

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

**September 24, 2012
Room 322, State Capitol
Santa Fe**

The thirty-eighth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, on September 24, 2012 at 9:27 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Paul Aguilar (Designee for Sec.-Designate
Hanna Skandera)
Rep. Donald E. Bratton
Sec. Tom Clifford
Dr. Carl Foster
Cecilia J. Grimes
Dr. Lisa Grover
Leonard Haskie
Robbie Heyman
Sen. Timothy Z. Jennings
Rep. Larry A. Larrañaga
Rep. W. Ken Martinez
Antonio Ortiz (Designee for Sec.-Designate
Hanna Skandera)
Lilliemaë Ortiz
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith

Guest Legislator

Rep. Dennis J. Roch

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Tom Pollard, Legislative Fiscal Analyst, LCS
Cassandra Jones, Research Assistant, LCS

Absent

Sen. Vernon D. Asbill
Sen. Lynda M. Lovejoy
Rep. Ben Lujan
Rep. James Roger Madalena
Kilino Marquez
Judy Rabon
Sen. Sander Rue

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Monday, September 24

Representative Miera welcomed the task force members.

Public School Capital Outlay Council (PSCOC) Strategic Issues for PSCOOTF Consideration

David Abbey, chair of the PSCOC and director of the Legislative Finance Committee, and Robert Gorrell, director of the Public School Facilities Authority (PSFA), briefly introduced some of the concepts that would be discussed in depth later in the meeting, including charter schools and the public school capital outlay funding formula, as well as policy options for possible task force consideration. Mr. Abbey presented a spreadsheet indicating which districts are available for a district waiver. Mr. Abbey told the task force that the Facilities Condition Index (FCI) has improved 36.8% since 2003. He noted that the Gallup-McKinley County School District has only three schools left in the top 100 average weighed New Mexico Condition Index (wNMCI) ranked schools and that the Gadsden Independent School District has only one.

Members of the task force discussed district waivers, local match concerns and square footage per student requirements and guidelines. Several members of the task force expressed concerns about expanding the use of capital outlay money.

Charter School Facilities Issues

Mr. Aguilar, deputy secretary of the Public Education Department (PED), told the task force that he has worked with the PSCOC for 10 years. He said that the capital outlay program has been an extraordinary success. He expressed concern that capital outlay dollars are being used for lease assistance rather than for construction purposes, particularly when the lease payments are going to private owners and foundations. He stressed the importance of helping to fund charter schools and assisting them in finding facilities that are conducive to student learning. He suggested that the statute requiring charter schools to reside in public buildings by 2015 should be clarified and offer penalties for those that do not comply.

Kelly Callahan, interim director of Options for Parents, PED, told the task force that the Charter Schools Division of the PED has a new application process as a result of provisions in SB 446 (Laws 2011, Chapter 14) and HB 283 (Laws 2011, Chapter 69). As a result of HB 283, charter school applicants have been asked to provide an abbreviated facilities master plan, which must be approved by the PSFA, prior to submission of the application. Ms. Callahan told the task force that this is difficult for applicants to do so early in the application process. Ms. Callahan reminded the task force that those charter schools that open before 2015 will not be required to be housed in public buildings until their renewal dates, five years after their application approval. Ms. Callahan also reminded the task force that the Charter School Capital

Outlay Fund, which provided funding for charter school PSCOC matches, was repealed as of July 1, 2012 by SB 634 (Laws 2007, Chapter 214).

Bruce Hegwer, Ed.D., executive director of the New Mexico Coalition for Charter Schools, stated that last week, the Public Education Commission (PEC) reviewed 11 charter school applications, only one of which was recommended for approval. He stressed the need to review charter school issues such as facilities, small school size adjustments and the number of units generated for charter schools in the funding formula. He also stressed the need to get input from individuals involved in charter schools when the PSCOOTF discusses these issues.

John Valdez, facility master planner, PSFA, referred the task force to an issue brief created by the PSFA regarding charter school facilities. He explained that each year, the PEC and the school districts consider authorization of new charter schools. The significant charter school growth in the state creates several issues for the schools, the PSCOC and the PSFA. He told the task force that the PSFA has organized the brief around problems, including the need for experience and expertise in charter school planning; the lack of administrative procedures in place that would require districts to offer available space to charter schools; issues regarding charter school leases; and variations between charter schools and traditional schools. Mr. Valdez emphasized that PSFA staff estimate that they spend between 80 and 100 hours per charter school on plan review, facilities assessment, data entry and lease assistance. For the 2011-2012 school year, there were 96 charter schools operating in New Mexico, 52 of which were state-authorized and 44 that were district-authorized. For 2011-2012, certified 40-day enrollment numbers showed that charter school enrollment accounted for 5.1% of all public school students in New Mexico. Charter school gross square footage (GSF) for the same year accounted for 3% of all public school GSF. He reported that 24 of the 96 2011-2012 charter schools are located in public facilities, two are in lease-purchase situations and 14 lease their facilities from nonprofit organizations. Mr. Valdez reminded the task force that charter schools can waive certain facility requirements, such as gymnasiums and libraries, if they demonstrate an alternative method of delivery for the same services.

Mr. Valdez presented the following policy options to the task force for consideration.

1. Provide charter schools with increased facilities knowledge and experience.

This option would require the creation of support to help charter schools choose and manage safe facilities. The support could reside in the Charter Schools Division of the PED, the PSFA, the New Mexico Coalition for Charter Schools or a private contractor. Job duties of the support resource may include creating and maintaining a database of available spaces that a charter school might be able to occupy; reviewing capacity and utilization of traditional public schools to determine if space is available in existing educational facilities; acting as a liaison between public school districts and charter schools; and developing standardized lease and lease-purchase agreements.

2. Provide for better charter school facility planning.

This option would reinstate the Charter School Capital Outlay Fund, which provided charter schools with local match funding to hire planning consultants to prepare their facility master plans. Mr. Valdez noted that a cost-benefit analysis of this scenario has not been completed.

3. Make authorizing bodies that approve/renew charters responsible for acquiring and managing their facilities.

Mr. Valdez told the task force that currently, there is no relationship between entities that authorize charter schools and entities that provide financial responsibility for those schools. The implementation of this option would tie the authorizing body to the financial liability of capital facility costs for the schools that are authorized. The school district or the PEC would assume full responsibility for charter school facilities needs.

4. Enforce facility sharing requirements of Section 22-8B-4 NMSA 1978.

Mr. Valdez told the task force that some districts and schools have underutilized and vacant space that might be appropriate for charter school locations. Section 22-8B-4 NMSA 1978 requires that districts offer available space to charter schools. Mr. Valdez suggested that the PSCOC could make requirement with this statute a condition of a capital outlay award.

5. Assist charter schools in lease management.

Mr. Valdez told the task force that the current lease structure allows for a variety of leases that make it difficult to know if leases are fair and leads to a lack of transparency and uncertainty in the way that charter schools spend taxpayer money. Unstructured leases also often strain maintenance because responsibility for maintenance is often unclear.

6. Strengthen the "be in public facilities" language in the Public School Capital Outlay Act (PSCOA).

This option would clarify the language in Section 22-8B-4.2 NMSA 1978 to ensure that charter schools that continue to be housed in leased facilities after July 1, 2015 would not receive lease assistance as provided for in the PSCOA.

7. Develop capabilities to respond to innovations in charter, alternative and family school program delivery and facilities needs.

This option requires a statutory change to Section 22-8B-4 NMSA 1978 to allow for virtual charter schools to have more flexible facility requirements in order to best meet the needs of their student populations. Students would be allowed to take examinations with proctors in places such as other schools, places of worship or libraries.

Members of the task force and PSFA staff discussed and commented on funding issues; measures of maintenance effectiveness; district responsibilities; and disconnects between state-chartered charter schools and the school districts in which they are located. Some members of the task force expressed concern about requiring school districts to share available space with state-chartered charter schools. Members of the task force discussed the importance of mediation or dispute resolution between school districts and charter schools and possible ways to

alleviate tension between them. Dr. Grover reminded the task force that SB 446 requires a dispute resolution clause to be in charter school contracts to address disputes between charter schools and the authorizer.

Martica Casias, planning and design manager, PSFA, clarified that the estimated time the PSFA spends on each charter school mostly consists of assessing sites chosen by the charter school and producing reports that are given to the school and the PED. Members of the task force discussed the charter school approval process and the extent of the PSFA's involvement. Task force members also discussed positive and negative consequences of implementing standardized leases. The task force also discussed concerns about maintenance costs for schools, some of which were built for more students than are currently enrolled, as well as the importance of creating a resource that would indicate where district space is available for charter use.

PSCOA Lease Assistance Program Costs

Tim Berry, deputy director for the PSFA, referred the task force to a brief created by the PSFA regarding the PSCOC lease assistance program. He noted that some of the policy considerations regarding lease assistance were also discussed in the previous presentation. Mr. Berry told the task force that the lease assistance program was established in 2004 with a program cap of \$4 million. In 2005, the cost of the program was \$2 million, and in 2013, the cost will exceed \$13 million. Twenty-nine of the 98 lease assistance applicants are in public buildings and another 16 are owned by charter school nonprofits. The remaining 53 are privately owned facilities. Today, lease assistance does not have a cap. Mr. Berry identified some issues identified with the lease assistance program: program costs have increased over 20% per year; over 50% of the program funds are used to pay leases of privately owned facilities; there is a risk that the 2015 statutory deadline for charter schools to be in public buildings will be extended, which will extend the high cost of the program; the statutory allowance for school districts to receive lease payments from charter schools for underutilized space has been ineffective; the annual adjustment of the disbursement rate by the Consumer Price Index (CPI) may not be an appropriate adjustment for commercial property rents, which do not move in concert with consumer prices; there is generally insufficient facility knowledge and experience to support the effective acquisition and operation of facilities; and there are no state-issued standard lease documents suitable for public education providers available to school districts or charter schools, which result in a lack of consistency and transparency. Mr. Berry outlined various policy changes for task force consideration.

1. Set annual award maximums and remove the CPI adjustment.

This option would cap the amount of lease assistance awarded by the PSCOC each year. If the amount of applications exceeded the cap, the per MEM amount would be prorated for each award.

2. Create standardized leases.

This option would require that all charter schools and school districts that lease facilities use a standard lease form in order to ensure that certain issues, such as responsibility for maintenance, are addressed.

3. Create a standardized intergovernmental land lease for building or renewing school facilities.

This option would standardize intergovernmental leases in order to remove terms that are not in the best interest of the state and would clearly define the end of the lease or the intended use terms and conditions.

4. Make authorizing bodies that approve/renew charter schools responsible for acquiring and managing their facilities.

As mentioned in the previous presentation, this option would link financial liability for facility capital costs to the authorizing body.

Gerald Pertner, financial specialist for the PSFA, told the task force that the total award amount for the 2012-2013 school year is approximately \$11.7 million. These awards were issued to 51 state charters, 11 charter schools in the first year of operation, 24 charters that are located in public buildings and five schools that have lease-purchase agreements. Awards to nine schools have been amended to only first quarter assistance, pending justification for a lease cost above \$22.50 per square foot. Lease assistance awarded to the New Mexico Virtual Academy was deferred until the school validates the number of students physically present. If the PSCOC pays out the remaining lease assistance awards to the New Mexico Virtual Academy and the nine schools with amended awards, the total for the 2012-2013 school year will be over \$13 million.

In response to questions from task force members, Mr. Berry clarified that the CPI adjustment to lease awards is in statute, but whether the adjustment is mandatory or not is unclear. Task force members asked questions regarding specific awards, which were addressed by Mr. Gorrell and Mr. Berry. Task force members discussed conflicts of interest in leases; the member composition of the PSCOC; how the lease assistance per MEM amount is calculated; the state match for SB 9; and the cost of lease assistance per MEM. Some members of the task force noted that lease costs may be driven up if renovations are made to a building leased by a school because charter schools are limited to five-year leases. Several task force members discussed the importance of effectively implementing statutory requirements and noted that many solutions may already exist in statute but lack implementation.

PSCOA and Funding Formula Issues

Mr. Gorrell and Jeff Eaton, chief financial officer, PSFA, directed the task force to a brief prepared by the PSFA regarding the PSCOA policy and funding formula issues. They outlined certain funding formula issues: the PSCOC bases adequacy on the adopted adequacy standards and total allowed space that includes circulation and other tare with the Adequacy Planning Guide (APG); the total GSF per student figures of the APG may be too generous for small population schools; high population schools allow facility scale advantages; scale advantage frees local resources, which has led to some PSCOA projects being built above adequacy; small rural population districts have insufficient local matches in certain instances; and the PSCOC has statutory authority to determine if a district is "recalcitrant", but the word lacks definition by the PSCOA and the PSCOC. Mr. Gorrell outlined the following possible policy options for task force consideration:

1. Decrease APG GSF per student allowance for schools.

The presenters told the task force that the APG treats schools with large and small populations the same. By adjusting the APG GSF per student allowance, issues specific to large and small schools could be taken into account.

2. Decrease state share for districts with high population densities.

The presenters told the task force that the current state-local share formula does not use population density as a factor in calculating the state-local match, which is a concern because rural districts cannot use facility space as efficiently as districts that have densely populated areas. This policy option would take population density into consideration.

3. Adjust funding on projects with "above adequacy" spaces.

The presenters told the task force that \$180 million has been expended on PSCOC awards since 2004 to exceed the adequacy standard, which happens when a district chooses to use locally generated revenue to build larger facilities than what the state considers to be adequately sized. This policy option would reduce the state share participation by the same amount that a district builds above adequacy. The reduction would be triggered when a project cost above adequacy exceeds \$1 million.

4. Relax restrictions on eligibility for a waiver of the local match.

The PSCOA allows for a waiver of the local match requirement on standards-based capital outlay if a district meets certain requirements in order to give the PSCOC latitude to fund a project when a school district has made a good-faith effort evidenced by its bonded indebtedness. This policy would relax the requirements for the waiver in order to allow the PSCOC more discretion.

5. Strengthen the recalcitrant district language in the PSCOA.

This option would legislatively require that districts be considered recalcitrant by the PSCOC if they meet a specific set of criteria, including an FCI above 65%.

The task force discussed and asked questions about considering student population in the PSCOA funding formula; the condition of large and small schools; the benefits and challenges associated with lowering GSF per student; the formula used to determine the state match; and specific school districts that have experienced difficulty with the PSCOA funding formula, including Tatum, Capitan and Corona.

Discussion About and Formation of Task Force Work Groups

Representative Miera stated that issues outlined in the briefs are very complex and need much consideration. He asked task force members to notify Sharon Ball of the LCS if they wish to attend work group meetings on the funding formula or charter schools, or to recommend work group members that are not members of the task force. Mr. Burciaga told the task force that Ms. Ball will coordinate meeting dates and contact task force members.

Adjournment

There being no further business before the task force, the thirty-eighth meeting of the PSCOOTF adjourned at 3:51 p.m.