

BEYOND

THE ROUNDHOUSE

a summary of interim legislative committee work



2010 Interim

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

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As the "direct descendent" of several task forces that were created as a result of the 1999 *Zuni* lawsuit (*The Zuni Public School District et al. v. The State of New Mexico et al.*, CV-98-14-11), the Public School Capital Outlay Oversight Task Force 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; 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.

Responding to the New Mexico Legislative Council's request that interim committees limit meeting time and travel during the 2010 interim because of revenue shortages, the task force held four one-day meetings in Santa Fe in addition to its May 19 organizational meeting. Full task force meetings were held on July 7, October 7, November 24 and December 21. The task force also held two meetings of a work group, on August 30 and October 7, pursuant to language in Laws 2010, Chapter 104 (p.v.), which states, in pertinent part, that the task force "shall continue the working group studying issues relating to performance-based procurement for public school capital outlay projects".

The task force began its seventh year of overseeing the implementation of the public school capital outlay standards-based process with a brief review of the work of the 2009 interim, a review of the Public School Capital Outlay Council's 2009 annual report and a summary of the status of task force-endorsed legislation.

With passage of the final version of the public school capital outlay "omnibus bill" (Laws 2010, Chapter 104, p.v.) endorsed by the task force, several of the task force's policy recommendations were enacted by the 2010 legislature, including the following amendments to the Public School Capital Outlay Act:

- (1) a requirement that money distributed from the Public School Capital Outlay Fund to the state fire marshal and the Construction Industries Division of the Regulation and Licensing Department be used to supplement, rather than supplant, general appropriations to those agencies;
- (2) language allowing the Public School Facilities Authority to administer procurement

for certain emergency projects;

(3) an extension of time for necessary roof repairs and replacements; and

(4) repeal of an appropriation enacted during the Forty-Ninth Legislature, Second Special Session, to pay certain insurance premiums for school districts.

In response to testimony heard during the 2009 interim, the task force endorsed legislation to amend the Qualified School Construction Bonds Act to clarify the methodology for allocation of bonding authority. The task force also endorsed a bill that did not receive a message from the governor that would have, among its provisions, amended the Charter Schools Act to require that on or after July 1, 2010, a new charter school cannot open and an existing charter school cannot relocate unless the Public School Facilities Authority finds that the facilities meet or exceed the average rating of schools on the New Mexico Condition Index.

The governor once again vetoed language in the "omnibus bill" 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 that authorized an increase in grant assistance for qualifying rural high schools. The governor also vetoed similar legislative language passed in the 2007, 2008 and 2009 legislatures allowing an increase in grant assistance for certain rural or "property-tax poor" high schools.

For the past four years, the task force has endorsed legislation, which did not pass, to eliminate or modify the statutory requirement 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 costs and benefits of bonding subcontractors on public school projects. The working group included task force members as well as representatives from the General Services Department, the Public School Facilities Authority and various representative groups from the construction industry. The group met on August 30 and again on October 7 and was facilitated by a contract professional to bring forth recommendations to the task force.

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

- Legislation: increase the subcontractor bonding threshold from \$125,000 to \$250,000.
- Rule changes: make wording changes in the New Mexico Administrative Code to modify proposal submission requirements and the resident preference.
- Process changes for the Public School Facilities Authority: 1) develop a standardized template for submission of requests for proposals for construction, with detailed instructions;

2) develop a web-based training module for contractors and subcontractors; and 3) develop a process for web-based training for evaluation committee members and require members to acknowledge completing it.

As has been the case in each interim since the establishment of the original task force in 2001, charter school facility issues were a topic of discussion at almost every meeting during the 2010 interim. 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 Public Education Department told the task force that several districts had recently had

Legislation passed in 2006 requires school districts to share HB 33 funds with charter schools, yet presenters told the task force that several districts recently held HB 33 elections that did not include charter schools in the proclamation.

HB 33 elections that did not include charter schools in the proclamation. Public School Facilities Authority 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 Public School Capital Outlay Council and the task force for consideration for legislation for the 2012 session. The task force also spent time at several meetings discussing issues related to approval of leases and lease-purchase agreements.

Other topics on which the task force heard testimony during the 2010 interim included the following:

(1) a presentation from representatives of the Albuquerque Public School District on the district's Capital Master Plan, which has been in place and operational for more than 20 years, as well as a presentation on the school district's current policy regarding charter school facilities;

(2) a demonstration of the new geographic information system, developed by the Public School Facilities Authority in collaboration with the University of New Mexico's Earth Data Analysis Center as the result of legislation endorsed by the task force for the 2009 session;

(3) an update from the Public School Facilities Authority on implementation of its facilities information management system and progress on implementation of equipment inventories and school district preventive maintenance plans; and

(4) Public School Facilities Authority audit reports on state sources of funding.

During the course of the interim, Public School Capital Outlay Council and Public School Facilities Authority 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 qualifying districts among the top 60 in the New Mexico Condition Index rankings. The task force heard a presentation from the council chair and the council's Awards Subcommittee chair on the funding for grant awards, criteria for making grant awards and potential grant award recipients.

During the remainder of the interim, the task force heard testimony about the ongoing implementation of the standards-based process, the adequacy of the current permanent revenue streams, the effect of the current economy on revenues to fund the current round of council grants and capital outlay funding resources and requirements for charter schools.

Highlights of Recommendations and Proposed Legislation

The task force's 2010 recommendations 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 Public School Capital Outlay Council funds. Task force endorsements for the 2011 legislature included bills to amend current statutes as follows.

- Amend the Procurement Code to increase the subcontractor bonding limit from \$125,000 to \$250,000
- Amend the Procurement Code to establish the applicability of the prevailing wage law for construction manager at risk procurement
- Amend the Public School Capital Improvements Act and the Public School Buildings Act to require charter schools to report anticipated and actual expenditure of distributions made pursuant to those acts
- Amend 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 New Mexico Condition Index rating equal to or better than average for all New Mexico public schools for that year and provides 18 months for charter schools to achieve this rating (the bill also exempts a school district leasing facilities to a charter school from State Board of Finance approval and requires Public School Facilities Authority approval before entering into a lease agreement or lease-purchase agreement for

school facilities or before applying for a grant for lease payment)

Task force members also considered proposed legislation to amend the Charter Schools Act to require the addition of a dispute resolution mechanism for state-chartered charter schools, as well as locally chartered charter schools. After considerable discussion, members agreed by consensus to ask task force staff to work with the LESC to address concerns with the bill and to prepare it for consideration for LESC endorsement.

RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

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The Radioactive and Hazardous Materials Committee met for one day in Los Alamos and two days in Carlsbad. Otherwise, all of its meetings were held in Santa Fe. The committee covered each topic in its scope of work, hearing testimony on:

- (1) government restructuring proposals and programs and the missions of the Department of Environment in the context of more efficiency and cost-effectiveness;
- (2) the nuclear fuel cycle relative to energy needs;
- (3) New Mexico's supply of and demand for electricity and the potential role in generation and transmission of electricity;
- (4) the status of the Waste Isolation Pilot Plant (WIPP);
- (5) "energy parks";
- (6) alternative and clean energy initiatives;
- (7) electricity, propane and gas heating cost increases as a result of renewable energy requirements;
- (8) proposed rules on greenhouse gas emissions;
- (9) a status report from Los Alamos National Laboratory on the progress of uranium legacy site cleanup and shipment of waste to WIPP;
- (10) uranium mining and uranium legacy mine contamination cleanup;
- (11) nuclear electric power as a clean energy option; and
- (12) geothermal power options.

The committee discussed whether the legislature's power to intervene in and review the rulemaking process is compatible with the separation of powers constitutional doctrine and the fact