

**UNAPPROVED MINUTES  
of the  
THIRTIETH MEETING  
of the  
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**December 21, 2010  
Room 307, State Capitol  
Santa Fe, NM**

The thirtieth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order at 9:05 a.m. by Representative Rick Miera, co-chair, on December 21, 2010 in Room 307 of the State Capitol in Santa Fe.

**Present**

Rep. Rick Miera, Co-Chair  
Sen. Vernon D. Asbill  
Dr. Lisa Grover  
Mr. Leonard Haskie  
Mr. Robbie Heyman  
Rep. Larry A. Larrañaga  
Sen. Lynda M. Lovejoy  
Mr. Kilino Marquez  
Ms. Elizabeth Marrufo  
Rep. W. Ken Martinez  
Dr. John Mondragon  
Mr. Mike Phipps  
Sen. Sander Rue  
Rep. Henry Kiki Saavedra

**Absent**

Sen. Cynthia Nava, Co-Chair  
Sec. Dannette Burch  
Rep. Keith J. Gardner  
Ms. Cecilia J. Grimes  
Sen. Timothy Z. Jennings  
Rep. Ben Lujan  
Rep. James Roger Madalena  
Dr. Susanna Murphy  
Sen. John Arthur Smith  
Mr. Ernesto Valdez

**Guest Legislators**

Sen. Rod Adair  
Rep. Ray Begaye

**Staff**

Sharon Ball, Senior Researcher, Legislative Council Service (LCS)  
Tim Berry, Deputy Director, Public School Facilities Authority (PSFA)  
Raúl E. Burciaga, Director, LCS  
Robert Gorrell, Director, PSFA  
Frances Maestas, Director, Legislative Education Study Committee (LESC)  
Leslie Porter, Research Assistant, LCS  
Peter Van Moorsel, Policy Analyst, LESC

**Guests**

A copy of the guest list is in the meeting file.

**Handouts**

Copies of handouts and written testimony are in the meeting file.

**Tuesday, December 21**

**Approval of Minutes**

Minutes from the November 24, 2010 meeting were approved as presented.

**Fiscal Year 2012 Revenue Projections**

Tom Clifford, Ph.D., chief economist, Legislative Finance Committee (LFC), said that the State Board of Finance (SBOF) and the LFC have updated the fiscal year (FY) 2011 severance tax bond (STB) capacity estimates to reflect December 2010 consensus revenue estimates. Directing members to the handout he provided (see below), Dr. Clifford gave members the following summary of STB capacity as of December 2010.

<b>Consensus Estimate</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>
Senior Long-Term Issuance	\$149.6	\$180.5	\$180.5	\$180.5
Senior Sponge Issuance	\$178.6	\$84.2	\$67.3	\$63.2
<b>Senior STB Capacity</b>	<b>\$328.2</b>	<b>\$264.7</b>	<b>\$247.8</b>	<b>\$243.7</b>
Authorized Unissued		(\$0.4)	\$0.0	\$0.0
Water Project Fund		(\$26.5)	(\$24.8)	(\$24.4)
Tribal Infrastructure Project Fund			(\$12.4)	(\$12.2)
Colonias Infrastructure Project Fund			(\$12.4)	(\$12.2)
<b>Net Senior STB Capacity</b>	<b>\$328.2</b>	<b>\$237.8</b>	<b>\$198.2</b>	<b>\$195.0</b>
Supplemental Long-Term Issuance	\$112.9	\$0.0	\$0.0	\$0.0
Supplemental Sponge Issuance	\$97.0	\$147.7	\$144.8	\$168.0
<b>Supplemental STB Capacity</b>	<b>\$209.9</b>	<b>\$147.7</b>	<b>\$144.8</b>	<b>\$168.0</b>
<b>Total STB Capacity</b>	<b>\$538.1</b>	<b>\$385.5</b>	<b>\$343.0</b>	<b>\$363.0</b>

Dr. Clifford explained that for FY 2011, both the SBOF and LFC estimate senior long-term capacity at \$180.5 million. The figure was calculated to ensure that the same amount can be issued in each of the next 10 fiscal years.

Dr. Clifford said that the SBOF and LFC used the following assumptions to calculate the FY 2011 STB capacity estimates:

- the Consensus Revenue Estimating Group's forecast of oil and gas prices through FY 2015, after which time, the oil and gas prices are set equal to the FY 2015 estimates;
- the Consensus Revenue Estimating Group's forecasts of oil and gas volumes through FY 2015, after which time, natural gas volumes are assumed to decrease by 2% per year and crude oil volumes to decrease by 0.8% per year; and

- the interest rate on the debt service is at 3.5%.

Dr. Clifford characterized the oil and gas price assumptions as optimistic, remaining at the \$7.00 per cubic foot mark. In response to task force members' comments and questions, he noted that the purchasers of these bonds understand that oil and gas prices are volatile.

In response to questions and concerns about the level of reserves and the effect on the interest rate that the state must pay for debt service on bonds, Dr. Clifford responded that New Mexico's bond rating is currently holding up, despite the fact that the reserves have fallen significantly. He added that the current general fund outlook allows for approximately 4.5% reserves at the end of this fiscal year. He noted that the state needs to be cautious when considering creative financing methods to get through the budget shortfall because some methods may hurt New Mexico's bond rating. In response to a task force question about the negative figures in the Water Project Fund projections, Dr. Clifford clarified that negative figures indicate earmarks and senior bond capacity. He said that the Water Project Fund is currently in law and that in FY 2012, two new earmarks, the tribal and colonias infrastructure project funds, at 5% each, will also "come off the top", along with the Water Project Fund funding. Some task force members expressed concerns about the effect of adding these earmarks, which will limit available bond funds for public school capital outlay projects. Dr. Clifford noted that STBs often seem to provide a ready source of supplemental funding in times of budget shortfalls, but the supplemental STB proceeds still go to public school capital outlay. In response to an additional question, Dr. Clifford explained that the LFC staff will provide an update of the forecast during the session before the FY 2012 budget is finalized.

### **Discussion of Potential Endorsement of Legislation**

**First proposed bill (.182974.1):** Ms. Ball directed task force members' attention to drafts of potential legislation in members' folders. She reminded task force members that the first bill for their consideration has already been approved for endorsement by both the task force and the LESC and is provided for informational purposes. She reminded task force members that this measure proposes to amend the Procurement Code to increase the subcontractor bonding limit from \$125,000 to \$250,000. She noted that Senator Asbill would carry this bill.

**Second proposed bill (.183642.1):** Directing task force members' attention to the second bill, Ms. Ball explained that this measure proposes to amend the Procurement Code to establish the applicability of the prevailing wage law for construction manager at risk (CMAR) procurement. Gary Carlson, contract bill drafter, LCS, explained that, according to a General Services Department (GSD) rule, a state agency is required to request a prevailing wage determination from the Workforce Solutions Department (WSD) prior to beginning the bidding process. He said that the intent of the bill is to prohibit the determination of another prevailing wage once the project has begun.

Task force members expressed concern about the necessity for this legislation if the matter is clear already in statute and rule. Mr. Berry reminded the task force of the problems with WSD wage determinations for the Las Cruces high school project. He acknowledged that, typically, a wage rate is issued at the beginning of the project and stays in effect throughout the project; however, the situation that led to the drafting of this legislation relates the fact that the Las Cruces high school project is a large one both in cost and in time. He said that, in this case, the bids for the final phase of work came six months after the first work began, and, because of

that time lapse, the GSD made the determination that the final bid was a new bid that required significantly higher wage rates, thereby negating the primary advantage of the CMAR process. On a motion by Representative Larrañaga, seconded by Mr. Heyman, the task force agreed to endorse the legislation, but to leave to the bill sponsor's discretion whether it will need to be introduced. Representative Miera agreed to sponsor the bill.

**Third proposed bill (.183685.1):** Ms. Ball and Mr. Carlson explained that this bill draft seeks to amend the Public School Capital Improvements Act (sometimes called "SB 9" or the "two-mill levy") and the Public School Buildings Act (sometimes called "HB 33") to require charter schools to report to the Public Education Department (PED) anticipated and actual expenditures of distributions made pursuant to those acts. Some task force members and charter school representatives expressed concern about endorsing legislation that would provide additional mandates for charter schools.

In response to task force discussion and questions, Ms. Ball explained that this report is only advisory in nature, and that passage of the bill will not infringe on charter schools' abilities to make their own decisions about expenditures. She added that the bill had been requested by a charter-authorizing public school district with the intent of eliminating or at least limiting charter school audit exceptions that reflect on the authorizing district.

In response to task force comments and questions, Mr. Carlson explained that school districts are required to expend any property tax money from direct mill levies for the purpose stated in the question posed to voters at the election. Ms. Ball explained that both SB 9 and HB 33 are direct levies with districts receiving their money from the county treasurer as the taxes are collected. HB 33, in particular, is a "pay-as-you-go" method for funding public school capital outlay.

Joe Guillen, executive director, New Mexico School Boards Association, asked on behalf of his organization to have local district school boards copied on advisories to charter schools that they had authorized.

In response to further discussion, Ms. Ball stated that passage of this legislation would provide a method for charter schools to receive advice on the appropriateness of their capital outlay expenditures and may help the sometimes strained relationships between some charters and their respective chartering authorities. Antonio Ortiz, Capital Outlay Bureau director, PED, stated that he and his staff are willing and able to provide this service for charter schools.

On a motion by Representative Martinez, seconded by Dr. Mondragon, the task force agreed to endorse this legislation with the suggested changes regarding wording and local school board notification. Representative Miera stated that he would designate a legislator to carry the bill before the session begins.

**Fourth proposed bill (.183651.1):** Ms. Ball discussed the intent of the next bill draft, which proposes to amend the Charter Schools Act to require the addition of a dispute resolution mechanism for disputes between state and locally chartered charter schools and their respective chartering authorities. In response to a task force question, Dr. Grover explained that current statute mandates that locally chartered charter schools have this clause in place and that this legislation will require *all* charter schools and authorizers to have a dispute resolution clause in

place, not simply those that are locally chartered. She added that this legislation would allow for the resolution of disputes within a given time frame agreed upon by the charter authorizer and the charter school.

After extensive task force discussion and audience comments about the bill's purpose, provisions and perhaps unintended consequences and costs, task force members agreed by consensus that the LESC may be the more appropriate venue for consideration of this legislation. In response to a request from Representative Miera, Ms. Maestas stated that the LESC will discuss possible endorsement of some version of this legislation at its next meeting.

**Fifth proposed bill (.182631.2):** Directing task force members' attention back to the proposed bill drafts, Ms. Ball discussed the intent of the bill draft that proposes to make several amendments to different sections of law relating to public school facilities, including the following:

- exempt school districts from seeking SBOF approval when leasing facilities to a charter school;
- beginning with FY 2012, prohibit new charter schools from opening and existing charter schools from relocating into a facility that receives a New Mexico Condition Index (NMCI) rating below the average condition for all New Mexico public schools for that year and allow for an 18-month period for the school to be improved to meet the average NMCI rating;
- require PSFA approval of all lease-purchase agreements entered into by school districts and charter schools; and
- prohibit the PSFA from making a lease assistance grant to a school district or charter school whose lease-purchase agreement has not been approved.

Ms. Ball explained that an earlier version of this measure was introduced by Senator Rue in the 2010 session, but the bill did not receive a message from the governor and therefore was not considered. She said that the bill has since been redrafted to reflect concerns expressed by charter schools during the 2010 session, including adding the additional time to bring the school up to the average score.

In response to questions from the task force about adding responsibilities to the PSFA's current workload, Mr. Gorrell indicated that passage of the bill would have a minimal fiscal impact on the agency. He noted that he would be able to reassign the duties of one full-time employee to accomplish the requirements of this bill and that minimal legal costs could be absorbed into the current budget.

Charter school representatives present in the audience expressed a number of concerns about the bill, including the following:

- a hesitancy to accept legislation that creates increased financial burdens that do not directly relate to student learning;
- a concern that charter schools are being held to a higher standard than other public schools with the average NMCI requirement; and

- a concern that the PSFA will not be able to review more than 80 leases per year in a timely manner.

Some task force members expressed concern that the comments from charter school representatives might be construed to reflect an unwillingness to be held accountable for the public funding they receive for their operations. In response to a task force question, Mr. Gorrell indicated that research shows that improved facilities can and do have an effect on students' learning. Task force members discussed the importance of continuing the implementation of the standards-based capital outlay process in response to the judge's order in the *Zuni* lawsuit for all schools and not to be tempted to provide for unequal advantages for one group of students at the expense of another group because of pressures from special interest groups.

In response to a task force question about the bill's intent to eliminate SBOF approval of leases between school districts and charter schools, Mr. Berry stated that the intent of this legislation is to provide an additional incentive for school districts to lease their facilities to charter schools as the 2015 deadline approaches.

Representative Miera requested that staff continue to work with all interested parties to continue the discussion in an effort to resolve the issues and concerns satisfactorily.

On a motion by Representative Martinez, seconded by Representative Larrañaga, the task force voted without opposition to endorse the draft bill with suggested changes.

### **Adjournment**

Representative Miera noted that this is the final PSCOOTF meeting for the 2010 interim and that the task force membership will change with a new administration taking office. He thanked the members of the task force for their commitment and their service and also thanked the staff for all of their hard work and support.

There being no further business the thirtieth meeting of the PSCOOTF adjourned by consensus at 12:00 noon.