

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

**June 10, 2016
Room 322, State Capitol
Santa Fe**

The first meeting of the Public School Capital Outlay Oversight Task Force was called to order by Senator John M. Sapien, chair, on June 10, 2016 at 10:09 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Sen. John M. Sapien, Chair
Rep. Dennis J. Roch, Vice Chair
Sen. Stuart Ingle
Rep. Larry A. Larrañaga
Rep. James Roger Madalena
Sen. John Arthur Smith
Antonio Ortiz (designate for Paul Aguilar)
Duffy Rodriguez
Carl Foster
James P. White
Randall Earwood

Absent

Rep. Sharon Clahchischilliage
Rep. Yvette Herrell
Rep. W. Ken Martinez
Sen. Mary K. Papen
Sen. Sander Rue
Sen. Benny Shendo, Jr.
Rep. Don L. Tripp
Kirk Hartom
T.J. Parks
Mike Phipps
Stan Rounds
Jerry Stagner

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Howie C. Morales
Sen. Cliff R. Pirtle
Rep. Patricia Roybal Caballero
Rep. James E. Smith
Sen. William P. Soules
Sen. Mimi Stewart
Sen. Pat Woods

Sen. Daniel A. Ivey-Soto
Rep. D. Wonda Johnson
Rep. Patricio Ruiloba
Sen. John C. Ryan
Sen. William E. Sharer

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Sharon S. Ball, Researcher/Drafter, LCS
Jeff Eaton, Research and Fiscal Policy Analyst, LCS
Michelle Jaschke, Researcher, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are available on the website and in the meeting file.

Friday, June 10**Welcome and Introductions**

The meeting was called to order at 10:09 a.m. Senator Sapien welcomed everyone and asked members and staff to introduce themselves.

An Assessment of New Mexico's Public School Capital Outlay Funding Formula

Dr. Jeffery Mitchell, economist and director, University of New Mexico Bureau of Business and Economic Research (BBER), presented a summary of the full report of a study conducted last interim by the BBER under a contract with the LCS. The purpose of the study was to collect the data in the formula independently, to reproduce and validate the calculations that are published annually by the Public Education Department (PED) and to make recommendations on steps that may need to be taken to improve the formula.

In the review, the BBER determined that the way the PED is applying the formula's calculations is correct and that the formula is being applied correctly. However, Dr. Mitchell stated that, even so, the study finds reasonable concerns that the formula does not make the most effective use of state resources and does not provide the predictability necessary for long-term planning. Dr. Mitchell provided several specific examples of differences between school districts in terms of construction costs; one being location, such as isolated rural areas versus densely populated urban areas; another is low enrollment levels in more rural school districts that cause the cost per student to be higher. Dr. Mitchell specifically pointed out the inherent volatility in some districts that rely on oil and gas production severance taxes. Because the formula weighs the property values very heavily, these districts experience very large swings due to the volatility in the oil and gas market.

Dr. Mitchell concluded that the current formula works as it was designed to work. He commented that differences between urban and rural school districts may be skewing equity and a restructuring of the formula may be needed to address this concern. He also suggested that at the core of the issue is the definition of what "ability to pay" means, noting that this definition may need to be more clearly defined apart from the structural components of the formula. Dr. Mitchell proposed that the BBER could, over a nine-month period, provide the task force and staff with interactive spreadsheets to look at the effects of various formula factors. This work could be done for under \$100,000.

Dr. Mitchell also suggested that access to the source data of the formula be made more accessible and transparent.

Responding to questions regarding issues related to rural districts, Dr. Mitchell discussed rural districts' possible recalcitrance in applying for Public School Capital Outlay Council (PSCOC) grant awards. He suggested that some rural school districts may not be taking advantage of state match funding in the standards-based process because of the reluctance of their taxpayers to commit themselves to the debt associated with approval of bond issues. He noted that some landowner taxpayers are "land rich" but cash poor. Task force members continued the discussion, noting especially "land rich" and "property tax poor" districts like Corona and Vaughn. Dr. Mitchell said that he is not suggesting two different formulas, one for rural school districts and one for urban school districts, but rather one funding formula that addresses the particulars that make the current formula appear disequitable.

Discussing the possibilities of changing the current formula, some members expressed concern that changes might bring about litigation and suggested a refinement of the definition of adequacy. Acknowledging the difficulty of defining adequacy, Dr. Mitchell acknowledged that defining adequacy well is central to the efficient and equitable expenditure of funds but that it is a difficult topic to define. The definition of adequacy, and differences among stakeholders about what constitutes adequacy, makes reaching consensus difficult. Dr. Mitchell and task force members also discussed problems with "adequacy creep"; i.e., districts with a property tax base sufficient to combine local funding with state funding to go beyond adequacy.

Some members expressed concerns about school districts with extensive federal lands that do not generate property taxes and the continuing concern about the state's crediting school districts with the amount of their respective federal impact aid allocations.

In response to continued member discussion about the possible adjustments to the formula, Dr. Mitchell mentioned several ways to work with the existing formula. Dr. Mitchell reiterated that the current computation is being appropriately executed but that it measures only two factors to capture ability to meet the required state match. He also discussed a possible total restructuring of the formula. He stated that, at a minimum, the formula study should look at adding more factors to capture ability to pay, such as income levels and per-student cost differences based on geography.

Members briefly discussed public-private partnerships as a possible way to bring more funding to public school construction. Dr. Mitchell said that more funding would help but that he was not familiar with the use of public-private partnerships. He noted, however, that there may be constitutional problems in forging such partnerships, given the current definition of "public" school.

Some members commented that perhaps another area in need of analysis is the difference between the cost of private sector construction and public sector construction.

Standards-Based Funding Stream: Effect of Passage of Laws 2015, Chapter 63 (House Bill (HB) 236) on Program Funding Adequacy

David Abbey, chair, PSCOC, and director, Legislative Finance Committee, provided background on the PSCOC and how the expenditure of more than \$2.5 billion dollars over the last 15 years improved or replaced the worst schools in the state and said that, overall, most of the schools in the state are in fairly good condition and that, going forward, most projects will be renovations of existing facilities and systems replacement rather than completely new facilities because of the progress that has been made so far.

Mr. Eaton presented the fiscal impacts of HB 236, passed by the 2015 legislature to reduce the amount of supplemental severance tax bonds available for distribution through the standards-based process. He explained that, prior to the *Zuni* lawsuit, the distribution of severance tax revenue to the Severance Tax Permanent Fund (STPF) was 50 percent of revenue collections. This distribution to the corpus of the fund was reduced over a period of six years (1999-2004) to five percent. The other 45 percent of severance tax bond proceeds provides funding for the PSCOC's programs. Because of the reduction in revenue inflows, the STPF corpus and resulting distributions to the state general fund have remained flat. Mr. Eaton testified that HB 236, when fully phased in during fiscal year (FY) 2022, will increase the distribution to the STPF to 13.8 percent, which will increase the corpus of the STPF more rapidly with resulting annual increases in distributions to the state general fund.

Mr. Eaton explained that, as introduced, HB 236 reduced funding designated for legislative capital projects, education (PSCOC), water projects, colonias infrastructure projects and tribal infrastructure projects, resulting in an increase in the percentage of contributions into the STPF. The bill phased in the reductions across all programs over four years (FY 2016-FY 2019). Changes were made to the bill, and the final draft signed into law delays the impacts on education capital until FY 2019 and makes adjustments to the capacity earmarked for tribal infrastructure and colonias infrastructure projects to hold these beneficiaries nearly harmless.

Mr. Eaton went on to explain the different reductions to the various programs and the phasing, indicating that, while the greatest reduction was to the PSCOC program from 45 percent to 38.6 percent, the impact to the PSCOC program is delayed until FY 2019. He said that reductions in funding are phased in gradually over four years (fully implemented in FY 2022) to take into account the fact that many projects were previously awarded and that the immediate reductions in funding would have a negative impact on projects already awarded.

Mr. Abbey provided an overview of bonding capacity, indicating that capacity has fallen by 40 percent over the last two years. He said that, even with the fewer revenues, the Facilities Condition Index (FCI) statewide is at 35 percent. He noted that strategies being developed will be used to maintain this FCI average, even with minimal funding caused by oil falling from \$95.00 per barrel to \$39.00 per barrel.

Mr. Abbey guided the task force through the PSCOC financial plan, highlighting the fixed program costs and the amount remaining for PSCOC awards. He noted that, because of the falling revenues, the PSCOC is considering only those schools ranked in the top 40 of the weighted New Mexico Condition Index for this year's award cycle. He added that very few schools outside this funding pool are in very poor condition, so the state is in a good position to have a much smaller awards program. Mr. Abbey indicated that awards may be made in October but expects minimal demand for new schools. He said that the timing is right to start making systems repair and replacement awards, which the PSCOC will pilot this year.

Mr. Abbey continued presenting the PSCOC detailed project schedule, which coincides with the timing of current and future bond sales so the awards that are made are "right-sized" for the current and available bonding capacity.

Task force members asked about funding for pre-kindergarten facilities and school buses in the PSCOC financial plan, noting that, in the out years it appears there is no funding in the plan for those line items. Mr. Abbey indicated that the Public School Capital Outlay Fund was used temporarily for these programs because of the downturn in the economy. But the expectation is that, as the economy recovers, those items will be able to be funded with senior severance tax bonds, which were the funding source in years prior.

Members expressed concern that the increased inflows to the STPF might not be sufficient to make the fund healthy. Mr. Eaton explained that the increase will make it grow and that it will be relatively healthier. He said that it has been long recognized that the state general fund revenue sources are somewhat volatile, which is due to the significant impact that the oil and gas industry has on the New Mexico economy. He said that, to the extent that the permanent funds can increase their share of the revenue portfolio, the year-to-year change in the general fund revenues as a whole will be less volatile.

Task force members expressed some concern that the PSCOC is moving away from building new school facilities and toward repairing and replacing various building systems, and that it is moving away from construction-centric activities to emphasizing maintenance. Mr. Abbey explained that building systems are less maintenance-focused than they are strategic repairs of a system or combination of systems to extend the life of a facility.

Responding to discussion and questions about the condition of charter schools, Mr. Abbey said that, in general, charter school facilities are in very good condition and that they have significant support from the PSCOC through the lease assistance program, which awards over \$14 million annually to support facility lease costs statewide. In response to questions about charter schools' progress toward acquiring public facilities, Robert Gorrell, director, Public School Facilities Authority (PSFA), indicated that the PSFA was in the process of surveying all charter schools and does not currently have that information but will present it at a future meeting. Mr. Abbey said that there are pockets of declining enrollment in the state and that there

is excess capacity and empty space. The goal is to utilize unused spaces and bring existing facilities closer to full capacity utilization.

In response to questions and comments about how HB 236 would affect compliance with requirements of the *Zuni* lawsuit, Mr. Abbey responded that the Grants-Cibola County School District did not join Gallup and Zuni in their recent filing. He explained that Grants has been given substantial assistance lately to help overcome some challenging site issues. Task force members noted that the passage of the systems bill helped to address the needs in the litigant districts. Mr. Abbey added that, one issue that may still be on the radar is the need for teacherages in the litigant districts and other districts that have schools that are isolated in rural areas. Mr. Abbey stated that the need for teacherages remains a big issue for the Gallup-McKinley County School District.

PSCOC and PSFA FY 2015 Annual Report

Mr. Gorrell presented the FY 2015 PSCOC annual report highlights to the committee, among which are the following:

- the PSCOC awarded a total of \$198.2 million for 63 individual school projects throughout the state;
- 80 percent of project funds were under contract within 15 months from the date of award;
- the 2015 state average FCI is 36.2 percent, roughly flat since FY 2010;
- maintenance performance statewide remains poor; and
- the current funding source (supplemental severance tax bonds) will not meet estimated fund requirements in order to maintain the overall condition of schools at the current level.

Mr. Gorrell directed members' attention to the listing of awards made in 2016. He noted that all of the PSCOC projects that will be ready in the fall of 2016 are "state-of-the-art" facilities. He concluded with a short list of potential strategic issues that the task force may wish to consider during the interim.

Task force discussion revolved around several issues, including the impact of the inclusion of charter schools on the statewide facility metrics. In response to a member question, Mr. Gorrell said that the most significant impact is the increase in gross square footage of school facility spaces. Another issue discussed relates to utilization of facilities. Members discussed the fact that school buildings are not used very efficiently, with schools closed early in the afternoon and all summer long. In response to the discussion, Mr. Gorrell noted that multi-use of school facilities for non-education purposes is permitted in statute and is insured by the Public School Insurance Authority. Anecdotally, Mr. Gorrell said that he is aware of a new school that was not made available by the school district for other uses because the school district was concerned that the facility would suffer premature wear and tear. On the other hand, members talked about instances in their respective districts in which facilities are frequently used during

the summer for activities, including K-3 Plus programs and summer school programs. Members also discussed instances in which school health clinics are opened to the public.

In response to task force discussion about the inclusion of the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf on the ranking list, Mr. Gorrell explained that individual buildings at the two special schools are included in the ranked list. He said that, after this year, the schools will be scored based on the aggregation of all the buildings on the campus, as other schools are. This variance in how the PSCOC traditionally ranks schools was permitted in statute for five years, and 2016 is the final year for their individual inclusion. He said that the PSCOC has made many significant improvements at both schools so that when each campus is evaluated, based on the entire campus, the schools will likely have a low ranking.

Broadband Deficiencies Correction Program Update

Ovidiu Viorica, broadband program manager, PSFA, presented an update of the PSFA's Broadband Deficiencies Correction Program. Mr. Viorica explained the "High-Level-View" of the way in which internet connectivity gets into classroom learning environments. Operationally, the goal is to have one megabit per second (Mbps) per student capacity in New Mexico schools. Currently, all school districts fall short of this goal, with 31 percent of school districts failing to have even 100 kilobits per second per student.

In terms of speed and capacity to the wide area network, the goal is to have one gigabit per second per school. Currently, only 28 percent of schools are meeting this target. The goal for internal equipment in the classroom is 1:1 per student in each classroom. According to a study and report by Hewlett Packard Corporation, 92 percent of schools need infrastructure upgrades.

Mr. Viorica continued, identifying future program priorities, including making fiber-optic upgrades, making network equipment and WiFi upgrades, improving internet affordability and developing a plan to make improvements sustainable. Mr. Viorica directed members' attention to Attachment C of the handout, which shows internet service provider cost by Mbps per month for each school district in New Mexico. This graphic illustrates the cost savings achieved by a consortium of school districts in the east central part of the state, identified on the graphic as "REC 6", which combined that demand for service to achieve better pricing from the winning service provider. Mr. Viorica concluded that, up to this point, much progress has been made in improving internet access in the classroom, yet much work is to be done. He anticipates that next year, all schools in the state will be connected by fiber optics, alleviating one capacity choke point.

Committee members discussed concerns over the broadband requirements and other state unfunded mandates. A member asked if there had been any discussion with the Public Regulation Commission about the cost of rental on utility poles. The member mentioned two school sites that are 10 miles away from the nearest municipality, and renting utility poles was

required to get internet access to those sites. Mr. Viorica said that he had not heard of the issue before the day's meeting; however, he said that he believes that the expenditure might be e-rate eligible and that the PSFA endeavors to study this type of expenditure to better understand the scope and depth of long-term operating costs of the broadband improvements.

Task force members discussed funding for provision of the fiber-optic and network upgrades identified as goals for the summer and fall 2016 program. Mr. Viorica stated that the availability of providers is still somewhat unclear but is now coming into focus. In some areas, there is only one provider, while in other areas, there are several. He explained that encouraging competition is a huge priority for the program. Mr. Viorica indicated that providers are not readily willing to give the status of their fiber-optic capabilities.

In response to a task force question about pricing, Mr. Viorica said that pricing in many areas is still rather high because the contracts for service tend to be for three to five years. He said that the PSFA is recommending neutral aggregation points for service in order to encourage redundancy in service as well as to level the playing field competitively among service providers. Concerning fiber-optic connections and "scalable" service, he said that fiber-optic cabling has capacity in the one-terabyte-per-second range, so it has ample bandwidth for the service requested. He added that T1 cabling and copper cabling, in contrast, are limited to much lower transmission speeds.

In response to a question about funding from sources other than e-rate, Mr. Viorica said participants in the inter-agency broadband deficiencies correction group are actively exploring other funding sources and will be providing that information to the task force as it becomes available. Regarding cross-agency cooperation, he said that the Department of Information Technology (DoIT) is currently collaborating with other entities in the public and private sector. Initially, the DoIT said lack of funding for staff was an issue in investigating other funding sources, but it now reports that it has the resources necessary to move forward more deliberately.

Task force members agreed that it seems the state is moving in the right direction to online education and that the computer-based curriculum is demonstrating measurably higher test scores.

Brief Review: PSCOOTF 2015 Interim and Proposed 2016 Interim Work Plan and Meeting Schedules

Ms. Ball directed members' attention to a copy of the PSCOOTF 2015 annual report and the 2016 proposed work plan in the meeting materials. She said that, at present, the state has not yet indicated activity from plaintiffs in the *Zuni* lawsuit.

Moving to the 2016 work plan, she said that it includes monitoring the effectiveness of the programs of the PSCOC in terms of the *Zuni* lawsuit, monitoring the revenue stream, monitoring progress in improving facilities, examining the cost of ownership and operation of facilities, examining issues related to charter schools and their facilities, consideration of the

inclusion of teacherages in the standards-based process, monitoring the progress of the Broadband Deficiencies Correction Program, reviewing provisions of school capital outlay legislation and making recommendations for changes as necessary and continuing to monitor the inclusion of the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf in the standards-based process.

Task force members had a discussion about the fact that, given all the new buildings constructed in the state over the past decade or so, some school districts have unusable buildings that they have had to abandon because the buildings are unsafe or even condemned. Districts have discovered that the cost of disposing of these school buildings has been and continues to be a very expensive proposition. A discussion ensued, and task force members moved to amend the work plan to include the topic of building disposal in the 2016 interim. The motion was adopted without objection. The task force moved to adopt the work plan as amended without objection.

Adjournment

There being no further business before the committee, the first meeting of the PSCOOTF for the 2016 interim adjourned at 3:29 p.m.