

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

**December 19, 2005  
Room 307, State Capitol  
Santa Fe**

The fifth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) for the 2005 interim was called to order by Representative Rick Miera, co-chair, on Monday, December 19, 2005, at 9:05 a.m. in Room 307 of the State Capitol in Santa Fe.

**Present**

Rep. Rick Miera, Co-Chair  
Sen. Cynthia Nava, Co-Chair  
Sen. Ben D. Altamirano  
Sen. Vernon D. Asbill  
Rep. Ray Begaye  
Sen. Joseph A. Fidel  
Cecilia Grimes  
Pancho Guardiola  
Leonard Haskie  
James Jimenez  
Rep. Larry A. Larranaga  
Sen. Carroll H. Leavell  
Adam Levine for Gary Bland  
Rep. Ben Lujan  
Elizabeth Marrufo  
Tony Monfiletto  
Don Moya for Veronica Garcia  
Bud Mulcock  
Rep. Henry Kiki Saavedra  
Norman Suazo  
Moises Venegas

**Absent**

Robbie Heyman  
Kilino Marquez  
Rep. W.C. "Dub" Williams

**Staff**

David Abbey, Legislative Finance Committee (LFC)  
Sharon Ball, Legislative Council Service (LCS)  
Tim Berry, Public School Facilities Authority (PSFA)  
Bob Bittner, PSFA  
Bob Gorrell, PSFA  
Linda Kehoe, LFC

Jeremy LaFaver, LCS  
Frances Maestas, Legislative Education Study Committee (LESC)  
Antonio Ortiz, Public Education Department (PED)  
Pauline Rindone, LESC  
Bill Sprick, PSFA  
Paula Tackett, LCS  
Doug Williams, LCS

### **Guests**

The guest list is in the meeting file.

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

### **Monday, December 19**

#### **Charter School Issues**

Alan Armijo, chair of the Charter School Advisory Subcommittee, reported that the eight-member subcommittee had met three times from October through December. He said that the subcommittee appreciated having staff support from the LCS, with additional assistance as needed from the PSFA, the LESC and the PED. He said that the subcommittee reached consensus on the following recommendations to the PSCOOTF:

- increase the appropriation for the lease payment assistance program to guarantee \$600 per MEM;
- require all charter schools to be included in their respective districts' master plans regardless of whether the district plans to apply for a Public School Capital Outlay Council (PSCOC) grant;
- study the feasibility of establishing a "90th school district" for authorization and oversight of charter schools; and
- explore the use of industrial revenue bonds (IRBs) and tax increment financing (TIF) for charter school capital needs.

In response to a task force question about the projected cost to fully fund the lease payment assistance program, Mr. Berry responded that all lease payment applications for the current school year totaled \$5.6 million. He said that the number of students statewide for FY06 that were funded through the lease assistance program was 8,341 charter school students and 990 non-charter school students, for a total of 9,331 students.

Representative Miera asked if the charter schools are actively working with school districts regarding planning for the 2010 deadline for locating charter schools in public facilities. Mr. Armijo said that the Albuquerque Public Schools (APS) have been discussing the issues, but no definitive decisions have yet been made. Mr. Gorrell said that the first step in the process is to identify the basic space requirements of charter schools and then to identify what space is available. PSFA is currently working to identify those requirements.

Senator Asbill said he believes that school districts should be encouraged to use their local bond capacity to provide for charter school capital needs.

Mr. Monfiletto noted that APS has not included any projects for charter schools in the bond issue it is presenting to voters in February 2006. He added that, while APS has indicated an interest in including charter schools in the capital planning process, no formal structure for that involvement has been established yet. Mr. Gorrell pointed out that the current bond issue will fund projects that are part of the APS master plan that has been in effect for a number of years, and charter schools will be included in the master plan update that is currently being developed. He added that the first phase of including charters in this process was to include them in the district's facilities master plans (FMP). Once the charter schools are included in the FMP and their projects are approved, their projects can be included in the bond elections since a project cannot be approved if it is not in the district's FMP.

Mr. Guardiola suggested that APS may find it difficult to pass a bond election if projects are included to meet current growth needs and repair and replacement needs, as well as charter school capital outlay needs, especially if charter schools are not housed in public buildings.

Senator Asbill suggested that a district might designate charter schools as a separate question on a local bond issue ballot. Mr. Monfiletto observed that districts and charter schools need to work to avoid the "zero-sum" game that creates winners and losers, thus pitting charter schools against their districts.

#### **Jemez Valley Public School Match for 2004-2005 San Diego Riverside Charter School Grant Award**

Sandra Henson, superintendent, Jemez Valley Public Schools, and Idalee Vogel, development director, San Diego Riverside Charter School, talked about the local match requirement and the Jemez Valley district's inability to fund the match for a prior year PSCOC grant. It was stated that the charter school is currently occupying a tribal building on tribal land. The district has offered the charter school alternate space in a public school building and the charter school has declined to use that space.

Ms. Henson mentioned that her district was the first district to include its charter school in its FMP and that the district had assisted the charter with its 2004-2005 cycle PSCOC grant application. In response to a question from Senator Nava, Ms. Henson said that the reason the district has been reluctant to accept the PSCOC grant is that the district does not have the necessary funds to provide the match required by law.

Ms. Tackett clarified that the dilemma that confronted the PSCOC in considering waiver of the match requirement had to do with the utilization of school district facilities. She said that the current availability of adequate district space is the conundrum. The PSCOC is seeking guidance from the task force regarding this issue. Mr. Gorrell added that the district has space available for the charter school to use but that the charter school does not wish to move from its current location within the pueblo. He noted that, while statute requires a district to offer its

charter school or schools available space under certain circumstances, nothing in statute or rule stipulates the consequences if the charter school declines the offer.

Ms. Vogel stated that at the time the charter school applied for the PSCOC award, the district had not made the space available. She said that the first time they were formally issued an invitation to share the space was December 5, 2005.

In response to a question from Senator Altamirano regarding ownership of the current charter school building, Ms. Vogel said the tribal government owns the building. A discussion ensued regarding whether that arrangement is allowed under the requirement that all charter schools be in public buildings by 2010. Ms. Vogel stated that, according to the statute, tribal governments are listed as an appropriate public entity to own a facility that a charter school uses. She explained that the charter school does not wish to relocate, because it has been in the same location since its inception and changing facilities would require busing the charter students to the district's campus.

Senator Leavell asked for a summary of the charter school capital needs and the distance between the current location and the public space. Mr. Berry said that the PSCOC grant was for \$2.5 million and the local share is \$1.2 million. He said that the space offered by the district already meets adequacy requirements as a result of a PSCOC grant awarded to the district in a previous awards cycle. He also said the distance between the two locations is approximately five miles.

Senator Asbill opined that allowing a waiver for the local match portion of the PSCOC grant award would fly in the face of the *Zuni* lawsuit remedies and perhaps undermine the match portion of the standards-based process as well.

In response to Senator Asbill's comments, Ms. Tackett stated that if a district receiving a PSCOC grant meets certain criteria established in statute, the PSCOC can provide for a waiver of the local match. Some of the examples Ms. Tackett mentioned included districts with fewer than 800 MEM and in which the district voters have approved imposition of more than seven mills to fund the district's capital outlay program.

Mr. Gorrell said PSFA staff initially consider utilization factors when they make recommendations to the PSCOC to grant a district a waiver from providing the match. Ms. Tackett reiterated that the PSCOC is looking for guidance to determine at what point an assessment of utilization factors is required and when it is not.

Ms. Henson said another issue is related to personnel overlap. The two charter schools and the district schools themselves include four principals, three business managers and a variety of other duplicative personnel that are serving only 500 students.

Mr. Moya reinforced Ms. Henson's point and stated it may be beneficial for administration groups within the district to have proximity during the work day and that it may

alleviate some of the concerns regarding exceptions related to the charter schools in the district's 2005 audit.

Mr. Suazo stated that, while the district makes some pertinent points, the most important issue is what is best for the students, and he believes that they should stay in the tribal space, which is the reason the original charter was applied for and granted. Both Senator Altamirano and Representative Begaye endorsed Mr. Suazo's position.

Ms. Henson said that she does not understand the reasoning that makes it a problem for the students in a clearly inadequate charter school facility to move to a facility that currently meets adequacy standards. Mr. Suazo said he believes it is a location issue. The charter school is a community facility on tribal land that serves a tribal population. Forcing students to get rides or to be bused to school as opposed to being able to walk is an undue burden on those students. Representative Saavedra stated he disagrees with Mr. Suazo's argument that it is bad for the students to have to ride a bus five miles to school. He mentioned that there are numerous areas throughout the state where students are bused many more miles than that. He noted the importance of having a diverse student population rather than establishing separate, isolated facilities.

It was stated that the current district population (without the charter school students) is approximately 365 and approximately 55 percent Native American. The charter school has a population of approximately 100 students and is 100 percent Native American. Ms. Henson closed by saying the district is not currently in a place financially to be able to match the PSCOC grant if it is not awarded a waiver by PSCOC.

Senator Nava noted that the other charter school in the district, Walatowa Charter High School, is currently housed in portable buildings and that perhaps the space on the district campus would be better utilized by the high school rather than San Diego Riverside, which is a K-8 school.

### **FY06 and Future Funding for Construction Industries Division (CID) Inspections of Public School Capital Outlay Projects**

Mr. Berry and Lisa Martinez, director, CID of the Regulation and Licensing Department (RLD), reported on the progress made by CID in achieving adequate staff levels to accomplish inspections of public school capital outlay construction projects.

Ms. Martinez stated that approximately 15 percent of CID's work involves PSCOC-funded projects. CID has been authorized for two new inspector positions but, because of budget constraints, has been unable to fill those positions. Senator Leavell asked how many positions are needed, and Ms. Martinez said CID is hoping to add four more inspectors in January and another four in April or May 2006. These eight inspectors will be funded by PSCOC funds, not general fund dollars. In response to a question from Senator Leavell, she said that the FY07 budget will not include a request for additional positions.

Senator Nava asked about the possibility of inspectors being certified in multiple disciplines. Ms. Martinez said that CID is attempting to increase the number of inspectors with multiple certifications. To this end, CID has established a new job position that will compensate persons with multiple certifications at a higher salary.

Mr. Suazo asked if CID has looked at the option of having the inspections performed by contract personnel. Ms. Martinez said CID does not currently have the funding to be able to contract for these services.

### **High-Growth Schools: Issues and Discussion**

Mr. Jimenez made a presentation concerning the governor's proposal for addressing growth. The governor is proposing to dedicate \$290 million (\$145 million each year for two years) to address high-growth school district needs. He said that the administration will seek an appropriation from the legislature.

Mr. Jimenez presented a memorandum to the task force outlining recommendations of the PSCOC's Awards Subcommittee to the task force. They are as follows:

- consider retroactive awards to APS for projects for which APS did not previously apply;
- consider waiver of APS match on all 2005 awards;
- consider waiver of match on all 2005 awards;
- create a moratorium on offsets, for a period of time, for awards related to "significant growth". Significant growth criteria would be developed by the PSCOC;
- require that growth dollars not be considered from PSCOC unless the district has implemented a policy that any school that enrolls its first student over design capacity will, as of the next school year, become a "year-round school". (A multitrack year-round schedule can increase student capacity at a school by as much as 20 percent.);
- require that growth dollars not be considered from PSCOC unless the district has first implemented all options, including boundary changes, that would spread students across available facilities;
- consider PSCOC tax imposition upon APS to raise needed match for high-needs school projects;
- adjust growth awards by reducing local match by, for example, 20 percent (.8 x calculated required local match amount) conditional upon a district's having a certain minimum indebtedness relative to a community "doing its best";
- allow PSCOC to lend funding to districts for match dollars and require repayment by a certain date;
- increase outside input of capital into schools, such as from developers;
  - ▶ impact fees for school construct; and
  - ▶ lease purchase option (after November 2006 – if passed); and
- review the weighting factor of three for the growth factor with the NMCI ranking formula so that growth issues would minimize making analysis of space needs simply reactive to present need.

Representative Miera said that impact fees for schools are a serious issue and that passing a measure to exempt schools from local governments' imposition of impact fees or to allow a school district to impose impact fees on developers would be difficult.

Ms. Tackett noted that retroactive awards to APS, a waiver of APS match requirements and a moratorium on offsets for direct appropriations would probably compromise or conflict with the *Zuni* remedies. New legislation would be required for PSCOC to be able to impose a property tax on a district whose voters had approved a mill levy or bond issue when the amount of the levies is insufficient to pay the district's match as part of the state-district share formula at the time of the award. Imposition of the "recalcitrant district" provisions of the Public School Capital Outlay Act requires that a district's voters refuse to pass a mill levy or bond issue to cover its share under the formula. She suggested that the task force might wish to consider a type of sliding scale loan program based on the state-local share formula, which would be determined by district wealth and/or its local tax burden.

Senator Asbill stated that waiving all district matches would anger districts that have already "paid their dues" over the past three years.

In response to a question from Senator Leavell, Mr. Armijo stated that APS is currently busing some students to less crowded schools as a partial solution to the growth on Albuquerque's west side. Secretary Jimenez pointed out that because of the high rate of growth, even with busing and boundary changes, ultimately it will be necessary to build new schools in Albuquerque.

### **"Tools for Schools" Indoor Air Quality Program**

Matthew Baca, state director of the "tools for schools" indoor air quality program, provided the task force with information on the implementation of the program in New Mexico.

Mr. Baca explained that six state entities\* have signed a memorandum of understanding to establish and implement this program, which is based on a federal Environmental Protection Agency (EPA) program designed to enable a committee of stakeholders to address air quality issues within schools. He explained that the program consists of a variety of checklists that various personnel must complete. Once the checklists are reviewed, problem areas are evaluated and assigned for correction to the appropriate entity within the school or district.

Mr. Baca explained that funding for the first year of the program came from the Department of Health, APS and the Department of Environment. During the first year, checklists and corrections took place in 40 schools. The second year will include nine schools from Deming, 40 from APS, six from the Bernalillo public schools and eight from the Rio

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\*The participating state entities include the Department of Health, the Public Education Department, the Public School Facilities Authority, the Department of Environment, the Energy, Minerals and Natural Resources Department and the Children, Youth and Families Department.

Rancho public schools.

Mr. Baca also said one of the advantages of the program is to standardize the diagnosis of indoor air quality issues statewide, which will work toward allowing for economies of scale by standardizing solutions for improving air quality in schools statewide.

Noting that her district, the Gadsden Independent Schools, participated in the implementation of the program during its first year, Senator Nava said that the "tools for schools" indoor air quality program is a low-cost way of reducing absenteeism and improving education. She said that she would recommend state funding for expansion of the program.

### **Discussion and Adoption of Recommendations for Legislation**

Ms. Tackett and Gary Carlson, LCS drafter, presented discussion drafts of potential legislation that the task force had requested to be drafted for its consideration for endorsement. The task force took action on the following issues.

- On a motion by Senator Leavell, seconded by Mr. Guardiola, the task force agreed to endorse legislation to approve the use of public school capital outlay funds for demolition of certain abandoned school buildings. The motion passed unanimously.
- Task force members agreed by consensus to provide public school capital outlay funds to address the correction of identified facilities deficiencies at the New Mexico School for the Deaf and the New Mexico School for the Blind and Visually Impaired.
- Task force members discussed the appointment by the task force co-chairs of a work group to include representatives from local governments, public schools, municipalities, counties and the state to work during the 2006 interim to address issues related to providing school districts a "seat at the table" during discussions of such issues as the approval of IRBs, zoning decisions and assessment of impact fees by and on school districts. On a motion by Representative Larranaga, seconded by Mr. Mulcock, the task force agreed unanimously to endorse this legislation.
- On a motion by Senator Leavell, seconded by Senator Asbill, the task force agreed to allow the use of public school capital outlay funds to fund certain districts' facilities master plans under certain conditions. Voting in the negative on this motion were Speaker Lujan, Representative Saavedra, Representative Miera and Representative Begaye.
- On a motion by Senator Asbill, seconded by Mr. Guardiola, the task force unanimously voted to approve an appropriation of \$94.4 million from the general fund for educational technology statewide and an additional appropriation of \$24.2 million from the general fund to replace functionally obsolete school computers and network hardware in accordance with the state technology plan. The motion included

the requirement that each district requesting funding from this appropriation must have a PED-approved educational technology plan in place and also must provide a match on the same basis as that used for PSCOC grant awards in the standards-based process. Task force members noted that this legislation follows up on legislation endorsed by the former Public School Capital Outlay Task Force to establish an educational technology deficiencies correction program based upon the principles of the previous deficiencies correction program for public schools that is currently in its final stages of being completed.

- On a motion by Senator Asbill, seconded by Dr. Venegas, the task force agreed to endorse legislation to eliminate the operational cash balance restrictions on school districts that were imposed in 2003. Senator Nava voted in the negative.
- On a motion by Mr. Mulcock, seconded by Representative Miera, the task force voted unanimously to endorse legislation to increase the state guarantee amount in the Public School Capital Improvements Act (also called "SB 9" or the "two-mill levy") from \$60.00 per mill per unit to \$90.00 per mill per unit to provide additional funding for maintenance of public school facilities and public school grounds statewide. The motion included the provision to maintain the language already in statute that requires a yearly adjustment (beginning in FY08) to the state guarantee based on yearly consumer price increases.
- On a motion by Senator Leavell, seconded by Mr. Mulcock, the task force voted unanimously to continue the status of PSFA employees as exempt rather than classified to retain quality employees and remain competitive with the public sector.
- On a motion by Mr. Mulcock, seconded by Ms. Marrufo, the task force voted to allow the PSFA to be its own purchasing agent to facilitate the awarding of contracts and to expedite capital projects throughout the state.
- On a motion by Representative Larranaga, seconded by Mr. Monfiletto, the majority of the task force voted to endorse legislation to change the limitation on the funds available to make lease payments and fully fund the lease assistance program at \$600 per MEM for charter schools. The recommendation was amended to reflect MEM data on the eightieth school day as reported by the charter schools. Representatives Miera, Saavedra and Begaye and Speaker Lujan voted in the negative.
- On a motion by Representative Larranaga, seconded by Dr. Venegas, the task force voted unanimously to endorse legislation to study the feasibility of allowing other entities, in addition to local school boards, to approve the establishment of charter schools. Task force members had some discussion about the efficacy of this proposal given the governor's announced legislative proposal to establish an independent chartering authority during this session of the legislature. Representative Larranaga noted that, in his experience over the past six or so years, the legislature has

considered several proposals like the one currently being proposed by the governor, but legislators have discovered that "the devil is in the details" when it comes to getting something passed through both houses. He emphasized that the task force's proposal would be a good "fallback" position in case the governor's proposed legislation does not make it through during this 30-day session. The proposed measure was amended by Representative Begaye to include specific language to address the needs of charter schools on tribal land.

- On a motion by Senator Asbill, seconded by Ms. Marrufo, the task force voted unanimously to approve a \$2.5 million appropriation to PSFA to fully implement the facility information management system (FIMS).
- On a motion by Representative Larranaga, seconded by Dr. Venegas, the task force voted to require all school districts to submit a five-year facilities plan that includes any charter schools located in the district as part of the required approval process for any school construction. Representative Begaye voted in opposition to the motion.
- By consensus, the task force directed staff to draft legislation containing an appropriation to expand the "tools for schools" indoor air quality program for final approval by a legislative subcommittee appointed by the task force chairs.

#### **Creation of a PSCOOTF Subcommittee**

On a motion by Mr. Mulcock, seconded by Ms. Grimes, the task force voted unanimously to create a subcommittee, whose members would be appointed by the task force co-chairs to review final legislation and any additional legislation before the upcoming legislative session along with the revisions adopted at the current meeting.

#### **Approval of the Minutes**

On a motion by Representative Miera, seconded by Mr. Mulcock, the task force approved the minutes of the fourth meeting of the PSCOOTF.

#### **Adjourn**

The task force adjourned at 4:05 p.m.