

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

**November 10, 2014
Room 307, State Capitol
Santa Fe, NM**

D

The fiftieth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Mimi Stewart, chair, on November 10, 2014 at 9:15 a.m. in Room 307 at the State Capitol in Santa Fe.

Present

Rep. Mimi Stewart, Chair
Paul Aguilar
Rep. Eliseo Lee Alcon
Tom Clifford, Secretary, Department of
Finance and Administration*
Dr. Carl Foster
Cecilia J. Grimes
Tracy Hofmann
Rep. Larry A. Larrañaga
Rep. James Roger Madalena
Rep. W. Ken Martinez
Mike Phipps
Sen. Cliff R. Pirtle
Sen. Benny Shendo, Jr.
Rep. James E. Smith
Sen. John Arthur Smith

Advisory Members

Rep. Roberto "Bobby" J. Gonzales**
Sen. Howie C. Morales

Absent

Sen. John M. Sapien, Vice Chair
Dr. Lisa Grover
Kirk Hartom
Leonard Haskie
Sen. Mary Kay Papen
T.J. Parks
Judy Rabon
Sen. Sander Rue
Rep. Henry Kiki Saavedra
Allan Tapia

F

Rep. Sharon Clahchischilliage
Rep. Sandra D. Jeff
Rep. Patricia Roybal Caballero
Sen. John C. Ryan
Sen. William E. Sharer
Sen. William P. Soules
Sen. Pat Woods

* Michael Marcelli, director, State Budget Division, Department of Finance and Administration, was designated to represent Secretary Clifford for this meeting.

** Representative Gonzales was designated by Speaker of the House Martinez as a voting member for this meeting to constitute a quorum.

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)

Sharon S. Ball, Senior Researcher, LCS

Kathleen Dexter, 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.

Monday, November 10

Welcome and Introductions

The chair welcomed task force members and guests and informed the members that Representative Gonzales was designated as a voting member for the meeting.

Approval of October 27, 2014 Meeting Minutes

On a motion duly made and seconded, the task force voted unanimously to approve the minutes of the PSCOOTF meeting of October 27, 2014.

Update on Progress of the *Zuni* Lawsuit

Sean Cunniff, assistant attorney general, Attorney General's Office (AGO), presented a brief overview of the history of the *Zuni* lawsuit and gave an update on where the litigation stands at present. Mr. Cunniff reported that the litigation has been inactive for years but that the judge retained jurisdiction in the case. This year, the plaintiffs, led by the Gallup-McKinley County School District, have successfully sought to reinstate the litigation to address the concerns that the litigant school districts maintain with regard to capital outlay funding and specific district needs. The litigation is on hold at present as discussions ensue regarding legislative solutions to litigant concerns.

Mr. Cunniff reported that the parties to the *Zuni* lawsuit have jointly asked the judge to postpone the hearing that was scheduled in November 2014. A new date of March 16, 2015 has now been scheduled for a full evidentiary hearing. He noted that the 2015 legislative session will be wrapping up at that time and, therefore, discovery for the hearing will be concurrent with the political process.

Task force discussion ensued regarding what the litigants are seeking in the upcoming legislative session. Mr. Cunniff stated that one initiative involves that of teacherages. Other areas of concern relate to maintenance costs and athletic facilities. One task force member raised

concerns regarding the impact that funding teacherages might have on the state equalization guarantee.

Task force members asked why the AGO had not objected to reopening the case. Mr. Cunniff further explained that when the case was administratively closed, the court made it clear that it was continuing its jurisdiction in the case. As a result, Mr. Cunniff observed, it was pro forma not to object as the matter will inevitably come before the court. Mr. Cunniff informed the task force that, technically and legally, the *Zuni* lawsuit has been reinstated. He noted that it is not uncommon for cases that involve a constitutional directive to require ongoing monitoring by the court. There has been no order closing the case, according to Mr. Cunniff, but the case has been reassigned to Judge Louis E. DePauli, Jr. Mr. Cunniff told the task force that legislators have the opportunity to shape what happens with the case during the upcoming legislative session, as the litigants have essentially yielded to that ongoing process.

Severance Tax Distribution Changes

Jeff Eaton, director of business operations, Public School Facilities Authority (PSFA), referred task force members to the severance tax distribution scenarios presented by the PSFA during the October 27, 2014 meeting and to the proposed legislation presented at that meeting by the State Investment Council (SIC). The PSFA outlined four scenarios at the October meeting that would gradually reduce funding for public school capital outlay and restore that funding to the Severance Tax Permanent Fund (STPF) instead. Each of those scenarios was projected to negatively affect the statewide school Facilities Condition Index (FCI) over the long term.

During the October meeting, the SIC presented two versions of proposed legislation to restore inflow to the STPF. One of the proposed bills would hold harmless the other beneficiaries of the current STPF distributions, including the Water Trust Fund (WTF), Tribal Infrastructure Trust Fund (TITF) and Colonias Infrastructure Trust Fund (CITF). Under that proposal, school and legislative capital outlay funds would be reduced by about 12% over a 10-year period.

Mr. Eaton stated that the PSFA had revisited these issues at the request of the task force to seek an equitable and workable solution that will not result in a degradation of public school facilities statewide. He presented the projected fiscal impacts of the SIC-proposed legislation and that of a "hybrid" proposal. The hybrid proposal would implement a 6% reduction in funding for all of the beneficiaries, excepting public school capital outlay, beginning in fiscal year (FY) 2016. A 16% reduction in funding would be applied to the public school capital outlay funding under the hybrid plan beginning in FY 2019, allowing time for appropriate scaling of upcoming projects and completion of projects in process.

One member of the task force asked if information the member had requested regarding the amount of funding leveraged by the CITF was available. Charles Wollman, spokesman for the SIC, informed the committee that the SIC is in the process of setting up meetings with representatives of the TITF, CITF and WTF to gather information and discuss proposed legislation to enact changes in the STPF distributions. Robert Gorrell, executive director, PSFA,

stated that state funding for public school capital outlay leverages local funds at the rate of 38% state funds to 62% local funds. The task force member maintained that the CITF leverages considerably more funding than the public school capital outlay program.

Another task force member questioned the "cone of certainty" surrounding the very long-range projections included in PSFA and SIC severance tax distribution scenarios, noting that many variables can change over a 20- or 30-year period. Mr. Eaton agreed, observing that even a few months ago, few were aware that the current oil glut was on the horizon. He stated that although there are many unpredictable factors that will influence STPF inflows and distributions, long-range analysis is valuable because many of these types of changes do take place over time. Mr. Eaton asserted that the contemplated revenue changes for public school capital outlay must also take place over time due to the primary importance of planning to that process.

The task force chair observed that with little apparent agreement among the stakeholders, the hybrid proposal may offer the most palatable alternative. Under that proposal, public school capital outlay would be subject to the heaviest budget cuts but would be granted a three-year delay of the proposed cuts. Most members agreed that the objective is to take action to increase the inflow into the STPF so that the fund is available for future use. The chair pointed out the complicating factor of threatened legal action if efforts are not made to meet litigant district requests for school facilities needs in the upcoming legislative session, and the chair suggested continued work to develop acceptable legislation.

Consideration of Possible Legislation for Task Force Endorsement

Ms. Ball presented proposed legislation to allow the Public School Capital Outlay Council (PSCOC) to provide temporary annual allocations to school districts to address building system needs in existing buildings. Mr. Gorrell reported that the proposed legislation is similar to the previously enacted roofing repair program for school buildings and, as a separate appropriation, will not compete with the Public School Capital Outlay Fund allocations. The bill addresses the need to avoid a return to the poor facilities conditions that instigated the *Zuni* lawsuit.

Mr. Gorrell reported that the proposed legislation will allow districts to address mechanical and other building system needs and will enable a cutback of some of the square footage that now increases maintenance costs. The intent is to use the requested \$15 million per year to address the most critical system needs, improving the weighted New Mexico FCI for certain facilities and relieving the need for more costly facilities replacement. The proposed legislation has a sunset provision after five years and offers an opportunity to address building system needs on a trial basis and leave the districts with more sustainable facilities. Mr. Gorrell presented draft systems renewal ranking standards developed to identify the highest-risk areas and highest levels of need.

Ms. Ball observed that the proposed legislation takes the \$10 million in funding for the roof repair program that will sunset next year and adds \$5 million annually, for a total of \$15 million for building system repairs. Thus, the total new cost is \$5 million. Mr. Gorrell and Paul

Aguilar, deputy secretary of finance and operations, Public Education Department, agreed that all of the \$15 million is needed by the districts for building system repairs and would be matched by some \$25 million in local dollars. At present, Mr. Gorrell observed, maintenance costs are draining local operating budgets, particularly where facilities have excess square footage. Mr. Gorrell asserted that this trial offers a means to change a currently failing statewide maintenance program and a means to illuminate options for continued maintenance program improvements.

Task force members discussed various options to finesse the language of the proposed legislation and to potentially allow more funding to flow to the maintenance of effort to meet the identified need for building system improvements and take advantage of the cost savings projected to result from system repairs instead of building replacement. One task force member asked if there is a way to determine the level of benefits that would flow to the litigant districts from the program. Mr. Gorrell and Ms. Ball agreed that, given the high level of maintenance needs and excess square footage in those districts, the program would likely be of direct benefit to the litigant districts. The task force decided not to make changes in the proposed legislation, and on a motion duly made and seconded, with one member objecting, the task force voted to endorse the proposed legislation.

Ms. Ball presented proposed legislation to allow the PSCOC to grant, under certain circumstances, a five-year extension of the deadline requiring charter schools to be housed in public buildings by July 1, 2015. Task force members and guests observed that the PSCOC lacks the statutory authority to grant such extensions, and a recommendation was made to propose separate legislation to clearly identify the statutory authority and to clarify the PSCOC's role in recommending extensions. Other members asserted that the charter schools should be well aware of the looming deadline for relocation and should be held to that deadline. One member observed that student safety is a primary issue in relocating charter schools into appropriate facilities and that there should be no compromise on that issue. Members deferred action on the proposed legislation.

The task force considered endorsing proposed legislation to make locally chartered and state-chartered charter schools eligible to receive a prorated share of education technology equipment purchased by a school district through a lease-purchase agreement under provisions of the Education Technology Equipment Act. Some task force members and guests stated that education technology equipment for state-chartered charter schools should be funded by the state and not automatically taken out of the budgets and bonding capacity of districts. One member reminded the task force that parents are paying local property taxes that go to support school systems whether their children are enrolled in charter schools or public schools.

A representative of the Albuquerque Public School District asked that the task force give consideration to including a state guarantee of bond issuances for education technology notes in the proposed legislation to give issuers confidence that the notes will be covered. One member observed that language included in the proposed legislation that would cover salaries and benefits for technology support personnel could trigger taxable events with the bond issuances, increasing local costs. The proposed legislation was not endorsed by the task force, although

four task force members voted for endorsement. The chair observed that the proposed legislation fails to target the greatest educational technology needs by universally granting equipment to eligible schools, and she suggested a stronger needs-based approach.

Ms. Ball presented proposed legislation requiring local government issuers of industrial revenue bonds to provide timely notice of the bond issuance to all local public bodies whose property tax base is affected by the issuance. One task force member noted that the importance of the legislation is in regard to sudden increases in student enrollment as a result of building booms or company relocations. The proposed legislation would give schools an opportunity to address their enrollment concerns with regard to the issuance of industrial revenue bonds. The chair stated that she will sponsor the proposed legislation in the upcoming legislative session.

Adjournment

There being no further business before the task force, the PSCOOTF adjourned at 12:25 p.m.

R

A

F

T