

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

**June 10, 2011
Room 322, State Capitol**

The thirty-first meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, on June 10, 2011 at 9:20 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Mr. Leonard Haskie
Sen. Timothy Z. Jennings
Rep. Larry A. Larrañaga
Rep. Ben Lujan
Rep. W. Ken Martinez
Secretary Richard May
Mr. Antonio Ortiz
Ms. Lilliemae G. Ortiz
Mr. Mike Phipps
Sen. Sander Rue
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith

Absent

Sen. Cynthia Nava, Co-Chair
Sen. Vernon D. Asbill
Rep. Donald E. Bratton
Ms. Cecilia J. Grimes
Dr. Lisa Grover
Mr. Robbie Heyman
Sen. Lynda M. Lovejoy
Mr. Kilino Marquez
Ms. Elizabeth Marrufo
Mr. John Mondragon
Sen. George K. Munoz

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Sharon Ball, Senior Researcher, LCS
Leslie Porter, Research Assistant, LCS
Tom Pollard, Legislative Fiscal Analyst, LCS
Frances Ramírez-Maestas, Director, Legislative Education Study Committee (LESC)
Peter B. van Moorsel, Senior Fiscal Analyst, LESC
David Abbey, Director, Legislative Finance Committee (LFC)

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Friday, June 10

Representative Miera welcomed the task force members. Noting the lack of a quorum and the election of the co-chairs, Representative Miera indicated that the work plan will be delayed until a quorum is present. He suggested that he assume the role of co-chair unless an objection was voiced. There being none, Representative Miera assumed the role of co-chair.

Brief Review of 2010 Task Force Work and Summary of 2011 Legislation

Ms. Ball explained that the PSCOOTF 2010 Annual Report was not printed because of budget considerations but is available online and upon request. She directed task force members' attention to the PSCOOTF section of the LCS publication, "Beyond the Roundhouse", which provides a brief summary of 2010 task force work and recommendations for legislation.

House Bill 113

Ms. Ball explained that HB 113 (Laws 2011, Chapter 11) is one of the two 2011 PSCOOTF-endorsed bills that passed. It amends the Public School Capital Improvements Act (also called "SB 9") and the Public School Buildings Act (also called "HB 33") to require all locally chartered or state-chartered charter schools expecting a state distribution of property taxes to report to the Public Education Department (PED) and its chartering authority no later than December 1 of each year the purposes for which the expected distribution will be expended, and report again by January 31 of the following year the purposes for which the distribution was expended and the amount expended for each purpose.

By way of background, Mr. Ortiz, director, Capital Outlay Bureau, PED, explained that statute requires each county treasurer to transfer to its local school districts and to each locally chartered or state-chartered charter school funding on a per-MEM, pro rata basis. He said that for Albuquerque Public Schools (APS), concern arose over the lack of control the local district has over the funds sent to the charter schools and the potential damaging effect on the district's annual audit, which includes exceptions for all locally chartered charter schools. Therefore, APS requested the task force to consider the reporting requirement for endorsement. The PED also endorsed the legislation.

Explaining the legislation, Mr. Ortiz stated that by December 1 of each year, the public school district will provide the PED a report on the anticipated distribution of funds. The PED will then provide a non-binding opinion on the appropriateness of the proposed expenditures. By January 31 of each year, the public school districts will submit a follow-up report on how the funds were actually dispersed in prior years, and the PED will issue another opinion. Mr. Ortiz explained that the PED is gathering guidelines on the appropriate uses of Section 22-26-2 NMSA 1978 (the definition of "capital improvements" as stated in the Public School Buildings Act), and he mentioned the difficulty of doing so because most charter schools are not currently in public buildings. Therefore, they cannot erect or remodel their facilities. He mentioned that charter schools are able to purchase equipment for the schools, and they do submit a list of requests to the PED for which the PED provides an opinion.

Expressing support of this safeguard, task force members asked if there is a mechanism in place for school districts to deal with the accountability of state-chartered charter schools for audit findings and misuse of state funds. Mr. Ortiz reminded the task force that the PED does not have an enforcement mechanism and that the report is advisory only, but he said that this safeguard is in place to reduce the number of audit findings for misuse of capital outlay funds.

In response to an inquiry about the effect of passage of this legislation on school district and charter school capital outlay funding, Mr. Ortiz said he would provide per-MEM funding information, and he explained that some charter schools receive enough funding to purchase a new building rather than inhabit a building leased from a private source or occupy a building that

does not meet adequacy standards. Ms. Ball added that charter schools are allowed to go to the Public School Capitol Outlay Council (PSCOC) to request funding to remodel a privately owned facility.

In response to a question about the number of years a charter school must be chartered before being able to secure enough funding to build a facility, Tim Berry, deputy director, Public School Facilities Authority (PSFA), said that a charter school must complete its first five-year chartering cycle before requesting standards-based dollars. He added that if a facility is built by a locally chartered charter school and the school closes, the property is reverted to the school district, and if it is a state-chartered charter school, the property is reverted to the state.

In response to a question about who determines what facilities charter schools can occupy, Mr. Berry responded that with implementation of HB 283, the PSCOC and PSFA can approve a facility that meets statewide adequacy standards or can reach adequacy standards within 18 months. Mr. Berry also stated that if a new locally chartered charter school facility is built and funded by the PSCOC, the old public facility will be demolished and a change of title will be done to make sure the demolished property is off the district's property roll and will not have to be maintained or insured. He assured the task force that when school districts request to keep old facilities, the Facilities Condition Index (FCI) is implemented, and if the FCI is not met, the district will no longer receive funding to upgrade that facility.

Regarding the involvement of the PSCOC and PSFA with the rebuilding of Del Norte High School (DNHS) in Albuquerque and the proposed new magnet school to be co-located on the Del Norte site, task force members expressed concern that APS may be over-building facilities that this district may not be able to afford to operate, given diminishing general fund dollars, because these facilities are being built entirely with local funds. Mr. Berry said that the PSFA has authority over all school construction regardless of PSCOC-approved funding and that the PSF approves the adequacy of the facility and that a building permit will not be issued without it. He added that he has limited knowledge of the magnet school, but he said that parents are responsible for transportation to the magnet school if the students live outside of the DNHS district. Mr. Ortiz added that the PED will vet the charter school transportation issue next session. Ms. Ball expressed concern about the influence of high school alumni on policy decisions about closing high schools that have low enrollment. She noted that at the time APS considered shutting down DNHS or selling the property, the alumni were so vocally opposed to it that the district had to relinquish the idea. Mr. Berry added that the magnet school was built due to the need for it and that co-locating it with DNHS is beneficial because both schools can share the gym and cafeteria and build only classrooms.

Task force members expressed concern about public school transportation costs and a lack of formula language to encourage school districts to keep transportation costs under control. Expressing support for the magnet school concept, task force members opined that magnet schools and charter schools can be laboratories for best teaching practices that can then be implemented in other public schools.

House Bill 283

Ms. Ball explained that HB 283 (Laws 2011, Chapter 69) makes several amendments to different sections of law relating to public school facilities. She said that the bill exempts school districts from seeking State Board of Finance approval when leasing facilities to a charter school;

prohibits new charter schools from opening, and existing charter schools from relocating, into a facility that receives an FCI rating below the average condition for all New Mexico public schools for that year; and prohibits the PSCOC from making grant awards to school districts or charter schools without approved lease-purchase awards.

In response to a task force discussion, Mr. Berry explained that when a charter school is applying for new facility to open, that facility must at least meet the statewide FCI, which is now 29.3. As an aside, he noted that 75 percent of current charter schools are located in facilities better than the statewide average, and as the PSCOC moves forward, any new charter school will require PSFA approval of the facility with a physical assessment and a demonstration that, within 18 months, the charter school has the funding to bring that facility at or above the FCI. He explained that both the PSFA and PED will be reviewing lease-purchase agreements. The PSFA then must approve all school construction, which also includes lease-purchase agreements approval. The PSFA must also approve moving charter schools into old facilities. Mr. Berry clarified that when the PSFA has approval authority on lease payments and when a charter school purchases a school under a lease-purchase, when the charter school applies for lease-payment assistance, a charter school will be denied reimbursement.

In response to task force discussion and questions, Mr. Berry indicated that while each district's facilities master plan references real property facilities not being used as schools, the PSFA does not inventory facilities not being used as schools.

Ms. Ball directed members' attention to a document included in their meeting folders entitled "A Primer of Public School Capital Outlay Funding in New Mexico", which was requested by the PSFA for inclusion in one of its publications. She pointed out that the document provides a brief description of each of New Mexico's public school capital outlay funding mechanisms.

Election of Co-Chairs

Task force members agreed by consensus to the New Mexico Legislative Council's appointment of Representative Miera and Senator Nava to serve as co-chairs for the 2011 interim.

Review of *Zuni* Lawsuit

Mr. Burciaga explained the outcome of the *Zuni* lawsuit, that the U.S. Supreme Court mandated creation of the PSCOOTF, the PSCOC and the PSFA. He stated that since their creation, the three entities have worked together to produce significant results and improvements in the realm of public school capital outlay.

Ms. Ball directed task force members' attention to the PSCOC/PSFA annual report for 2010 and referred the task force to a brief time line on page 10 that includes a description of major events, including the filing of the lawsuit in January 1998, the judge's finding that New Mexico was in violation of the constitutional provision in 1999 and the special master's finding regarding the disqualifying effect of direct appropriations. She noted that since implementation of the standards-based process, the PSCOC has awarded more than \$1 billion in project funding.

PSCOC/PSFA

Mr. Berry directed members' attention to materials distributed regarding the PSCOC/PSFA annual report. He noted that the increase in the price of oil and gas, coupled with a decrease in construction costs, resulted in significant savings that can be reallocated. In addition, he said that 2010 allowed for 2011 early awards for design for 19 schools in seven districts based on the applications submitted for the top 60 New Mexico FCI rank list. Also, sufficient funding is available for approximately 10 new roofs. He believes that revenue stream projections for the next three to four years will improve. He said that the PSCOC has received the final applications, and in two weeks it will see presentations from applicant districts in which there are 19 project proposals. He noted that \$10 million should be available to move those projects forward.

Mark Williams, communications and strategic planning manager, PSFA, discussed the annual report in detail. He highlighted five new schools; seven major renovations; 31 new roofs; and 86 lease-payment assistance packages to charter schools. He explained the current funding level of \$86.7 million and that it has steadily been trending downward since the peak in 2005 of about \$225 million. He stated that since the Deficiencies Correction Program began in 2002, the legislature has allocated a total of \$1.5 billion into the projects, and the number is trending upward. Currently, there are fewer projects with more funding allocated to each project. He explained that the trend line of the FCI has steadily improved since 2003-2004, essentially cutting the number from 2003-2004 in half, although the number is still not desirable. He discussed the forecast of how much money needs to be allocated to facility repair to sustain the money at its current level with a state match at 39 percent. He reported that over the next five years, the state will need to contribute about \$100 million to sustain the current level of facilities maintenance and keep it constant.

Mr. Williams said that metrics within the management system are slowly improving. He noted that most funds are spent on field operations. He also stated that the PSFA's operational budget is currently 3.2 percent, which is well below the statutory limit of five percent of the total capital outlay award allocations.

In addition, he reported the following amounts and metrics relating to the first quarter of the 2011 calendar year:

- \$13.3 million was reverted back to the fund in 2010;
- 56 districts have maintenance prevention plans, which is up 53 percent;
- 87 percent of award dollars are under contract;
- \$52 million in projects funds have been awarded; and
- plan review processing time has been reduced from 12 days to eight days from the second quarter of 2010 to the first quarter of 2011.

Mr. Williams also noted that 67 randomly selected respondents to a survey said that the PSFA has had a positive impact on improving public school facilities and facilities funding in New Mexico, which is up from last year. He also reported that the number of negative responses went down, which he believes means that the partnership with the school districts is working well.

Mr. Williams and Harold Caba, communications officer, PSFA, briefly discussed the launching of the biweekly PSCOC e-newsletter, which will be archived on the PSCOC web site.

They mentioned that it is distributed to school district staff members who are on the PSCOC master database, as well as to policymakers and people in the construction industry.

Representative Miera congratulated the PSCOC and PSFA on their accomplishments and requested that the PSCOOTF be added to the newsletter database.

Senator Rue expressed his appreciation for the quarterly customer satisfaction mechanism and inquired about preventive maintenance. Pat McMurray, planning design manager, PSFA, explained that the PSFA's work order system helps districts align their resources and efforts to perform preventive maintenance and that more districts have become proactive instead of reactive and are making progress. He explained that districts are trained to use the system and share their best practices with the rest of state. Mr. Berry added that as part of contractual requirements when conducting building renovations or when erecting a new building, a contractor is required to provide a list of equipment and components and input that information into the system, and the system will automatically notify the district when maintenance needs to be done.

Regarding the FCI, Senator Smith asked if an index of zero is realistic and attainable. Mr. Williams assured Senator Smith that an index of zero is indeed unrealistic. He explained that the PSCOC has not set an index number as the goal, but that an index of 20 is realistic. Mr. Berry explained that the PSCOC is focusing on preventive maintenance and stated that a ranked list of the schools is available on the PSCOC web site. Mr. McMurray added that the state is getting more for the dollar now and that reducing a school footprint aids the operational costs in the future, so erecting a new facility is not always negative. Senator Smith asked about the PSCOC's involvement in the siting process for a new facility. Mr. McMurray responded that the PSCOC is available to advise on, but does not contribute to, funding for school sites. Mr. Berry added that the statewide Geographic Information System has the ability to geocode where students reside, and it is available to advise.

Senator Smith, Mr. Williams and Mr. Berry briefly discussed subcontractor bonding and the prevailing wage. Mr. Berry stated that if the project is a PSCOC project, the wage decision is required to be in the bid documents when they go out.

Speaker Lujan asked about oversight on construction of new schools. Mr. Berry reiterated that the PSCOC and PSFA review the plans to the extent that adequacy standards and building codes are met and that decisions to renovate and construct new schools are 100 percent local.

Representative Miera asked how many students the new classrooms are meant to hold. Martica Casias, planning design manager, PSFA, responded that the rooms are meant to hold 25 students.

Discussion of Work Plan, Items for Future Agendas and Other Organizational Business

Ms. Ball directed members' attention to the proposed work plan. She noted that, in addition to its statutory duties to monitor the progress and effectiveness of programs administered under the Public School Capital Outlay Act and maintain adequate sources of long-term funding for public school capital outlay projects, the task force will consider issues related

to charter school facilities. She noted that the proposed task force work plan includes establishment of a subcommittee to examine issues related to performance-based procurement for public school capital outlay projects.

Task force members discussed continuing concerns regarding inclusion of the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf in the PSCOC ranked list of school buildings and requested that the issue be included in the 2011 interim work plan.

Members of the task force also requested inclusion of public school transportation capital outlay issues and school district real property holdings in the work plan.

Task force members agreed by consensus to adopt the proposed work plan, allowing staff to make technical corrections as necessary.

Adjournment

There being no further business before the committee, the thirty-first meeting of the PSCOOTF for the 2011 interim adjourned at 12:50 p.m.