

**MINUTES  
of the  
TWENTY-NINTH MEETING  
of the  
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**November 24, 2010  
Room 307, State Capitol  
Santa Fe**

The twenty-ninth meeting of the Public School Capital Outlay Oversight Task Force was called to order at 9:15 a.m. by Representative Rick Miera, co-chair, on Thursday, November 24, 2010, in Room 307, State Capitol.

**Present**

Rep. Rick Miera, Co-Chair  
Sen. Vernon D. Asbill  
Rep. Keith J. Gardner  
Dr. Lisa Grover  
Mr. Leonard Haskie  
Mr. Robbie Heyman  
Rep. Larry A. Larrañaga  
Sen. Lynda M. Lovejoy  
Rep. Ben Lujan  
Rep. W. Ken Martinez  
Mr. Richard La Pan for Sec.-Designate  
    Dannette Burch  
Dr. John D. Mondragon  
Mr. Antonio Ortiz for Sec.-Designate  
    Dr. Susanna Murphy  
Mr. Mike Phipps  
Sen. Sander Rue  
Sen. John Arthur Smith

**Absent**

Sen. Cynthia Nava, Co-Chair  
Ms. Cecilia Grimes  
Sen. Timothy Z. Jennings  
Rep. James Roger Madalena  
Mr. Kilino Marquez  
Ms. Elizabeth Marrufo  
Rep. Henry Kiki Saavedra  
Mr. Ernesto Valdez

**Staff**

Sharon Ball, Senior Researcher, Legislative Council Service (LCS)  
Tim Berry, Deputy Director, Public School Facilities Authority (PSFA)  
Raúl E. Burciaga, Director, LCS  
Martica Casias, Planning and Design Manager, PSFA  
Robert Gorrell, Director, PSFA  
Pat McMurray, Senior Facilities Manager, PSFA  
Leslie Porter, Research Assistant, LCS  
Mark Williams, Communications and Strategic Planning Manager, PSFA

**Guests**

A copy of the guest list is in the meeting file.

### **Handouts**

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

### **Thursday, November 24**

#### **Approval of Minutes**

The minutes from the July 7, 2010 and October 7, 2010 meetings were approved.

#### **2010-2011 Public School Capital Outlay Council (PSCOC) Special Standards-Based, Short-Cycle Capital Outlay and Roof Awards**

David Abbey, chair, PSCOC, and Joe Guillen, chair, PSCOC Awards Subcommittee, provided the task force with information on the special "short-cycle", standards-based PSCOC awards process. Mr. Abbey explained that, because of a lack of significant funding available from the supplemental severance tax bonds (the dedicated funding stream for PSCOC awards) earlier in the year, the PSCOC had decided to postpone a full-fledged standards-based awards cycle.

Directing members' attention to the handouts, specifically the one labeled "Financial and Operational Data", Mr. Abbey stated that the PSCOC, with considerable support from both the legislature and the executive, has been making demonstrable progress in bringing the state's school buildings up to adequacy as measured by the PSCOC-adopted adequacy standards. He explained, for example, the criteria for building a new building as opposed to repairing, remodeling and/or refurbishing an existing building. He said that, if a public school facility receives a Facility Condition Index (FCI) at or above 60 percent, the facility should be replaced. Conversely, if the facility has been scored under 60 percent on the FCI, the facility should be remodeled, repaired or refurbished as needed. He noted that in FY 2004, the first year of implementation of the standards-based process, the average public school facility scored above 60 percent on the FCI. He pointed out that, currently, the average FCI rating of the facilities is 36.13 percent. He noted that as implementation of the standards-based process has progressed over the past six or seven years, projects are currently being funded "just in time", when districts have their projects "shovel ready". He added that, in the past, sometimes more than \$50 million could be tied up in one award while districts worked to get voter approval for the district's share of the project.

Mr. Abbey explained that the council is now awarding planning and design money first, and providing funding for construction when the plans are ready and the district's share of the funding is in place, a process that can take a year or more. He stated that in FY 2010, nearly 81 percent of awards were under contract. He discussed the financial plan and the process and said the PSCOC pays careful attention to available funding. Directing members' attention to the "PSCOC Financial Plan" document, he discussed revenue sources and uses. He noted that in FY 2011, the funding source is supplemental severance tax bonds totaling \$260 million. He noted that funding for the Senate Bill 9 (SB 9) guarantee, the lease payment assistance program

and PSFA operations come "off the top" of the available funding and must be accounted for before any standards-based grants can be awarded. He noted that the special roof award program, authorized by the 2010 legislature, accounts for another \$10 million "off the top" of the available funds. He pointed out that \$174 million has been committed to Phase II projects but that funding has not been awarded yet. He pointed out that, currently, the PSCOC can expect to make approximately \$27.8 million in planning and design grants to districts that apply for these short-cycle grant awards.

Mr. Guillen discussed the status of the current application cycle. He stated that PSCOC staff have completed site visits on their projects and will have districts make presentations on December 9, 2010 in Santa Fe. The PSCOC will be meeting on January 13, 2011 to make awards on those applications. He also emphasized the fact that the PSCOC has been funding projects on a "just in time" basis and noted that the applications received are for planning and design funding and have come from seven districts with a total of 18 projects.

Mr. Guillen highlighted the \$10 million set aside for roof applications. He closed by stating that staff will be making recommendations in terms of phasing and reducing project costs.

The topic of state reimbursement came up during the task force discussion. In response to questions about the process, Mr. Abbey said that, with some exceptions in specific circumstances, districts are reimbursed based on their provision of documentation that the funds have been expended. In response to additional discussion, Mr. Gorrell stated that the PSCOC has the authority to expend funds to make emergency repairs and to provide advances in rare cases in which districts have little or no funding available; for example, before bonds that have been authorized have been sold or receipts are due on a mill levy from the county treasurer.

Some task force members expressed concern that the Albuquerque Public Schools (APS) does not appear to be applying for PSCOC funding in this cycle. Mr. Abbey explained that APS has three schools ranked in the top 60 that could have been eligible for funding, but the district chose not to apply during this short cycle. Some task force members expressed concern about some kind of state oversight with the APS capital outlay program. Mr. Gorrell explained that all districts, including APS, must request approval from the PSFA for any project that is estimated to cost more than \$200,000. He explained that the PSFA web-based accounting system tracks whether and how a district is using PSCOC dollars.

Task force members discussed the possibility of legislation being proposed that would impose a moratorium on the establishment of new schools and the effect that this moratorium would have on the standards-based process. Representative Miera emphasized that the potential legislation would stop the building of *new schools*, not the improvements on existing facilities. Regarding the construction industry, Mr. Gorrell noted that eliminating implementation of the standards-based process could create a 40 percent to 50 percent increase in unemployment in that sector. In response to further discussion, Mr. Gorrell stated that construction plans should be valid for up to three years.

Mr. Haskie inquired if the PSCOC has the authority to accommodate a pre-k program and stated that the program has been declared not eligible under enrollment in his area. Mr. Abbey answered that the PSCOC has funded pre-k classrooms when they are state-funded programs and requested that Mr. Haskie bring forth the details of the issue to ensure that the PSCOC is being consistent. Mr. Gorrell added that if there are not enough children, the PSCOC cannot supply the money.

In further discussion, Mr. Abbey explained that the PSCOC has funded facilities for pre-k classes only when they are state-funded programs and under specific conditions applicable at the time, such as an advance that must be repaid. Another member asked about the possibility of increasing the rate of the local match in order to allow for more state funding of projects. Mr. Abbey explained that the capital outlay funding formula and property tax rates are in statute and cannot be changed without legislative action. Superintendent Phipps stated that if the difference between the adequacy standards and what the district is building is not greater than five percent, he believes the district may be able to find ways to tighten its budget to find that five percent if a temporary adjustment to the statute is made.

Representative Miera asked if PSCOC money would be used to purchase land for new facilities. Mr. Abbey assured him it would not. Representative Miera inquired about the increase in PSCOC spending over this fiscal year and its basis. Mr. Abbey noted the consumer price index provision and suggested that this may be a way to reduce spending, for the statute has now allowed for standard yearly growth.

### **APS Charter School Facilities Program**

Kizito Wijenje, director, Capital Master Plan, APS; Don Moya, chief financial officer, APS; Carrie Robin Menapace, policy analyst, APS; and Mark Tolley, director, charter and magnet schools, APS, provided the task force with an overview of the district's capacity and utilization analysis and its charter schools facilities programs.

Mr. Wijenje explained the difference between "maximum capacity" and "workload capacity". APS defines "maximum capacity" as the theoretical number of students that can be housed using all available instructional spaces multiplied by a student loading factor that reflects average New Mexico pupil teacher ratios (PTR). The district defines "workload capacity" as the identification of the number of students that can be housed based on actual instructional spaces available to regular and C&D special education enrollments, multiplied by a student loading factor that reflects actual New Mexico PTR for that program, and the results are multiplied by factors addressing scheduling utilization, special education inclusion and school size.

For example, Mr. Wijenje said, if APS builds a school with 30 classrooms, typically nine of those classrooms will have to be used for special programs, leaving a working capacity of about 450 students in a building with a design capacity of 650 students. He said that if APS builds a school with 40 classrooms, its working capacity is about 650 students while its design capacity would be 880 students.

He went on to explain the way in which APS defines a "utilization analysis". Directing members' attention to his handout, Mr. Wijenje explained that a "classroom need analysis" identifies the number of classrooms needed to accommodate a given enrollment based on state PTR at a given schedule. A utilization analysis identifies the number of classrooms available on the site and the current use based upon the current program and the percentage of a given classroom capacity actually needed for existing and projected enrollments at a given schedule. He provided maps of schools in APS that illustrate the utilization of all schools in the district and pointed out the more than 25 schools that are currently at 100 percent of capacity or greater.

Mr. Wijenje indicated that the district has been looking for opportunities to co-locate charter schools within existing facilities as an alternative to new facilities. He gave the example of the co-location of Wilson Middle School and the Native American Charter Academy on the former Wilson campus and also pointed out the co-location of the Public Academy for Performing Arts on the Bel Air Elementary School campus.

Mr. Wijenje continued, stating that APS is currently providing \$34 million for the construction of new charter facilities over the next six years in its current Capital Master Plan. Three of these schools are in the advanced stage of design and should be under construction in the next three months.

He also discussed the construction of a new charter modular facility for the Robert F. Kennedy High Charter School (RFK). He explained that, given the composition of the student body, which consists of students who would not attend any type of traditional high school, the district had to search for a site that would be in "neutral gang territory".

Mr. Wijenje introduced Robert Baade, RFK principal, who discussed the type of student his school caters to and talked about the process of working with APS to select a site and build the modular school. Task force members expressed a great deal of interest in the RFK school and were very complimentary to Mr. Baade and his staff. Mr. Tolley explained that RFK provides a service to a certain type of troubled student that the district has not been able to duplicate, and he pointed out that, by working together, the charter school and the district have been able to graduate students who could not have gotten along in a traditional high school.

Mr. Wijenje discussed lessons learned with the district's current efforts to house charter schools that are willing to participate in its program. He explained that participating charter schools give up some independence and autonomy for the peace of mind of not having to deal with facilities and other real estate issues. He explained that the participating charter schools sign a memorandum of understanding (MOU) with the district to allow APS to keep six (rather than the statutorily required two) percent of its state equalization guarantee (SEG) distribution plus signing over the state lease reimbursement for APS to maintain the facilities. He emphasized the importance of the state lease reimbursement for making the school district/charter school relation function successfully. He also opined that the current lease-purchase legislation in effect has not been a cost-effective mechanism for the district to use in building or purchasing a new facility and cited the district's experience with the Montessori of

the Rio Grande Charter School. At this point, the district has simply purchased a private facility, and the charter school has committed its lease funds to the district in exchange.

In response to task force discussion and questions, Mr. Baade indicated that he has been willing to give up some of his former autonomy in order to concentrate on his school's mission, which is to work with high-risk teenagers to educate them and keep them out of trouble. He prefers to have APS as his landlord.

Mr. Wijenje pointed out that issues of governance that impact facilities must be a part of any successful MOU between the district and a charter school. He also emphasized that the MOU between the charter school and the district is such that it can be a "turnkey situation", in which the charter is left to concentrate on its ingenuity and proactive education, and the district can provide the leverage to maintain the facility.

Mr. Tolley discussed problems that have arisen throughout the process. For example, lease assistance is increasing annually, but it is still a small portion of the costs the co-located charter schools are required to pay for their leases. He mentioned that, with the lease reimbursement and the six percent of the charter school's SEG, the goal is to recoup APS costs and relieve the stress on the leadership of these charter schools, for charter schools are intended to address the needs of students in alternate ways that public schools cannot address. He added that APS also deals with the MOUs between the APS school board and the charter school board, and it is challenging to reach agreements when the memberships are continually changing. He brought up the challenge of oversight, for some of the charter schools are authorized by APS and others by the Public Education Department (PED).

Ms. Menapace stated that House Bill 33 (HB 33) is supposed to provide funds to all schools in the district. Because charters are an aspect of the audit, she said that APS would like to see a notification of some sort that would be given to both the authorizer and the charter school to ensure that HB 33 and SB 9 funds are expended according to law. She emphasized that the district is not advocating some sort of permission; rather, it would like to see a process in place in which the PED, for example, advises the charter school about appropriate expenditure of funds.

In response to task force discussion and questions about the current charter school oversight agreement and the proposed notification system for appropriate expenditure of HB 33 and SB 9 funds, Mr. Moya answered that the district believes that the proposal discussed by Ms. Menapace would not only protect locally chartered schools but also state-chartered schools. In response to a question about current PED oversight of Public Education Commission (PEC) authorized charter schools, Mr. Moya responded that he assumes the PEC and the PED do have oversight but, unlike school district authorizers, the PEC does not put the questions of a mill levy before the voters. He clarified that APS wants to ensure that local *and* state charters have a plan for the mill levy money. Representative Larrañaga asked who is providing audits for charters funded by the PED and asked if the PED intercepts money and then distributes it to charters. In response to additional discussion and questions, Mr. Moya clarified that charters that are

component units of the PED budget have an independent auditor chosen by the PED while district-chartered charter schools are a component part of the district's audit. He also noted that each county treasurer flows the SB 9 and HB 33 funding directly to the charter schools themselves, while the SEG money flows through the authorizer.

In response to additional task force discussion and questions, Mr. Tolley explained that charter schools and magnet schools often have a similar mission in terms of appealing to the student at risk of dropping out of a traditional high school, but the difference between the two is governance. He added that, in his opinion, magnet schools are not in competition with charter schools. Mr. Moya also explained that magnet schools, unlike charter schools, are not component units of the APS audit but are part of the entire district audit.

Task force members discussed the audit costs, stating that charter schools were paying more than half of the cost of the APS audit, and expressed reluctance to use those costs as an example. In response to a question, Ms. Menapace stated that APS does have a written policy in a procedural directive, making the relationship one that is board-to-board. She continued, stating that attached to that, the APS voters approved a strategy and prioritization process on how charters access the master plan, and it was part of developing the bond question that went to the public. She said that, while creating that directive, Assistant Superintendent Diego Gallegos met with charter schools for input. Ms. Menapace added that the procedural directive needs to be updated to include the local dollars and said that a letter will be sent to the locally authorized charters about how they can access the money. In response to additional questions and comments, Ms. Menapace responded that the charters included in the resolution that was approved by the voters are the ones that will receive the funds per the county treasurer. Task force members expressed concern about an apparent discrepancy between what the district is asking the county treasurer to do and what the statute says. Some task force members indicated that charters around the state are managing to use the lease-purchase program effectively to get into public buildings by 2015 and expressed concern about attempting to amend current statute. In response to this discussion, Mr. Moya assured the task force that APS is not opposed to the lease-purchase agreement legislation and concurred that it is invaluable to some charters. In that regard, he stated that APS can purchase facilities and not pay interest costs, making it more effective for the charters.

Task force members expressed concern that positively performing charter schools should remain open and expressed concerns about the method to shut down low- or non-performing charter schools. Mr. Tolley answered that the methods for withdrawing a charter school's authorization are in statute and explained that APS authorizes charters for five years and then conducts an evaluation. Ms. Menapace explained that in law, there are three things that an authorizer can do: authorize; suspend; or revoke a charter. The suspension process is not well written, and APS believes there should be a middle ground to allow charters to have a chance to redeem themselves. She added that the process mirrors what the secretary of public education can do if there is a problem with a school in a district. Task force members expressed concern about the damage to the students given the time line to evaluate and revoke a charter. Mr. Moya responded, stating that APS does not have state-chartered schools in APS facilities and for the

moment, they should not be included in the issue. In response to a task force question, Mr. Moya stated that his office would be able to serve as a landlord to charter schools in district facilities. Representative Martinez requested staff to examine the issue further, and Mr. Gorrell noted that his presentation that afternoon would address the issue.

In response to additional task force questions, Mr. Moya responded that 98 percent of the SEG funding generated by a student follows that student into the charter school regardless if the charter is state or local. Representative Martinez stated that the money moved is a net loss to the district, and Senator Asbill clarified that this is not the case if it is a startup charter. Representative Miera expressed the desire to change that.

Some task force members had a number of questions about the performance of RFK. Mr. Tolley stated that the school does not meet adequate yearly progress each year, and while the school's performance on paper appears to be dismal, this school is dealing with the highest at-risk students in the district. The school provides educational opportunities to students who would not have another choice but jail. Mr. Baade said that the school is a Title I school and serves a student body with 90 percent qualifying for free or reduced-fee lunches and 90 percent with some type of gang affiliation. The school has a substance abuse clinic and an early intervention program to provide rehabilitation and intervention; a growing bilingual program; an early childhood development program to train the students who are parents to be good parents; and a literacy program for parents to teach their kids how to read. Regarding enrollment, Mr. Baade stated that RFK enrolls students throughout the academic year because dropouts need to be in school. He discussed the school's mandatory six-week orientation program in which a student has a sponsor. He said that about half of the students do not pass the orientation requirements but half of those that do not pass voluntarily repeat it multiple times until they do. Mr. Baade stated that the average student comes into ninth grade and is four grade levels behind, so RFK has a remedial reading class that is part of the forced electives. He noted that RFK shows two years of academic growth within the first year. He declared that RFK is graduating students and that it provides the services that are not being provided elsewhere.

Several task force members complimented Mr. Baade and his staff on the important work they are doing for troubled young people.

### **Lease-Purchase Update**

Mr. Ortiz gave a brief history on lease-purchase, stating that provisions of the enabling legislation for the constitutional amendment to allow the lease-purchase arrangement require PED approval of each lease-purchase arrangement. He reported that, since 2007, only five requests have come to the PED: the Media Arts Collaborative; a charter in Taos; Mesa del Sol; a school in Las Cruces; and Albuquerque Montessori of the Rio Grande. He stated that APS chose not to go forward with Montessori. He emphasized that the problem with the lease-purchase arrangement is that charters often do not have the money for the down payment.

Some task force members expressed concern that charter schools could have funding for a down payment if they were receiving their share of HB 33 and SB 9 funds as required by law.

The task force asked for comments from the students from the Media Collaborative Charter School. Several students stressed the point of the uniqueness of their school and the choices they have been offered. Many of the students had attended several schools and find this one to have the most opportunities.

### **Charter School Concerns: Facilities and Accessing Capital Funds**

Patricia Matthews, Esq., Matthews Fox, P.C., began with the concerns regarding charter schools' ability to receive their share of SB 9 and HB 33 levies. She said that, first, the statute requires that district charters be included in the facilities master plan (FMP); in some cases they are not. She stated that some charters are seeking clarification within the statute to ensure that charters are included in the FMPs in the future. She posed the questions about how the PED communicates with the districts to ensure that charter schools are involved in developing the district resolutions. She noted that there had been a great deal of discussion about whether a per-MEM distribution makes sense in terms of providing sufficient funding for down payments.

Concerning the Public School Lease Purchase Act, Ms. Matthews indicated that she believes having SB 9 and HB 33 dollars flowing to charter schools will enable charters to have the money for the down payments on lease-purchase agreements. She added that these sources may be used more often and have provided some unique abilities to leverage other sources of funds. Regarding being asked to make improvement on a facility, some charters and the PSFA are working together to meet adequacy standards where appropriate.

**missed his name** and Michael Vigil, chief executive officer for the Coalition of Charter Schools, welcomed APS' ability to work with charters. Until recently, he said charters did not have that ability to maintain their facilities and this is an opportunity to work with the district and is a viable option.

**Patricia** said that in the past, the reporting requirement was developed to make sure charters complied and added that Dr. Grover helped with that process. She said they are pushing for a quality initiative that is not legislated, but part of the performance contract with an authorizer where both the school and the authorizer comply. She said she appreciates the work that has been done and sees this as a way to maintain facilities.

Representative Miera asked if the coalition is willing to work with Ms. Ball on potential statutory language that would be acceptable to both charter schools and the PSFA. Ms. Matthews said that she believes that the acquisition of a facility is an appropriate use of that money. The transaction could be structured to include a distribution of funds over the next five years. Dr. Grover suggested finding out the ways in which charters are pursuing different sources to secure various sources of reliable funding. Ms. Ball added that both SB 9 and HB 33 are direct levies and can be used as down payments. She noted, however, that SB 9 state guarantee funds are bond proceeds and possibly may not be used for this purpose. Mr. Ortiz concurred.

### **Incubator Process for Facilities for Charter School Start-Ups**

Mr. Gorrell discussed concerns that charter schools are being approved without having a potential facility selected. PSFA staff are proposing to amend statute so that the PSCOC can be the landlord of any new charter. He explained that the PSFA would work to establish agreements with districts to broker their use by new charter schools. Once the first anniversary date of five years occurs, charters would be eligible to opt out if they have found space.

Some task force members expressed concern about supporting legislation that would erode a local school board's authority to determine its district's expenditures. Senator Asbill noted, as an example, that his school district, Carlsbad, has a policy of supporting small, neighborhood schools and, as a result, has 10 schools where five would probably serve the students more economically. Representative Miera noted that the concept is on record and requested that Mr. Gorrell and Mr. Berry continue the research, take the idea to the PSCOC and bring it back as a formal presentation to the task force during the 2011 interim.

### **Recommendations for 2011 Public School Capital Outlay Oversight Task Force (PSCOOTF)-Endorsed Legislation**

SB 140 (2010 Session): "School Facility Leases and Standards"  
Raising Minimum Contract Amount for Subcontractor Bonding  
PSCOOTF Members and Staff

Ms. Ball directed task force members' attention to the discussion drafts of two bills under consideration. She noted that the first bill, .182974.1, is the result of the work of the task force's subcommittee on subcontractor bonding. This draft, she explained, would increase the limit for the subcontractor bonding requirement from the current \$125,000 to \$250,000. Senator Asbill stated that this bill is a first step to making sure projects are funded appropriately.

Senator Asbill made a motion to endorse the draft bill, seconded by Mr. Phipps, and Representative Miera announced, without opposition, that the bill will be a PSCOOTF-endorsed bill. Senator Asbill will sponsor the bill.

Ms. Ball discussed SB 140 from the last session, noting that changes were made to the original version that were not added during the 2010 session because the bill did not receive a message to be germane from the governor. She noted that those changes are included in the present version of the bill.

Mr. Gorrell explained the rationale of the bill, stating that charters often are authorized that have facilities that are well below the state average facilities index score. He explained that once these charters are renewed, this below-average facility will move to the top of the FCI list and be among the first to be considered for state funding. He explained that this bill ensures that the facility the charter is moving into cannot be below the state average.

Task force members expressed a number of concerns about the bill, including the following:

- the requirement that charter schools must be in facilities that meet average adequacy standards;
- the lack of language to give charter schools the first right of refusal for underutilized facilities;
- a lack of protection for a charter school in a district building if the district decides to sell the facility; and
- concerns about the inclusion of the PEC as the state-chartered charter school authorizer.

Task force members requested additional work on the bill and asked that it be brought to the December 21 PSCOOTF meeting.

Task force members requested that staff draft bills to address the following issues:

- the possibility of an "intermediate" authority to determine if charter schools are expending their HB 33 and SB 9 funds according to law;
- an amendment to the construction manager at risk statute to determine "start" and "finish" dates as they relate to the determination of prevailing wage; and
- an amendment to statute to require a dispute resolution clause in the charter of a state-chartered charter school as well as a district-chartered charter school.

### **Adjournment**

There being no further business, the task force adjourned at 2:45 p.m.