

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

**August 1, 2012
State Capitol, Room 322
Santa Fe**

The thirty-seventh meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, on August 1, 2012 at 9:18 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Rep. Donald E. Bratton
Dr. Carl Foster
Cecilia Grimes
Leonard Haskie
Robbie Heyman
Sen. Lynda M. Lovejoy
Rep. James Roger Madalena
Supt. Kilino Marquez
Rep. W. Ken Martinez
Sen. Howie C. Morales (Designee for Sen. Timothy Z. Jennings)
Antonio Ortiz (Designee for Sec.-Designate Hanna Skandera)
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith

Absent

Sen. Vernon D. Asbill
Sec. Tom Clifford
Dr. Lisa Grover
Rep. Larry A. Larrañaga
Rep. Ben Lujan
Lilliema G. Ortiz
Judy Rabon
Sen. Sander Rue

Guest Legislator

Sen. Linda M. Lopez

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Sharon S. Ball, Senior Researcher, LCS
Tom Pollard, Legislative Fiscal Analyst, LCS
Leslie Porter, Research Assistant, LCS
Cassandra Jones, Research Assistant, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Wednesday, August 1

Representative Miera welcomed the task force members and asked them and members of the audience to introduce themselves.

Public School Capital Outlay Council (PSCOC): A Look at Strategic Issues

David Abbey, chair of the PSCOC and director of the Legislative Finance Committee, directed task force members' attention to the handout accompanying his presentation. He pointed out that since the beginning of implementation of the public school capital outlay standards-based process in 2003, the PSCOC has made approximately \$1.5 billion in standards-based awards to school districts throughout the state and to qualifying charter and special schools. He explained that the Public School Capital Outlay Act authorizes the PSCOC to certify by resolution that proceeds of supplemental severance tax bonds (SSTBs) are needed for expenditures relating to public school capital outlay projects or for the state guarantee for the Public School Capital Improvements Act (also called SB 9). He explained that the average Facilities Condition Index (FCI), which is the cost of repair divided by the cost of replacement, is a key performance measure of public school building conditions and has improved 36.8 percentage points since 2003.

Mr. Abbey told the task force that in 2011, the PSCOC awarded \$78.7 million to 11 districts with an average weighted New Mexico Condition Index (wNMCI) of 63.17%. In 2012, the PSCOC awarded approximately \$121.5 million in standards-based awards. He explained that the wNMCI is the FCI with the New Mexico public school capital outlay adequacy standards applied.

Mr. Abbey said that he would discuss building conditions in two school districts, the Gallup-McKinley County School District (GMCS D) and the Gadsden Independent School District (GISD), which are illustrative of the program's successful implementation.

- **GMCS D:**
Seven of the Gallup-McKinley County schools were awarded funding in 2012: Juan de Onate Elementary School, Washington Elementary School, Church Rock Academy Elementary School, Thoreau Elementary School, Jefferson Elementary School, Lincoln Elementary School and Roosevelt Elementary School. These schools have an average FCI of 63.85%. The remaining 28 schools in Gallup have an average wNMCI of 15.07%. Only three schools in Gallup remain among the top 100 in the wNMCI rankings: Crownpoint High School, Ramah Elementary School and Red Rocks Elementary School.
- **GISD:**
Gadsden High School is the only standards-based project that the GISD currently has funded. Desert View Elementary School is the only GISD school that remains ranked in the top 100 wNMCI ranked schools. GISD's remaining 19 schools have an average wNMCI of 14.67%.

Mr. Abbey discussed several observations with the task force.

- The funding needed for replacement and repair has greatly diminished because the FCI has been substantially lowered.

- According to Public School Facilities Authority (PSFA) staff, school districts and charter schools continue to experience persistent maintenance problems.
- The Public School Capital Outlay Act does not require districts to prioritize a district's lowest-ranked facilities (i.e., those with the greatest facility needs) when allocating its own locally generated funding.

Mr. Abbey also expressed particular concerns about the relatively small number of school districts that are not able, or find it difficult, to participate in the standards-based program, such as Capitan, Clayton, Floyd, Lovington, Reserve and Tatum. Several of these small-enrollment districts with plentiful land valuation must come up with 90% of any PSCOC award for which they qualify. Other concerns include low bonding capacity and strong voter resistance.

Mr. Abbey noted that the PSCOC has been discussing the possibility of recommending statutory amendments for PSCOOTF consideration that would shift funding from entire school projects to discrete buildings or systems using SSTBs for other public school capital outlay needs, such as buses and increased maintenance funding; reallocating funding for other critical needs; and, depending on standards-based needs, allowing more funding to flow to the Severance Tax Permanent Fund corpus.

Mr. Abbey then pointed out several problematic issues concerning charter school facilities. He said that facility capital needs are growing rapidly because of continued growth in the number of charter school authorizations. There are 14 new charter school applications for fiscal year (FY) 2014. Lease assistance for charter schools increased approximately 25% within the last fiscal year, from FY 2012 to FY 2013. He said it appears as if some charter schools may be paying excessive lease costs and are supplementing lease expenses with their state equalization guarantee funds. He noted that it appears that charter schools do not always take advantage of excess school district-owned space. He said that the PSCOC has considered the possibility that lease assistance funding provisions in statute discourage schools and property owners from negotiating lease terms. He also pointed out that lease assistance funding is adjusted automatically to account for changes in the Consumer Price Index each year, without taking rental market factors into account. He expressed concern that in some cases, charter schools are paying state SSTB funds to local districts so that charter schools can lease district-owned facilities.

Mr. Abbey suggested that state entities should consider reviewing the funding formula, decreasing allowable gross square footage in order to address pressure on operating budgets and lack of adequate maintenance, increasing the flexibility of the Public School Capital Outlay Act and addressing the abundance of small schools that increase the gross square footage across a district in order to qualify for small school size funding.

In response to questions from task force members, Mr. Abbey explained that many school districts have been experiencing increasing excess capacity. He suggested that allowing the PSCOC more discretion with award money, particularly regarding the amount of money paid per square foot, might be part of the solution. Mr. Abbey told the task force that the cost-of-living adjustment (COLA) is often greater than the increase in market value for leases. Requiring a COLA for leases sometimes leads to excess spending. Mr. Abbey stated that the date by which charter schools must move into district space may need to be pushed back later

than the existing 2015 date. Mr. Abbey also suggested that the state consider putting a cap on the number of new charter schools.

In response to task force questions, Mr. Ortiz explained that state-chartered charter schools are required to get approval from the Public Education Department (PED). Charter school applicants submit applications to the Public Education Commission. If an application is denied, the applicant may appeal to the secretary of public education. The PED takes 2% of charter school funding in order to fund its Charter Schools Division. Mr. Abbey told the task force that in recent years, almost all charter school applications have been approved.

The task force discussed several areas of concern, including a need for increased and better science labs in the state; the form and function of a potential charter school subcommittee; the possibility of postponing the date by which all charter schools would be required to move into district space; conflicts of interest regarding lease reimbursement; franchise charter schools; and charter school lease payments to school districts.

In response to questions from task force members, Mr. Abbey clarified that Sandia Riverside Charter Elementary School makes lease payments to the pueblo. The Public School Capital Outlay Act was amended to name tribal governments as governments of public ownership. Mr. Abbey stressed the need for increased oversight on leases of school buildings. Mr. Abbey told the task force that it is likely that PSCOC awards will decline each year into the future.

Approval of Minutes

Upon a motion by Representative Saavedra, seconded by Representative Bratton, the minutes of the June 7, 2012 meeting of the PSCOOTF were approved.

PED Report on Statutory and Administrative Code Definitions and Descriptions of Programs, Alternative Schools and Charter Schools

Annjennette Torres, director, legislative services, PED, told the task force that a definition of the term "alternative school" does not exist in statute or in the New Mexico Administrative Code. However, based on nonregulatory guidance in the form of department memos and emails, the PED has established some basic criteria to define an alternative school:

- alternative schools report membership on the fortieth, eightieth and one hundredth twentieth day of school and at the end of the school year;
- they are rated for accountability;
- they have principals; and
- they issue diplomas.

In response to questions from task force members, Julia Rosa Emslie, director of the Strategic Initiatives Division of the PED, clarified that alternative schools do not qualify for the small school size adjustment. Alternative schools can be within an existing school district, in which case the district receives operational funding through the state equalization guarantee and distributes it to the alternative school. Ms. Emslie told the committee that alternative schools operate within law like traditional schools, but they differ in the curriculum and programs that are offered.

The task force discussed alternative and charter schools, charter school incentives and school program availability to alternative school students.

Election of Co-Chairs

Task force members voted unanimously to confirm the New Mexico Legislative Council's appointment of Representative Miera and Senator Nava to serve as co-chairs for the PSCOOTF for the 2012 interim.

PSCOC 2012-2013 Standards-Based Capital Outlay and Roof Awards

Robert Gorrell, director, PSFA, and Tim Berry, deputy director, PSFA, followed up on Mr. Abbey's discussion of the standards-based awards. The New Mexico School for the Deaf (NMSD) was awarded \$1.4 million for planning and design to address site infrastructure and deficiencies. The amount includes funding for an additional recreational field. In response to questions from members of the task force regarding the award to Santo Domingo Elementary School and Middle School, which is contingent upon a 50-year land lease, Mr. Gorrell stated that the PSCOC has met with tribal leaders and that progress has been made. If the lease is not negotiated by January 1, 2013, the award will be rescinded. In response to questions from the task force, Mr. Gorrell clarified that the NMSD and the New Mexico School for the Blind and Visually Impaired (NMSBVI) were awarded money under the deficiency correction program. The schools will likely receive standards-based awards for the 2013-2014 school year. Mr. Gorrell told the task force that the PSCOC will consider each individual building at the NMSD and the NMSBVI for five years, at which point the schools will be considered for awards at the campus level. This has been done to address serious deficiencies on each campus. In response to questions regarding the Alma d'Arte Charter High School, Mr. Gorrell explained that the actual ownership of the building is unclear.

In response to questions from task force members, Mr. Gorrell explained that schools must select roof contractors from a pool established by the PSCOC to conduct an assessment of roof conditions. Mesa Vista Middle School and High School's award is contingent on a roof consultant report. Task force members requested information regarding the Ben Lujan award. Mr. Gorrell explained that the award cannot be given out until a facility maintenance assessment report (FMAR) has been completed for each school district. In order for the PSFA to conduct the FMAR, additional funding and at least four additional full-time employees would be needed.

Mr. Gorrell updated the task force on the status of Escalante High School. Contractors for the new roof on Escalante High School substituted an agreed-upon material for a thinner material that looked similar. The PSCOC has funded repair costs, and the new roof is almost completed. Ceilings in the school will be repaired before the school year begins. Mr. Gorrell explained that the PSFA has made a claim against the bonding company for the roof but that often, public entities do not complete lawsuits due to expenses. The PSFA is considering various policy options to avoid similar situations in the future.

GMCS D Facilities Utilization and Capital Outlay Master Plan

Mr. Haskie, assistant superintendent, support operations, GMCS D, told the task force that the GMCS D has worked to address facilities issues in the school district, including low utilization ratings that are generally between 30% and 50%. The GMCS D has been forced to fund many redundancies that could be addressed by consolidating schools. The GMCS D contemplated combining schools and building new schools as a result of recent PSCOC awards.

Ray Arsenault, superintendent, GMCS D, told the task force that the district has created a master plan that involves the consolidation of several schools. Because of necessary budget cuts, the GMCS D made a request of the PED to close Tohatchi Middle School, Navajo Middle School and Crownpoint Middle School and to reorganize grade levels to accommodate in existing facilities the displacement of students as a result of the school closings. The PED denied the request.

Several members of the task force expressed concern about maintaining the integrity of the autonomy of local school boards when the PED has the ability to overrule local decisions. Members of the task force also discussed the importance of involving community members in important decisions such as school closings. Members also stressed the importance of educating the public on the benefits and consequences of decisions made by the school board.

Mr. Arsenault told the task force that the GMCS D is currently adjusting its facility master plan to account for recent developments. The GMCS D would still like to consider consolidating certain schools in order to increase efficiency of utilization and to maintain fiscal responsibility. The GMCS D intends to analyze various consolidation options carefully before moving forward. Because the PED denied the GMCS D consolidation, the district must make budget cuts to accommodate the PED's decision.

Task force members discussed the importance of communication between federal and state schools in the GMCS D. Without a dialogue between the various educational entities, much work and funding is redundant. The task force discussed challenges that are unique to the GMCS D, including the mobility of Native American children and the difficulties associated with planning when several entities are involved. The task force also discussed the benefits of variety and choice when selecting a school.

Review of the *Zuni* Lawsuit

Mr. Burciaga told the task force that all state constitutions have equal protection guarantee and educational clauses that require the state to provide educational services. Two models have emerged from school litigation: the equity model and the adequacy model. Mr. Burciaga stated that having equity is more complex than simply being equal. Adequacy requires a value judgment. In 1998, a study of the FCI determined that New Mexico school facility deficiencies amounted to approximately \$2.5 billion. The court, in the *Zuni* lawsuit found that the state was in violation of Article 12, Section 1 of the Constitution of New Mexico, which states that "a uniform system of free public schools sufficient for the education of, and open to, all children of school age in the state shall be established and maintained". In 2000, the *Zuni* lawsuit judge appointed a special master to determine if the state was meeting the constitutional adequacy requirements. In 2002, the judge accepted the report of the special master, which stated that the state is making a good-faith effort and has largely complied with the requirements of the court finding. SB 167, introduced in 2001, addressed adequacy concerns and provided for a regular revenue stream. Mr. Burciaga stated that in 2007, a law student named Lynn Carrillo Cruz wrote an article for the *New Mexico Law Review* that raised concerns about the choice of adequacy over equity and the implementation of the findings of the *Zuni* lawsuit.

Mr. Burciaga clarified that the *Zuni* lawsuit is ongoing because the court has issued no final order stating that the state is in compliance. Members of the task force discussed the

ongoing *Zuni* lawsuit, the amount of money spent on school facilities since the *Zuni* lawsuit and charter schools.

The Public School Capital Outlay Act: Comparison Between the 2003 and 2012 Versions

Ms. Ball presented the task force with a handout illustrating the differences between the 2003 Public School Capital Outlay Act and the 2012 Public School Capital Outlay Act. The Public School Capital Outlay Act was amended in 2003 to address critical capital outlay needs that local school districts were unable to meet. In 2004, the legislature passed a measure that allowed the PSCOC to certify the need for SSTBs directly through a legislative appropriation. Ms. Ball told the task force that the PSCOC has also used SSTBs to provide funding for school districts to participate in a facility information management system by paying for the program and training.

Discussion of Work Plan and Formation of Task Force Work Groups

Ms. Ball discussed the possible formation of a subcommittee on capital outlay and another on charter schools. The task force discussed a variety of issues that might be covered by the subcommittees, as well as the possible number of meetings of each subcommittee and the desired end result. The task force discussed the possibility of having intensive one-day meetings for each work group during which the work group would agree on potential legislative policy changes and report them to the full task force at a later PSCOOTF meeting date.

The task force directed staff to organize potential meeting dates for subcommittees and report back to the task force at a later date.

Adjournment

There being no further business, the thirty-seventh meeting of the PSCOOTF adjourned at 3:21 p.m.