

**MINUTES**  
**of the**  
**AUGUST 30, 2004 MEETING**  
**of the**  
**PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE**

**August 30, 2004**  
**Pete McDavid Room, The Pit Arena, University of New Mexico**  
**Albuquerque**

Representative Rick Miera called the meeting of the public school capital outlay task force to order at 9:40 a.m. on Monday, August 30, in the Pete McDavid room at the university of New Mexico's Pit arena in Albuquerque.

**PRESENT**

Sen. Ben D. Altamirano  
Robert Desiderio  
Odis Echols  
Pancho Guardiola  
Leonard Haskie  
Robert G. Heyman  
James Jimenez  
Rep. Larry A. Larranaga  
Sen. Carroll H. Leavell  
Kilino Marquez  
Rep. Rick Miera  
Tony Monfiletto  
Don Moya (Representing Veronica Garcia)  
Bud Mulcock  
Neil Nuttall  
Rep. Henry Kiki Saavedra  
Norman Suazo

**ABSENT**

Gary Bland  
Rey S. Medina  
Sen. Cynthia Nava

**Advisory Member**

Speaker Ben Lujan

**Staff**

Sharon Ball, analyst, Legislative Education Study Committee (LESC)  
Tim Berry, deputy director, Public School Facilities Authority (PSFA)  
Bob Gorrell, director, PSFA  
Liz Holmes, research assistant, Legislative Council Service (LCS)  
Linda Kehoe, capital outlay coordinator, Legislative Finance Committee (LFC)  
Antonio Ortiz, director, capital outlay unit, Public Education Department (PED)  
Olivia Jackson-Padilla, analyst, LFC  
Janet Peacock, research and fiscal policy analyst, LCS  
Pauline Rindone, director, LESC  
Bill Sprick, planning and designing, PSFA  
Paula Tackett, director, LCS  
Doug Williams, researcher, LCS

Mark Williams, communications officer, PSFA

Representative Miera welcomed members, staff and guests. He acknowledged the appointment of Representative Henry Kiki Saavedra and the re-appointment, after a year's hiatus, of Robert G. Heyman to the task force and welcomed both of them.

The task force adopted the minutes of the May 18, 2004 meeting. Ms. Peacock then reported that the legislative council adopted the proposed work plan of the task force for the 2004 interim. This work plan had been discussed at the previous meeting of the task force and was subsequently revised to expand the language pertaining to the continuing work on maintenance issues. A copy of the approved work plan is in the meeting file. In response to a question, Mr. Desiderio briefly summarized the goals of the task force and the work to be done in the interim. Representative Miera noted that the work plan included hearing from the LESC's subcommittee on charter schools, and he emphasized the importance of having the task force continue to provide recommendations relating to the facility needs of charter schools.

Ms. Peacock said that staff is recommending that the maintenance subcommittee of the task force be re-created and that the September 16 meeting of the full task force be changed to a meeting of the subcommittee. She explained that a lot of fairly detailed information on maintenance issues had been compiled by staff at the request of the previous maintenance subcommittee, and it was felt that a continued discussion of the information and of related maintenance issues would be beneficial at the subcommittee level. The task force adopted a motion to re-create the maintenance subcommittee, with Representative Miera to continue as chair along with the following members from last year — Senator Nava, Mr. Guardiola, Mr. Haskie, Mr. Marquez and Mr. Suazo. Other members of the task force were invited to serve on the subcommittee and the co-chairs were asked to appoint members to replace individuals who had served on the previous subcommittee but are no longer on the task force.

### **Report from the New Mexico Public School Insurance Authority**

Sammy Quintana, director of the New Mexico public school insurance authority (PSIA), and Julie Garcia of Poms & Associates presented information on the state's public school insurance program, focusing on the property insurance program. A copy of their presentation is in the meeting file. Mr. Quintana explained the structure and services of the PSIA. He noted that all school districts except Albuquerque are required to participate in the PSIA insurance programs and other educational entities may elect to participate. The programs are all self-insured, with excess coverage purchased privately. Mr. Quintana said that PSIA is working closely with Mr. Gorrell and his staff and that he believed that this cooperation could lead to a significant drop in claims in the future, especially as the new maintenance guidelines and construction oversight programs are implemented.

Ms. Garcia reviewed the property insurance program administered by PSIA, including coverage, exclusions, deductibles and recent claim history. She noted that claims resulting from water damage are the largest source of property damage and estimated that 90 percent of water damage claims result from poor maintenance. She said that programs to mitigate water damage

could lead to significant premium reductions. She also noted that a number of charter schools have had a relatively high claims history, reflecting to some extent the poor condition of facilities that they are housed in and, to some extent, the operational focus of charter school administrators.

During the discussion, the issue of renovation and repair projects being paid for from PSIA funds and going to contractors without competitive bid was raised. It was noted that one interpretation is that insurance funds are not public funds and therefore are not subject to the Procurement Code. Mr. Moya said that based on his experience in the Santa Fe school district, projects paid for from insurance funds could also be an emergency, such as in the case of a fire, and the contracts would come under the Procurement Code exception for emergencies. It was suggested that the LCS staff could do a legal analysis of the applicability of the Procurement Code to insurance-funded projects and report back to the task force.

Other issues raised by members of the task force included concerns about soaring premiums despite the efforts of school districts to implement mitigation plans; the recent increases in deductibles; and the lack of district input into work performed for the PSIA. The question of the compatibility between PSIA projects and programs and those administered by the PSFA was also raised. The maintenance subcommittee was asked to look into ways to avoid duplication and conflict between the PSIA and the PSFA and to ensure adequate district involvement in both processes.

### **The Volatility of the State-Share Formula**

Ms. Peacock reviewed the formula that determines what percentage of costs the state will pay for under the new, standards-based process and changes in the formula results over the past three years. A copy of the presentation is in the meeting file. She explained that the formula relies primarily on two factors — the assessed value of the school district for property tax purposes and the enrollment, or membership, of the district. These factors are used to calculate the relative assessed value per member of the district compared to the state as a whole, which is used as a measure of the ability of the district to finance its own capital improvements. The lower the assessed value per member of the district, the higher the state share. In addition, districts that impose property taxes for educational purposes in excess of the average statewide receive a bonus of up to five percentage points in state share. Ms. Peacock also reminded members that the local share determined by the formula is the offset amount that is applied to direct legislative appropriations for capital outlay and education technology appropriations to public schools.

Ms. Peacock presented a number of tables showing the change in state-share amounts since 2002. She concluded that the formula has been fairly volatile, especially in 2004, when 31 districts experienced a change in their state-share percentage from 2003 of five percent or more. She noted that while much of the volatility in 2004 was probably a one-time adjustment to statutory changes resulting in revaluation of residential property in many counties, there will always be some districts experiencing large year-to-year changes because of changes in the valuation from oil and gas production or nonresidential property and changes in school

enrollment, especially in small districts. In response to a suggestion that the volatility could be reduced by using a three- or five-year rolling average, Ms. Peacock noted that one of the tables shows a three-year average, which reduces the number of districts with a change in their state-share percentage of five percent or more in 2004 from 31 to four.

### **Review of the Offsets for Direct Appropriations**

Antonio Ortiz, director of the capital outlay unit of the PED, provided information on both the educational technology and capital project offset amounts for all school districts for 2003 and 2004. A copy of his presentation is in the meeting file. His report shows that 10 districts were subject to educational technology offsets in 2003, amounting to \$2.045 million, and 12 in 2004, totaling \$5.3 million. Three districts currently have an educational technology offset carry-forward amount — Albuquerque for \$4.2 million; Ft. Sumner for \$25,160; and Mountainair for \$13,438. In response to a question, Mr. Ortiz verified that the law was changed in 2004 to limit the carry-forward period for educational technology offsets to three years.

Mr. Ortiz also reported that offsets for capital outlay projects (other than educational technology) for appropriations made in 2003 and 2004 total \$10.371 million and apply to 56 school districts. The two-year calculation for these offsets reflects the fact that this is the first year of the standards-based process that is subject to the state-share formula and offset provisions. These offset amounts will be subtracted from grant awards made by the public school capital outlay council later this year for non-continuation projects. Amounts for school districts that do not receive grant awards or receive awards smaller than their offset amount will be carried forward and applied to future award amounts. Unlike educational technology offsets, the carry-forward period for these offsets is not limited.

During the discussion on offsets, two issues were raised. The first dealt with the time frame and authority for districts to reject direct appropriations. Mr. Ortiz noted that the law provides that districts must notify the department of finance and administration and the PED by July 15 if they want to reject an appropriation. This decision is made by the local school board. So far, no direct appropriations have been rejected. However, he also noted that since severance tax bonds for projects funded by direct appropriations are often sold in June, the PED has agreed that certification by a local board to the state board of finance that a project is ready for bonds to be issued is deemed as acceptance of the appropriation. It was suggested that some consideration be given to changing the date for notification of rejection to fit in with the state board of finance schedules for selling bonds. The second issue dealt with school district involvement in the direct appropriations process and the goal of having appropriations better reflect the needs of the district. One suggestion was to require a school district to endorse an appropriation prior to its passage. However, it was noted that the current capital outlay appropriation process may not easily accommodate such a requirement.

Ferdi Serim, program manager of the educational technology unit of PED, provided an overview of state and federal funding for educational technology in the schools. A copy of his presentation is in the meeting file. He stressed the importance of educational technology in twenty-first century education and highlighted a number of statewide efforts to enhance

education through technology. During discussion, Mr. Serim was asked if he could quantify the costs in terms of technology resources and operating costs to districts of complying with the No Child Left Behind Act. He responded that this would be very difficult. He stated that, contrary to popular belief, the act does not have quantifiable standards for technology, which makes it more difficult to determine costs of compliance.

Tom Ryan, executive director of technology for Albuquerque public schools (APS), talked about the impact that the offset for direct appropriations for educational technology is having on APS. He noted that because of generous appropriations from Albuquerque legislators for educational technology at specific schools in the district, the APS distribution from the educational technology fund in July of each year has been zero in both 2003 and 2004. This, coupled with the lack of E\*Rate funding, has meant that the district has no reliable source of funding for educational technology needs, including the operational costs of providing internet access, running district networks, etc. He said that APS would need a minimum of \$102 million over the next five to seven years just to maintain the level of current technology systems at its schools. Mr. Ryan stressed the importance of technology infrastructure in the schools, saying it is not a choice but a necessity, and he questioned the decision to separate funding for technology infrastructure from funding for facilities. He suggested that the state should approach funding for technology infrastructure as it is now approaching funding for facilities, i.e., develop minimum standards, assess all schools against these standards, provide funding based on a rank-ordered assessment of need and provide adequate funding to ensure that all schools meet the standards. He again noted the need for operational funds for supporting technology and said that the educational technology fund distributions had previously met some of this need for APS.

Task force members questioned Mr. Ryan about the process APS uses to provide funds for educational technology to individual schools. Mr. Ryan said that APS does have minimum standards that it takes into consideration in distributing funds. However, he reiterated that the shortage of funds makes it difficult to achieve the standards.

### **History of Critical Capital Outlay Awards**

Ms. Peacock and Mr. Ortiz provided information on critical capital outlay awards during the past 10 years. A copy of the presentation is in the meeting file. Ms. Peacock noted that this information is being compiled in response to a legislative request for the LCS to evaluate the changes in funding for the public school capital outlay process since 1999 to see if the additional funding has reduced the disparity in the quality of educational facilities in the state. Staff intends to discuss the study results with the task force during the interim.

The information shows that total critical capital outlay awards from fiscal year 1995 through fiscal year 2004 totaled \$527.6 million. Of this amount, approximately \$130 million was awarded in the first five years with 49 districts receiving awards, compared to \$400 million in the second five years with 65 districts receiving awards. Ms. Peacock noted that the awards information had been sorted in three ways — total awards by district over the 10-year period, awards per member and awards per square foot of district facilities. She noted that when looked at per member or per square foot, small districts generally received the highest awards, reflecting

the lack of economies of scale available to them. She also noted that staff did look at the awards compared to the state share of districts calculated under the new formula, and generally found that the vast majority of critical capital outlay awards went to relatively poor districts. She said, however, that staff was not able to look at awards compared to "need", as there was no uniform measurement of the condition of the schools prior to the 3DI assessment. Finally, she said that information was provided on awards by school during the last five years, which showed that in some cases awards were made for projects to more than one school within a district. Ms. Peacock reminded members that one of the concerns of the litigants in the *Zuni* lawsuit was the fact that awards were generally limited to one project per district per year, regardless of the needs of the district.

### **Update from the Public School Capital Outlay Council (PSCOC)**

#### **1. Overview and Emerging Issues**

Ms. Tackett began the presentation by summarizing the large amount of work that the PSCOC and the PSFA have accomplished since the last meeting of the task force. She said that the PSCOC is in the middle of the pilot year of the standards-based process while transitioning from the former critical capital outlay process in place for many years. Noting that the current law requires the PSCOC to give priority to funding of continuation projects from the critical capital outlay process for the next three years, she provided members with a definition of "continuation project" that will be presented to the PSCOC at its next meeting for consideration prior to making awards. A copy of the definition is in the meeting file.

Ms. Tackett reported that the PSCOC had three days of district presentations in August and heard from 34 districts requesting funding for continuation projects and standards-based projects. She noted the high quality of the presentations and praised both the district representatives and the PSFA staff for their hard work in making the new process a reality. She said that during the presentations, a number of issues surfaced on which she felt the PSCOC could use some guidance from the task force. These included the following:

- review of growth issues, including the question of who should pay for growth, the current weighting factors for growth used in the rankings and the methodology of calculating growth;
- the inability of small school districts to meet match requirements for large projects;
- whether the state-share amount applies to projected costs on which the grant award is made or actual bid costs;
- whether the state will pay for land as part of the project cost;
- whether the PSCOC should develop flexible rules for applying the state share to total project costs when a project has been begun by the district at some reasonable date prior to the awards date in order to reward proactive districts; and
- whether the statute needs to specifically authorize the funding of master plans by the PSCOC.

Although the co-chairs indicated that there would be further discussions on these issues, several

members of the task force expressed concern about including payment of land costs as part of the project cost.

## 2. Awards Application Process

Mr. Berry discussed the awards application process and presented a table showing the revised applications submitted by district. He also provided a chart showing the worst 100 schools in the 3DI rankings with an indication of whether the applicable district had applied for a project addressing the inadequacies at that school. Copies of these handouts are in the meeting file.

With respect to the applications, Mr. Berry noted that PSCOC had received 18 applications for continuation projects, totaling \$124.8 million, and 60 requests for standards-based projects, totaling \$252 million. He indicated that the PSFA staff had worked with many of the applicants to make sure they understood the state adequacy standards and, for non-continuation projects, the local share requirements. With respect to the schools included in the worst 100, Mr. Berry noted that applications had been received directly addressing 39 of the schools, leaving 61 of them without an application. However, he added that for some schools that had overcrowding issues, applications for new schools would relieve the overcrowding and thereby reduce the condition index for schools on the list. Mr. Berry also noted that for many of the schools where no application had been submitted, the state match is very low or the school district may have not applied because it is not prepared to meet its local match requirement.

Task force members raised a number of questions regarding the applications, many of which focused on the issue of growth. With respect to the need for new schools, Ms. Tackett noted that the 3DI database is very good at identifying the problem of inadequate space and that PSFA staff, district personnel and PSCOC members are working to craft the appropriate solution, which in some cases is funding a brand new school. A question was raised about the optimum size of a school. It was noted that size is usually left to the discretion of the district; it is not addressed in the adequacy standards and often a tradeoff must be made between size and cost.

## 3. Lease Payment Assistance

Mr. Berry reported that applications for lease payment assistance have been received from 48 schools, 42 of which are charter schools. The total amount of funds requested is \$1.9 million. A copy of the lease payment requests is in the meeting file. During discussion, it was noted that the law allows up to \$4 million of funds in the public school capital outlay fund to be used for lease payments, so that approximately \$2 million is not being used for this purpose. It was also noted that the lease payment amounts are calculated on previous year enrollment, which precludes new schools from receiving assistance the first year. Staff noted that the charter school stimulus fund should be available to help with first-year lease payments, although it was not known whether sufficient revenues are available in the fund.

## 4. Update on the Full-Day Kindergarten Initiative

Mr. Gorrell then presented an update on the full-day kindergarten initiative. He reported that the PSFA has been allocated up to \$12 million to provide 112 new full-day kindergarten facilities that are available for the start of the current school year. This includes 103 portable classrooms (25 singles and 39 doubles) and nine renovations. He noted that there are some major obstacles faced by the PSFA and the districts on this project, including a large increase in the cost of steel, site issues, flooding, security issues at Los Alamos, a shortage of installation personnel and the difficulty of projecting how many kindergarten students will show up and at what schools. Mr. Gorrell said that PSFA has determined that portables do not generally meet the state adequacy standards for kindergarten classes of 60 square feet per student or 1,200 square feet for a class of 20, excluding storage space, and access to toilet facilities without exiting the building. Thus, districts have been advised that use of portables is to be considered as a temporary solution until brick and mortar classroom space that meet the adequacy standards is provided. With this in mind, the PSCOC has granted a variance to the standards for the use of portables for full-day kindergarten when no other option is feasible. It was later reiterated that the use of portables is a temporary solution and the 3DI database will still show a need to provide additional space with adequate toilet and storage facilities in order to meet the standards.

Task force members commended Mr. Gorrell and his staff for accomplishing so much in such a short time frame. It was noted that the current project did not really get underway until Representative Miera met with the governor after the 2004 legislative session to work out a plan for advancing money for kindergarten facilities included in the general obligation bond resolution to be voted on in November and using other public school capital outlay funds in order to get the kindergarten kids in classrooms by the start of the school year. Questions were raised about why the time frame is so short when full-day kindergarten is being phased in over five years. A number of factors were noted, including the fact that during the first years of the program, only districts that had adequate facilities participated. The difficulty of projecting which parents would enroll their students in full-day kindergarten was also noted.

Representative Miera recognized Representative Thomas Swisstack from Rio Rancho and invited him to address the task force. Representative Swisstack reported that Rio Rancho has experienced a greater enrollment in kindergarten than projected and therefore the 14 portables that it requested and were provided are not adequate. He said it needs at least one more doublewide. Mr. Gorrell said that, assuming approval by the PSCOC, the PSFA will provide the additional portable.

## 5. Update on Deficiencies Correction Program

Mr. Berry presented an update on the deficiencies correction program. A copy of his handout is in the meeting file. He reported that as of August 6, 2004, the PSCOC had approved 347 deficiency correction projects and awarded \$223 million. Of this amount, contracts had been entered into for about \$106 million and \$73 million had been expended. He noted that work is moving forward fairly quickly now and the two latter numbers are probably each about \$10 million higher as of today. In response to a question, Mr. Berry said that the current law requires all deficiency correction projects to be allocated by June 30, 2006 and all money expended by June 30, 2007. Mr. Gorrell noted that, in some cases, the PSFA is holding up the expenditure of funds in order to combine a deficiency correction project with a bigger project being funded by the PSCOC or the district. It was noted that delaying expenditure beyond June 30, 2007 will require a statutory change.

## 6. Other PSFA Initiatives

Bill Sprick discussed the planning and design review process being implemented by the PSFA. Highlights include achieving a 14-day turnaround on getting building permits through coordination with the construction industries division of the regulation and licensing department, the energy, minerals and natural resources department and the developmental disabilities council; working with the districts on master plan development and review; continuing to update the COMET database and training districts on its use; and working with districts and their architects on the design and specifications for projects prior to bidding.

Mr. Gorrell introduced Jim Luster and Bob Bittner, PSFA staff members in charge of the maintenance program, and talked about their recent efforts in developing a statewide, web-based maintenance system. He discussed the potential for the PSFA to provide statewide purchasing for common maintenance items such as light bulbs, and to offer a regional directory of resources available for certain maintenance services. He also discussed plans to implement requirements for certification of maintenance staff, starting with certification of construction procurement specialists, and efforts to develop maintenance and custodial guidelines.

Mr. Gorrell was praised for the good work being done by PSFA and was asked if there are areas where things are not going well. He noted that two challenges are being able to retain the high-level staff he has put together and to provide an organization structure that will lead to long-term stability through entry-level positions and training and development opportunities.

## **Adjournment**

The meeting was adjourned at 3:40 p.m.