

**MINUTES  
of the  
FIRST MEETING  
of the  
LEASE ASSISTANCE AND CHARTER SCHOOL FACILITIES WORK GROUP  
of the  
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**October 17, 2012  
Room 322, State Capitol  
Santa Fe**

The first meeting of the Lease Assistance and Charter School Facilities Work Group of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator Cynthia Nava, co-chair of the PSCOOTF, on October 17, 2012 at 9:22 a.m. in Room 322 of the State Capitol.

**Attendees**

Rep. Rick Miera, Co-Chair  
Sen. Cynthia Nava, Co-Chair  
Rep. Donald E. Bratton  
Secretary Tom Clifford  
Cecilia Grimes  
Dr. Lisa Grover  
Joe Guillen  
Leonard Haskie  
Bruce Hegwer  
Rep. Larry A. Larrañaga  
Rep. James Roger Madalena  
Tony Monfilleto  
Antonio Ortiz (Designee for Secretary  
Hannah Skandera)  
Lilliemae G. Ortiz  
Rep. Henry Kiki Saavedra  
Sen. John Arthur Smith  
Michael Vigil

**Staff**

Raúl E. Burciaga, Legislative Council Service (LCS)  
Sharon Ball, LCS  
Tom Pollard, LCS  
Cassandra Jones, LCS

**Guests**

The guest list is in the meeting file.

**Wednesday, October 17**

**Welcome and Introductions**

Senator Nava welcomed the work group members and audience.

**Work Group Issues for Consideration**

Ms. Ball briefly introduced issues for consideration by the work group. She referred the work group to a handout prepared by the Public School Facilities Authority (PSFA), which outlines various issues with the Public School Capital Outlay Council (PSCOC) Lease Assistance Program as well as charter school facilities issues.

**Review of Lease Assistance Program Issue Brief**

Robert Gorrell, director of the PSFA, referred the work group to an issue brief created by the PSFA regarding the PSCOC Lease Assistance Program. He told the work group that the lease assistance program was put in place to accommodate charter schools, which do not have a property tax base. Jeff Eaton, chief financial officer for the PSFA, outlined the following 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.

The 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. Standardized intergovernmental land leases for building or renewing school facilities.

This option would standardize intergovernmental leases in order to disallow terms that are not in the best interest of the state and would clearly define the end of a 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 facilities capital costs to the authorizing body.

**Work Group Discussion of Lease Assistance Program**

Members of the work group asked questions and were answered by staff. Members discussed the benefits and costs of leasing school buildings rather than constructing them. Members also discussed school operating and capital budgets, as well as the cost of maintenance. Members discussed current lease assistance funding levels and considered various policy options to address lease assistance program issues identified by the PSFA. They discussed the increase in gross square footage (GSF) per student, as well as the related increase in the cost of maintenance. Work group members discussed eliminating a statutory requirement for an adjustment based on the Consumer Price Index for the lease assistance program. Work group

members also discussed: various capital outlay mechanisms for public schools; lease-purchase options; and the Public School Capital Outlay Fund.

### **Review of Charter School Facilities Issue Brief**

Mr. Gorrell referred the work group to an issue brief created by the PSFA regarding charter school facilities. He explained that each year the Public Education Commission (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 work group that the PSFA Charter School Working Group has organized the brief around problems recognized by the PSFA Charter School Working Group, including: need for experience and expertise in charter school planning; 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. For the 2011-2012 school year, there were 96 charter schools operating in New Mexico, 52 of them state-authorized and 44 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. The charter school GSF for the same year accounted for 3% of all public school GSF. Twenty-four 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. Gorrell reminded the work group that charter schools can waive certain facility requirements, such as gyms and libraries, if they demonstrate an alternative method of delivery for the same services.

Mr. Gorrell presented policy options to the work group 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 Public Education Department (PED), the PSFA, the Charter School Coalition or a private contractor. Job duties of the 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 provides charter schools with local match funding to hire planning consultants to prepare their facility master plan. Mr. Gorrell noted that a cost-benefit analysis of this scenario has not been completed.

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

Mr. Gorrell told the work group that currently there is no relationship between entities that authorize charter schools and 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 PEC would assume full responsibility for charter school facilities needs.

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

Mr. Gorrell told the work group that some districts and schools have unutilized 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. Gorrell told the work group 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 facilities requirements in order to best meet the needs of their student population. Students would be allowed to take examinations with proctors in places such as other schools, places of worship or libraries.

### **Charter Schools Position Paper in Response to Issue Brief to the PSCOOTF**

Susan Fox, Charter Law Office, P.C., presented the committee with a position paper in response to PSFA's brief regarding charter school facilities issues. Ms. Fox told the committee that the PSFA has often commended charter school operators for meeting requirements and providing educational space for students at a much lower cost than traditional public schools, partially because charter schools are eligible for and receive waivers from certain state adequacy standards. Ms. Fox emphasized the importance of allowing charter schools to be creative with their money. She told the work group that imposing additional regulations on facilities processes will increase costs and distract charter schools from implementing the academic programs set out in their charter school agreements. She said that the state should focus on enforcing existing laws and, in some cases, strengthening them rather than implementing new legislation.

Ms. Fox discussed specific policy options presented in the brief. She discussed the importance of leaving charters unencumbered by regulation. She specifically addressed standardized leases, master planning development, PSFA assessment of potential charter facilities and the importance of charter school autonomy. Ms. Fox discussed existing legislation and potential consequences to proposed legislative and rule changes.

Members of the work group asked questions and received answers from Ms. Fox and Patricia Matthews, P. Matthews, LLC. Ms. Matthews suggested that all public schools wishing to enter into a lease-purchase agreement should be required to have the agreement certified by an attorney, as charter schools are currently required to do.

### **Work Group Discussion of Charter School Facilities Issues and Potential Legislation**

Members of the work group discussed various policy options presented by the PSFA and other members of the work group. Members suggested researching best practices for dealing with charter school issues in other states. Members also discussed: virtual charter schools and potential amendments and adaptations to the law in order to allow for virtual charter schools; the relationship between charter schools and public school districts; current law requiring school districts to share available space with charter schools; and the PED's responsibility for charter schools.

Members of the committee discussed long-term policy shifts to address lease assistance and charter school issues, as well as immediate legislative action, such as:

- capping lease assistance awards and removing the CPI adjustment;
- requiring that all lease-purchase agreements be certified by an attorney according to the terms of the Public School Lease Purchase Act; and
- establishing consequences for schools not offering available space to charters.

Long-term issues discussed by the work group included virtual charter school issues and requiring authorizers of charter schools to be responsible for charter school facilities.

### **Adjournment**

There being no further business before the work group, the first meeting of the Lease Assistance and Charter School Facilities Work Group of the PSCOOTF adjourned at 3:01 p.m.