

In response to task force questions, Ms. Tackett said that Roy Soto is the state's chief information officer and that Robert Piro is the PED chief information officer.

Charter Schools Advisory Committee Status Report

Substituting for Alan Armijo, chair of the PSCOOTF Charter School Advisory Committee who was out of town, Ms. Ball presented a status report to the task force on the work of the Charter School Advisory Committee. Ms. Ball indicated that in their discussions, members of the advisory committee had expressed concerns about trying to address only charter school capital outlay issues without also considering governance issues. The committee's consensus was that the capital outlay issues are so closely bound up with governance issues that considering the first without the latter might not be productive. Mr. Monfiletto added that, as a charter school operator, he believes that solving governance issues would help address capital outlay problems.

Ms. Ball also said that the committee had indicated it may not make recommendations for specific legislation for the 2006 session because the committee has been meeting only since October 2005 and the committee members felt confident that they would be able to produce more substantive legislative recommendations for the 2007 session.

Representative Larranaga pointed out that the governor appears to be considering a change in charter school governance, perhaps creating a so-called "90th district" that would be under the supervision of the PED. He said that this type of governance proposal could affect the recommendations of the advisory committee.

Secretary Jimenez indicated his concern that the advisory committee might not be able to make recommendations for the 2006 session. He stressed the importance of the committee's recommendations to the PSCOOTF notwithstanding the executive's proposals. Senator Nava agreed and noted that perhaps the reason that the executive is moving forward on this issue is that the legislature has not yet been able to resolve the concerns of charter schools and districts related to both governance and capital outlay.

Mr. Monfiletto stated that his organization, the New Mexico Coalition for Charter Schools, would have recommendations ready for the advisory committee's December 5 meeting and for the LESC meeting on December 12.

Ms. Ball expressed the hope that the advisory committee would be able to consider the executive's proposal at its next meeting as it puts together its recommendations. Co-chair Miera indicated that the sooner the various interim committees can examine any proposal or recommendations, the more likely those proposals and recommendations can receive careful consideration—especially prior to and during a 30-day session. Ms. Ball reiterated that the advisory committee will meet again on December 5 and will work to come to a consensus on legislative recommendations at that time.

New Mexico School for the Deaf (NMSD)/New Mexico School for the Blind and Visually Impaired (NMSBVI)

Miguel Hidalgo, deputy secretary, Higher Education Department (HED), explained that he would be leading the presentation because HED Secretary McClure had been called away this morning. He said that these two institutions, the NMSD and the NMSBVI, are established in the state constitution, and both serve a K-12 student population. He noted that, perhaps because of their

constitutional status, both of these schools have been under the oversight of the former Commission on Higher Education (now HED) and, as a result, have been forced to compete through the legislative process with all of the state's institutions of higher education and the New Mexico Military Institute for sometimes scarce capital outlay appropriations. He suggested that, because these two state schools serve K-12 students, they should be included in the Public School Capital Outlay Act standards-based process. He emphasized, however, that HED is not recommending that the two schools be placed under the PED for administrative purposes but only for capital outlay appropriations in the standards-based process.

Mr. Hidalgo introduced representatives from the NMSD to provide information to the committee regarding capital outlay needs for NMSD facilities.

Rosemary Griegos, director of early childhood outreach, NMSD, provided a historical and statistical overview of NMSD. She said that in October 2000, the NMSD Board of Regents voted to retain its main campus presence along Cerrillos Road creating a number of challenges based on the age and historical significance of its buildings. Currently, the buildings do not conform to today's accessibility, safety, learning and other standards. Given the buildings' poor insulation and antiquated utility infrastructure for water, sewage, heating and cooling, the school's resources cannot be managed effectively and efficiently.

Ms. Griegos explained that the school had commissioned a long-range facilities master plan for the main campus in Santa Fe (the school also has a preschool facility in Albuquerque), which was completed in February 2001. The plan included three phases to be constructed over a period of eight years at an estimated total cost of \$33.8 million. She said that NMSD had received a total of \$11 million from the past two statewide general obligation bond elections, \$5 million of which was used to fund Phase I of the design and construction of a new residential complex with a student activity center on the Santa Fe campus. The remaining \$6 million will fund design and construction of a new classroom facility in Santa Fe, which is scheduled for completion in October 2006.

Ms. Griegos provided task force members with a copy of the NMSD's current five-year capital master plan update for the main campus and noted that it identifies and prioritizes specific improvements while preserving the historic integrity of the campus. She said the cost would be approximately \$31 million over the next five years; however, the school has approximately \$2.5 million in immediate serious health and safety and code capital outlay requirements.

Dianna Jennings, superintendent, NMSBVI, provided information about her institution. Founded in 1906 with a student population of 21 students, she said that the school now serves more than 800 students throughout the state with approximately 60 resident students on the Alamogordo campus. She said that the remainder of those 800 students are served either at an early childhood center in Albuquerque or through the use of itinerant teachers who work under joint powers agreements with more than 40 local districts.

Ms. Jennings also provided the task force with a copy of the current NMSBVI facilities. She said that prior funding of approximately \$4 million from statewide general obligation bonds had funded upgrading and remodeling some of the school's facilities for federal Americans with Disabilities Act (ADA) compliance and fire code requirements. She noted that for the remaining facilities, however, the facilities master plan projects approximately \$8.5 million for remodeling for

serious safety and fire code requirements, ADA compliance, mechanical upgrades and more efficient space utilization.

Senator Leavell asked whether, because the two schools are constitutionally created, passage of a constitutional amendment would be necessary to include them in the Public School Capital Outlay Act standards-based process. Ms. Tackett indicated that including these institutions would require only amendments to current statute. She added that the task force could determine specifics of these amendments.

Senator Nava suggested that establishing a deficiency correction fund specifically to correct health and safety and code deficiencies for these two institutions might be the best approach. She noted that, after the deficiencies are corrected, they could become part of the regular standards-based process.

In response to a task force question, Mr. Hidalgo indicated that placing these two institutions under the administration of HED had been a past legislative decision. He reiterated that HED does not wish to relinquish its current relationship with these schools but would like for them to have the same access to public school capital outlay funds that the schools in the state's other 89 districts have. Task force members expressed some concerns about how these schools would meet local matches required by the Public School Capital Outlay Act and agreed by consensus to consider supporting a one-time \$40 million appropriation for the two schools to be administered by the PSCOC over the next five years of implementation of the institutions' respective facility master plans.

Financing Options and Issues — Impact on Equalization Tax Increment Financing

Robert Desiderio, former dean, University of New Mexico School of Law, presented information to the task force regarding tax increment financing (TIF). Mr. Desiderio explained that TIF is a financing tool used to create new increased tax revenue for public capital projects within a community. Under Mr. Desiderio's scenario, the developer is responsible for the purchase of the land and then the construction is paid for through bonds that are paid back through gross receipts tax. Mr. Desiderio expressed concerns about the effect of the TIF program on the equity issues brought out in the *Zuni* lawsuit. The PSCOOTF would need to address that problem before schools are constructed without the funding being channeled through the PSCOC.

In response to task force questions, Mr. Desiderio stated that the new tax revenue is generated from the new development and is not, in effect, a tax rate increase.

Senator Nava said that an argument could be made that revenue would not exist without the development, and therefore, one might be able to entice development by making the TIF in lieu of impact fees. Mr. Desiderio said that a TIF is not a revenue source in lieu of impact fees. He added that the new revenue comes from new commercial businesses, homes and other economic development. The increase in tax revenues would be from those sources and not from a tax rate increase.

Ms. Grimes asked if the TIF proposal would conflict with the state funding formula. PSFA staff indicated that since TIF funding is for capital projects, it would not conflict with the equity of the operational funding formula. However, staff noted possible issues with the TIF proposal in respect to the *Zuni* lawsuit.

Industrial Revenue Bonds

Russell Caldwell, senior vice president of public finance, Kirkpatrick Pettis Division, D.A. Davidson & Co., gave a brief overview to the task force of the basic Industrial Revenue Bond (IRB) structure to finance capital outlay expenditures for charter schools. He stated that his firm has underwritten bonds for 44 charter schools totaling more than \$400 million while he has served in his current position. Mr. Caldwell further noted that in order for a charter school's bonds to be marketable, the charter school must have facility and maintenance plans similar to what the PSFA requires currently and must illustrate that its program is viable and its fiscal operation is sound.

Regarding the recently negotiated proposed issuance of IRBs for Santa Fe's Academy for Technology and the Classics (ATC) Charter School, Mr. Caldwell explained that the term of the bonds would be for 30 years, with level lease payments and the operating lease payment decreasing over time. In response to a question from Mr. Mulcock, Mr. Caldwell said the bonds would not be rated and that they are predominantly for industrial investors with approximately a six percent return rate to the investor.

In response to Ms. Tackett's question regarding the source of the bonds' repayment, Mr. Caldwell said that the school would have a lease payment as a line item within its operating budget and the bond payback would come from that revenue. Lee Pittard, ATC Board president, emphasized that the charter school's 501(c)3 foundation, created solely for that purpose, is legally responsible for repayment of the bonds. Both he and Mr. Caldwell assured task force members that neither Santa Fe County nor the state would ever be responsible for repayment of these bonds.

Representative Miera asked where in the plan was financing for maintenance, and Mr. Caldwell said that, like the lease payments, maintenance is a line item in the budget. Mr. Pittard added that some of the initial financing is for cash reserves and that money could be used for maintenance.

Ms. Tackett expressed concerns about who would be responsible for oversight when a foundation acquires IRB funds to build a charter school facility: the contractor, the school's foundation, the school's governing board or the PSFA. Mr. Mulcock reminded the task force that the initial capital plan was developed when charter schools said they would never need capital money.

In response to a question from Dr. Pauline Rindone, LESC director, about ownership of the facility, Mr. Caldwell said that the county and the foundation of the school would be the owner, with the county having no liability after the 30-year lease payment is over. After that, the school and the foundation would be the primary owners of the property. It was further noted that having the foundation be the primary owner of the property does not conflict with the provision in the current statute requiring all charter schools to be in a public building by 2010 since the foundation is a 501(c)3 nonprofit organization; however, the foundation would have to assume responsibility for keeping the building at adequacy standards.

Public Comment

Stephen Fox, Santa Fe resident, expressed concerns to the task force about school officials prescribing medication to students.

Recess

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

1 expended in the most prudent manner possible and consistent
2 with the original purpose.

3 D. As used in the Public School Capital Outlay Act,
4 "public school capital outlay project", "capital outlay
5 project" or "project" includes a program for the correction of
6 deficiencies at the New Mexico school for the blind and
7 visually handicapped or at the New Mexico school for the deaf
8 pursuant to this section."

9 Section 7. A new section of the Public School Capital
10 Outlay Act, Section 22-24-5.7 NMSA 1978, is enacted to read:

11 "22-24-5.7. [NEW MATERIAL] LOAN PROGRAM FOR NEW SCHOOLS
12 IN HIGH-GROWTH AREAS.--During the 2006-2007 and 2007-2008 award
13 cycles, if a new school, approved for funding pursuant to
14 Section 22-24-5 NMSA 1978, will be located in a high-growth
15 area as determined by the council and if the council finds that
16 the school district is likely to develop and complete the
17 construction of the new school within thirty months of the
18 grant allocation decision, the following provisions apply:

19 A. balances in the fund may be used to make an
20 interest-free loan to the school district, for a period set by
21 the council but not to exceed ten years, in an amount not
22 exceeding the total project cost less the amount otherwise to
23 be paid from the fund as calculated by Paragraphs (5) and (6)
24 of Subsection B of Section 22-24-5 NMSA 1978;

25 .160866.1

1 be submitted to the public education commission, the governor,
2 the legislative finance committee, the legislative education
3 study committee and the legislature."

4 Section 6. A new section of the Public School Capital
5 Outlay Act, Section 22-24-5.6 NMSA 1978, is enacted to read:

6 "22-24-5.6 [NEW MATERIAL] OUTSTANDING DEFICIENCIES AT
7 CERTAIN STATE EDUCATIONAL INSTITUTIONS.--

8 A. In consultation with the higher education
9 department and the applicable board of regents, and after
10 reviewing the existing five-year facilities plan and the
11 facilities condition assessment, the public school facilities
12 authority shall verify the assessed outstanding health, safety
13 or infrastructure deficiencies at the New Mexico school for the
14 blind and visually impaired and the New Mexico school for the
15 deaf and shall develop a plan to correct the deficiencies.

16 B. To the extent that money is available in the
17 fund for such purposes, the council may approve allocations
18 from the fund and, working with the higher education department
19 and the applicable board of regents, enter into construction
20 contracts to correct the deficiencies.

21 C. The council shall establish oversight functions
22 for the public school facilities authority and such other
23 guidelines and conditions as it deems necessary to ensure that
24 the allocations from the fund pursuant to this section are

25

.160866.1

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