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

July 28, 2011
Room 322, State Capitol
Santa Fe

The thirty-second meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, on July 28, 2011 at 9:00 a.m. in Room 322, State Capitol.

Present
Rep. Rick Miera, Co-Chair
Sen. Vernon D. Asbill
Dr. Carl Foster
Ms. Cecilia Grimes
Dr. Lisa Grover
Mr. Leonard Haskie
Sen. Timothy Z. Jennings
Sen. Lynda M. Lovejoy
Rep. Ben Lujan
Mr. Kilino Marquez
Secretary Rick May
Sen. George K. Munoz
Ms. Lilliemae Ortiz
Mr. Mike Phipps
Sen. Sander Rue
Rep. Henry Kiki Saavedra

Absent
Sen. Cynthia Nava, Co-Chair
Rep. Donald E. Bratton
Mr. Robbie Heyman
Rep. Larry A. Larrañaga
Rep. W. Ken Martinez
Mr. Antonio Ortiz
Ms. Judy Rabon
Sen. John Arthur Smith

Guest Legislator
Sen. Nancy Rodriguez

Staff
Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Sharon Ball, Senior Researcher, LCS
Leslie Porter, Research Assistant, LCS
Tom Pollard, Legislative Fiscal Analyst, LCS
Frances Ramirez-Maestas, Director, Legislative Education Study Committee (LESC)
Peter B. van Moorsel, Senior Fiscal Analyst, LESC
David Abbey, Director, Legislative Finance Committee

Guests
The guest list is in the meeting file.

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

Thursday, July 28

Representative Miera welcomed the task force members. Noting the lack of a quorum, he indicated that the approval of the June minutes would be delayed until a quorum is present. Members of the task force introduced themselves.

Brief Review of New Mexico Legislative Council-Approved 2011 Task Force Work Plan

Mr. Burciaga briefly explained that the PSCOOTF proposed work plan had been approved as submitted to the New Mexico Legislative Council. Ms. Ball noted that some council members had expressed several concerns about issues related to charter school facilities, particularly school district rental of property. She said that the work plan covers that issue in item #6: "...examining issues related to charter school facilities, including increases in lease assistance from the state, utilization of public school buildings and other public buildings to accommodate charter schools, charter schools and the use of lease-purchase agreements and defining facility needs and cost requirements prior to final approval of a charter; ...".

Update on Progress of the Development of Adequacy Standards and Consideration of Funding Requirements for the New Mexico School for the Deaf (NMSD) and the New Mexico School for the Blind and Visually Impaired (NMSBVI)

By way of background, Ms. Ball explained that, during the 2005 legislative interim, the PSCOOTF heard testimony from the Higher Education Department (HED) and representatives from the NMSD and NMSBVI requesting the task force to consider allowing these two constitutional schools to qualify for funding under the standards-based process in the Public School Capital Outlay Act (PSCOA) for the state's 89 school districts in response to the judge's findings in the *Zuni* lawsuit in 2000. The 2006 legislature enacted PSCOOTF-endorsed legislation that included both special schools in the deficiencies correction program (DCP).

Continuing, Ms. Ball explained that the 2009 legislature passed additional amendments to the PSCOA to clarify NMSBVI and NMSD inclusion in the DCP and to request the PSCOOTF to study "reasonable alternatives for determining local matching funds" for both special schools. After hearing testimony from the Public School Facilities Authority (PSFA) staff regarding the necessity for the Public School Capital Outlay Council (PSCOC) to establish adequacy standards for these two special schools, Ms. Ball said that there was an agreement to begin a formal study of the issue of a local match, but it requested staff to begin to examine this issue for later task force consideration.

In the meantime, Ms. Ball said, the legislature made a total of $16.2 million in capital outlay appropriations to the NMSBVI, including $8.8 million for the NMSBVI preschool in Albuquerque, and $21.6 million to the NMSD, most of which was designated for deficiencies corrections projects. Ms. Ball also pointed out a table showing a total of more than $20 million in direct appropriations from the legislature from 2005 through 2010. She pointed out, however, that more than $6 million in general obligation funds were not approved by the voters in 2010. In response to a task force question, Ms. Ball explained that the funding for the two special schools was included in the higher education question on the ballot that was defeated because of public concerns about several higher education issues rather than a desire to withhold funding from the two special schools.

Ms. Ball went on to explain that the 2011 legislature considered a measure (SB 441), sponsored by PSCOOTF Co-Chair Nava, to exempt the NMSBVI and NMSD from the PSCOA requirement of a local match on the part of each school.

Task force members expressed a number of concerns about the long delay in getting adequacy standards established for these two special schools. In response, Robert Gorrell, director, PSFA, directed task force members' attention to a document titled "Special Purpose Schools Adequacy Standards Project History". Noting that in-house work had begun in May 2009, Mr. Gorrell said that the first meeting with staff from the special schools was held in October 2009.

In response to task force comments and questions, Linda Lyle, superintendent, NMSBVI, explained that the school administration searched for nationwide adequacy standards data but found none and had compiled information about the NMSBVI and NMSD to establish adequacy standards for the special schools. Mr. Gorrell added that these special schools have various additional facilities requirements, such as more room for wheelchairs and better lighting for the visually impaired, all of which require additional costs.

Representative Miera noted that the *Zuni* lawsuit did not address the two special schools since they were created separately under the Constitution of New Mexico. Mr. Gorrell responded that he believes a set of standards must be set for the NMSBVI and NMSD, and he requested help from the task force to address this issue.

In regard to special constitutional schools' standards development, Ms. Ball explained the history of the funding process for the NMSBVI and NMSD. She said that during the 2005 interim, the PSCOOTF heard from the HED, NMSD and NMSBVI about allowing these two constitutional schools to qualify for funding under the standards-based process established in the PSCOA for the 89 public school districts. She said the 2006 legislature enacted Laws 2006, Chapter 95, a PSCOOTF-endorsed measure to include the NMSBVI and NMSD in the DCP. Continuing, she explained how the 2009 legislature passed additional amendments to the PSCOA to include the NMSBVI and NMSD in the DCP and requested the PSCOOTF to study alternative methods for determining local matching funds for the schools. She said that after the PSCOOTF heard testimony from the PSFA about establishing the mentioned adequacy standards for these two schools, the PSCOOTF decided to wait for the PSFA's report on the subject. The legislature appropriated $16.2 million in capital outlay to the NMSBVI and $21.6 million to the NMSD, Ms. Ball said, designated for the DCP. In 2011, the legislature considered a measure to exempt the NMSBVI and NMSD from the PSCOA requirement of a local match from each school. The legislation did not pass. Ms. Ball stated that this interim, the PSCOOTF is monitoring the progress of this dilemma.

In response to task force questions about facilities funding for other similar schools nationally, Ms. Lyle stated that schools for the blind around the country generally receive funds from their respective legislatures. In response to a question about the availability of federal funds for the two schools, Ms. Lyle clarified that no federal capital funding is available. Ms. Lyle thanked the task force for continuing to work with the schools to find a viable solution. She emphasized that 80 percent of working-age individuals who are blind are unemployed or underemployed because society is scared of blindness.

In response to additional task force discussion, Ms. Lyle added that the NMSBVI and NMSD will do what needs to be done to develop adequacy standards. Dr. Ronald Stern, superintendent, NMSD, agreed with her comments. He added that the schools take adequacy standards seriously, and he is particularly concerned that perhaps the PSFA may be trying to "fit a square peg in a round hole" by attempting to measure the special schools against standards for the state's public schools. He said that these schools serve as more than simply schools because they serve the public schools around the state in helping to meet IDEA (federal special education) requirements, have a residential component and provide professional development services. In response to further task force discussion and questions, Dr. Stern said that the NMSD's first capital outlay priorities include the infirmary and the dining hall. He expressed concern that proposed adequacy standards deadlines will not allow for response and input to the proposed standards.

Senator Rodriguez thanked the task force for the work done thus far and explained that she has experience with the NMSD because she had a daughter who was deaf and benefited greatly from her attendance at the school. She explained that she has been the president of the NMSD board of regents and that she offers her home to graduates of the NMSD who have no place to go. She explained that deaf children live in a silent world that is designed for the hearing and that many of the children are orphans. She mentioned that the NMSBVI and NMSD are in limbo due to the uncompleted adequacy standards process and her main concern is that the schools may be left behind. She expressed concern that little or no progress has been made.

Some task force members expressed concern about the fiscal consequences of adding the special schools to the standards-based process when there are not currently enough resources for the 89 public school districts. Having noted that the top needs of the NMSD are the dining hall and the infirmary, which are needs no other regular public school has, task force members asked about potential costs for these projects. Dr. Stern said that $20 million is needed to upgrade the NMSD campus. Ms. Lyle said that at least $10 million is needed for the education center, with an additional $10 million needed to renovate the dormitory. In response to a task force question about sources for matching funds, Ms. Lyle said that since neither school has bonding capacity, matching funds must come from another source.

Representative Miera declared that this issue must be dealt with as soon as possible and expressed confusion because Dr. Stern said that the October 2011 deadline is too soon but also said that funding is needed now. Dr. Stern clarified that the schools do indeed want to move forward as quickly and as responsibly as possible for both schools, but that they simply want the opportunity to give feedback on the adequacy standards established by the PSFA. Richard Gorman, project manager, NMSD, explained that the process as currently defined requires that the developed adequacy standards go directly from the PSFA to the PSCOOTF and the schools want to assess those standards to ensure that they address the complexities of their needs. In response, Mr. Gorrell assured Mr. Gorman that both schools will be involved in the process.

Speaker Lujan suggested either a special or separate allocation of general obligation bonds dedicated for both schools available under the Department of Finance and Administration or the Public Education Department for the schools' local match requirements and also suggested consideration of a direct mill levy to be established for the special schools.

In response to a task force question about making the special schools school districts, Mr. Gorrell responded that, because the schools are established through the Constitution of New Mexico, voters would have to approve a change to the state constitution.

Task force members discussed the importance of having students in the "least restrictive environment". Dr. Stern explained that, for deaf children, sometimes a school for the deaf is the least restrictive environment. Other task force members discussed the importance of professional development for teachers to provide the most effective services to students in regular public school classrooms. Ms. Lyle added that the schools reintegrate the students back into their public schools appropriately and that the least restrictive environment must be considered given the importance of growing up in a family and a community.

School District Real Property Ownership

Albuquerque Public Schools (APS)

Brad Winter, Ed.D., chief operations officer, APS, said that the district is constantly looking to the future for use of currently owned land and for use of land possibly acquired. Directing members' attention to handouts provided by the district, Dr. Winter noted that the district owns a total of 329 acres of vacant property with an approximate current value of $21.3 million and an approximate future value of $40.3 million. He said that none of this vacant property includes any vacant buildings.

Don Moya, chief financial officer, APS, stated that is it important to note that all of the revenue from the sale of a land parcel can be used only for capital expenses and is put into a land acquisition fund. He said that in order to keep costs low, acquisitions are generally considered for areas in which the district anticipates growth. He stated that in the 1950s, APS gave up a parcel of land where the School for the Deaf in Albuquerque is and gained a parcel that now handles a few schools and added that this exchange would not have been possible without the purchase 60 years ago with anticipation of growth.

Marty Eckert, real estate director, APS, pointed out that the Albuquerque metropolitan area is currently depressed and the current estimated values are significantly lower now than they were at the peak of the real estate market several years ago. He explained that most of the APS vacant parcels are located in partially developed neighborhoods that have the potential for future growth that will likely require future school facilities to be constructed. He directed members' attention to the map provided by the district that shows the location of each vacant parcel. He said that the APS board believes that the district should retain the vacant parcels that are in the path of future growth until such time as the neighborhoods surrounding the parcels fully develop and the board determines that the property will not be needed for a school site. He opined that, if APS disposes of these parcels now, it will likely need to purchase replacement parcels in the same areas for the future, likely at a substantially higher price.

Dr. Winter said that the APS capital master plan has budgeted $35 million for future land purchases for charter schools, magnet schools, K-8 schools and high schools. For example, he said, the district has several possibilities for existing and new APS properties, including building a new school on vacant land, converting property from office use to school use, converting property from school use to office use, banking property for future use, selling or leasing properties and buying property.

In response to task force discussion regarding the Mesa del Sol development and school sites, Dr. Winter explained that APS is currently working with the developer, but that the land does not belong to APS. Mr. Eckert added that the land was a state trust that was occupied by the University of New Mexico and the State Land Office and that the two entities have entered into an agreement with the developer.

In response to questions and comments about APS land management, Mr. Eckert explained that he manages the acquisition and sales of property for schools, memoranda of understanding, joint use agreements and the physical maintenance of the properties. He added that because APS does not pay property taxes, the district has few holding costs. In response to questions and comments about the source of APS capital outlay funding, Mr. Moya explained that the district uses three funding mechanisms: general obligation bonds, HB 33 direct levy funds and SB 9 direct levy funds. He added that the $33 million will address APS needs for the next 20 years. Senator Rue expressed his appreciation for what APS has done because in a short amount of time, APS has accomplished a herculean task of meeting the needs of Albuquerque's students. He asked for the value of the land held by APS. Mr. Eckert responded that APS is actively pursuing the purchasing of property, is currently negotiating with developers on the west side of Albuquerque and had a $35 million bond issue.

In response to a question about water rights on vacant APS property, Dr. Winter said that the district has water rights and is working diligently on how to use those rights. Mr. Eckert clarified that APS is working with consultants to identify and protect those rights. In response to task force concerns that the Office of the State Engineer can confront APS for not using those rights, Mr. Eckert gave an example of what APS has done in the past in regard to trading property. He said that in 1950, APS purchased 440 acres for under $400 per acre and traded some of the land and received 70 acres for Volcano Vista High School. In 2008, APS traded an 11-acre parcel to the State Land Office and received 65 acres on the west side for a soccer complex and two schools. He said that APS does not want to dispose of any property today that may be needed in the future.

Las Cruces Public Schools (LCPS)

Dane Kennon, associate superintendent for operations, LCPS, said that LCPS has 140 acres of vacant land with no immediate plans for utilization. He said some land is rented to the City of Las Cruces for $1.00 per year, and that the city rents it to a charter school. Task force members expressed concern that the city may be earning a profit from state lease dollars provided to the charter school.

In response to questions about water rights on vacant land, Mr. Kennan replied that mineral rights are more of an issue. Mr. Kennan added that the district is in the process of installing sprinklers on one 40-acre parcel with an eye to leasing the land for farming. He also noted that the land in question is not in the anticipated direction of population growth in Las Cruces.

Farmington Municipal Schools (FMS)

James Barfoot, assistant superintendent of operations, FMS, explained that a 160-acre lease from the Bureau of Land Management (BLM) expires in 2012 and that FMS will reapply to retain this property even though it has not pursued the construction of a school on that land. Mr. Barfoot said that FMS has a good working relationship with the BLM, but FMS and the BLM

have differing ideas on property planning, and the BLM is limiting FMS to a 10-year lease while paying $8,000 in fees and development. Mr. Barfoot directed members to the handouts and explained the locations of the vacant land and the construction plans.

Representative Miera stated that the PSCOOTF and the legislature have assumed that there is a great deal of money associated with that land and that FMS is sitting on hundreds of acres. He opined that the deals with the BLM are good.

Senator Rue said that plans seem to be contingent on FMS's relationship with the BLM, which does not apply to APS, and he noted that this agreement is significant and flexible. Janelle Ryan, superintendent, FMS, mentioned that having the ability to not have to purchase land when FMS wants to move or establish a new school is a huge advantage.

In response to a question about the benefits of having oil wells on school property, Mr. Barfoot said that the oil wells help the mill levies and that without the wells, FMS would have to seek other sources of funding.

Gallup-McKinley County Public Schools (GMCPS)

Johnty Cresto, maintenance director, GMCPS, explained to the task force that the district has 5,000 acres of land with only 55 acres of vacant land. He said that the district traded forest land to acquire land for the middle school, which was fortunate. He said that due to the nature of the land in the district, there is not a lot of free acreage, specifically in Gallup, where the town is landlocked by tribal, forest or BLM land. He said that the district works diligently with the aforementioned entities to acquire the property needed for schools, and he opined that the district is in a good position.

Mr. Haskie, assistant superintendent, GMCPS, and task force member, explained that most of the schools are on tribal lands. He elaborated on the acreage and location of the used and vacant land in the district.

In response to a question about the district's planning for two schools prior to securing building sites, Mr. Cresto said that funds will not be allocated until locations are acquired.

Rio Rancho Public Schools (RRPS)

Al Sena, executive director of facilities, RRPS, reminded the task force about Rio Rancho's infrastructure challenges and said that the district is coordinating school sites with the capital plan in order to make the process easier.

In response to issues of developer donation of land, Mr. Sena said that he is not aware of a statutory requirement but that in the past, developers have provided tracts for potential school site locations, some of which are not suitable for houses or schools.

Task force members discussed a new effort under way by solar energy companies to lease air around school districts from the school districts that is beneficial for schools because they are able to raise money and gain electricity. In response, Mr. Gorrell added that there are many opportunities surrounding this issue, such as tax credits.

Public School Capital Outlay Standards-Based Awards Process: Ongoing PSCOOTF Review and Monitoring

Tim Berry, deputy director, PSFA, reported that 73 percent of actual project awards were for either planning and design or for actual construction. Looking forward to fiscal year 2012, he said that project funding will be close to 90 percent of the awards at $319 million. He explained that the dollar amount is larger due to previously funded projects for planning and design that are returning for construction funds. Mr. Berry emphasized that data he would be providing today will not be approved by the PSCOC until its awards meeting tomorrow, but he directed members' attention to the spreadsheet illustrating the 2011-2012 standards-based capital outlay applications. He said that 13 districts had applied for a total of $170.6 million, $166.7 million of which would address adequacy standards. He said that, given each district's local match and some districts' offsets from direct appropriations in the past, the PSCOC plans to award $5.4 million in net state awards to 18 schools in 12 districts. In response to task force discussion, he noted that the PSFA is predicting the out-year costs for these projects will amount to approximately $79.1 million, with total cost to adequacy at $153.9 million (including $74.8 million in district matching funds).

Mr. Berry also directed members' attention to the 2011-2012 standards-based roof applications spreadsheet. He noted that the council would award a total of $6.7 million to 17 schools in 11 districts. Regarding lease assistance awards, Mr. Berry said that 83 charter schools and seven districts had applied for approximately $10.8 million in awards.

Pat McMurray, senior facilities manager, PSFA, said that there are currently 18 projects funded in 12 districts, with most projects being in the planning and design phase. In response to a task force question, Mr. McMurray said that when the PSFA conducts site visits, it divides into three teams and verifies what is being asked for.

Mr. Berry said that schools are given New Mexico Conditions Index (NMCI) rankings for the year, and, from these rankings, the PSCOC sets the funding. He highlighted three facilities: Central and two in west Las Vegas. He said that those projects were funded in a previous awards cycle and when the district chose to close a school, the kids were moved to three other schools. The request this year was that the dollars follow those kids and have improvements made at the other three schools. The PSCOC asked the schools to reapply. Regarding renovation of those facilities for the new kids, Mr. McMurray said that the PSFA's share would be $4.7 million. Mr. Gorrell added that the renovations would lower the operating costs.

Mr. Berry highlighted projects in Rio Rancho, explaining that those schools rank higher on the NMCI due to the high growth and overcrowding in the area, regardless of the new status that resulted in building a new school.

Mr. Gorrell discussed the roof applications. He said that the legislature allowed $10 million a year for the roof repairs. He said that there were not as many applications as the pool allowed because many schools do not have the local match requirement. He added that, unfortunately, the problem is getting worse. Speaker Lujan requested a list of roofs that have been repaired in the past nine years, and Mr. Gorrell said he would provide that for him.

Mr. Haskie observed that some schools anticipate an early start on the projects but that they are paralyzed by the paperwork. Mr. Gorrell said that any district that sees a problem with the process should write the PSFA a letter because the PSCOC has given Mr. Gorrell the authority to grant additional time for the application process.

Regarding the facility master plan (FMP) assistance awards, Mr. Berry said that for the 2010-2011 awards, state-chartered charter schools are also granted awards.

Members of the task force discussed specific school projects with Mr. Gorrell and Mr. Berry.

Representative Miera asked why some schools do not have an FMP and then complain about funds not being granted to them. Mr. Berry clarified that the FMP could have just expired. Representative Miera asked which schools do not have FMPs, and Mr. Gorrell said that the PSFA will provide that information for him.

Dr. Grover asked if there is a process in place to assure that locally chartered charter schools are included in this process. Martica Casias, planning and design manager, PSFA, said that the locally chartered charter schools must be included in the process, and, if they are not, the FMP is not approved. President Pro Tempore Jennings asked if there are assurances that a locally chartered charter school is not penalized for being just that. Mr. Gorrell assured President Pro Tempore Jennings that this was fixed last year.

Dr. Foster asked about the consequences of not having an FMP but needing services. Mr. Berry responded that the PSCOC has the ability to assist districts with the FMP, but that awards are given to those districts with state and local matches.

Chris Aguilar, facilities database manager, PSFA, said that traveling to the schools is the single best method to input the data into the database. He said that he does an in-house plan review of projects, and, even though this occurs, the main onus is on the schools. He said that the PSFA attempts to engage the schools but that some of the districts are nonresponsive. He said that a total of $602 million must be pumped into public school facilities or the state will slip back to where it came from, in terms of facility management. Concerning the 20-year modeling of funding, he noted that the dollar amount rises the farther the projection goes due to a construction bubble, so as the facilities age, they must be fixed. One hundred twenty million dollars is needed to maintain the facilities and when stretched out, a total of $5 billion is needed to maintain all school facilities.

Martin Montaño, maintenance and operations support manager, PSFA, said that school facilities should last well over 30 years with proper maintenance and that these investments must be protected. He clarified that even though the dollar amount for these facilities has increased over the years, an increase in maintenance has not been seen. He emphasized that for every dollar spent on preventative maintenance, $3.00 is saved from reactive maintenance. He said that state statute (Section 22-24-5.3 NMSA 1978) requires the PSFA to audit maintenance but said that the PSFA does not have a tool to do this right now, nor does any other entity in the nation. Mr. Gorrell stated that a pilot project has been conducted and the PSFA is looking to improve the process.

Statewide Adequacy Standards: Update on Modifications and Additions

Ms. Casias reiterated that the adequacy standards are the basis for equally ranking the facilities. She elaborated, explaining that the standards include aspects such as minimum sizes of teaching space and proper heating and cooling systems. She said that the standards were set in 2002, and in 2008, the documents were completed and are updated as needed. She added that the standards were updated between 2008 and 2010, and the feedback received is that the standards are too particular. Ms. Casias also explained the post-occupancy examination. She offered an example of V. Sue Cleveland High School and the negative feedback received, being that the school is too linear, which results in students being late to class and a lack of natural light available in the school.

Regarding the NMSD and NMSBVI, Representative Saavedra expressed concern about how long the process of establishing adequacy standards for the NMSBVI and NMSD has taken and noted the lack of staff at those schools to manage the facilities. Richard Romero, facilities specialist, PSFA, said that the NMSBVI hired an architect and planner on contract who is aiding the school in the process. Mr. Romero said that when the process began it took a while due to the nature of the work at hand. He said that the schools and the PSFA were in agreement that the similarities of the plans were stronger than the differences between them, and all parties decided to proceed with one standard for both schools.

Mr. Gorrell, Ms. Casias and task force members discussed the characteristics of what defines an alternative school versus an alternative program, and staff offered a checklist developed to clarify the definition.

Adjournment

There being no further business, the thirty-second meeting of the PSCOOTF adjourned at 3:30 p.m.