

**MINUTES
of the
FORTY-FOURTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**October 10, 2013
Room 322, State Capitol
Santa Fe**

The forty-fourth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Mimi Stewart, chair, on October 10, 2013 at 9:17 a.m. in Room 322 of the State Capitol.

Present

Rep. Mimi Stewart, Chair
Paul Aguilar
Tom Clifford
Dr. Carl Foster
Kirk Hartom
Leonard Haskie
T.J. Parks
Mike Phipps
Sen. Cliff R. Pirtle
Sen. Sander Rue
Sen. Benny Shendo, Jr.
Rep. James E. Smith
Sen. John Arthur Smith

Absent

Sen. John M. Sapien, Vice Chair
Cecilia J. Grimes
Lisa Grover
Robbie Heyman
Rep. Larry A. Larrañaga
Rep. James Roger Madalena
Rep. W. Ken Martinez
Sen. George K. Munoz
Sen. Mary Kay Papen
Judy Rabon
Rep. Henry Kiki Saavedra
Allan Tapia

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Sharon Clahchischilliage
Rep. Roberto "Bobby" J. Gonzales

Rep. Sandra D. Jeff
Sen. Howie C. Morales
Sen. John C. Ryan
Sen. William E. Sharer
Sen. William P. Soules
Sen. Pat Woods

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Sharon Ball, Senior Researcher, LCS
Cassandra Jones, Research Assistant, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, October 10

Call to Order

At the chair's request, members of the task force introduced themselves.

Approval of September 12, 2013 Meeting Minutes

Upon a motion by Senator Smith, seconded by Representative Smith, the minutes of the September 12, 2013 meeting of the PSCOOTF were approved as distributed.

Standardized Lease Development: Status Report

Tim Berry, deputy director, Public School Facilities Authority (PSFA), told the task force that in 2012, the Public School Capital Outlay Council (PSCOC) raised concerns about several individual charter school lease costs. An examination of those leases was performed and some were found to be problematic and even burdensome to the individual charter schools. As a result and in order to attempt to avoid leases with unfavorable terms, the PSCOC has developed and favors the adoption of standardized leases. Mr. Berry told the task force that the PSCOC's fiscal year (FY) 2015 budget includes an expansion to the base budget to add a staff attorney to examine standardized leases and other issues related to PSCOC project cost containment. Toward the end of FY 2013 and at the urging of the PSCOC, the PSFA contracted with a real estate attorney to draft two standardized leases. Mr. Berry discussed benefits of standardized leases, including: ease of use; defined gross square footage; clear definition of terms and conditions; identification of responsibility for all operating costs; reduced legal support costs; and a clear understanding of how tax revenue is being spent. Mr. Berry referred the task force to a handout containing a listing of the standardized leases. He told the task force that the leases are structured so that all variables in the documents are at the beginning of the document in order to make comparison from one lease to another simpler.

Ken Hunt, Esq., contract attorney, PSFA, told the task force that he had been contracted by the PSCOC, through the PSFA, to come up with a template for a typical lease of facilities and a template for a lease purchase in which charter schools would ultimately become owners of the property. He told the task force that many different variables, such as shared space, are taken into account. Mr. Berry told the task force that on July 25, 2013, the PSCOC approved the standardized leases for lease or lease purchase of facilities by charter schools, subject to technical corrections, to go out for public comment and be brought for final approval along with draft rules to implement their use at a future PSCOC meeting. The PSFA scheduled a review meeting for October 23, 2013 to receive comments from stakeholders. He told the task force that after sufficient review and comment by the public, the leases will be submitted to the PSCOC for its final approval. Mr. Berry also told the task force that conflict of interest disclosures are not included in the lease but are included in the lease assistance application. The PSCOC directed

the PSFA to add a conflict-of-interest disclosure to the standardized lease documents.

Mr. Berry told the task force that charter school representatives have extensively analyzed the leases and that their main concern is the way in which implementation of these leases will affect current leases already in place. Mr. Berry told the task force that the intent is to implement the lease moving forward rather than retroactively. Members of the task force asked questions about and discussed stakeholder comments; concerns about responsibility for property taxes and charter school foundations; PSFA resources for charter schools; charter school lease oversight; charter schools in public buildings; lease negotiation; charter school facility needs; the lease assistance program; privately owned facilities for public use; and adequacy standards.

Charter Schools in Public Buildings: Current Status

Mr. Berry told the task force that in New Mexico, charter schools were created by the legislature in 1992 through passage of the Charter Schools Act. The original legislation allowed only traditional public schools to convert to charter schools. In 1999, the legislature fundamentally changed the Charter Schools Act to allow the creation of district-authorized start-up charter schools. Mr. Berry told the task force that the Charter Schools Act was again amended in 2006 to authorize the Public Education Commission to charter schools independently of a local school district. Currently, there are 96 charter schools providing education for more than 20,000 students in more than 2.5 million square feet of space.

Mr. Berry told the task force that the 1999 Charter Schools Act required that charter schools be housed in local school district facilities, but it soon became clear that identifying sufficient available school district space in which to operate was challenging. Charter schools found that the most readily accessible option was to lease private facilities. Because charter schools cannot levy taxes to raise capital for facilities, the impact of the lease cost on their operating budget was substantial. In order to assist charter schools with the added cost of leasing facilities and in the hope of incentivizing school districts to identify or make available existing school district space, the legislature created the lease assistance program administered by the PSCOC and funded from supplemental severance tax bonds (SSTBs).

Mr. Berry referred the task force to a chart showing the history of PSCOC lease assistance awards. In FY 2005, schools were awarded \$300 per MEM with a cap of \$4 million for the program. In 2009, the statutes were amended to provide \$719.6 per MEM with a cap of \$7.5 million to charter schools for the program. Awards totaled approximately \$7.3 million. In FY 2010, the cap was removed, and the program was awarded more than \$8 million. For FY 2014, the rate per MEM is \$739.95, and total awards are almost \$13 million. The average costs per square foot for charter school leases increased from FY 2008 to FY 2013, even though the market moved in the opposite direction. If existing underutilized or unused public space can be acquired and meet the standards for existing or new charter schools, it would be a better value for taxpayers than leasing additional privately owned space.

Richard Romero, facilities specialist, PSFA, told the task force that facility cost per student per year and facility cost per square foot per year were analyzed by the PSFA and the cost of leasing charter school facilities was annualized for comparison purposes. Mr. Romero

told the task force that owning and maintaining a facility have many costs, and some costs change quite often. The PSFA estimates that the average cost for a new school facility is currently \$280 per square foot. If it is assumed that a facility's expected life is 40 years, the annual depreciation cost of the facility is \$7.00 per square foot. Industry studies have shown that the cost to properly maintain a school facility is approximately \$6.00 per square foot. Based on these assumptions, the annual cost of building and maintaining a school facility is approximately \$13.00 per square foot. Mr. Berry told the task force that charter school leases currently average approximately \$10.00 per square foot.

Mr. Romero told the task force that comparisons between charter schools and traditional schools are problematic because charter schools have nontraditional programs, delivery methods, space needs and facility space requirements. Each charter school facility is evaluated by the PSFA Planning Department for suitability and that facility conditions meet at least the average statewide facility condition of public schools. A charter school can have its own unique facility requirements, though variances are considered carefully by PSFA staff upon evaluating the school's curriculum as well as the use of shared public spaces for program delivery.

Members of the task force discussed and asked questions about requirement differences for charter and public schools; unique needs for charter schools; adequacy standards; charter schools in public buildings; and traditional schools leasing space to charter schools.

Opportunities to Lease Public Space

Robert Gorrell, director, PSFA, told the task force that the rising cost of public school funds going to private owners leasing facilities to charter schools prompted the legislature in 2005 to create a deadline of 2010 for charters to be located in public facilities or to meet other requirements prior to authorization. As the deadline approached, only a small percentage of charter schools were in public facilities. In 2009, the legislature amended the deadline to 2015. With less than two years to go until the deadline, only 46 of the 96 charter schools are currently in a public facility or are leasing from a nonprofit entity specifically organized for the purpose of providing the facility for the charter school. The other 50 charter schools are still located in privately owned facilities.

Mr. Gorrell told the task force that the PSFA relies on the school district's facilities master plan capacity and utilization analysis to determine whether traditional public schools have potential to house charter schools in their facilities. The capacity analysis quantifies the number of students a school can hold in its general and special educational rooms while discounting the spaces that are used for special purposes and unable to accommodate students based on the current educational program.

Mr. Gorrell explained that the master plan consultant, in conjunction with the district, determines the school's capacity and compares it to the school's enrollment to determine the number of seats available for growth or other functions. The consultant considers the appropriateness of available space as well as the utilization of the space by the school district. Based on a utilization analysis, a charter school may or may not be able to implement its

schedule in a traditional school space. Other factors, such as age appropriateness, scheduling and rules and procedures, are also considered when evaluating a traditional public school's vacant or underutilized space for a charter. Charter schools that are not in public spaces by 2015 are still in compliance with state law if the charter school is housed in a facility that meets statewide adequacy standards and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the state and if either: 1) public buildings are not available or adequate; or 2) the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school.

Stan Rounds, superintendent, Las Cruces Public School District, told the task force that Las Cruces is a growing school district despite the recession, which makes the availability of traditional school space for charter schools unlikely. Mr. Rounds discussed various resources that he has been accessing and utilizing in order to keep up with the growing student population. He told the task force that many banks will not work with charter schools, which makes it more difficult for them to acquire facilities. Mr. Rounds discussed the ways in which the Las Cruces Public School District has worked to assist charter schools with facilities, including purchasing property to be used by charter schools and leasing it to them. Mr. Rounds told the task force that one charter school has refused available space.

Kizito Wijenje, A.I.C.P., director, Capital Master Plan, Albuquerque Public School District (APS), referred the task force to a handout provided by APS. Don Moya, chief financial officer, APS, told the task force that there are 55 charter schools in APS, 20 of which are locally chartered and 35 that are state-chartered. APS charter schools constitute more than 65 percent of all charter schools in New Mexico in an area that has 27 percent of New Mexico's students. The APS area has 101,000 public school students. Of those students, 88 percent attend 132 traditional schools and 12 percent attend the 55 charter schools. Mr. Moya told the task force that from 2011 to 2019, more than \$40 million will flow directly to APS charter schools from Bernalillo and Sandoval county assessors as required by state mandate through the Public School Capital Improvements Act (often called "SB 9") and the Public School Buildings Act (often called "HB 33"). From 2011 to 2016, APS has dedicated \$34 million to constructing technically assessed and prioritized charter school capital facilities. He reported that APS has six charter schools in district-owned and-maintained facilities. Mr. Moya told the task force that all APS collaboration with charter schools on facilities is voluntary on the part of the charter schools and overseen through memoranda of understanding (MOUs) entered into by the district and each individual charter school participating in the program. He said that the APS charter facility provision program is limited by priorities, limitations of planning and a finite tax base, and state-authorized and locally authorized charters.

Mr. Wijenje reviewed the status of six charter schools that are housed in APS facilities. Mr. Moya discussed APS oversight of charter schools that are housed in APS facilities. Mr. Moya told the task force that APS has very little control over charter school creation, location and operation and that the APS tax base does not have the capacity to absorb entire charter school needs into existing facilities or sites. He suggested that the sharing of common facilities should be encouraged as much as possible in order to achieve economies of scale.

Mr. Moya told the task force that the capital and operational consequence to taxpayers from the creation of a new charter school can range anywhere from \$5 million to \$20 million. Mr. Moya provided the task force with preliminary recommendations, including requiring a fiscal cost-benefit analysis when considering new charter school proposals; requiring districts to be responsible for district-authorized charter school facilities; requiring district-authorized charter schools to accept available district facility solutions; requiring the state to be responsible for the facility, construction and maintenance of state-authorized charter schools; and requiring the state and districts to put in place a rational technical process for location and construction of charter schools before approving their creation. Mr. Moya suggested that SB 9 and HB 33 mill levy funds should be provided to charter schools on a reimbursement basis in order to provide adequate oversight of how the funds are used.

Members of the task force discussed and asked questions about consequences for charter schools that are not in public facilities by 2015 and for traditional schools that do not offer available space; lease-purchase agreements for charter schools; the lease reimbursement program; state- and district-chartered charter schools; use of HB 33 and SB 9 mill levy funds for charter school facilities; adequacy standards for charter schools; MOUs between APS and charter schools; charter school funding; and responsibility for state-chartered charter school facilities.

Charter School Facilities Issues

Carlos Rey Romero, vice president, New Mexico Coalition for Charter Schools (NMCCS) Governing Board, told the task force that he believes it is in the best interest of the taxpayers to come up with a better solution for providing charter school facilities. He expressed concerns about situations in which a charter school in a lease-purchase agreement is not renewed, which causes the state to lose any investment put into the purchase of the facility. He suggested a partnership among the New Mexico Finance Authority (NMFA) and the legislative and executive branches to come up with practical solutions to get charter schools into public buildings could be helpful.

Dr. Bruce Hegwer, executive director of the NMCCS, told the task force that three options are available to acquire charter school facilities: leasing, lease purchasing and purchasing. Public buildings that house charter schools must comply with certain standards provided in law. Dr. Hegwer told the task force that it is often difficult to find public buildings that are adequate for charter schools. He said that more private than public buildings are available, but beginning on July 1, 2015, private buildings that house charter schools must also comply with standards provided in law, which may be challenging. Dr. Hegwer told the task force that options for lease-purchasing include private buildings, foundations, public buildings and joint powers agreements. Options for purchasing include the NMFA, bonds and joint powers agreements.

Dr. Hegwer told the task force that joint powers agreements can be facilitated by the Association for Charter Education Services (ACES), which is a new public entity that facilitates the purchase of professional services, construction services and tangible personal property for

local bodies and state agencies when it is requested to do so and in accordance with the requirements of the Procurement Code. ACES has the authority to issue bonds to pay for the cost and expenses of acquiring or constructing any structures, facilities or equipment necessary. Revenue bonds could be secured by lease assistance payments. There is some risk that lease assistance payments could be eliminated or decreased.

Dr. Hegwer explained that the NMFA's Public Project Revolving Fund provides credit enhancements to revenue bonds. He told the task force that if a charter school in a building provided by ACES was to have its charter revoked or not renewed, ACES would own the building and could easily lease it to another charter school. Risk would be distributed among all members of ACES, rather than just one entity.

Members of the task force asked questions about and discussed funding for ACES; how ACES differs from other public entities; charter school inefficiencies; models for charter school facilities funding; NMFA funds; and services that might potentially be offered by ACES.

Continuation: Potential Legislation: Discussion and Direction to Staff

In response to a question from a task force member, Antonio Ortiz, PED, told the task force that charter schools are required to report budgetary expenses for HB 33 and SB 9 funding on December 1 of each year. The PED is required to respond by December 20 regarding whether the expenditures are qualified. In January of each year, the charter schools are then required to report what the funds were spent on. Mr. Ortiz told the task force that in some cases the expenditures proposed in December are not the same as those that are reported in January.

Ms. Ball discussed draft legislation requested by the task force:

- 194694.1: Ms. Ball told the task force that this bill would amend the Public School Capital Outlay Act to make awards for building system needs. The bill defines what a building system is. The bill would allow up to \$15 million to be expended annually from 2015 to 2019 and requires that awards be expended within two years. The bill was endorsed by the 2012 task force but did not pass the legislature. Members of the task force discussed and asked questions about the bill. The task force directed Ms. Ball to change the bill to allow for three years between the award being made and the funds being expended.
- 194695.1: Ms. Ball told the task force that this bill would allow the PSCOC to have more latitude when providing waivers for required funding matches. The task force endorsed this legislation in 2012, but it did not pass. Members of the task force discussed and asked questions about free and reduced-price lunch requirements and calculations and the proposed legislation.
- 194690.1: Ms. Ball told the task force that this bill combined HB 660 (2013) and SB 620 (2013). The bill defines the term "education technology infrastructure". The bill provides for allocations from the Public School Capital Outlay Fund for education

technology infrastructure and establishes an Educational Technology Infrastructure Deficiency Corrections Initiative. The bill also allows for district share waivers. Ms. Ball told the task force that the bill was originally requested as a result of the Partnership for Assessment of Readiness of College and Careers (PARCC) assessment. Members of the task force discussed and asked questions about the PARCC assessment; district match requirements; stakeholder input; funding for the initiative; and the nature of education technology. The task force directed staff to work with the PSFA to make some minor changes and prepare the bill for potential endorsement at the November PSCOOTF meeting.

Members of the task force discussed the Severance Tax Permanent Fund. The members discussed potential funding sources and trade-offs that could be made to grow the fund. Members of the task force asked questions about the lease assistance program. Representative Stewart reminded the task force to send any ideas for potential legislation to her and to LCS staff as soon as possible in order to prepare legislation for consideration for endorsement at the next PSCOOTF meeting.

Adjournment

There being no further business to come before the task force, the forty-fourth meeting of the PSCOOTF for the 2013 interim adjourned at 4:08 p.m.