

**MINUTES  
of the  
FIFTY-FIRST MEETING  
of the  
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**June 2, 2015  
Room 322, State Capitol  
Santa Fe**

The fifty-first meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator John M. Sapien, chair, on June 2, 2015 at 10:11 a.m. in Room 322 at the State Capitol in Santa Fe.

**Present**

Sen. John M. Sapien, Chair  
Rep. Dennis J. Roch, Vice Chair  
Deputy Sec. Paul Aguilar  
Rep. Sharon Clahchischilliage  
Sec. Tom Clifford  
Carl Foster  
Rep. James Roger Madalena  
Rep. W. Ken Martinez  
Mike Phipps  
Sen. Cliff R. Pirtle  
Sen. Benny Shendo, Jr.  
Sen. John Arthur Smith  
\*Sen. Mimi Stewart  
Allan Tapia  
Rep. Don L. Tripp

**Absent**

Lisa Grover  
Kirk Hartom  
Tracy Hofmann  
Rep. Larry A. Larrañaga  
Sen. Mary Kay Papen  
T.J. Parks  
Sen. Sander Rue

**Advisory Members**

Rep. Eliseo Lee Alcon  
Rep. D. Wonda Johnson  
Sen. Howie C. Morales  
Rep. Patricia Roybal Caballero  
Rep. James E. Smith  
Sen. William P. Soules

Sen. John C. Ryan  
Sen. William E. Sharer  
Sen. Pat Woods

\* Senator Papen designated Senator Stewart to be a voting member for this meeting.

**Staff**

Raúl E. Burciaga, Director, Legislative Council Service (LCS)  
Sharon S. Ball, Senior Researcher, LCS  
Michelle Jaschke, Researcher, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Copies of all handouts are in the meeting file.

**Tuesday, June 2****Welcome and Introductions**

Senator Sapien called the meeting to order and welcomed members and guests.

**Consideration of Chair Appointment; Election of Vice Chair**

Mr. Burciaga explained the procedure for election of interim committee chairs, and, without objection, the task force confirmed the appointment of Senator Sapien as the PSCOOTF chair, and Representative Roch was elected as PSCOOTF vice chair for the 2015 interim.

**Brief Review: PSCOOTF 2014 Interim Work; Summary of 2015 Capital Outlay Legislation**

Ms. Ball reviewed the composition of the PSCOOTF membership and reported changes, noting that three positions are vacant. Ms. Ball presented an overview of task force work during the 2014 interim, as well as a summary of seven bills and a joint resolution bearing upon public school capital outlay that came before the 2015 legislature.

Chief among the six bills relating to public school capital outlay that passed during the 2015 legislative session is task force-endorsed Senate Bill (SB) 128, public school capital outlay building systems funding, which enables the Public School Capital Outlay Council (PSCOC) to direct up to \$15 million of the Public School Capital Outlay Fund (PSCOF) annually to building system repairs. The intent of the bill is to increase the life span of school buildings and hold down construction costs by adequately maintaining essential systems in existing facilities. Addressing passage of House Bill (HB) 236, Ms. Ball noted that the Public School Facilities Authority (PSFA) and the State Investment Council (SIC) are on today's agenda to explain the impact of HB 236 on public school capital outlay funding. Ms. Ball also reported on the passage of SB 8, which makes local and state-chartered charter schools eligible to receive a prorated share of education technology equipment purchased by a school district under the Education Technology Equipment Act. Other bills passed during the session relate to liens on school buses, school and transportation information reporting and clarification of the Public School Lease Purchase Act definitions. She noted that SB 236, which was an act to standardize charter school

lease provisions and strengthen conflict-of-interest disclosure requirements, passed the senate but did not make it through the house before the end of the session.

### **Standards-Based Funding Stream: Effect of Passage of Laws 2015, Chapter 63 (HB 236) on Program Funding Adequacy**

Steven K. Moise, state investment officer, SIC, presented an overview of the impact of passage and implementation of HB 236 on the Severance Tax Permanent Fund (STPF), as well as the severance tax bonding capacity. Mr. Moise explained that the STPF was established by the legislature as a constitutionally protected endowment in 1976 to receive and invest severance taxes collected on natural resources extracted from New Mexico lands. He described inflows to and distributions from the fund and related concerns about depletion of the corpus of the STPF that prompted enactment of the statutory changes contained in HB 236. The bill changes the percentage split between bond payments from the fund, and deposits to the fund, from the current 95-percent-to-five-percent split to a phased-in 86-percent-to-14-percent split by 2022. Mr. Moise drew a comparison between the Land Grant Permanent Fund (LGPF) and the STPF, pointing out that the corpus of the STPF had been depleted over time in comparison to the LGPF as a result of direct distributions from the STPF.

Charles Wollmann, director of communications and legislative affairs, SIC, explained the evolution of the legislation contained in HB 236 from an "equal cuts" model for fund beneficiaries to a series of phased-in cuts designed to minimize the immediate impact on the PSCOF, the Tribal Infrastructure Project Fund (TIPF) and the Colonias Infrastructure Project Fund (CIPF). The amended bill maintains the same percentage distributions to the PSCOF for the first three years of the phase-in period. Rapid changes in the percentage distribution are an issue of concern to the task force because of the long-range nature of school construction and facilities planning processes. Mr. Wollmann asserted that an increase in the corpus of the fund will eventually result from increased distributions from the fund.

Representative Martinez pointed out that HB 236 essentially reallocates what is now dedicated state funding back to the general fund and questioned the comparison of the LGPF and the STPF. He stated that the inflows to the LGPF are built upon proceeds from state ownership of sales of gas and oil, as well as proceeds from severance taxes, including those from private lands. Representative Martinez observed that the difference between the funds has more to do with the levels of gas and oil production and sales of those commodities than with distributions from the funds. He stated that the tension between putting more into the corpus of a fund and funding critical needs is a necessary component of government. He further noted that the funding that flows to the TIPF and CIPF from the STPF leverages federal funding at a rate of up to three federal dollars for each state dollar, and the state incurs a concomitant loss of federal dollars with state cutbacks.

Senator Soules explained the vagaries of relying on long-range projections to gauge the growth of the corpus of the STPF, expressing concern that extreme cutbacks in funding for public school capital outlay will result in a poor statewide Facilities Condition Index (FCI) and in

increased costs to school districts. Mr. Aguilar noted that the FCI is not a precise indicator of need and that expectations regarding the availability of funding may need to be reexamined.

Rocky Kearney, PSFA deputy director, and Jeffrey Eaton, PSFA director of business operations, presented projections of the levels of funding to be available over the phase-in time of the bill provisions and the way in which the ability of the PSFA to maintain the FCI over that period of time will be affected. The projections show the available education capital levels dropping well below the funding levels needed to maintain the FCI at the end of a 10-year cycle. Mr. Kearney and Mr. Eaton presented a chart illustrating a projected and rapidly climbing FCI (lower is better) at the end of fiscal year (FY) 2022. Ian Kleats, deputy director, Legislative Education Study Committee, presented similar projections as a result of the statutory changes in bonding capacity for education capital included in HB 236. Based on his projections, one out of every \$700 of education capital currently available will no longer be available for public school capital outlay at the end of FY 2022. Mr. Kleats also suggested that the task force revisit the issue of state and local cost shares with respect to education capital, particularly for those districts with median FCIs.

Task force members and the panel discussed the savings that might result from implementation of SB 128, the building systems bill. Task force members generally agreed on the difficulty of projecting the number of projects that will benefit annually from the building systems bill at this time or the degree to which such assistance will mitigate other building needs. Members also discussed the high cost of lease assistance for charter schools, the rapid and continuing growth in that program and the fact that no cap on lease assistance has been established. The mandate to move charter schools into existing public space continues to present challenges. Secretary Clifford noted that inflation in public school building programs appears to far exceed the rate of inflation in other economic sectors and can significantly deteriorate purchasing power over time.

Senator Stewart, who chaired the task force during the 2014 interim, thanked members for their work on both HB 236 and SB 128 and reported that the compromise reached on the bills during the 2015 legislative session will give the PSFA some time to begin budget adjustments for building programs. She noted that the building systems bill will essentially begin as a pilot project, but it is expected to help maintain the FCI in the face of budget cuts. Senator Stewart suggested that the task force examine the needs of impact aid districts (IADs) and secure the assistance of financial experts to revisit the school funding formula during the interim.

### **PSCOC and PSFA FY 2014 Annual Report**

David Abbey, director of the Legislative Finance Committee and chair of the PSCOC, presented highlights from the PSCOC annual report. The PSCOC awarded a total of \$217.8 million for 102 individual school projects in FY 2014. Mr. Abbey discussed the provisions of the building systems bill and stated that it will be important to track changes in the FCI moving forward to assess the efficacy of the building systems program. He observed that PSCOC awards are at a near record high for the 10-year period ending in FY 2014.

Mr. Kearney reported that because a relatively stable FCI has been established throughout the state, the building systems bill can be used to target systems needs for those schools with a higher weighted New Mexico Facilities Condition Index (wNMCI). Mr. Abbey pointed out that only 16 of the 800 schools in the state have a wNMCI higher than 60 percent, the level indicating a need for facility replacement. Mr. Abbey outlined a number of issues presenting a negative outlook for PSCOC funding, including: too many projects in the queue for available funding; accounting changes making long-term comparisons more difficult; unanticipated changes in project scope and needs; front loading for construction manager at risk projects; inflation of around 8.5 percent per year over the past several years; reductions in revenues by direct appropriations over the last several years; and reduced oil and gas revenue estimates for this year and future years.

Mr. Abbey and Mr. Kearney addressed the following strategic issues facing the PSCOC and the PSFA: implementing building systems legislation; revisiting the state/local share match formula; funding projects beyond the standard of adequacy; the PSFA's role in maintenance; and timely advancement and completion of projects. Mr. Kearney stated that the PSFA and the PSCOC are in the process of developing an application process for the building systems bill.

Representative Martinez pointed out that the original purpose of the funding formula and equalization guarantee was to honor the provisions of the Constitution of New Mexico that mandate a uniform system of free public schools. He noted that public school capital outlay funding is complicated by large variances in district tax bases, recalcitrant school districts (with regard to voter approval of bond issues) and the potentially disequalizing effect of legislation such as the building systems bill. Representative Martinez suggested that these issues may be on a collision course with the cutbacks in distributions from the STPF for the PSCOF.

### **Status of *Zuni* Lawsuit and Litigant Districts**

Mr. Burciaga presented an overview of the origins and current status of the *Zuni* lawsuit, the impetus for the state's effort to establish adequate facilities in school districts throughout the state over the past decade. He also explained a subsequent lawsuit that was filed by the same plaintiff districts requesting that the U.S. Department of Education no longer consider New Mexico to be an "equalized expenditures state" when considering the noncategorical, basic payment portion of federal impact aid flowing to New Mexico. The U.S. Supreme Court confirmed a lower court's decision that the U.S. secretary of education is correct in permitting the state to take credit for the noncategorical, basic payment portion of federal impact aid funding.

Mr. Burciaga further reported that last spring, two different organizations, in conjunction with several parents representing their plaintiff children, filed lawsuits challenging the equity and sufficiency of the state's system for funding public education. One of the original lawsuits seeks to establish education as a fundamental right, and both of the original lawsuits call on the state to provide sufficient funding for public schools. The two new lawsuits have been combined under the title *Louise Martinez v. State of New Mexico*. The combined lawsuit challenges that state government has failed to provide a uniform system of schools sufficient for the education of all

children of school age in the state, as required by the Constitution of New Mexico. The plaintiffs are apparently seeking a declaration from the judge that public education in New Mexico is not funded sufficiently and an order from the judge for the state to make reparations in that regard, as well as for the judge to continue to hold jurisdiction over the case. Mr. Burciaga also reported that according to one of the plaintiff attorneys, the plaintiff districts have a 10-day evidentiary hearing scheduled in district court in Gallup in October. In preparation for the evidentiary hearing, plaintiff districts will conduct discovery and take depositions in June and August, respectively.

Task force members noted that during the last interim, the task force spent time in several meetings discussing concerns raised by the plaintiff districts. Members discussed the efforts made to alleviate some of the litigant district concerns and what effect the building systems bill might have in that regard. Discussion ensued regarding the need to invite representatives from the litigant districts to attend one of this year's interim meetings to continue the exchange regarding litigant concerns.

### **Broadband Deficiencies Corrections Program Update**

Kendra Karp, PSFA chief information officer, and Ovidiu Viorica, PSFA Broadband Deficiencies Corrections Program (BDCP) manager, presented an update on the BDCP. Ms. Karp reported that reliable broadband is essential for a twenty-first century education and related a number of testing, professional development, homework, distance-learning and other applications that broadband development will address. The program is collaborating with a number of state agencies to achieve shared development goals in this area. Mr. Viorica described a multilevel statewide effort to phase in needed broadband services and outlined the upcoming components of the plan. Task force members discussed the opportunity to create jobs through the BDCP and encouraged the PSFA to coordinate closely with other agencies in the broadband expansion effort.

### **Proposed Work Plan and Meeting Schedule**

Ms. Ball outlined the proposed work plan for the coming year and reviewed statutory requirements for the task force. Members suggested that the following items be included in the work plan:

- a summary and review of IAD information;
- hearing the concerns of the litigant districts in the *Zuni* lawsuit;
- an examination of providing teacherages to school districts;
- a discussion of the way in which issuance of industrial revenue bonds (IRBs) affects school systems and proposed legislation to support district involvement in decision-making about IRB issuances;
- a review of public school square footage available to charter schools and how to match charter schools with available space; and
- an examination of the issues surrounding reasons that school districts choose not to use PSCOC funding for their capital outlay needs.

**Adjournment**

There being no further business before the task force, the fifty-first meeting of the PSCOOTF adjourned at 4:30 p.m.