

**MINUTES
of the
FIFTY-SEVENTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**July 22, 2016
Room 307, State Capitol
Santa Fe**

The fifty-seventh meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator Mimi Stewart, acting chair, on July 22, 2016 at 10:12 a.m. in Room 307 at the State Capitol in Santa Fe.

Present

Sen. Mimi Stewart, Chair's designee, Acting
Chair
Antonio Ortiz, designee for Dep. Sec. Paul
Aguilar, Public Education
Department
Rep. Sharon Clahchischilliage
Dr. Carl Foster
Kirk Hartom
Sen. Stuart Ingle
Rep. Larry A. Larrañaga
Rep. James Roger Madalena
Sen. Mary Kay Papen
Debbie Romero, designee for Acting
Secretary Duffy Rodriguez,
Department of Finance and
Administration
Sen. Benny Shendo, Jr.
Rep. James E. Smith, designee for
Rep. Don L. Tripp
James P. White

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Howie C. Morales
Rep. Patricio Ruiloba
Sen. Pat Woods

Absent

Sen. John M. Sapien, Chair
Rep. Dennis J. Roch, Vice Chair
Randall Earwood
Yvette Herrell
T.J. Parks
Mike Phipps
Sen. Sander Rue
Sen. John Arthur Smith
Jerry Stagner
Don L. Tripp

Sen. Daniel A. Ivey-Soto
Rep. D. Wonda Johnson
Sen. Cliff R. Pirtle
Rep. Patricia Roybal Caballero
Sen. John C. Ryan
Sen. William E. Sharer
Sen. William P. Soules

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)

Sharon Ball, Researcher, LCS

Jeff Eaton, Fiscal Analyst, LCS

Michelle Jaschke, Researcher, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Friday, July 22**Welcome**

The chair welcomed members and guests. On a motion duly made and seconded, the minutes of the fifty-sixth meeting of the PSCOOTF were approved without objection.

Update on the *Zuni* Lawsuit

Superintendent Frank Chiapetti, Gallup-McKinley County School District (GMCS D), and GMCS D Director of Facilities Ron Triplehorn updated the members on the status of the *Zuni* lawsuit. The litigant school districts are seeking a judicial review of the progress made toward remedying the lack of uniformity in funding public school capital improvements. Superintendent Chiapetti stated that the litigant school districts continue to suffer funding inequities as a result of the limited tax base and bonding capacity in those districts. He outlined the following necessities that are not covered by the current adequacy standards:

- off-site improvements, including extension of utilities to school sites;
- teacherages;
- payment of Navajo Nation business activity taxes;
- security systems;
- furniture (some), fixtures and equipment;
- competition athletic fields and facilities; and
- landscaping.

Mr. Triplehorn reported that the GMCS D struggles to bridge what he described as a significant gap between adequacy standards and educational specifications, particularly with regard to meeting the needs of pre-kindergarten and "at-risk" student populations and addressing the mandates to provide Navajo language and culture classes and Title IX athletic facilities for female students. In response to member questions, he stated that the biggest disparity the district wants to see addressed is that property-tax-wealthy school districts are able to build public schools significantly above adequacy standards without taxing themselves to the extent that the GMCS D voters tax themselves simply to meet matching requirements. Some members noted

that the funding formula penalizes impact aid districts, as 75 percent of the federal "payments in lieu of taxes" (PILT) for impact aid districts goes to the state for redistribution under the formula.

Assistant Attorney General Tim Williams informed task force members that hearings in the case have been scheduled for five days beginning on October 17, 2016. A special master was appointed after the lawsuit was initiated in 1998; however, Mr. Williams reported that Eleventh Judicial District Court Judge Louis E. DePauli, Jr., intends to hear the arguments without appointing a new special master. Mr. Williams reported that many depositions have been taken but that the discovery process is still active, and he anticipates taking more depositions before the hearings in October.

Task force members discussed the following issues related to the *Zuni* lawsuit:

- the economic impact of mine and forest product closures in the litigant school districts and legislative initiatives to establish an inland port and industrial center in the area;
- changes in GMCSO student enrollment;
- legislative efforts to address area needs with a \$15 million five-year building systems replacement initiative;
- legislative efforts to address area needs with a \$15 million five-year broadband development initiative;
- changes to the adequacy standards since the lawsuit was initiated;
- the status of teacherages in the GMCSO;
- the Grants-Cibola County School District decision not to actively participate in the upcoming status hearing;
- the Navajo Nation's limited responsibilities for funding schools that serve Navajo chapters; and
- the duplication of effort and fluctuations in enrollment resulting from Bureau of Indian Affairs school operations competing with state public school operations in the litigant districts.

Public School Capital Outlay Council (PSCOC) Standards-Based Grant Awards: 2016-2017 Funding Cycle, Project Status Reports and Schools Opening This Fall

Deputy Director Rocky Kearney, Public Schools Facility Authority (PSFA), and PSFA Programs Support Manager Casandra Cano presented a preliminary ranking by the weighted New Mexico Condition Index (wNMCI) for schools for the 2016-2017 funding cycle. Ms. Cano reported that the PSCOC grant awards are delayed somewhat this year as a result of the need to correct reporting errors in the wNMCI data. It is anticipated that final awards for the 2016-2017 cycle will be made in October 2016. PSFA staff presented information on the following PSCOC awards:

- fiscal year (FY) 2016 new and out-of-cycle awards totaling over \$150 million;
- FY 2016 broadband deficiencies correction program awards;

- FY 2017 out-of-cycle awards totaling over \$95 million; and
- FY 2006-FY 2016 historical summary of standards-based awards.

Mr. Kearney and Ms. Cano also presented information on the current status of PSCOC projects and the funding needed to maintain the Facility Condition Index (FCI) at a level that will protect the state's investment in school facilities. Staff reviewed the minor changes in the three-year average of the wNMCI for the top 30 schools on the ranked list and for the statewide FCI. Mr. Kearney reported that the focus of PSFA programs has shifted to the building systems initiative as a result of current and projected budget cuts for new construction and as supported by the stabilized condition indices. Task force members discussed the possibility of school closures. The chair asked that the PSFA provide a copy of a white paper that the PSFA has recently prepared on the issue of school closures and facility disposition.

PSCOC Financial Plan

Chief Financial Officer Denise Irion, PSFA, presented the PSCOC financial plan and a summary of changes affecting projects in Socorro and Alamogordo. Ms. Irion also presented a project award schedule detailing planned expenditures by quarter for active awards as well as projections for upcoming awards cycles through FY 2020. In response to member questions, Ms. Irion explained that the PSCOC seeks to dovetail local match expenditures with state funding to assure that all funds are spent within the allotted time periods and in accordance with federal tax guidelines. Ms. Irion reviewed upcoming projects for PSCOC action, noting that some adjustments may occur in the design and building systems awards categories.

Charter Schools: Progress Toward Public Facilities Deadline

Martica Casias, planning and design manager, PSFA, presented a status update for charter schools showing how the schools are progressing toward meeting the mandate for all charter schools to be located in public facilities. She observed that school charters cannot be renewed unless certain conditions are met, including the requirement to locate in public facilities when such space is available. It was noted that charters self-report school district space available for charter school use. Ms. Casias also presented information showing that the amount of lease assistance provided to charter schools has increased from \$2 million in FY 2005 to nearly \$15 million in FY 2015. Task force members discussed lease-to-purchase agreements and the variety of ways in which those agreements can be constructed.

Greta Roskom, co-executive director, New Mexico Coalition for Charter Schools, discussed some of the impediments to locating charter schools in public facilities, including the requirement that the Public Education Department (PED) approve all lease-to-purchase agreements. She observed that nonprofit status is not available to charter schools in New Mexico and that many schools have chosen to establish private nonprofit foundations to help purchase facilities and raise money for the schools. Ms. Roskom reported that the letter grades assigned to schools by the PED can impede loan-making to the schools for the purchase of facilities. The lack of a centralized bank of information identifying available space in the school districts for charters to draw upon is also problematic. One member asked about conflicts of interest when

staffing for a charter school overlaps with the directorship of the school's foundation. Ms. Roskom stated that there are requirements to identify such conflicts of interest.

Task force members asked that the PSFA provide information on the number of charter schools that are in a lease-to-purchase agreement supported by a private nonprofit foundation and that clarification be provided as to what entity will own the purchased facilities in that situation should the school close. One member asked how leasing from a nonprofit affects a charter school's ability to receive capital outlay funds from the state. It was noted that special conditions will be set in such instances by the State Board of Finance and the Office of the Attorney General. Further, it was noted that capital outlay funding may not be used to pay for lease-to-purchase agreements, except in the instance of the last lease to purchase payment that would establish state ownership of the facility. In response to a member's question, Ms. Roskom reported that she had no knowledge of any plan on the part of charter schools to initiate a lawsuit against the state. It was also noted that the PSFA has considerable information available regarding vacant space in the school districts that charter schools may choose to reference.

PED Suggested Legislation: Amendments to the Public School Capital Improvements Act (SB 9) and the Public School Buildings Act (HB 33)

Mr. Ortiz, director, Capital Outlay and Transportation Bureaus, PED, presented suggested changes to existing legislation to address the following issues:

- establishment of alternative methods for distribution of tax revenues flowing to charter schools as a result of the imposition of property tax millage according to provisions of the Public School Capital Improvements Act, the Public School Buildings Act and the Oil and Gas Ad Valorem Production Tax Act if a county or school district chooses not to distribute those revenues to the eligible charter school;
- whether the PED should continue to determine which items are eligible for reimbursement to charter schools and school districts under SB 9 and HB 33, or if the districts can make those determinations; and
- whether prior-year data may be used to make state match calculations to facilitate the distribution of bond money.

Members expressed some reservations with regard to allowing school districts to make determinations regarding which items are eligible for reimbursement. The chair asked Mr. Ortiz to work with Ms. Ball to develop some alternatives for amending SB 9 and HB 33 to address the PED's other concerns to present to the task force.

Adjournment

There being no further business to come before the task force, the fifty-seventh meeting of the PSCOOTF adjourned at 3:30 p.m.