public School Capital Outlay Fund was used temporarily for these programs because of the downturn in the economy. But the expectation is that, as the economy recovers, those items will be able to be funded with senior severance tax bonds, which were the funding source in years prior.

Members expressed concern that the increased inflows to the STPF might not be sufficient to make the fund healthy. Mr Eaton explained that the increase will make it grow and that it will be relatively healthier. He said that it has been long recognized that the state general fund revenue sources are somewhat volatile, which is due to the significant impact that the oil and gas industry has on the New Mexico economy. He said that, to the extent that the permanent funds can increase their share of the revenue portfolio, the year-to-year change in the general fund revenues as a whole will be less volatile.

Task force members expressed some concern that the PSCOC is moving away from building new school facilities and toward repairing and replacing various building systems, and that it is moving away from construction-centric activities to emphasizing maintenance. Mr. Abbey explained that building systems are less maintenance-focused than they are strategic repairs of a system or combination of systems to extend the life of a facility.

Responding to discussion and questions about the condition of charter schools, Mr. Abbey said that, in general, charter school facilities are in very good condition and that they have significant support from the PSCOC through the lease assistance program, which awards over \$14 million annually to support facility lease costs statewide. In response to questions about charter schools' progress toward acquiring public facilities, Robert Gorrell, director, Public School Facilities Authority (PSFA), indicated that the PSFA was in the process of surveying all charter schools and does not currently have that information but will present it at a future meeting. Mr. Abbey said that there are pockets of declining enrollment in the state and that there

is excess capacity and empty space. The goal is to utilize unused spaces and bring existing facilities closer to full capacity utilization.

In response to questions and comments about how HB 236 would affect compliance with requirements of the *Zuni* lawsuit, Mr. Abbey responded that the Grants-Cibola County School District did not join Gallup and Zuni in their recent filing. He explained that Grants has been given substantial assistance lately to help overcome some challenging site issues. Task force members noted that the passage of the systems bill helped to address the needs in the litigant districts. Mr. Abbey added that, one issue that may still be on the radar is the need for teacherages in the litigant districts and other districts that have schools that are isolated in rural areas. Mr. Abbey stated that the need for teacherages remains a big issue for the Gallup-McKinley County School District.

PSCOC and PSFA FY 2015 Annual Report

Mr. Gorrell presented the FY 2015 PSCOC annual report highlights to the committee, among which are the following:

- the PSCOC awarded a total of \$198.2 million for 63 individual school projects throughout the state;
- 80 percent of project funds were under contract within 15 months from the date of award;
- the 2015 state average FCI is 36.2 percent, roughly flat since FY 2010;
- maintenance performance statewide remains poor; and
- the current funding source (supplemental severance tax bonds) will not meet estimated fund requirements in order to maintain the overall condition of schools at the current level.

Mr. Gorrell directed members' attention to the listing of awards made in 2016. He noted that all of the PSCOC projects that will be ready in the fall of 2016 are "state-of-the-art" facilities. He concluded with a short list of potential strategic issues that the task force may wish to consider during the interim.

Task force discussion revolved around several issues, including the impact of the inclusion of charter schools on the statewide facility metrics. In response to a member question, Mr. Gorrell said that the most significant impact is the increase in gross square footage of school facility spaces. Another issue discussed relates to utilization of facilities. Members discussed the fact that school buildings are not used very efficiently, with schools closed early in the afternoon and all summer long. In response to the discussion, Mr. Gorrell noted that multi-use of school facilities for non-education purposes is permitted in statute and is insured by the Public School Insurance Authority. Anecdotally, Mr. Gorrell said that he is aware of a new school that was not made available by the school district for other uses because the school district was concerned that the facility would suffer premature wear and tear. On the other hand, members talked about instances in their respective districts in which facilities are frequently used during

the summer for activities, including K-3 Plus programs and summer school programs. Members also discussed instances in which school health clinics are opened to the public.

In response to task force discussion about the inclusion of the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf on the ranking list, Mr. Gorrell explained that individual buildings at the two special schools are included in the ranked list. He said that, after this year, the schools will be scored based on the aggregation of all the buildings on the campus, as other schools are. This variance in how the PSCOC traditionally ranks schools was permitted in statute for five years, and 2016 is the final year for their individual inclusion. He said that the PSCOC has made many significant improvements at both schools so that when each campus is evaluated, based on the entire campus, the schools will likely have a low ranking.

Broadband Deficiencies Correction Program Update

Ovidiu Viorica, broadband program manager, PSFA, presented an update of the PSFA's Broadband Deficiencies Correction Program. Mr. Viorica explained the "High-Level-View" of the way in which internet connectivity gets into classroom learning environments. Operationally, the goal is to have one megabit per second (Mbps) per student capacity in New Mexico schools. Currently, all school districts fall short of this goal, with 31 percent of school districts failing to have even 100 kilobits per second per student.

In terms of speed and capacity to the wide area network, the goal is to have one gigabit per second per school. Currently, only 28 percent of schools are meeting this target. The goal for internal equipment in the classroom is 1:1 per student in each classroom. According to a study and report by Hewlett Packard Corporation, 92 percent of schools need infrastructure upgrades.

Mr. Viorica continued, identifying future program priorities, including making fiber-optic upgrades, making network equipment and WiFi upgrades, improving internet affordability and developing a plan to make improvements sustainable. Mr. Viorica directed members' attention to Attachment C of the handout, which shows internet service provider cost by Mbps per month for each school district in New Mexico. This graphic illustrates the cost savings achieved by a consortium of school districts in the east central part of the state, identified on the graphic as "REC 6", which combined that demand for service to achieve better pricing from the winning service provider. Mr. Viorica concluded that, up to this point, much progress has been made in improving internet access in the classroom, yet much work is to be done. He anticipates that next year, all schools in the state will be connected by fiber optics, alleviating one capacity choke point.

Committee members discussed concerns over the broadband requirements and other state unfunded mandates. A member asked if there had been any discussion with the Public Regulation Commission about the cost of rental on utility poles. The member mentioned two school sites that are 10 miles away from the nearest municipality, and renting utility poles was

required to get internet access to those sites. Mr. Viorica said that he had not heard of the issue before the day's meeting; however, he said that he believes that the expenditure might be e-rate eligible and that the PSFA endeavors to study this type of expenditure to better understand the scope and depth of long-term operating costs of the broadband improvements.

Task force members discussed funding for provision of the fiber-optic and network upgrades identified as goals for the summer and fall 2016 program. Mr. Viorica stated that the availability of providers is still somewhat unclear but is now coming into focus. In some areas, there is only one provider, while in other areas, there are several. He explained that encouraging competition is a huge priority for the program. Mr. Viorica indicated that providers are not readily willing to give the status of their fiber-optic capabilities.

In response to a task force question about pricing, Mr. Viorica said that pricing in many areas is still rather high because the contracts for service tend to be for three to five years. He said that the PSFA is recommending neutral aggregation points for service in order to encourage redundancy in service as well as to level the playing field competitively among service providers. Concerning fiber-optic connections and "scalable" service, he said that fiber-optic cabling has capacity in the one-terabyte-per-second range, so it has ample bandwidth for the service requested. He added that T1 cabling and copper cabling, in contrast, are limited to much lower transmission speeds.

In response to a question about funding from sources other than e-rate, Mr. Viorica said participants in the inter-agency broadband deficiencies correction group are actively exploring other funding sources and will be providing that information to the task force as it becomes available. Regarding cross-agency cooperation, he said that the Department of Information Technology (DoIT) is currently collaborating with other entities in the public and private sector. Initially, the DoIT said lack of funding for staff was an issue in investigating other funding sources, but it now reports that it has the resources necessary to move forward more deliberately.

Task force members agreed that it seems the state is moving in the right direction to online education and that the computer-based curriculum is demonstrating measurably higher test scores.

Brief Review: PSCOOTF 2015 Interim and Proposed 2016 Interim Work Plan and Meeting Schedules

Ms. Ball directed members' attention to a copy of the PSCOOTF 2015 annual report and the 2016 proposed work plan in the meeting materials. She said that, at present, the state has not yet indicated activity from plaintiffs in the *Zuni* lawsuit.

Moving to the 2016 work plan, she said that it includes monitoring the effectiveness of the programs of the PSCOC in terms of the *Zuni* lawsuit, monitoring the revenue stream, monitoring progress in improving facilities, examining the cost of ownership and operation of facilities, examining issues related to charter schools and their facilities, consideration of the

inclusion of teacherages in the standards-based process, monitoring the progress of the Broadband Deficiencies Correction Program, reviewing provisions of school capital outlay legislation and making recommendations for changes as necessary and continuing to monitor the inclusion of the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf in the standards-based process.

Task force members had a discussion about the fact that, given all the new buildings constructed in the state over the past decade or so, some school districts have unusable buildings that they have had to abandon because the buildings are unsafe or even condemned. Districts have discovered that the cost of disposing of these school buildings has been and continues to be a very expensive proposition. A discussion ensued, and task force members moved to amend the work plan to include the topic of building disposal in the 2016 interim. The motion was adopted without objection. The task force moved to adopt the work plan as amended without objection.

Adjournment

There being no further business before the committee, the first meeting of the PSCOOTF for the 2016 interim adjourned at 3:29 p.m.

Revised: July 21, 2016

**TENTATIVE AGENDA
for the
FIFTY-SEVENTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**July 22, 2016
Room 307, State Capitol
Santa Fe**

Friday, July 22

- 10:00 a.m. **Call to Order, Introductions**
—Senator John M. Sapien, Chair
—Representative Dennis J. Roch, Vice Chair
- 10:05 a.m. **Approval of June 10, 2016 Minutes**
- 10:10 a.m. (1) **Update on the Zuni Lawsuit**
—Frank Chiapetti, Superintendent, Gallup-McKinley County Schools
 (GMCS)
—Ron Triplehorn, Director of Facilities, GMCS
- 11:10 a.m. (2) **Public School Capital Outlay Council (PSCOC) Standards-Based Grant
Awards: 2016-2017 Funding Cycle, Project Status Report and Schools
Opening This Fall**
—Rocky Kearney, Deputy Director, Public School Facilities Authority
 (PSFA)
- 12:00 noon **Lunch**
- 1:00 p.m. (3) **PSCOC Financial Plan**
—Denise Irion, Chief Financial Officer, PSFA
- 1:45 p.m. (4) **Charter Schools: Progress Toward Public Facilities Deadline**
—Martica Casias, Planning and Design Manager, PSFA
—Greta Roskom, Co-Executive Director, New Mexico Coalition for Charter
 Schools
—Donna Eldredge, Principal, Coral Community Charter School,
 Albuquerque

3:00 p.m. (5) **Public Education Department (PED) Suggested Legislation:
Amendments to the Public School Capital Improvements Act ("SB 9")
and the Public School Buildings Act ("HB 33")**
—Antonio Ortiz, Director, Capital Outlay and Transportation Bureaus, PED

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

**MINUTES
of the
FIFTY-SEVENTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**July 22, 2016
Room 307, State Capitol
Santa Fe**

The fifty-seventh meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator Mimi Stewart, acting chair, on July 22, 2016 at 10:12 a.m. in Room 307 at the State Capitol in Santa Fe.

Present

Sen. Mimi Stewart, Chair's designee, Acting
Chair
Antonio Ortiz, designee for Dep. Sec. Paul
Aguilar, Public Education
Department
Rep. Sharon Clahchischilliage
Dr. Carl Foster
Kirk Hartom
Sen. Stuart Ingle
Rep. Larry A. Larrañaga
Rep. James Roger Madalena
Sen. Mary Kay Papen
Debbie Romero, designee for Acting
Secretary Duffy Rodriguez,
Department of Finance and
Administration
Sen. Benny Shendo, Jr.
Rep. James E. Smith, designee for
Rep. Don L. Tripp
James P. White

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Howie C. Morales
Rep. Patricio Ruiloba
Sen. Pat Woods

Absent

Sen. John M. Sapien, Chair
Rep. Dennis J. Roch, Vice Chair
Randall Earwood
Yvette Herrell
T.J. Parks
Mike Phipps
Sen. Sander Rue
Sen. John Arthur Smith
Jerry Stagner
Don L. Tripp

Sen. Daniel A. Ivey-Soto
Rep. D. Wonda Johnson
Sen. Cliff R. Pirtle
Rep. Patricia Roybal Caballero
Sen. John C. Ryan
Sen. William E. Sharer
Sen. William P. Soules

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)

Sharon Ball, Researcher, LCS

Jeff Eaton, Fiscal Analyst, LCS

Michelle Jaschke, Researcher, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Friday, July 22**Welcome**

The chair welcomed members and guests. On a motion duly made and seconded, the minutes of the fifty-sixth meeting of the PSCOOTF were approved without objection.

Update on the *Zuni* Lawsuit

Superintendent Frank Chiapetti, Gallup-McKinley County School District (GMCS D), and GMCS D Director of Facilities Ron Triplehorn updated the members on the status of the *Zuni* lawsuit. The litigant school districts are seeking a judicial review of the progress made toward remedying the lack of uniformity in funding public school capital improvements. Superintendent Chiapetti stated that the litigant school districts continue to suffer funding inequities as a result of the limited tax base and bonding capacity in those districts. He outlined the following necessities that are not covered by the current adequacy standards:

- off-site improvements, including extension of utilities to school sites;
- teacherages;
- payment of Navajo Nation business activity taxes;
- security systems;
- furniture (some), fixtures and equipment;
- competition athletic fields and facilities; and
- landscaping.

Mr. Triplehorn reported that the GMCS D struggles to bridge what he described as a significant gap between adequacy standards and educational specifications, particularly with regard to meeting the needs of pre-kindergarten and "at-risk" student populations and addressing the mandates to provide Navajo language and culture classes and Title IX athletic facilities for female students. In response to member questions, he stated that the biggest disparity the district wants to see addressed is that property-tax-wealthy school districts are able to build public schools significantly above adequacy standards without taxing themselves to the extent that the GMCS D voters tax themselves simply to meet matching requirements. Some members noted

that the funding formula penalizes impact aid districts, as 75 percent of the federal "payments in lieu of taxes" (PILT) for impact aid districts goes to the state for redistribution under the formula.

Assistant Attorney General Tim Williams informed task force members that hearings in the case have been scheduled for five days beginning on October 17, 2016. A special master was appointed after the lawsuit was initiated in 1998; however, Mr. Williams reported that Eleventh Judicial District Court Judge Louis E. DePauli, Jr., intends to hear the arguments without appointing a new special master. Mr. Williams reported that many depositions have been taken but that the discovery process is still active, and he anticipates taking more depositions before the hearings in October.

Task force members discussed the following issues related to the *Zuni* lawsuit:

- the economic impact of mine and forest product closures in the litigant school districts and legislative initiatives to establish an inland port and industrial center in the area;
- changes in GMCS D student enrollment;
- legislative efforts to address area needs with a \$15 million five-year building systems replacement initiative;
- legislative efforts to address area needs with a \$15 million five-year broadband development initiative;
- changes to the adequacy standards since the lawsuit was initiated;
- the status of teacherages in the GMCS D;
- the Grants-Cibola County School District decision not to actively participate in the upcoming status hearing;
- the Navajo Nation's limited responsibilities for funding schools that serve Navajo chapters; and
- the duplication of effort and fluctuations in enrollment resulting from Bureau of Indian Affairs school operations competing with state public school operations in the litigant districts.

Public School Capital Outlay Council (PSCOC) Standards-Based Grant Awards: 2016-2017 Funding Cycle, Project Status Reports and Schools Opening This Fall

Deputy Director Rocky Kearney, Public Schools Facility Authority (PSFA), and PSFA Programs Support Manager Casandra Cano presented a preliminary ranking by the weighted New Mexico Condition Index (wNMCI) for schools for the 2016-2017 funding cycle. Ms. Cano reported that the PSCOC grant awards are delayed somewhat this year as a result of the need to correct reporting errors in the wNMCI data. It is anticipated that final awards for the 2016-2017 cycle will be made in October 2016. PSFA staff presented information on the following PSCOC awards:

- fiscal year (FY) 2016 new and out-of-cycle awards totaling over \$150 million;
- FY 2016 broadband deficiencies correction program awards;

- FY 2017 out-of-cycle awards totaling over \$95 million; and
- FY 2006-FY 2016 historical summary of standards-based awards.

Mr. Kearney and Ms. Cano also presented information on the current status of PSCOC projects and the funding needed to maintain the Facility Condition Index (FCI) at a level that will protect the state's investment in school facilities. Staff reviewed the minor changes in the three-year average of the wNMCI for the top 30 schools on the ranked list and for the statewide FCI. Mr. Kearney reported that the focus of PSFA programs has shifted to the building systems initiative as a result of current and projected budget cuts for new construction and as supported by the stabilized condition indices. Task force members discussed the possibility of school closures. The chair asked that the PSFA provide a copy of a white paper that the PSFA has recently prepared on the issue of school closures and facility disposition.

PSCOC Financial Plan

Chief Financial Officer Denise Irion, PSFA, presented the PSCOC financial plan and a summary of changes affecting projects in Socorro and Alamogordo. Ms. Irion also presented a project award schedule detailing planned expenditures by quarter for active awards as well as projections for upcoming awards cycles through FY 2020. In response to member questions, Ms. Irion explained that the PSCOC seeks to dovetail local match expenditures with state funding to assure that all funds are spent within the allotted time periods and in accordance with federal tax guidelines. Ms. Irion reviewed upcoming projects for PSCOC action, noting that some adjustments may occur in the design and building systems awards categories.

Charter Schools: Progress Toward Public Facilities Deadline

Martica Casias, planning and design manager, PSFA, presented a status update for charter schools showing how the schools are progressing toward meeting the mandate for all charter schools to be located in public facilities. She observed that school charters cannot be renewed unless certain conditions are met, including the requirement to locate in public facilities when such space is available. It was noted that charters self-report school district space available for charter school use. Ms. Casias also presented information showing that the amount of lease assistance provided to charter schools has increased from \$2 million in FY 2005 to nearly \$15 million in FY 2015. Task force members discussed lease-to-purchase agreements and the variety of ways in which those agreements can be constructed.

Greta Roskom, co-executive director, New Mexico Coalition for Charter Schools, discussed some of the impediments to locating charter schools in public facilities, including the requirement that the Public Education Department (PED) approve all lease-to-purchase agreements. She observed that nonprofit status is not available to charter schools in New Mexico and that many schools have chosen to establish private nonprofit foundations to help purchase facilities and raise money for the schools. Ms. Roskom reported that the letter grades assigned to schools by the PED can impede loan-making to the schools for the purchase of facilities. The lack of a centralized bank of information identifying available space in the school districts for charters to draw upon is also problematic. One member asked about conflicts of interest when

staffing for a charter school overlaps with the directorship of the school's foundation. Ms. Roskom stated that there are requirements to identify such conflicts of interest.

Task force members asked that the PSFA provide information on the number of charter schools that are in a lease-to-purchase agreement supported by a private nonprofit foundation and that clarification be provided as to what entity will own the purchased facilities in that situation should the school close. One member asked how leasing from a nonprofit affects a charter school's ability to receive capital outlay funds from the state. It was noted that special conditions will be set in such instances by the State Board of Finance and the Office of the Attorney General. Further, it was noted that capital outlay funding may not be used to pay for lease-to-purchase agreements, except in the instance of the last lease to purchase payment that would establish state ownership of the facility. In response to a member's question, Ms. Roskom reported that she had no knowledge of any plan on the part of charter schools to initiate a lawsuit against the state. It was also noted that the PSFA has considerable information available regarding vacant space in the school districts that charter schools may choose to reference.

PED Suggested Legislation: Amendments to the Public School Capital Improvements Act (SB 9) and the Public School Buildings Act (HB 33)

Mr. Ortiz, director, Capital Outlay and Transportation Bureaus, PED, presented suggested changes to existing legislation to address the following issues:

- establishment of alternative methods for distribution of tax revenues flowing to charter schools as a result of the imposition of property tax millage according to provisions of the Public School Capital Improvements Act, the Public School Buildings Act and the Oil and Gas Ad Valorem Production Tax Act if a county or school district chooses not to distribute those revenues to the eligible charter school;
- whether the PED should continue to determine which items are eligible for reimbursement to charter schools and school districts under SB 9 and HB 33, or if the districts can make those determinations; and
- whether prior-year data may be used to make state match calculations to facilitate the distribution of bond money.

Members expressed some reservations with regard to allowing school districts to make determinations regarding which items are eligible for reimbursement. The chair asked Mr. Ortiz to work with Ms. Ball to develop some alternatives for amending SB 9 and HB 33 to address the PED's other concerns to present to the task force.

Adjournment

There being no further business to come before the task force, the fifty-seventh meeting of the PSCOOTF adjourned at 3:30 p.m.

**TENTATIVE AGENDA
for the
FIFTY-EIGHTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**October 20, 2016
Room 322, State Capitol
Santa Fe**

Thursday, October 20

- 10:00 a.m. **Call to Order, Introductions**
—Senator John M. Sapien, Chair
—Representative Dennis J. Roch, Vice Chair
- 10:05 a.m. **Approval of July 22, 2016 Minutes**
- 10:10 a.m. (1) **[Public School Capital Outlay Oversight Task Force \(PSCOOTF\)
Resource Booklet: Update](#)**
—Sharon S. Ball, PSCOOTF Staff, Senior Researcher, Legislative Council
Service
- 10:20 a.m. (2) **[Public School Capital Outlay Revenue Stream Update: State
Investment Council \(SIC\) Report](#)**
—Steven K. Moise, State Investment Officer, SIC
—Charles Wollmann, Director, Communications and Legislative Affairs,
SIC
- 11:30 a.m. (3) **[Public School Capital Outlay Council \(PSCOC\) Financial Plan](#)**
—David Abbey, Chair, PSCOC; Director, Legislative Finance Committee
—Denise Irion, Chief Financial Officer, Public School Facilities Authority
(PSFA)
- 12:30 p.m. **Lunch**

- 1:30 p.m. (4) **Charter Schools' Facilities Issues**
- **Progress Toward the Public Facilities Deadline**
 - **Lease-Purchase Agreements**
 - **PSCOC Adoption of Standardized Lease Frameworks**
- Rachel Gudgel, Esq., Member, PSCOC; Director, Legislative Education Study Committee
- Hipolito "Paul" Aguilar, Member, PSCOC; Deputy Secretary, Public Education Department
- Patricia Matthews, Esq., Matthews Fox, Charter School Legal Counsel
- 2:45 p.m. (5) **Cost of Public School Facilities Ownership**
- Katie McEuen, Research and Policy Analyst, PSFA
- 4:00 p.m. **Adjourn**

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

**October 20, 2016
Room 322, State Capitol
Santa Fe**

The fifty-eighth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator John M. Sapien, chair, on October 20, 2016 at 10:20 a.m. in Room 322 at the State Capitol in Santa Fe.

Present

Sen. John M. Sapien, Chair
Rep. Dennis J. Roch, Vice Chair
Dep. Sec. Paul Aguilar, Public Education
Department
Dr. Carl Foster
Rep. Harry Garcia
Dr. Reinaldo Garcia
Kirk Hartom
Sen. Stuart Ingle
Rep. Larry A. Larrañaga
Rep. James Roger Madalena
Acting Secretary Duffy Rodriguez,
Department of Finance and
Administration
Stan Rounds
Sen. Benny Shendo, Jr.
Sen. John Arthur Smith
Sen. Mimi Stewart, designee for Sen. Mary
Kay Papen

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Howie C. Morales
Sen. Cliff R. Pirtle

Absent

Rep. Sharon Clahchischilliage
Randall Earwood
Rep. Yvette Herrell
Sen. Mary Kay Papen
T.J. Parks
Mike Phipps
Sen. Sander Rue
Rep. Don L. Tripp

Sen. Daniel A. Ivey-Soto
Rep. D. Wonda Johnson
Rep. Patricia Roybal Caballero
Rep. Patricio Ruiloba
Sen. William E. Sharer
Rep. James E. Smith
Sen. William P. Soules
Sen. Pat Woods

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)

Sharon S. Ball, Senior Researcher, LCS

Jeff Eaton, Research and Fiscal Policy Analyst, LCS

Michelle Jaschke, Researcher, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Thursday, October 20**Welcome and Approval of Minutes**

The chair welcomed members and guests and asked that the members introduce themselves. On a motion duly made and seconded, the minutes of the fifty-seventh meeting of the PSCOOTF were approved without objection.

PSCOOTF Resource Booklet Update

Ms. Ball presented an overview of the information contained in the PSCOOTF Resource Booklet. Ms. Ball noted that much of the information is updated annually, including information on the Severance Tax Permanent Fund (STPF) from the State Investment Council (SIC), award offset information and Facility Condition Index (FCI) rankings from the Public Education Department (PED) and a range of relevant tax information from the Department of Finance and Administration. The booklet includes historical material tracing the PSCOOTF's roots back to 1998, when the *Zuni* lawsuit was filed, as well as the 2002 report of the special master in that case. The booklet is posted on the legislature's website and is available as a publication from the LCS.

Public School Capital Outlay Council (PSCOC) Revenue Stream Update: SIC Report

Steven K. Moise, state investment officer, SIC, and Charles Wollmann, director of communications and legislative affairs, SIC, updated task force members on the status of the PSCOC revenue stream. Mr. Moise provided an overview of the assets under management by the SIC, including the Land Grant Permanent Fund (LGPF), the STPF, the Tobacco Settlement Permanent Fund (TSPF) and the Water Trust Fund. In addition, the SIC manages the assets of other government clients who have been drawn to the economies of scale offered by the SIC. Combined fund values for all of these funds and governmental client assets as of August 30, 2016 total \$20.61 billion.

Mr. Moise presented a detailed breakout of investment allocation and investment performance over time as of August 31, 2016. He observed that despite strong stock performance in July and August of this year, performance overall is still below investment

targets. A target investment return of seven percent is set for the LGPF, and a target of 6.75 percent is set for the STPF. Last year, the SIC reduced its expectations for returns in anticipation of the low-return environment ahead. Inflows to the permanent funds are expected to stay below average for some time, largely because of falling gas and oil prices. Mr. Moise reported that investments must earn more in the face of diminished inflows in order to prevent dipping into the corpus of the funds. A summary of the widely varying returns and inflows and outflows over the past five years was presented. Mr. Moise reported that the rolling five-year average used to determine distributions from the permanent funds is an important tool that helps to stabilize the corpus of the funds over time.

Task force members and SIC staff discussed the impact of House Bill (HB) 236, passed during the 2015 legislative session to increase inflows to the STPF from the current five percent to a target of nearly 14 percent in fiscal year (FY) 2022 through a number of phased-in reductions to beneficiary set-asides. A member noted that the reductions to the Public School Capital Outlay Fund (PSCOF) will not begin to be phased in for two more years, and that, therefore, the real impact of the HB 236 reductions has yet to be assessed. Mr. Wollmann agreed that the SIC needs time to assess the full effect of HB 236 before any further reductions are made to distributions.

Mr. Wollmann proceeded to outline some of the SIC's investment strategies, including the New Mexico Private Equity Investment Program (NMPEIP). He reported that the early years of the program focused on economic development, but current strategy prioritizes financial return over job creation. He reported that the NMPEIP has proven to be a valuable component of the SIC portfolio, bringing an additional \$6.00 in outside investment in venture capital activities for start-up companies for each SIC dollar invested. The SIC can invest up to nine percent of the STPF in the NMPEIP, although the current target is five percent. Statutory changes included in Senate Bill 15, passed during the 2016 regular legislative session, removed the requirement that NMPEIP participants have an in-state office or in-state staffing.

In summary, Mr. Moise reported that the seven- to 10-year macroeconomic and financial market outlooks are challenging. A doubly negative impact on the funds is anticipated, with downturns in both inflows and returns on investment. In response to members' questions regarding the cost of investing, Mr. Wollmann reported a total SIC budget of \$51 million, and a management fee average of one-fourth percent of the funds managed. Mr. Moise stated that he would work on breaking out a figure from the \$51 million budget to address the cost-of-investing question by providing a specific dollar amount. The chair noted that one-fourth percent is significantly less than a standard management fee of four percent to six percent for investments. Members also raised questions regarding the possibility of a bond ratings reduction for the state. SIC staff indicated that the planned use of the TSPF to cover the past fiscal year expenses could have repercussions in the bond ratings arena. A task force member noted that the state legislature has made difficult decisions in the face of reduced revenues, but that those difficult decisions will help to protect the state's current excellent bond rating.

PSCOC Financial Plan

Denise Irion, chief financial officer, Public School Facilities Authority (PSFA), presented an update to the PSCOC financial plan. Ms. Irion noted that the PSCOF has experienced weakened revenues and that the forecast is for continued long-term reductions. Revenue forecasts for FY 2016 through FY 2020 have decreased by an additional 5.2 percent for a total reduction of 16.5 percent since FY 2015.

The standards-based program now in effect has dramatically reduced the statewide FCI, according to Ms. Irion. In 2001, the average statewide FCI was 71 percent, but now stands at 32 percent (lower is better). Moving forward with the building systems initiative, Ms. Irion reported that it is possible to maintain the FCI range in the mid-30s with fewer capital dollars than have been invested in the past. This will, however, require good facility planning and management, as well as improved district facility maintenance efforts.

Ms. Irion was joined by David Abbey, director, Legislative Finance Committee, and chair, PSCOC, who announced the pending retirement of Robert Gorrell, director, PSFA, eight months hence. Mr. Abbey reported the excellent work of the PSCOC and PSFA staff in working toward a transition from a focus on the standards-based building program to a focus on a building systems program. In response to member questions, Mr. Abbey reported that staff have been trained and that a methodology for the building systems initiative has been developed. Mr. Gorrell observed that the PSFA has been moving toward this transition for years and is well-equipped with tools such as the Facilities Maintenance Assessment Report to proceed with the transition. As with the standards-based program, Mr. Abbey observed that piloting the building systems initiative is likely to require some experimentation.

Members raised questions regarding the purchase and use of portable buildings, the adequacy of emergency reserve funds and progress toward developing maintenance cost codes and appropriately training school maintenance workers to use them. Mr. Gorrell stated that the PSFA would look at all possible means to use existing portable facilities where needed and where cost-effective before purchasing any new portable buildings. Mr. Abbey stated that the PSCOC will work on plans to address the Construction Industries Division of the Regulation and Licensing Department's training requirements for maintenance workers and the need for maintenance cost codes to further the work of districts and the PSFA in facilities maintenance. He further observed that with respect to emergency reserve funds, the outlook is "tight but not impossible", at least until FY 2018.

Charter Schools' Facilities Issues

Rachel Gudgel, director, Legislative Education Study Committee, presented information on a range of charter school facilities issues. She reported that despite decreased revenue for public school projects, lease-assistance funding requests continue to grow as the number of charter schools continues to grow. She noted that lease-assistance funding is not mandatory and the program lacks adequate controls. Statute allows the PSCOC to make awards from the

PSCOF for lease payments for classroom facilities leased by school districts and charter schools. Lease-assistance funding has increased from \$2 million to \$16 million over the past 10 years.

Ms. Gudgel also reviewed the requirements for charter schools to be located in public facilities. As of July 1, 2015, in order for a new charter school to open or for a school to renew its charter, the school must meet one of the following requirements:

- be housed in a public facility that is owned by the charter school, the school district, the state, an institution of the state, another political subdivision of the state, the federal government, or one of its agencies, or a tribal government;
- be subject to a PED-approved lease-purchase agreement;
- be located in a facility that 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 the state and other public buildings are not available or adequate for the educational program of the charter school; or
- be located in a facility that 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 the state and the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school.

According to Ms. Gudgel, 103 charter school lease applications were submitted in FY 2016. A PSCOC review of those lease applications revealed that 78 charter schools were in compliance with the public building requirements (either because they are not yet subject to the requirements or they meet one of the four enumerated facility agreements) and had submitted all required documentation. Twenty-five charter schools were not in compliance with the public building requirements or did not submit required documentation. Many specific compliance issues were noted. Ms. Gudgel reported that next steps may include coordination between the PSCOC and the PSFA to streamline the review process and identify issues that require legislative attention. One of those issues may be a requirement for a uniform, standardized lease agreement.

Ms. Gudgel wanted to make the point that the requirement to be in a public building in Section 22-8B-4 NMSA 1978 and the requirement to be in a "public school building" pursuant to Section 22-8B-4.2 NMSA 1978 are actually a "rolling" requirement because the requirement goes into effect when a new school is chartered or when an existing school applies for renewal of a charter into the requirement over a period of several years. That is, the need to renew differs among charter schools depending on when their last renewal was issued by the PED. She added that the statutory language has been confusing to some of her client charter schools.

Continuing, Patricia Matthews, Esq., charter school legal counsel, Matthews Fox, discussed concerns with the PED's lack of timely approval of lease-purchase arrangements. She explained that these funding mechanisms give charter schools an opportunity to use capital improvement funds generated through direct mill levies (with school district and voter approval)

in addition to operational funds to make facility improvements. Ms. Matthews explained that it is a way to comply with Section 22-8B-4.2 NMSA 1978 under the statutory deadlines.

In response to task force questions and comments, Mr. Aguilar discussed some concerns with statutory language that might alleviate some of the PED's concerns. He also noted that some charter school foundations have gone ahead and made lease-purchase agreements with certain vendors without having their proposals approved by the department, which means they have committed public funds without meeting certain requirements.

Ms. Gudgel said that, speaking as a member of the PSCOC, she is concerned that some charter schools have entered into straight leases with a simple agreement to purchase the building at a fixed price, which does not meet statutory requirements.

A member requested a copy of the Legislative Education Study Committee report and Ms. Matthews' rebuttal letter, which Ms. Matthews mentioned in her presentation. Ms. Gudgel noted that, currently, both the report and rebuttal letter are under review, and, as a result, are not ready for distribution. She explained that the report will be ready once corrections have been completed.

During discussion, several members mentioned concerns about the ultimate ownership of charter school properties if, for some reason, a charter school closes, expressing particular concerns about the ownership by foundations when taxpayers' dollars have paid for the facilities.

Given the complexity of the issue and time constraints for some panel members, the task force agreed to continue this discussion at the next PSCOOTF meeting, which is scheduled for November 14, 2016.

Adjournment

Members agreed to postpone hearing the final agenda item until the next meeting. There being no further business before the task force, the fifty-eighth meeting of the PSCOOTF adjourned at 1:30 p.m.

**TENTATIVE AGENDA
for the
FIFTY-NINTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**December 1, 2016
Room 317, State Capitol
Santa Fe**

Thursday, December 1

- 10:00 a.m. **Call to Order, Introductions**
—Senator John M. Sapien, Chair
—Representative Dennis J. Roch, Vice Chair
- 10:05 a.m. **Approval of October 20, 2016 Minutes**
- 10:10 a.m. (1) **[The Cost of Ownership of New Mexico's Public School Facilities](#)**
—Katie McEuen, Research and Policy Analyst, Public School Facilities
 Authority
- 11:00 a.m. (2) **[Charter Schools' Facilities Issues](#)**
Progress Toward the Public Facilities Deadline
Lease-Purchase Agreements
Public School Capital Outlay Council (PSCOC) Adoption of
Standardized Lease Frameworks
—Rachel Gudgel, Esq., Member, PSCOC; Director, Legislative Education
 Study Committee
—Hipolito "Paul" Aguilar, Member, PSCOC; Deputy Secretary, Public
 Education Department
—Patricia Matthews, Esq., Matthews Fox, Charter School Legal Counsel
- 12:30 p.m. **Lunch**
- 1:30 p.m. (3) **[Zuni Lawsuit Update](#)**
—Timothy Williams, Esq., Assistant Attorney General, Office of the
 Attorney General (OAG)
—Joshua Granata, Esq., OAG
- 2:45 p.m. (4) **[Proposed Legislation for Task Force Endorsement Consideration](#)**
—Task Force Members and Staff
- 4:00 p.m. **Adjourn**

**MINUTES
of the
FIFTY-NINTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**December 1, 2016
Room 317, State Capitol
Santa Fe**

The fifty-ninth meeting of the Public School Capital Outlay Oversight Task Force was called to order by Senator John M. Sapien, chair, on December 1, 2016 at 10:14 a.m. in Room 317 at the State Capitol in Santa Fe.

Present

Sen. John M. Sapien, Chair
Rep. Dennis J. Roch, Vice Chair
Deputy Secretary Paul Aguilar, Public
Education Department (PED)
Randall Earwood
Dr. Carl Foster
Rep. Harry Garcia
Reinaldo Garcia
Kirk Hartom
Rep. Larry A. Larrañaga
Rep. James Roger Madalena
Mike Phipps
Acting Secretary Duffy Rodriguez,
Department of Finance and
Administration
Sen. Benny Shendo, Jr.
Sen. John Arthur Smith
Sen. Mimi Stewart, designee for
Sen. Mary Kay Papen
Glenn Walters, designee for
Rep. Don L. Tripp

Advisory Members

Rep. Patricio Ruiloba
Rep. James E. Smith
Sen. Pat Woods

Absent

Rep. Sharon Clahchischilliage
Rep. Yvette Herrell
Sen. Stuart Ingle
T.J. Parks
Stan Rounds
Sen. Sander Rue

Rep. Eliseo Lee Alcon
Sen. Daniel A. Ivey-Soto
Rep. D. Wonda Johnson
Sen. Howie C. Morales
Sen. Cliff R. Pirtle
Rep. Patricia Roybal Caballero
Sen. William E. Sharer
Sen. William P. Soules

Minutes Approved

Because the task force will not meet again this year, the minutes for this meeting have not been officially approved by the task force.

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)

Sharon Ball, Researcher, LCS

Jeff Eaton, Fiscal Analyst, LCS

Michelle Jaschke, Researcher, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Thursday, December 1

Cost of Ownership of New Mexico's Public School Facilities

Katie McEuen, research and policy analyst, Public School Facilities Authority (PSFA), reported to the task force on costs associated with ownership of public school facilities statewide. In her presentation, she noted that New Mexico has 61 million square feet of public school facilities. Major challenges that the state faces with regard to those facilities include sufficient maintenance funding; rising replacement costs, which currently stand at approximately \$19.5 billion; large inventories of space; and the effectiveness, or lack of effectiveness, of facility maintenance.

Using National Research Council benchmarks, Ms. McEuen noted that the recurring annual cost to maintain a school facility is between one percent and three percent of the total cost of the building, including site costs. The replacement cost is approximately \$320 per square foot. Ms. McEuen reported that if all schools were built to the Public School Capital Outlay Council (PSCOC) adequacy standards, the number of districts having the capacity to meet spending benchmarks would increase from two of the state's 89 school districts to more than 50 districts.

Ms. McEuen presented a chart that showed average annual school district facilities expenditures in 2013 and 2014. The chart indicated that many districts with low assessed property tax valuations have facilities that are in as good, or better, condition than facilities found in school districts with higher assessed valuations. In addition, the chart showed that poverty in a district is not a statistically significant indicator of capital spending on a per-student basis.

Charter School Facilities Issues

Rachel Gudgel, director, Legislative Education Study Committee; Deputy Secretary Aguilar; and Patricia Matthews, attorney with Matthews Fox, PC, gave a presentation on issues with charter school facilities.

Ms. Gudgel summarized the facility lease and ownership options available to charter schools. A charter school can:

- own its facility;
- secure a mortgage with a bank;
- be party to a lease purchase agreement;
- lease from a private party; or
- lease from a charter school foundation established for that purpose.

All of the presenters cited oversight of lease purchase agreements as an important issue. Ms. Matthews, who provides legal counsel to charter schools, stated that prior to January 2015, the PED's lease assistance submittal and approval process was working very smoothly, with approval turn-around times ranging between 30 days and 90 days. Since January 2015, however, requests for lease purchase agreement approvals have been rejected for a variety of reasons that, prior to that time, were considered "non-issues". The review process now takes a very long time, without explanation. The PED has changed the submittal, review and approval process several times in the past two years and this has caused a great deal of confusion and exacerbated the delays. Ms. Matthews said that her charter school clients do not object to the oversight but, rather, to the changing process.

Deputy Secretary Aguilar acknowledged that there has been a lack of predictability in the lease purchase review and approval process and that the PED is working to address the issue and make improvements. In response to a concern raised by task force members and PSFA director Robert Gorrell, Deputy Secretary Aguilar explained that the predictability, or lack thereof, in the review process is an indication that the PED opposes a standardized lease. The department prefers that a lease be modifiable to meet the particular needs and circumstances of each school. Deputy Secretary Aguilar indicated that the lease purchase agreement used by the Taos Academy Charter School, with minor changes, is the template that the PED would like charter schools to use going forward.

One of the concerns that the PED has with some leases submitted by charter schools is the "pledge and covenant agreement". Under the agreement, a charter school's lease payments are automatically withdrawn from the bank account that receives all of the school's state and local resources. The lease payments are withdrawn on a regular basis prior to a school's meeting its other budget needs. Deputy Secretary Aguilar stated that Ms. Matthews and PED staff are currently working together on resolving this issue. He hopes that within the next 30 days, the PED will have a template developed through a redline review process, which had not been done in previous collaborative attempts.

Deputy Secretary Aguilar noted that the PSCOC and PSFA require that a charter school facility, leased or otherwise, be at or better than the average weighted New Mexico Condition Index level, a standard that can be hard to achieve. He suggested that the task force consider easing this requirement. He also reported that the PSCOC has met and discussed the issue of charter schools meeting the deadline for moving into public facilities, but that the PSCOC is not ready at this time to bring a recommendation.

In discussion among the presenters and task force members, a member asked the panel to comment on former Senator Sue Wilson Beffort's bill (Senate Bill 333, 2013 regular session) that, had it not been pocket-vetoed, would have required the use of standardized leases by charter schools. Ms. Gudgel recalled that the bill had provisions addressing conflicts of interest between charter school lessees and charter school foundations (lessors) in addition to requiring the use of a standardized lease. Ms. Gudgel offered that standardized language would be helpful and should be given consideration. She commented that there are some unknowns that would need to be considered and defined and enforcement questions that would need to be clarified. Deputy Secretary Aguilar commented that the state should be cautious not to become too prescriptive in this area, as it may impinge on local control and possibly make lease terms difficult for property owners/lessors. A task force member commented that the bill may be revived, as these issues have not gone away.

A member asked the panel if the state would retain ownership of a facility if one of the 14 charter schools that is leasing from its foundations ends its operations. Deputy Secretary Aguilar replied that the state would not retain ownership and that ownership of the leased facility would not pass to the leasing charter school until the final lease payment is made. Ms. Matthews clarified that a charter school foundation is a private, tax-exempt entity created for the purpose of leasing to a charter school; it would be unconstitutional for the state to take possession of the property. A discussion ensued about the nature of ownership in regard to lease purchase agreements and using state revenue to make lease payments. Ms. Matthews said that it appears that the equity going into the property is the central issue. Ms. Gudgel offered that the panel members could work to propose changes to the relevant statutes to address the task force's concerns.

A member inquired about lease purchase agreements still awaiting approval at the PED and how long it would take to clear the backlog. Deputy Secretary Aguilar replied that he expects the backlog to be cleared in 45 days.

In response to a member's question on how many charter schools have closed, Deputy Secretary Aguilar said that five have closed recently but that he is not certain of the total number of closures over the years. The member inquired about the status of the International School at Mesa del Sol charter school whose campus property is under foreclosure. Ms. Matthews replied that the school operated in a portable building and that the school's lease with the property owner is a straight lease. The school hopes that the foreclosing developer will let the school remain at that location, but, if not, Ms. Matthews said the school would have to move the portable building off the site. Deputy Secretary Aguilar added that if the building is owned by the developer, the school might be evicted from the building as well.

A member asked about schools located on tribal land. Deputy Secretary Aguilar said that a common practice agreeable to developers, charter schools and tribal entities has been to enter into long-term leases of 45 years or more.

The chair thanked the panel and noted that, when the Charter Schools Act was passed, the issues surrounding facilities were not fully contemplated and that this discussion will continue. Ms. Gudgel said that the panel would come back with recommendations from the PSCOC.

Zuni Lawsuit Update

Timothy Williams and Joshua Granata, assistant attorneys general, both from the Office of the Attorney General (OAG), gave an update on developments in the *Zuni* lawsuit.

Mr. Williams reported that there was a hearing held in Gallup, November 7 through 11, 2016, and that another hearing is scheduled for January 30 through February 3, 2017, with a possible additional week of hearings following that. He said the OAG requested a briefing upon conclusion of the final hearings and the case. He does not expect a judgment in the case for at least a couple of months, but when it is issued, it may offer guidance to the legislature on what to do, if anything.

Mr. Williams enumerated the principal complaints brought by the Gallup-McKinley County School District (GMCS), the current litigant, including that:

- rural areas are disadvantaged because of their smaller tax bases, especially when they include untaxable federal lands;
- the Albuquerque Public School District has a large enough tax base and can achieve certain economies of scale to be able to build amenity-filled school facilities that are far above adequacy;
- the GMCS is one of the few districts with schools located in isolated, rural areas that require teacherages to house school staff;
- the GMCS needs additional funds to bring utilities to isolated, rural school sites;
- the GMCS faces higher taxes because the Navajo Nation requires the district to pay a business activity tax for schools built on tribal lands;
- state funding is not being made available for some site security features;
- funding is limited for furniture, fixtures and equipment; and
- state funding is not available for computer equipment.

In response to a member's question, Mr. Williams reported that the school district called witnesses during the first hearing, including PSCOC members, current and former PSFA staff members and Ron Triplehorn, GMCS facilities director. The member asked if Mr. Williams has any experience in education, and he replied that he does not. The member commented that she was surprised that the state has assigned attorneys to argue cases when they have no experience in the field and that this was also true in two other state cases. The member asked if there could be a mixed judgment in the case, and Mr. Williams replied that it is a possibility. He said that in 1999, the judge in the *Zuni* lawsuit ordered a partial summary judgment; that is, some findings favored the litigants, while other items included in the complaint were not addressed. Mr. Williams said the court could either make a "global" ruling — such as one that declares something to be unconstitutional — or make a very narrow ruling. He said that it is his understanding that what the school district wants is complete uniformity in funding across all school districts or more uniformity in funding with the exception of teacherages. A member asked if during the proceedings a definition of "adequacy" had been agreed upon, and Mr. Williams replied that it had not.

Ms. Gudgel noted that, in the hopes of reaching a settlement, some PSCOC members and GMCS staff agreed to talk to the school district staff informally in the afternoon after the meeting.

A member asked if, in the event a negotiation is reached, there is any power vested in the attorney general to agree to a financial settlement with the school district or whether legislative approval would be required. Mr. Williams replied that, to the extent legislative staff have conversations with the school district staff, the discussions or agreements are not binding. He said that there may be administrative rule changes that can be done by the PSCOC, and local match waivers granted under certain circumstances, but that he believes a substantive solution will require legislative action.

A member expressed concern that the *Zuni* case has been going on for years, like the behavioral health lawsuit. Mr. Williams agreed and added that micro-managing by the court is also a concern, as is the level of "finality", if any, of any settlement that may be reached. Ms. Gudgel commented that, currently, there are two district lawsuits concerning operational funding and one lawsuit concerning capital funding and she does not want to characterize this afternoon's meeting as a settlement negotiation.

Proposed Legislation for Task Force Endorsement Consideration

In a joint presentation by members and staff, the task force considered legislation for possible endorsement in the upcoming 2017 legislative session.

The first proposed bill (.204819.2) was presented by Antonio Ortiz, director, capital outlay and transportation bureaus, PED. Mr Ortiz explained that the bill changes the current Public School Capital Improvements Act calculations and distributions to allow allocations to be made in February — in the budget cycle, like other school budget funds — and changes the calculated distribution based on a school district's prior-year enrollment. He explained that current law uses same-year enrollment estimates to calculate the distribution and that this has caused unused funds to accumulate over an extended period — an inefficient use of state funds that would be corrected by using prior-year actual enrollment figures.

A member asked that a technical language change be made, changing "fortieth day" to "first reporting day" wherever the term appears in the section being amended so as to be consistent. A motion to approve the bill as amended was duly made and seconded, and the measure passed without objection.

Mr. Ortiz also presented the next proposed bill (.204821.3), which would require school districts to distribute certain shares of oil and gas tax revenues to charter schools. A motion duly made to adopt the same amendment suggested on the previous bill (change "fortieth day" to "first reporting day" wherever the term appears in the section being amended) was seconded, and the motion passed without objection.

Mr. Ortiz's third and final bill (.204820.1) would repeal a statute that requires districts to submit to the PED a list of proposed expenditures for an opinion of appropriateness. Mr. Ortiz explained that the funds used for those expenditures are local funds, and because the PED has no

authority to make an opinion of district-funded expenditures, the department recommends that the language be repealed. Several members expressed concern about repealing a statute without sufficient time to review. The task force took no action on the proposed bill.

There being no further business to come before the task force, the meeting adjourned at 12:24 p.m.

ENDORSED LEGISLATION

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HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

ENDORSED BY THE PUBLIC SCHOOL CAPITAL OUTLAY
OVERSIGHT TASK FORCE

AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; REQUIRING SCHOOL
DISTRICTS TO DISTRIBUTE CERTAIN SHARES OF PROPERTY TAX REVENUES
TO CHARTER SCHOOLS; REQUIRING CERTIFICATION OF CHARTER SCHOOL
SHARES OF CERTAIN PROPERTY TAX REVENUES TO SCHOOL DISTRICTS.

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

SECTION 1. Section 22-25-7 NMSA 1978 (being Laws 1975
(S.S.), Chapter 5, Section 7, as amended) is amended to read:

"22-25-7. IMPOSITION OF TAX--LIMITATION ON
EXPENDITURES.--

A. If as a result of an election held in accordance
with the Public School Capital Improvements Act a majority of
the qualified electors voting on the question votes in favor of
the imposition of the tax, the tax rate shall be certified,
unless the local school board requests by resolution that a

.204821.3SA

underscoring material = new
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underscored material = new
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1 rate be discontinued, by the department of finance and
2 administration at the rate specified in the resolution
3 authorized under Section 22-25-3 NMSA 1978 or at any lower rate
4 required by operation of the rate limitation provisions of
5 Section 7-37-7.1 NMSA 1978 upon the rate specified in the
6 resolution and be imposed at the rate certified in accordance
7 with the provisions of the Property Tax Code.

8 B. The revenue produced by the tax and, except as
9 provided in Subsection F, G or H of Section 22-25-9 NMSA 1978,
10 any state distribution resulting to the district under the
11 Public School Capital Improvements Act shall be expended only
12 for the capital improvements specified in the authorizing
13 resolution.

14 C. For resolutions approved by the electors on or
15 after July 1, 2009, the amount of tax revenue to be distributed
16 to each charter school that was included in the resolution
17 shall be determined each year and shall be in the same
18 proportion as the average full-time-equivalent enrollment of
19 the charter school on the ~~[fortieth day]~~ first reporting date
20 of the prior school year is to the total such enrollment in the
21 school district; provided that no distribution shall be made to
22 an approved charter school that had not commenced classroom
23 instruction in the prior school year and, provided further,
24 that, in determining a school district's total enrollment,
25 students attending a state-chartered charter school within that

.204821.3SA

underscoring material = new
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1 school district shall be included. Each year, the department
2 shall certify to the county treasurer of the county in which
3 the eligible charter schools in the school district are located
4 and to each school district the percentage of the revenue to be
5 distributed to each charter school. The county treasurer shall
6 distribute the charter school's share of the property tax
7 revenue directly to the charter school. In the event that a
8 charter school's share of the property tax revenue is
9 distributed to a school district, the school district shall
10 distribute that share to the charter school."

11 SECTION 2. Section 22-26-9 NMSA 1978 (being Laws 2007,
12 Chapter 366, Section 23, as amended) is amended to read:

13 "22-26-9. CHARTER SCHOOLS--RECEIPT OF LOCAL PROPERTY TAX
14 REVENUE.--If, in an election held after July 1, 2007, the
15 qualified electors of a school district have voted in favor of
16 the imposition of a property tax as provided in Section
17 22-26-3 NMSA 1978, the amount of tax revenue to be distributed
18 to each charter school that was included in the resolution
19 shall be determined each year and shall be in the same
20 proportion as the average full-time-equivalent enrollment of
21 the charter school on the first reporting date of the prior
22 school year is to the total such enrollment in the district;
23 provided that, in the case of an approved charter school that
24 had not commenced classroom instruction in the prior school
25 year, the estimated full-time-equivalent enrollment in the

.204821.3SA

underscored material = new
~~[bracketed material] = delete~~

1 first year of instruction, as shown in the approved charter
2 school application, shall be used, subject to adjustment after
3 the first reporting date. Each year, the department shall
4 certify to the county treasurer of the county in which the
5 eligible charter schools in the school district are located the
6 percentage of the revenue to be distributed to each charter
7 school. The county treasurer shall distribute the charter
8 school's share of the property tax revenue directly to the
9 charter school. In the event that a charter school's share of
10 the property tax revenue is distributed to a school district,
11 the school district shall distribute that share to the charter
12 school."

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LEGISLATIVE COUNCIL SERVICE
SANTA FE, NEW MEXICO