

STATE OF NEW MEXICO
LEGISLATIVE EDUCATION STUDY COMMITTEE

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MINUTES
LESC MEETING
JANUARY 17, 2011

Frances Ramirez-Maestas, Director
David Harrell, PhD, Deputy Director

Senator Cynthia Nava, Chair, called the Legislative Education Study Committee (LESC) to order at 2:17 p.m. on Monday, January 17, 2011, in Room 322 of the State Capitol, in Santa Fe, New Mexico.

The following LESC members were present:

Senators Cynthia Nava, Chair, Mary Jane M. García, Gay G. Kernan, and Lynda M. Lovejoy; and Representatives Rick Miera, Vice Chair, Roberto "Bobby" J. Gonzales, Jimmie C. Hall, Dennis J. Roch, and Mimi Stewart.

The following LESC advisory members were also present:

Senators Vernon D. Asbill, Stephen H. Fischmann, John Pinto, and Sander Rue; and Representatives Andrew J. Barreras, Ray Begaye, Eleanor Chávez, Nathan P. Cote, Nora Espinoza, Mary Helen Garcia, Sheryl Williams Stapleton, and Shirley A. Tyler.

REMARKS BY MS. HANNA SKANDERA,
SECRETARY-DESIGNATE OF PUBLIC EDUCATION

The Chair recognized and welcomed Ms. Hanna Skandera, Secretary-designate of Public Education, who explained her position on various education issues.

Secretary-designate Skandera discussed her intention to focus on transparency and accountability, to honor and reward teachers and administrators for performance, to identify the most effective programs, and to ensure that students have a solid reading foundation. Alluding to the low ranking that New Mexico had recently received in the annual *Quality Counts* report, Ms. Skandera said that closing the achievement gap is one of the most important goals that the state can accomplish. She also said that parents must understand what is happening in the schools and that, in difficult times, it is especially important to identify and implement the best programs in terms of effectiveness and return on investment. Students, she added, must come first.

Committee Discussion

In response to a question from a committee member concerning her opinion of the federal *No Child Left Behind Act of 2001* (NCLB), Ms. Skandera said that she approved of the law's focus on the need for improvement but thought it should also acknowledge student growth. Just as the law identifies failing schools, it should also recognize those that succeed; and it should provide a more transparent rating system that parents can understand, something like the A to F grading system used for students. Parents will become involved, Ms. Skandera continued, when they are informed. Parents also need options for their children when a school is consistently failing.

In response to a question from a committee member regarding the continued availability of state-funded postsecondary scholarships for undocumented students, Ms. Skandera said that she supported the policy that ensured that all students receive a quality education.

When a committee member asked whether she had met with educators across the state, Ms. Skandera replied that she had reached out to the unions and that she hoped to meet with more educators soon. Although she had been in New Mexico for only 14 days, she had no illusions about the challenges and she realized that change and success can come only through full cooperation, a partnership from top to bottom.

In response to a question from a committee member regarding her position on the myriad of tests currently administered to students, Ms. Skandera stated that formative assessments designed to inform instruction were very important, but testing for accountability was also important. She said she was an advocate of developing assessments that could be used for both purposes.

In response to a question from a committee member about how she proposed that school districts address cuts in education funding for FY 12 if the amount of the reduction exceeded the amount the district was currently spending for administrative costs, Ms. Skandera said that she would be meeting with superintendents and other stakeholders soon but could offer little comment until then.

One other topic of discussion was the teaching of reading. Noting that the state of Florida had spent 12 years and millions of dollars training teachers in the best practices of teaching reading, a committee member expressed concern that New Mexico may look only at retaining third graders unable to read at proficiency. Ms. Skandera agreed that the teaching of reading must be research-driven, and she suggested that some federal Title I funds may be available for that purpose.

RECOMMENDATIONS OF THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

The Chair recognized Ms. Sharon Ball, Researcher III, Legislative Council Service, and Mr. Bob Gorrell, Director, Public School Facilities Authority, to discuss three pieces of legislation proposed by the Public School Capital Outlay Oversight Task Force (PSCOOTF).

The primary focus of the first piece of proposed legislation was public school facilities and lease-purchase agreements. The bill would require:

- State Board of Finance approval when a school district leases facilities to a charter school in an amount over \$25,000;
- charter schools to meet the average condition index as measured by the New Mexico Condition Index; and
- restrictions on entrance into lease-purchase agreements.

On a motion by Senator Kernan, seconded by Representative Hall, the LESC unanimously endorsed this legislation addressing charter school facilities standards and lease-purchase agreements.

The second piece of proposed legislation would amend the *Public School Capital Improvements Act* and the *Public School Buildings Act* to require charter schools to report anticipated and actual expenditures of distributions.

On a motion by Representative Roch, seconded by Representative Hall, the committee unanimously endorsed this legislation.

The third piece of proposed legislation would clarify the *Public Works Minimum Wage Act* by making public school construction contractors subject to a single rate determination.

There being no motion to endorse it, the committee did not vote to support proposed legislation relating to the *Public Works Minimum Wage Act*.

DIRECTOR'S REPORT

a. Approval of Draft LESC Minutes for October 2010 and November 2010

On a motion by Representative Miera, seconded by Representative Stewart, the committee voted unanimously to approve the draft LESC minutes for October 2010 and November 2010.

b. Approval of LESC Financial Report for November 2010

On a motion by Representative Hall, seconded by Representative Roch, the committee voted unanimously to approve the LESC Financial Report for November 2010.

c. Approval of LESC FY 10 Audit Report

Ms. Frances Ramírez-Maestas, LESC Director, noted that the FY 10 Audit Report for the LESC showed no findings or exceptions. On a motion by Senator Kernan, seconded by Representative Hall, the committee voted unanimously to approve the report.

EDUCATION-RELATED ISSUES FOR THE 2011 LEGISLATIVE SESSION

a. Public School Support Recommendations

The Chair asked the committee to consider the Public School Support Recommendations in handouts distributed by the staff that reflected committee discussion at the Sunday, January 16 executive session. On a motion by Senator García, seconded by Representative Miera, the committee unanimously approved the recommendations.

b. Endorsement of Potential Legislation and Approval of Sponsors for Endorsed Legislation

The Chair recognized Ms. Pamela Herman, LESC staff, to review the list of potential legislation for the 2011 session and to present drafts of bills not previously seen by the committee. Ms. Herman directed the committee's attention to the section in their notebooks containing the list; and she noted that the committee had already voted to endorse items 1 through 26 and 31 through 34. The list presented to the committee contained the following items:

ITEMS ENDORSED AT THE DECEMBER 2010 LESC MEETING

LESC-ENDORSED ITEMS INTRODUCED BUT NOT ENACTED IN 2010

1. **Extend Educational Testing Contract Lengths:** Amend the *Procurement Code* to allow extensions of up to 12 years for the development and implementation of standardized tests in grades K through 12 and for the development and implementation of teacher tests for professional licensures. (183506.1) *Sponsor: Rep. Miera.*
2. **Alternative School Curricular Plans:** Amend the *Public School Code* to allow the Secretary of Public Education to waive class-size requirements for classes to which a student teacher who meets certain criteria has been assigned. (183502.1)
Sponsor: Sen. Nava.
3. **Education Dept. Pays for Standard-based Tests:** Amend the *Assessment and Accountability Act* to require PED to pay the costs of administering, scoring, and reporting standards-based assessments. (183505.1) *Sponsor: Sen. Asbill.*
4. **Create Dual Credit Textbook Fund:** Add a new section to the *Public School Code* to:
 - create the Dual Credit Textbook Fund to distribute money to college bookstores on warrant of PED to provide textbooks and course supplies for students participating in the Dual Credit Program;
 - require that PED establish, by rule, a method to allocate and distribute monies in the fund to college bookstores on warrant of PED; and
 - require that PED establish, by rule, provisions for the schedule and amount of monies to be distributed, the tracking of inventory and possession of the textbooks, and an accounting of the monies distributed to the bookstores. (183503.3)
Sponsor: Sen. García.

5. **K-3 Plus Funds Allocation:** Introduce legislation and include language in the *General Appropriation Act of 2011* to ensure that K-3 Plus funds can be made available to school districts before the start of the fiscal year, so that districts receive the funds in time to commence programs prior to the start of the new school year. (183507.1)
Sponsor: Rep. Stewart.

OTHER ITEMS ENDORSED AT THE DECEMBER 2010 LESC MEETING

Assessment and Accountability

6. **Suspend Non-federally Required Assessments:** Endorse legislation to suspend, for one year, all student assessments currently required in state law but not in federal law. (184005.1) *Sponsor: Sen. Nava.*
7. **Retain Students Not Proficient in Reading in Grade 3:** Endorse legislation to require school districts to retain any student who is not academically proficient in reading by the end of grade 3; to develop objective standards based on which the retention determination is made; and to provide that a student may be held back in grade 3 only twice. (183655.2)
Sponsor: Rep. Espinoza.

Charter Schools

8. **Monitoring of Charter School Performance by Authorizers:** Introduce legislation to amend the *Charter Schools Act* to require an authorizer to monitor the fiscal condition of any charter school it has authorized when that charter school has received an adverse audit. The monitoring shall continue until the charter school receives a clean audit, and it shall consist of at least one site visit and at least three status reports per year. Each status report shall address the charter school's progress toward resolving the specific audit findings. (103508.1) *Sponsor: Rep. Hall.*
9. **Enrollment in Charter Schools Created Through Restructuring:** Amend the *Assessment and Accountability Act* to clarify that, if a traditional public school in Restructuring 2 is converted to a state-chartered charter school pursuant to its restructuring plan, it must grant enrollment priority to students already attending that school. (183509.1)
Sponsor: Rep. Hall.

Curriculum and Programs

10. **SB 78, School District Bullying Prevention Programs:** Introduce legislation to require PED to establish guidelines for bullying prevention policies to be promulgated by local school boards; require local boards to promulgate policies by August 2011; and require every public school to implement a bullying prevention program by August 2012. (183530.1) *Sponsors: Sen. García and Rep. Miera.*
11. **Memorial Requesting Bullying Study:** Introduce a memorial requesting the Children, Youth and Families Department, PED, and the Department of Health to conduct a joint study of the incidence, nature, and effects of bullying and other forms of harassment

affecting New Mexico children and youth, and to report findings and recommendations to the LESC by November 30, 2011. (183531.1) *Sponsors: Sen. García and Rep. Miera.*

12. **HB 43, Develop Diploma Stamp System:** Endorse legislation requiring that, by the beginning of school year 2012-2013, PED establish a system to allow school districts voluntarily to award “diploma stamps” on diplomas of students who excel in completion of specified career technical education courses. (183743.1) *Sponsors: Rep. Stapleton and Sen. Keller.*
13. **Supplemental Education Services:** Amend the *Assessment and Accountability Act* regarding supplemental educational services (SES) to:
 - allow local school boards and charter school governing bodies to adopt a policy governing whether a school’s teachers may be hired as tutors for the teacher’s own students or for students from the teacher’s school; and
 - require PED to adopt rules (1) establishing a range of rates that providers may charge, and (2) requiring each SES provider to include in its application for state approval, as prescribed by PED, documentation that the tutoring services to be offered are consistent with the instructional program offered by the district or charter school whose students the SES provider will serve. *Sponsor: Rep. Chávez*

P-20 Programs and Policies

14. **Dual Credit Reimbursement:** Introduce legislation to provide that dual credit reimbursement through the higher education funding formula shall be based on course completion, not enrollment. (183587.1) *Sponsor: Sen. Lovejoy.*
15. **Education Assistance Act Amendments:** Endorse legislation to repeal and replace sections of the *Educational Assistance Act* to allow the NM Student Loan Guarantee Corporation and the NM Educational Assistance Foundation to manage the orderly elimination of the federal Family Education Loan Program portfolio and to explore other opportunities that could provide services to educational institutions and students in the state. (183178.3) *Sponsor: Rep. Miera.*

Public School Finance

16. **Approval of Independent Auditors:** Introduce legislation to amend the *Audit Act* to remove the requirement that PED approve the selection of an independent auditor by a school district. (183635.1) *Sponsors: Sen. Nava and Rep. Hall.*
17. **Codify School Business Official Licensure Requirements:** Introduce legislation to amend the *School Personnel Act* to require PED to:
 - provide by rule for licensure of school business officials (SBOs), including initial and continuing licensure, competencies, ethics and reporting requirements, and a savings clause;
 - track the denial, suspension, or revocation of SBO licenses and determine if these actions occur in a timely manner;

- assess the quality of and enforcement of training requirements for SBO licensure; and
 - require mandatory training for superintendents on the evaluation of SBOs, including how to assess SBO competencies. (183928.1) *Sponsors: Sen. Nava and Rep. Hall.*
18. **Expand Definition of Ethical Misconduct:** Introduce legislation to amend the *School Personnel Act* to add “financial malfeasance or misfeasance” to the definition of “ethical misconduct” in current law. (183637.1) *Sponsors: Sen. Nava and Rep. Hall.*
19. **PED Office of Inspector General (OIG) Positions:** Write a letter to the House Appropriations and Finance Committee requesting language in the *General Appropriation Act of 2011* to transfer the six PED OIG positions to the Office of the State Auditor and to dedicate the positions to education-related reviews.
20. **Memorial Requesting Study of Small District Services:** Introduce a joint memorial requesting that PED, in collaboration with the Office of Education Accountability, the Office of the State Auditor, regional education cooperatives, Cooperative Educational Services, and other stakeholders examine the feasibility of (1) consolidating certain business services for small school districts; (2) providing support services to small districts through a regional system; and (3) operating one or more pilot projects to determine the effectiveness of such proposals; and provide a report to the LESC before October 31, 2011. (184094.1) *Sponsors: Rep. Hall and Sen. Nava.*
21. **Letter Regarding Increased School Board Training Requirements:** Write a letter to PED requesting that the department change rules relating to school board member and charter school governing board member training to increase the required training from five to 10 hours, five of which shall be focused on the financial and audit responsibilities of boards and governing bodies.
22. **Letter Regarding Certain School Audit Issues:** Write a letter to the Office of the State Auditor requesting that the office explore:
- whether the state audit rule could be amended to allow certain school districts to submit their financial audits on December 15 rather than on November 15; and
 - the feasibility of allowing locally chartered and state-chartered charter schools to have audits independent of their authorizers.
23. **Letter Regarding SBO Successor Planning:** Write a letter to PED requesting that PED include confirmation on the school budget questionnaire that school districts and charter schools have established SBO successor planning as part of their internal control process.
24. **Letter Regarding CPA Training Courses:** Write a letter to the New Mexico Association of School Business Officials (NMASBO) from the LESC requesting that NMASBO develop courses that count toward required annual Certified Public Accountant training.

Public School Personnel

25. **Reading Test for Teacher Licensure:** Amend the *School Personnel Act* to require that, to qualify for licensure to teach grades K-5, a candidate must demonstrate an understanding

of, and ability to apply, the scientific research on teaching reading by passing a rigorous exam. (183948.1) *Sponsors: Rep. Stewart and Rep. Hall.*

26. Educator Evaluation Council and Evaluation Pilot Project: Introduce legislation to amend the *School Personnel Act* to create an annual educator evaluation system for licensed school personnel that:

- includes a student growth component;
- is integrated into the existing three-tiered licensure system;
- provides a basis for personnel actions for school personnel; and
- has the capability to link the licensed person's evaluation to the PED-approved educator preparation program that prepared the individual for licensure, with a timetable and process to tie results of the system to departmental approval of such programs;

by:

- establishing an Educator Evaluation Council as a policy advisory body to PED, to make recommendations to PED for the design of the evaluation system, including a cost analysis and implementation plan; and
- providing for a one-year pilot study of the new system to be conducted by three school districts – one large, one medium, and one small – prior to the presentation of final recommendations by PED for legislation to establish the system in statute.

Public School Capital Outlay

27. SB 35, Public Works Contract Subcontractor Bonds: Endorse legislation to raise the minimum contract size on which a subcontractor's bond shall be required for public school capital outlay projects to \$250,000. (182974.1) *Sponsor: Sen. Asbill.*

Pursuant to the committee discussion of bills presented under Recommendations of the Public School Capital Outlay Oversight Task Force, the LESC agreed to sponsor items 28 and 29 on the list of proposed legislation but not Item 30:

28. School Facility Leases and Standards: Endorse legislation to:

- require that, on or after July 1, 2011, a new charter school cannot open, nor an existing charter relocate, unless the facility of the school receives, within 18 months, a New Mexico Condition Index rating equal to or better than the average condition of all New Mexico public schools for that year;
- exempt a school district leasing a facility to a charter school from the requirement for State Board of Finance approval; and
- require prior Public School Facilities Authority approval before execution of a lease or lease-purchase agreement for school facilities or before applying for a grant for lease payments [For the Public School Capital Outlay Oversight Task Force]. (182631.2)

29. Charter School SB 9 and HB 33 Expenditures: Endorse legislation to amend the *Public School Capital Improvements Act* (SB 9) and the *Public School Buildings Act* (HB 33) to require charter schools to report anticipated and actual expenditures of distributions made pursuant to those acts [For the Public School Capital Outlay Oversight Task Force]. (183635.2)

30. **Prevailing Wage Rate for Construction Managers-at-risk:** Endorse legislation to amend the *Procurement Code* to establish the applicability of the prevailing wage law for Construction Manager at Risk procurement [For the Public School Capital Outlay Oversight Task Force]. (183642.1)

School Calendars

31. **Clarify School Calendar Requirements:** Introduce legislation to repeal the provision enacted in 2009 that requires that a school year consist of 180 full instructional days for a regular school calendar or 150 days for a variable school calendar, exclusive of professional development days and adjustments for cancelled days due to inclement weather. (183513.1) *Sponsor: Sen. Kernan.*

Special Education

32. **Align State and Federal Special Education Law:** Introduce legislation to align the language in state special education law with that in the federal law to which the state and public schools are accountable. (182620.1) *Sponsors: Sen. Lovejoy and Rep. Stewart.*

Appropriations

33. **Appropriate Funds for the Summer Science Program:** Endorse legislation to appropriate \$50,000 to New Mexico Tech for the Summer Science Program. (183765.1) *Sponsor: Sen. Nava.*
34. **Appropriate Funds for the MESA Program:** Endorse legislation to appropriate \$100,000 to the Higher Education Department for the MESA Program. (183766.1) *Sponsor: Sen. Nava.*

NEW ITEMS REVIEWED AT JANUARY LESC MEETING

Ms. Ramírez-Maestas stated that copies of draft legislation for items 35 through 49 were included in committee members' notebooks. These items embodied cost-saving ideas discussed at the December LESC meeting.

LESC Alternatives to Government Restructuring Task Force Proposals

35. **Limit Size and Growth Units:** Introduce legislation to amend the *Public School Finance Act* by adding a temporary provision, for FY 12 and FY 13, to:
- provide that small school size adjustment units are calculated based on a facility's total student population, regardless of the number of individual schools in that facility; and
 - limit the sum of a school district's or charter school's size adjustment and enrollment growth units at an amount equal to the sum of its early childhood education and basic program units. (183624.1)

36. **PED School Budget & Finance Division:** Introduce legislation to amend the *Public Education Department Act* to create a budget and finance division at PED. (183585.1) *Sponsor: Rep. Miera.*

37. **See Item 19, letter—transfer PED Office of Inspector General (OIG) Positions:** Include language in the *General Appropriation Act of 2011* to transfer six PED OIG positions to the Office of the State Auditor and to dedicate the positions to education-related reviews.

Public Education-related Cost Saving Measures

38. **Reduce Professional Development Days:** Include language in the *General Appropriation Act of 2011* that states: “The General Fund appropriation to the state equalization guarantee distribution considers a reduction to the school year by two full professional development days. Prior to the approval of a school district’s or charter school’s budget, the Secretary of Public Education shall verify that each school district or charter school has reduced its academic calendar by two full professional development days below the 2010-2011 school year”; and reduce the appropriation to the state equalization guarantee by \$11.5 million.

39. **Double-funding of Charter School Students:** Introduce legislation to amend the *Public School Finance Act* with a two-year temporary section to provide that the prior-year membership used by districts to calculate program units shall not include students who were enrolled in that district in the prior year and who are attending a charter school in its first year of operation in the current year. (183623.1)

40. **Ancillary Workload Calculation:** Introduce legislation to amend the *Public School Finance Act* to provide that, in calculating related services (ancillary) units, school districts and charter schools may not exceed 1.5 times the PED guidelines for calculating related services FTEs. (183622.2) *Sponsor: Sen. Nava.*

41. **Recapture Graduate NM Funds:** Request that the Governor reallocate unspent Graduate New Mexico *American Recovery and Reinvestment Act* funds to the state equalization guarantee.

42. **Approval of Emergency Supplemental Funding Requests:** Introduce legislation to amend the *Public School Finance Act* to grant the State Board of Finance approval authority for the distribution of emergency supplemental funds to school districts. (183510.1) *Sponsor: Rep. Roch.*

43. **New Public School Moratorium:** Introduce legislation to amend the *Public School Code* to include a temporary provision to establish a six-year moratorium on new public schools to save the cost to the state of constructing and opening these facilities; and provide for exceptions in certain circumstances. (183514.1) *Sponsor: Rep. Stewart.*

44. **New Postsecondary Campus & Learning Center Moratorium:** Introduce legislation to create a temporary provision to establish a six-year moratorium on postsecondary branch campuses, campuses of independent community colleges, and learning centers, to save the cost to the state of constructing and opening these facilities; and provide for exceptions in certain circumstances. (184123.1) *Sponsor: Sen. Kernan.*

