



Public School Capital Outlay Oversight Task Force

**2015
ANNUAL REPORT**

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***PUBLIC SCHOOL CAPITAL OUTLAY
OVERSIGHT TASK FORCE***

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**REPORT
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

Introduction

As the "direct descendent" of several task forces that were created as a result of the 1998 *Zuni* lawsuit (*The Zuni Public School District et al. v. The State of New Mexico et al.*, CV-98-14-11), the Public School Capital Outlay Oversight Task Force (PSCOOTF) is the entity charged by statute to monitor the implementation of the standards-based process established in provisions of the Public School Capital Outlay Act, the Public School Capital Improvements Act and the Public School Buildings Act; to monitor the revenue streams that fund the standards-based process; to oversee the work of the Public School Facilities Authority (PSFA); and to make annual recommendations related to the implementation of the standards-based public school capital outlay process to the legislature and the executive before the beginning of each legislative session.

The legislature established the standards-based public school capital outlay process in response to the judge's order in the *Zuni* lawsuit that found the state to be in violation of the Constitution of New Mexico uniformity clause (Article 12, Section 1)¹. Filed by parents on behalf of their children in the Zuni Public School District, and later joined by parents in the Gallup-McKinley County School District (GMCSO) and Grants-Cibola County School District, the *Zuni* lawsuit successfully challenged the constitutionality of New Mexico's process for funding public school capital outlay that was in effect at the time. In 1999, Judge Joseph L. Rich, Eleventh Judicial District, gave the state until July 28, 2000 to correct past inequities and to establish and implement a uniform system of funding for future public school capital improvements. Later, the court extended the deadline in order to evaluate the legislation recommended by a task force established in 2000 and subsequently created by law in 2001.

The current PSCOOTF consists of 25 members, including members of the legislature and the executive; certain designated public members, some of whom have expertise in finance and education; and superintendents of school districts or their designees, two of whom must be from districts that receive federal impact aid grants. Appendix A provides a listing of the members who served during the 2015 interim.

Previous reports of the public school capital outlay task forces created by Laws 2001, Chapter 338 and re-created by Laws 2004, Chapter 125 provide details related to the background and development of the statewide standards-based public school capital outlay process that is now in its twelfth year of implementation. While this report focuses primarily on the work of the task force during the 2015 interim, background information in this report is provided for perspective on the issues before the task force.

¹"A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained." (Article 12, Section 1, Constitution of New Mexico)

Background

1998 - 2003

The earliest work that addressed public school capital outlay funding discrepancies was performed by a task force established by the State Department of Public Education (now the Public Education Department (PED)) in 1998 and co-chaired by Representative Ben Lujan and Senator Linda M. Lopez. This task force contracted with a nationally known consulting firm, MGT of America, Inc., to conduct a comprehensive review of issues concerning New Mexico public school capital outlay, including conducting a sampling assessment of public school facilities in 35 school districts.

The first legislatively created task force was established in 2000 in Senate Joint Memorial 21 by the Forty-Fourth Legislature, Second Special Session, in response to an order by Judge Rich giving the state until July 28, 2000 to correct past inequities and establish and implement a uniform system of funding for future public school capital improvements. Many of this first PSCOOTF's recommendations, issued in December 2000, were adopted in Laws 2001, Chapter 338, including statutory authorization to continue its work.

These recommendations, which were enacted in Laws 2001, Chapter 338, focused on establishment of a transitional three-pronged framework for public school capital outlay that:

- 1) corrected past inequities by providing 100 percent state funding for immediate remediation of health and safety deficiencies identified in a one-time initial assessment of every public school throughout the state;
- 2) continued to fund the substantial backlog of critical capital outlay needs of school districts that had substantially used up their own resources for public school capital improvements; and
- 3) implemented a long-term public school capital improvement process based on the development of adequacy standards.

In addition, this measure increased the Public School Capital Improvements Act (also called "Senate Bill (SB) 9" or "the two-mill levy") state guarantee from \$35.00 per mill per unit (the first such increase in almost 30 years) to \$50.00 per mill per unit and designated supplemental severance tax bonds as the permanent revenue source for public school capital outlay.

In April 2001, Judge Rich appointed the Honorable Dan McKinnon, a former state supreme court justice, as a special master to review the progress the state had made in correcting past inequities and in developing and implementing the new capital outlay process. In his report, Justice McKinnon concluded "that since 1998 the state has made a substantial effort to rectify the

disparities..." in funding for school facilities and that "...at this time the state is in good faith and with substantial resources attempting to comply with the requirements of Judge Rich's previous directions". Adopting the report of the special master in May 2002, Judge Rich reserved the right to hold status conferences to monitor and review the state's progress in addressing issues raised by the *Zuni* lawsuit.

The special master's report emphasized the importance of mitigating the disequalizing effect of direct legislative appropriations to individual schools for capital outlay purposes and directed that these appropriations be taken into account in the funding formula that was to go into effect after September 1, 2003. In response to this directive, the 2003 legislature amended the funding formula (Laws 2003, Chapter 147) to provide an offset against state grant awards for public school capital outlay equal to a percentage of any funds received by a school district as a direct legislative appropriation using the local/state-share formula. At the time, the offset provision also applied to legislative appropriations for educational technology, with the reduction credited against the school district's annual distribution under the Education Technology Equipment Act.

2004 Legislation

Legislation enacted in 2004 made a number of improvements to the capital outlay process and provided \$57 million of additional funding for deficiency correction and continuation projects (Laws 2004, Chapter 125). It enacted many of the recommendations of the task force from the 2003 interim, including a recommendation to extend the life of the task force for an additional year, and added provisions relating to what are called "recalcitrant districts". These provisions would allow the Public School Capital Outlay Council (PSCOC) to bring a court action against a school district if it determines that a school district's facilities are below the minimum standard required by the state constitution and that the district has consistently failed to take action. The court action could result in the imposition of a property tax in the school district to pay the district's required share of the costs of bringing the school facilities up to the adequacy standards. The task force considered the enactment of these "recalcitrant district" provisions as another important step for ensuring that the new process will comply with the directives of the court in addressing the *Zuni* remedies.

2005 Legislation

Legislation enacted in 2005 (Laws 2005, Chapter 274) added a number of refinements to the standards-based awards process as a result of experience gained during the pilot year, including many of the recommendations of the task force from the 2004 interim. Among those recommendations was completion of the deficiencies correction program with specific emphasis on the correction of serious roof deficiencies. In addition, this legislation created a separate two-year roof repair and replacement initiative and allocated up to \$30 million per year for fiscal years 2006 and 2007 for this initiative. The lease assistance program enacted in 2004 was modified to increase the maximum grant award from \$300 per member to \$600 per member and

to extend this lease assistance to charter schools in their initial year of operation. In response to the task force's focus on improving maintenance of public school buildings, the SB 9 guarantee amount was increased from \$50.00 per mill per unit to \$60.00 per mill per unit with automatic yearly increases based upon the Consumer Price Index. The legislation also established a framework to allow the PSCOC to waive all or a portion of the local share when funding a project if the school district meets certain criteria.

The 2005 legislation also required new charter schools to meet educational occupancy standards before being chartered and established guidelines to assist in the transition of charter schools to public facilities by 2010 (later amended to 2015).

2005 Interim and 2006 Legislation

During the 2005 interim, the first full year of the task force's existence in its current iteration, the members reviewed the statewide assessment of school facilities; the deficiencies correction program; the roof deficiency correction program; PSCOC awards; lease payment awards; the development of educational technology adequacy standards as directed by House Bill (HB) 511 from the 2005 legislature; and a number of issues related to charter schools. The task force also explored a number of new subjects, including high-growth districts and schools; issues related to rural and very small schools; alternative capital financing options, including tax increment financing and industrial revenue bonds; and opportunities for energy-efficient school buildings.

Acting on the recommendations of the PSCOOTF, the 2006 legislature passed and the governor signed into law Laws 2006, Chapter 95, partial veto (p.v.), amending the Public School Capital Outlay Act to:

- increase distributions for lease payments owed by schools, including charter schools, from \$600 to \$700;
- provide for partial state funding to school districts for the development of five-year facilities master plans, including full funding for some of the smaller districts;
- allow the use of state funding for demolition of abandoned school buildings;
- create a process to identify and correct serious outstanding deficiencies at the New Mexico School for the Blind and Visually Impaired (NMSBVI) and the New Mexico School for the Deaf (NMSD) if additional funding is provided;
- exempt all PSFA staff from provisions of the Personnel Act; and
- create a program for advancing to a school district the local matching share otherwise required if the money is for a "qualified high priority project", which is defined as a project in a high-growth area (also defined in the legislation). The legislation provides that once a school district receives an advance of the local share, it is no longer eligible to receive state funding for future projects until the amount advanced is fully recouped by the amounts that would otherwise have been granted by the state.

Additional legislation passed and signed into law:

- requires districts to submit a five-year facilities plan to the PSFA before beginning any PSCOC project;
- eases restrictions on the limits on school district cash balances and allows the balances to be used for the local match required for PSCOC grant awards;
- creates the New School Development Fund to provide funding for school districts for one-time expenditures associated with the opening of new schools;
- amends the Procurement Code to allow the PSFA to be its own central purchasing office;
- appropriates funding to continue the development and implementation of the facility information management system (FIMS) program, a uniform web-based system to manage maintenance for school district facilities; and
- allocates funding to improve the indoor air quality of public schools.

2006 Interim and 2007 Legislation

During the 2006 interim, the task force heard testimony about the continuing statewide implementation of the FIMS program and school district facilities master plans; revision of current PSFA oversight and review responsibilities, as well as concerns about a perceived PSFA staff focus on regulation rather than assistance; cooperation among school districts, counties and municipalities regarding issues related to growth; energy-efficient school buildings; factors affecting construction costs; an update on development and implementation of educational technology adequacy standards as required in HB 511, passed by the 2005 legislature; and concerns about offsets for direct appropriations.

PSCOOTF endorsements for legislation for the 2007 session addressed testimony that the task force heard during the 2006 interim, particularly the effects and some unintended consequences of legislation enacted over the previous six or seven years. Recommendations in the task force "omnibus" bill that were enacted and signed into law (Laws 2007, Chapter 366, p.v.) included the following:

- exemption from PSFA approval of school construction projects costing \$200,000 or less;
- the following amendments to the Public School Capital Outlay Act:
 - reduction of offsets from future projects awards for special appropriations by 50 percent if the special appropriation is for a project that ranks in the top 150 projects statewide;
 - transfer of the offset against a local school district for special appropriations for state-chartered charter schools from the school district to the state-chartered charter school;
 - allowance of PSCOC grant assistance to purchase a privately owned facility that is already in use by a school district if the facility meets specified requirements;

- provision for additional time to correct outstanding deficiencies in the remaining deficiencies correction process, including some roofing projects;
- an increase in lease reimbursement payments from \$600 to \$700 per membership (MEM) with yearly increases for inflation; and
- an extension of time for the lease payments to 2020 and an allowance for limited leased administrative space to qualify for the lease reimbursement;
- an amendment to the Public School Capital Improvements Act (SB 9) to increase the state guarantee from \$60.00 to \$70.00 per mill per unit with additional annual increases for inflation;
- amendments to the Public School Buildings Act (commonly known as HB 33) to:
 - allow a percentage of revenues to be used for project management;
 - increase the period for which a tax may be imposed from five to six years to track with SB 9 and other school district elections;
 - require that future local board bond resolutions contain the capital needs of charter schools based upon the appropriate five-year plans; and
 - require that the proportionate revenue from future HB 33 taxes approved by voters be distributed directly to charter schools;
- amendments to state statute to assist with implementation of the constitutional amendment approved by voters in the 2006 general election whereby lease purchases are not considered debt in the constitutional sense, allowing school districts to enter into lease-purchase agreements without the leases being subject to voter approval; and
- amendments to the Procurement Code to provide for a contractor-at-risk mechanism for construction of education facilities.

Since 2003, when all school districts became eligible to apply for public school capital outlay funds and the adequacy standards were made operational, the task force has heard testimony that some students live in school districts that may never have a large enough property tax base to be able to finance the building of facilities that can ever go above adequacy standards. The governor vetoed language in the "omnibus" bill that would have established a process to allow a school district to be eligible for an additional "beyond-adequacy" award if the PSCOC based it on certain qualifications, including a state share of 70 percent or greater, voter approval of at least nine mills in property taxes for schools and eligibility for free or reduced-fee lunches of 70 percent or greater.

2007 Interim and 2008 Legislation

PSCOOTF recommendations to the 2008 legislature resulted in the passage of an "omnibus" measure (Laws 2008, Chapter 90, p.v.) that proposed to amend the Public School Capital Outlay Act to allow the PSCOC to make awards above adequacy to qualifying school districts in addition to their standards-based funding. This section of the legislation was vetoed by the executive and did not become law. Other provisions of the bill that managed to avoid the veto pen include provisions to reduce the offset from a PSCOC grant award for direct appropriations made for joint use with another governmental entity; to provide an increased grant

award to districts with a demonstrable exemplary record of preventive maintenance; to reauthorize continuation of FIMS funding; and to appropriate funding to the already established New School Development Fund for fiscal year (FY) 2009 and subsequent fiscal years for distributions to school districts for equipment and other nonoperating costs unique to the first year of a new school's operation.

Other PSCOOTF-recommended legislation did not receive executive messages and therefore were not considered by the 2008 legislature, including measures to repeal subcontractor bonding requirements, to allow charter schools to transfer chartering authorities at any time and to expand Public School Insurance Authority coverage to include community use of a public school building.

2008 Interim and 2009 Legislation

PSCOOTF recommendations to the 2009 legislature reflected the task force's focus on an examination of the ramifications of the Charter Schools Act's requirement that charter schools be located in public facilities by 2010 and other charter school facility issues; policies to encourage the joint use of school facilities by other governmental, community and certain private entities; the relationship of funding to provide adequacy and space flexibility; and costs related to revisions to the statewide adequacy standards.

Legislation based on PSCOOTF recommendations that passed the 2009 legislature and were signed into law by the governor include the following in Laws 2009, Chapter 258 (p.v.):

- amendments to the Charter Schools Act to extend to 2015 the deadline for charter schools to be located in public buildings;
- amendments to the Public School Capital Outlay Act to:
 - provide \$10 million to be awarded for expenditure in FY 2010 through FY 2012 for a roof repair and replacement initiative;
 - limit lease payment assistance for lease-purchase arrangements to charter school facilities;
 - remove the limit on the amount of lease payment assistance funds that may be awarded; and
 - require that federal funds received by a school district or charter school for nonoperating costs be included in the district's or charter school's offset; and
- amendments to the Public School Capital Improvements Act to:
 - expand the definition of "capital improvements";
 - require bond resolutions to include charter school capital improvements; and
 - require proportional distributions of bond proceeds and state match dollars to charter schools.

The governor vetoed language in this measure that would have provided Public School Capital Outlay Act funding to pay for lights and bleachers for athletic fields at certain rural high

schools and authorized an increase in grant assistance for qualifying rural high schools. The governor vetoed similar legislative language allowing an increase in grant assistance for certain rural high schools that passed in the 2008 session.

Other legislation that passed the 2009 legislature and was signed into law includes the following:

- amendments to the Public School Insurance Authority Act to allow for insurance for joint use of school buildings (Laws 2009, Chapter 198);
- a measure that appropriates \$575,000 from the Public School Capital Outlay Fund (PSCOF) to develop and implement a geographic information system (Laws 2009, Chapter 115);
- amendments to the Public School Capital Outlay Act to include the NMSBVI and the NMSD in the statewide deficiency corrections program (Laws 2009, Chapter 37); and
- new legislation to enact the Qualified School Construction Bonds Act to provide statutory language to implement the "qualified school construction bonds" program included in the federal American Recovery and Reinvestment Act of 2009 (ARRA).

2009 Interim and 2010 Legislation

During the 2009 interim, the task force heard testimony about, among other issues, the costs associated with subcontractor bonding, public school capital outlay project planning (development and implementation of education specifications), the effects of the broad economic decline that began in 2008, charter school facility issues and the positive effects of passage of the ARRA that have saved the state from massive budget cuts.

Legislation that passed in 2010 and was signed into law includes the following:

- amendments to the Public School Capital Outlay Act (Laws 2010, Chapter 104, p.v.) to:
 - extend the roof repair and replacement initiative sunset date from 2012 to 2015;
 - require that money distributed from the PSCOF to the state fire marshal or the Construction Industries Division of the Regulation and Licensing Department be used to supplement, rather than supplant, appropriations to those agencies;
 - allow the PSFA to manage procurement for certain emergency school projects;
 - require the PSCOOTF to continue the work group studying performance-based procurement issues for public school capital outlay projects and report findings to the legislature and the executive before the 2011 legislative session; and
 - repeal sections of the law passed during the Forty-Ninth Legislature, Second Session, that appropriated \$29.9 million from the PSCOF directly to the Public School Insurance Authority to pay property insurance premiums and charter schools (including Albuquerque Public Schools); and
- amendments to the Qualified School Construction Bonds Act to clarify the

methodology for allocation of bonding authority (Laws 2010, Chapter 56).

2010 Interim and 2011 Legislation

Key issues that the PSCOOTF addressed were charter school facility issues, which were discussed at almost every meeting. The task force heard testimony that legislation passed in 2006 requires districts to share Public School Buildings Act (HB 33) funds with charter schools and that legislation passed in 2009 with the same requirement for the Public School Capital Improvements Act. Representatives from charter schools and from the PED told the task force that several districts recently had HB 33 elections that did not include charter schools in the proclamation. PSFA staff presented information regarding a potential "incubator process" for charter school startups. The task force co-chair requested staff to work on the issue during the 2011 interim and to bring a more fully developed plan to both the PSCOC and the PSCOOTF for consideration for legislation for the 2012 session. The task force also spent time at several meetings discussing issues related to PSFA and/or PSCOC approval of leases and lease-purchase agreements.

During the course of the 2010 interim, PSCOC and PSFA staff determined that enough funding would be available from supplemental severance tax bonds to allow for the awarding of special short-cycle, standards-based planning grants to qualify districts among the top 60 in the New Mexico Condition Index (NMCI) rankings. The task force heard a presentation from the PSCOC chair and the PSCOC Awards Subcommittee chair on the funding for grant awards, criteria for making grant awards and potential grant award recipients.

The 2010 recommendations of the PSCOOTF continued the work of the task force in terms of monitoring the continuing implementation of the standards-based process established in the Public School Capital Outlay Act while continuing to be mindful of the state's commitments related to the *Zuni* lawsuit and the standards-based process for allocating PSCOC funds.

During the previous four years, the task force endorsed legislation, which did not pass, to eliminate or modify the statutory requirements for the bonding of subcontractors for public school projects. In response to continued concerns and a requirement in the "omnibus" bill, the task force continued and expanded the work group to examine the cost and benefits of bonding subcontractors on public school projects. The work group included task force members as well as representatives from the General Services Department, the PSFA and various representative groups from the construction industry. The group met on August 30 and again on October 7 and was facilitated by a contract professional to bring forth recommendations to the task force.

Members who were present at the last meeting of the task force work group agreed upon the following recommendations:

- legislation: increase the subcontractor bonding threshold from \$125,000 to \$250,000;
- rule changes: make changes in the New Mexico Administrative Code to modify

- proposal submission requirements and the resident preference; and
- process changes for the PSFA: develop a standardization template for submission of requests for proposals for construction, with detailed instructions; develop a web-based training module for contractors and subcontractors; and develop a process for web-based training for evaluation of members and require members to acknowledge completing it.

PSCOOTF-endorsed legislation for the 2011 legislature that was signed into law included:

- Laws 2011, Chapter 11 (HB 113), in which the Public School Capital Improvements Act and the Public School Buildings Act were amended to require charter schools to report anticipated and actual expenditure of distributions made pursuant to those acts; and
- Laws 2011, Chapter 69 (HB 283), which amends the Public School Capital Outlay Act to require that on or after July 1, 2011, a new charter school cannot open or an existing charter school cannot relocate unless the facilities of the new or relocated school have an NMCI rating equal to or better than average for all New Mexico public schools for that year, and which provides 18 months for charter schools to achieve this rating. The bill also exempts a school district that leases facilities to a charter school from State Board of Finance approval, and it requires PSFA approval before entering into a lease agreement or lease-purchase agreement for school facilities or before applying for a grant for lease payment.

2011 Interim and 2012 Legislation

The PSCOOTF addressed several key issues during the interim, including modifying statutory requirements for the bonding of subcontractors on public school projects. A subcommittee was appointed consisting of task force members, representatives from the General Services Department and the PSFA, legislative staff and representatives from a variety of construction industries. The subcommittee met on October 17 and November 10 in Santa Fe to bring forth recommendations for the task force's consideration. Members present at the final meeting of the subcommittee agreed on several recommendations, only one of which required legislative action: amending the Procurement Code to clarify the use of "best and final offer" in relation to requests for proposals for construction, maintenance, services and repairs. Other changes were administrative and related to changes in PSFA guidelines and the New Mexico Administrative Code.

The PSCOOTF also spent time considering issues unique to the NMSD and the NMSBVI. Working together with legislative staff and appropriate staff members from the two schools, PSFA staff members were able to provide the task force the opportunity to review and comment on proposed statutory and rule changes that would make the NMSBVI and the NMSD eligible to participate in the standards-based process.

One of the task force's policy recommendations was enacted by the 2012 legislature but was vetoed by the governor: the bill to allow the PSCOC to make optional or adjust the automatic Consumer Price Index rate for the lease-assistance program. Laws 2012, Chapter 53 (SB 196) allows the NMSBVI and the NMSD to participate in the Public School Capital Outlay Act standards-based process. Both of these special schools, which are established by the Constitution of New Mexico, have their own boards of regents and are overseen by the Higher Education Department, even though they are pre-kindergarten through twelfth grade schools. Enactment of this measure provides an additional source of funding for the capital outlay needs of these two historic institutions.

2012 Interim and 2013 Legislation

At the task force's request, the PSFA developed a series of policy briefs for task force members to use as resources for their 2012 interim policy discussions. These in-depth policy briefs provided background material on issues related to the statutory lease-assistance program, including standardizing language in lease documents, a policy review of the Public School Capital Outlay Act, capital outlay funding formula issues and charter school facilities issues. The briefs also provided policy options in each of these areas, some of which required legislative change and others that required changes to the New Mexico Administrative Code or PSCOC guidelines.

After discussion throughout the 2013 interim, the task force endorsed legislation to: (1) allow an annual distribution from the PSCOF for building systems repair, remodel or replacement; (2) allow the PSCOC more flexibility to determine local match waiver eligibility; (3) allow the PSCOC to make optional or adjust the automatic Consumer Price Index rate for the lease-assistance program; (4) provide a separate appropriation from the PSCOF to increase availability of funding for deferred maintenance; (5) amend the Public School Capital Outlay Act to reestablish the Charter School Capital Outlay Fund, which was repealed July 1, 2012, and to reestablish criteria for grant awards from that fund; and (6) amend the Charter Schools Act to allow the PSCOC to recommend suspension, nonrenewal or revocation of a charter based on the charter school's facility condition.

Two other task force-endorsed bills did not pass — one that would have delayed the repeal of the Charter School Capital Outlay Fund and one that would have made more consistent the language in the Procurement Code that addresses competitive sealed proposals.

2013 Interim and 2014 Legislation

With a record 18 new members (including, for the first time, nine advisory members), the task force began its tenth year of overseeing the implementation of the public school capital outlay standards-based process with discussion of a number of basic issues at its first two meetings of the interim, including staff presentations on interim committee procedures, a primer and brief background review of the task force's purpose and history and a review of the *Zuni*

lawsuit. The task force also heard presentations from the state investment officer and his deputy on the Public School Capital Outlay Act funding stream, which is the Severance Tax Permanent Fund, and issuance of severance tax bonds; a report on the current PSCOC awards; and a presentation from the New Mexico Finance Authority on other sources of funding to finance school-related buildings outside Public School Capital Outlay Act provisions.

The task force spent time at each meeting discussing concerns about the availability of facilities for charter schools to meet the statutory requirement that all charter schools be in public buildings by 2015, which is always a topic of concern. PSFA staff provided presentations on PSCOC finances, funding allocations and the Facilities Condition Index, as well as on utilization and maintenance issues related to public school facilities. PSFA staff also provided an update on the current status of the development of a standardized lease form as well as an update on the status of charter schools already in public buildings. School district staff and PSFA staff provided a presentation on opportunities to lease public spaces that local districts had been using.

Once again, the task force endorsed a bill to provide funding for building systems, and, once again, the bill did not pass. However, the bill to allow the PSCOC to provide allocations to purchase educational technology to meet assessments requirements of the common core currently adopted and being implemented by the PED did pass and was signed into law by the governor.

2014 Interim and 2015 Legislation

One of the areas that the task force considered during the 2014 interim focused on several possibilities for reprioritizing the current distribution of proceeds from the sale of supplemental severance tax bonds. Task force members heard testimony from PSFA staff regarding a solution that would not result in degradation of public school facilities while allowing for rebuilding of the Severance Tax Permanent Fund. Task force members agreed that achieving a balance between the two policy issues would be difficult but also agreed that some action must be taken.

During the first meeting of the interim, task force members learned that the Gallup-McKinley County School District (GMCS D) had requested from the Eleventh Judicial District judge in the *Zuni* lawsuit a status conference on the district's concerns with implementation of the standards-based process over the past 12 years. The district was granted the status conference in March. Several times during the interim, the task force took testimony from GMCS D representatives regarding the possibility of addressing the district's concerns with the standards-based process through administrative solutions. The task force was provided a presentation from the PSCOC and the PSFA explaining that about half of the GMCS D concerns would require legislative solutions, including funding of teacherages, implementation of provisions of Title IX of 1972 federal legislation that mandated equal opportunities in athletics for male and female athletes, construction of concession stands and other amenities for high school playing fields, facilities for Navajo language instruction, additional funding for facilities maintenance and state match requirements for PSCOC grant awards.

Besides hearing testimony from the PSCOC, PSFA and invited presenters on its statutory duties, the task force heard testimony on the continuing development of standardized lease agreements, the Office of the State Auditor's report on the agency's risk review of four charter schools that resulted in the Federal Bureau of Investigation raids on the schools, the availability of public facilities for charter schools by the 2015 deadline and potential and actual conflicts of interest inherent in some charter school operating models.

At the task force's final meeting of the interim, members agreed to endorse for the third year in a row potential legislation to allow the PSCOC to provide temporary annual allocations to address building systems needs in existing buildings.

Work During the 2015 Interim

State statute allows the Public School Capital Outlay Oversight Task Force (PSCOOTF) to hold a maximum of four meetings during each interim in addition to one organizational meeting. In 2015, meetings were held in Santa Fe at the State Capitol on June 2, August 11, September 16, October 20 and December 4.

At the June meeting, task force members elected by acclamation Representative Dennis J. Roch to serve as task force vice chair for the 2015 interim. Members received new, softbound reference booklets on public school capital outlay issues, including the standards-based funding formula, information and documentation related to the *Zuni* lawsuit and explanations and examples of the public school capital outlay grant awards process.

During the June meeting, members heard testimony on legislation passed during the 2015 session. After having been considered for the past three sessions, the task force endorsed a bill to allow for Public School Capital Outlay Council (PSCOC) funding for school districts to address building systems needs for existing school buildings. PSCOC and Public School Facilities Authority (PSFA) staff told the task force that passage of this legislation will allow the council to use Public School Capital Outlay Fund (PSCOF) dollars to address system needs without having to fund an entire, full-fledged building project.

Legislation from the 2015 session that was enacted and signed into law includes a measure that will have the longest-term effect on the public school capital outlay standards-based funding capacity. This measure amends the Severance Tax Bonding Act to phase in reductions in the statutory limits of supplemental severance tax bonds (SSTBs), the primary funding stream for the standards-based process. Beginning in fiscal year 2019, SSTB capacity will be reduced by 1.6 percent, and when fully phased in, revenue available to finance SSTBs will be reduced by 6.4 percent. The task force requested an update during the interim on the actual dollar effect on PSCOC projects.

Finally, during the June meeting, the task force adopted a proposed work plan for approval by the New Mexico Legislative Council. In addition to, and along with, meeting statutory requirements, during the 2015 interim, the task force focused on several issues, including updates on the *Zuni* lawsuit; continued implementation of the broadband deficiencies correction program and beginning implementation of the systems-based grant request program; maintenance and "right-sizing" of the state's school buildings; and an in-depth look at the public school capital outlay funding formula.

At the August meeting, task force members heard testimony about the reopening of the *Zuni* lawsuit by the judge in the Eleventh Judicial District. Representatives from the Gallup-McKinley County School District (GMCS D), including the district superintendent, provided an update on a possible evidentiary hearing, including the district's amended complaint, which includes the state's current practice of "taking credit" for federal impact aid funds. After a

personnel change at the school district, the judge postponed an evidentiary hearing and instead had a hearing to update the court on the progress of improvements to GMCSO facilities in the past decade or so.

Also at the August meeting, the task force agreed by consensus to study issues related to the funding formula and its performance as an "equalizing" mechanism since its implementation during the 2004 funding cycle, as well as the formula's effect on two disequalizing realities: (1) the political process that is the basis of the legislature's direct appropriation process makes it inherently disequalizing; and (2) relying on assessed valuation per student as a factor in the funding's calculation creates some disequity because of "outliers"; i.e., very low student populations in school districts with a great deal of agricultural land creates these "outliers".

Senator John M. Sapien appointed Senator Mimi Stewart to be chair of a task force subcommittee to study issues related to funding formula disequities during the remainder of the interim and make any recommendations for possible legislation for the 2016 legislature. At its first meeting, the subcommittee agreed to hire a contractor to assist with the study, the Bureau of Business and Economic Research (BBER) at the University of New Mexico. At each meeting during the remainder of the interim, the task force received testimony from the subcommittee and the contractors on progress of the study. BBER researchers learned that even though the funding formula includes only three variables, data collection and the standardization process proved to be complex because of geographic overlays between school districts and other boundaries, for example, county lines, and the various means by which the data were reported. Researchers noted that the data they collected align closely with data compiled by the Public Education Department (PED).

At the final meeting of the interim, the task force agreed on the following issues related to school district property tax bases and the formula:

- in rural areas, private range land and crop land may be of substantial taxable value that is not necessarily indicative of the capacity of rural landowners to pay for school facilities;
- property valuations are subject to significant variability in school districts in which commodities such as oil and gas extraction comprise a significant share of property valuation;
- property valuations may be high in certain urban areas but may still not be indicative of the local population's ability to pay for school improvements; and
- school districts may encompass a mix of charter schools and traditional public schools within a concentrated geographic area, raising questions about the way in which the funding formula addresses overlapping school systems.

At the final meeting of the interim, task force members agreed to continue studying the issue contingent upon sufficient funding being made available for that purpose.

At most of the meetings during the interim, the task force heard reports on the progress of implementation of the Broadband Deficiencies Correction Program, which was funded by a task-force endorsed bill during the 2014 session. The task force heard testimony from legislative and executive staff about collaboration among the PSFA, PED, Office of the Governor and the Department of Information Technology (DoIT) staff and the acquisition of federal money set aside for subsidizing internet bills to establish broadband connections for nearly all schools in the state.

At the September, October and December meetings, the task force heard testimony from representatives of the PSCOC and PSFA on the importance of developing and implementing continuing preventive maintenance to protect the state's \$2 billion investment in public school facilities, as well as implementation of a standardized lease format, and the possibility of developing prototype schools and "right-sizing" school buildings.

Also during the 2015 interim, the task force heard presentations on the 2015 PSCOC standards-based awards, the importance of community involvement in facilities master planning, capital outlay issues related to public school transportation and the challenges and opportunities associated with disposing of public school buildings.

Almost always a topic of concern and discussion at task force meetings, task force members spent a great deal of time at the December meeting discussing the availability of public facilities for charter schools to meet the statutory requirement that charter schools be in public buildings by July 1, 2015. Task force members heard testimony from staff and charter school representatives that the 2015 deadline has come and gone without solving the critical problems of housing students in public buildings, in part because of flexibility in statutory exceptions. Many charter schools will have one or more extra years to secure a public building, since the requirement does not go into effect until the charter school's charter is up for renewal. Task force members also had a lengthy discussion on conflicts of interest that seem to be inherent in some charter school operating models.

At the final meeting of the interim, the task force did not endorse legislation for the 2016 session.

Appendix A

***PUBLIC SCHOOL CAPITAL OUTLAY
OVERSIGHT TASK FORCE***

MEMBERSHIP, 2015 INTERIM

**PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
MEMBERSHIP, 2015 INTERIM**

Senator John M. Sapien, Chair	Senate Education Committee Chair
Representative Dennis J. Roch, Vice Chair	House Education Committee Chair's Designee
Senator Mary Kay Papen	Senate President Pro Tempore
Representative Don L. Tripp	Speaker of the House of Representatives
Representative Larry A. Larrañaga	House Appropriations and Finance Committee Chair
Senator John Arthur Smith	Senate Finance Committee Chair
Representative W. Ken Martinez	House Minority Member
Representative James Roger Madalena	House Minority Member
Senator Cliff R. Pirtle	Interim Indian Affairs Committee Member
Senator Sander Rue	Senate Minority Member
Senator Stuart Ingle	Senate Minority Member
Representative Sharon Clahchischilliage	"Impact Aid" District Representative
Senator Benny Shendo, Jr.	"Impact Aid" District Senator
Paul Aguilar	Secretary of Education's Designee
Tom Clifford, Ph.D.	Secretary of Finance and Administration
James P. White	Public member with expertise in education and finance
Jerry Stagner	Public member with expertise in education and finance
Mike Phipps	Retired educator, public member with expertise in education and finance
Tracy Hofmann, Esq.	Bond counsel
Carl Foster, Ed.D.	Retired educator, public member with expertise in education and finance, "impact aid" district
Vacant	Public member with expertise in education and finance, "impact aid" district

Lisa Grover, Ph.D.
T.J. Parks

Public member, non-"impact aid" district
superintendent, non-"impact aid" district
(Hobbs Municipal School District)

Vacant

Public member, "impact aid" district

Allan Tapia

Superintendent, "impact aid" district (Bernalillo
Public School District)

ADVISORY MEMBERS, 2015 INTERIM

Representative Eliseo Lee Alcon

Senator Daniel A. Ivey-Soto

Representative D. Wonda Johnson

Senator Howie C. Morales

Representative Patricia Roybal Caballero

Representative Patricio Ruiloba

Senator John C. Ryan

Senator William E. Sharer

Representative James E. Smith

Senator William P. Soules

Senator Mimi Stewart

Senator Pat Woods

STAFF, 2015 INTERIM

Sharon S. Ball, Senior Researcher, Legislative Council Service (LCS)

Raúl E. Burciaga, Esq., Director, LCS

Michelle Jaschke, Researcher, LCS

Jeff Eaton, Legislative Fiscal Analyst, LCS

Appendix B

***PUBLIC SCHOOL CAPITAL OUTLAY
OVERSIGHT TASK FORCE***

**2015 STATUTORY AUTHORITY
AND DUTIES**

22-24-7. Public school capital outlay oversight task force; creation; staff. (2008)

A. The "public school capital outlay oversight task force" is created. The task force consists of twenty-five members as follows:

- (1) the secretary of finance and administration or the secretary's designee;
- (2) the secretary of public education or the secretary's designee;
- (3) the speaker of the house of representatives or the speaker's designee;
- (4) the president pro tempore of the senate or the president pro tempore's designee;
- (5) the chairs of the house appropriations and finance committee, the senate finance committee, the senate education committee and the house education committee or their designees;
- (6) two minority party members of the house of representatives, appointed by the New Mexico legislative council;
- (7) two minority party members of the senate, appointed by the New Mexico legislative council;
- (8) a member of the interim legislative committee charged with the oversight of Indian affairs, appointed by the New Mexico legislative council, provided that the member shall rotate annually between a senate member and a member of the house of representatives;
- (9) a member of the house of representatives and a member of the senate who represent districts with school districts receiving federal funds commonly known as "PL 874" funds or "impact aid", appointed by the New Mexico legislative council;
- (10) two public members who have expertise in education and finance appointed by the speaker of the house of representatives;
- (11) two public members who have expertise in education and finance appointed by the president pro tempore of the senate;
- (12) three public members, two of whom are residents of school districts that receive grants from the federal government as assistance to areas affected by federal activity authorized in accordance with Title 20 of the United States Code, appointed by the governor; and
- (13) three superintendents of school districts or their designees, two of whom are from school districts that receive grants from the federal government as assistance to areas affected by federal activity authorized in accordance with Title 20 of the United States Code, appointed by the New Mexico legislative council in consultation with the governor.

B. The chair of the public school capital outlay oversight task force shall be elected by the task force. The task force shall meet at the call of the chair, but no more than four times per calendar year.

C. Non-ex-officio members of the task force shall serve at the pleasure of their appointing authorities.

D. The public members of the public school capital outlay oversight task force shall receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978].

E. The legislative council service, with assistance from the public school facilities authority, the department of finance and administration, the public education department, the legislative education study committee and the legislative finance committee, shall provide staff for the public school capital outlay oversight task force.

22-24-8. Public school capital outlay oversight task force; duties.

The public school capital outlay oversight task force shall:

- A. monitor the overall progress of bringing all public schools up to the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act;
- B. monitor the progress and effectiveness of programs administered pursuant to the Public School Capital Outlay Act and the Public School Capital Improvements Act [Chapter 22, Article 25 NMSA 1978];
- C. monitor the existing permanent revenue streams to ensure that they remain adequate long-term funding sources for public school capital outlay projects;
- D. oversee the work of the public school capital outlay council and the public school facilities authority as they perform functions pursuant to the Public School Capital Outlay Act, particularly as they implement the statewide-based process for making grant awards;
- E. appoint an advisory committee to study the feasibility of implementing a long-range planning process that will facilitate the interaction between charter schools and their school districts on issues relating to facility needs; and
- F. before the beginning of each regular session of the legislature, report the results of its analyses and oversight and any recommendations to the governor and the legislature.

History: Laws 2001, ch. 338, § 13; 2004, ch. 125, § 17; 2005, ch. 274, § 11.

Temporary provisions. — Laws 2009, ch. 37, § 2 provided that during calendar year 2009, the public school capital outlay oversight task force shall study reasonable alternatives for determining the local matching funds to be required from the New Mexico school for the blind and visually impaired and the New Mexico school for the deaf for a grant award pursuant to the Public School Capital Outlay Act and shall report its findings and recommendations to the second session of the forty-ninth legislature.

The 2005 amendment, effective April 6, 2005, added Subsection A to provide that the task force shall monitor the progress of bringing public schools up to the statewide adequacy standards; deleted the former requirement in Subsection B that the task force review the condition index and the methodology used for ranking projects; provided in Subsection C that the task force monitor revenue streams to ensure that they remain adequate; provided in Subsection D that the task force oversee the work of the council and the authority; added Subsection E to provide that the task force appoint an advisory committee to study the feasibility of a long-range planning process to facilitate interaction between charter schools and school districts.

Appendix C

***PUBLIC SCHOOL CAPITAL OUTLAY
OVERSIGHT TASK FORCE***

APPROVED 2015 INTERIM WORK PLAN

**2015 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

Members

Sen. John M. Sapien, Chair	T.J. Parks
Rep. Dennis J. Roch, Vice Chair	Mike Phipps
Deputy Sec. Paul Aguilar	Sen. Cliff R. Pirtle
Rep. Sharon Clahchischilliage	Sen. Sander Rue
Sec. Tom Clifford	Sen. Benny Shendo, Jr.
Carl Foster	Sen. John Arthur Smith
Lisa Grover	Allan Tapia
Kirk Hartom	Rep. Don L. Tripp
Tracy Hofmann	James P. White
Rep. Larry A. Larrañaga	Governor Public Member Appt. (TBD)
Rep. James Roger Madalena	Senate Minority Member (TBD)
Rep. W. Ken Martinez	Speaker Public Member Appt. (TBD)
Sen. Mary Kay Papen	

Advisory Members

Rep. Eliseo Lee Alcon	Sen. William E. Sharer
Rep. D. Wonda Johnson	Rep. James E. Smith
Sen. Howie C. Morales	Sen. William P. Soules
Rep. Patricia Roybal Caballero	Sen. Mimi Stewart
Rep. Patricio Ruiloba	Sen. Pat Woods
Sen. John C. Ryan	

Background

Created in statute in 2005 (Sections 22-24-7 and 22-24-8 NMSA 1978), the Public School Capital Outlay Oversight Task Force oversees the work of the Public School Capital Outlay Council and the Public School Facilities Authority as they implement the state's standards-based public school capital outlay funding methodology established in statute to address the judge's order in *Zuni Pueblo School District No. 89, et al., v. U.S. Department of Education, et al.*, CV-98-14-11. The task force consists of 25 members (or their respective designees). State statute allows for a total of five meetings throughout the interim.

Work Plan

The task force will focus on the following activities during the 2015 interim:

1. monitoring the progress and effectiveness of programs administered pursuant to the Public School Capital Outlay Act and the Public School Capital Improvements Act in terms of continued implementation of the district court's order in the *Zuni* lawsuit;
2. examining existing permanent revenue streams to ensure that they remain adequate long-term funding sources for public school capital outlay projects;
3. continuing to oversee the work of the Public School Capital Outlay Council and the Public School Facilities Authority;

4. monitoring the overall progress of bringing all public school facilities to the statewide adequacy standards developed pursuant to provisions in the Public School Capital Outlay Act, including examination of the original intent of the establishment of the standards-based process and its evolution as it has been implemented;
5. considering the inclusion of teacherages in the standards-based process;
6. examining issues related to charter school facilities, including:
 - (a) lease assistance from the state;
 - (b) utilization of public school buildings and other public buildings;
 - (c) the use of lease-purchase agreements; and
 - (d) compliance with the 2015 deadline to be in public buildings;
7. reviewing progress on the implementation of Section 22-24-4.5 NMSA 1978, regarding establishment of a process to correct deficiencies in school districts' respective educational technology infrastructures in light of the electronic implementation of the state's student assessments of readiness for college and careers in the 2015-2016 school year;
8. examining school transportation capital outlay issues;
9. reviewing the oversight of maintenance of public school buildings;
10. reviewing provisions of the Public School Capital Outlay Act and making recommendations for changes as necessary, including provisions pertaining to the capital outlay sliding scale formula and offsets;
11. reviewing provisions of the Public School Capital Improvements Act and the Public School Buildings Act, with consideration of a direct mill levy to fund school district education technology needs and making recommendations for changes as necessary;
12. 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; and
13. reviewing statutory, constitutional and other related issues as they affect school districts' ability to dispose of abandoned school buildings.

**Public School Capital Outlay Oversight Task Force
2015 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
June 2	Santa Fe
August 11	Santa Fe
September 16	Santa Fe
October 22	Santa Fe
November 12	Santa Fe

Appendix D

***PUBLIC SCHOOL CAPITAL OUTLAY
OVERSIGHT TASK FORCE***

**2015 MEETING
AGENDAS AND MINUTES**

Revised: June 1, 2015

**TENTATIVE AGENDA
for the
FIFTY-FIRST MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**June 2, 2015
Room 322, State Capitol
Santa Fe**

Tuesday, June 2

- 10:00 a.m. **Call to Order**
—Senator John M. Sapien, Chair
- 10:05 a.m. **Consideration of Chair Appointment; Election of Vice Chair**
—Raúl E. Burciaga, Director, Legislative Council Service (LCS)
- 10:10 a.m. (1) **[Brief Review: Public School Capital Outlay Oversight Task Force \(PSCOOTF\) 2014 Interim Work; Summary of 2015 Capital Outlay Legislation](#)**
—Sharon Ball, PSCOOTF Staff, LCS
- 10:45 a.m. (2) **[Standards-Based Funding Stream: Effect of Passage of Laws 2015, Chapter 63 \(HB 236\) on Program Funding Adequacy](#)**
—Steven K. Moise, State Investment Officer, State Investment Council (SIC)
—Charles Wollmann, Director, Communications and Legislative Affairs, SIC
—Rocky Kearney, Deputy Director, Public School Facilities Authority (PSFA)
—Jeffrey Eaton, Director of Business Operations, PSFA
—Ian Kleats, Deputy Director, Legislative Education Study Committee
- 12:00 noon **Lunch**
- 1:00 p.m. (3) **[Public School Capital Outlay Council \(PSCOC\) and PSFA Fiscal Year 2014 Annual Report](#)**
—David Abbey, Director, Legislative Finance Committee; Chair, PSCOC
—Rocky Kearney, Deputy Director, PSFA
—Jeffrey Eaton, Director of Business Operations, PSFA
- 2:00 p.m. (4) **[Status of Zuni Lawsuit and Litigant Districts](#)**
—Raúl E. Burciaga, Director, LCS

- 3:00 p.m. (5) **Broadband Deficiencies Program Update**
—Kendra Karp, Chief Information Officer, PSFA
—Ovidiu Viorica, Broadband Deficiencies Corrections Program Manager,
PSFA
- 3:30 p.m. (6) **Proposed Work Plan and Meeting Schedule**
—Task Force Members and Staff
- 4:30 p.m. **Adjourn**

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

**June 2, 2015
Room 322, State Capitol
Santa Fe**

The fifty-first meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator John M. Sapien, chair, on June 2, 2015 at 10:11 a.m. in Room 322 at the State Capitol in Santa Fe.

Present

Sen. John M. Sapien, Chair
Rep. Dennis J. Roch, Vice Chair
Deputy Sec. Paul Aguilar
Rep. Sharon Clahchischilliage
Sec. Tom Clifford
Carl Foster
Rep. James Roger Madalena
Rep. W. Ken Martinez
Mike Phipps
Sen. Cliff R. Pirtle
Sen. Benny Shendo, Jr.
Sen. John Arthur Smith
*Sen. Mimi Stewart
Allan Tapia
Rep. Don L. Tripp

Absent

Lisa Grover
Kirk Hartom
Tracy Hofmann
Rep. Larry A. Larrañaga
Sen. Mary Kay Papen
T.J. Parks
Sen. Sander Rue

Advisory Members

Rep. Eliseo Lee Alcon
Rep. D. Wonda Johnson
Sen. Howie C. Morales
Rep. Patricia Roybal Caballero
Rep. James E. Smith
Sen. William P. Soules

Sen. John C. Ryan
Sen. William E. Sharer
Sen. Pat Woods

* Senator Papen designated Senator Stewart to be a voting member for this meeting.

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Sharon S. Ball, Senior Researcher, LCS
Michelle Jaschke, Researcher, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Tuesday, June 2

Welcome and Introductions

Senator Sapien called the meeting to order and welcomed members and guests.

Consideration of Chair Appointment; Election of Vice Chair

Mr. Burciaga explained the procedure for election of interim committee chairs, and, without objection, the task force confirmed the appointment of Senator Sapien as the PSCOOTF chair, and Representative Roch was elected as PSCOOTF vice chair for the 2015 interim.

Brief Review: PSCOOTF 2014 Interim Work; Summary of 2015 Capital Outlay Legislation

Ms. Ball reviewed the composition of the PSCOOTF membership and reported changes, noting that three positions are vacant. Ms. Ball presented an overview of task force work during the 2014 interim, as well as a summary of seven bills and a joint resolution bearing upon public school capital outlay that came before the 2015 legislature.

Chief among the six bills relating to public school capital outlay that passed during the 2015 legislative session is task force-endorsed Senate Bill (SB) 128, public school capital outlay building systems funding, which enables the Public School Capital Outlay Council (PSCOC) to direct up to \$15 million of the Public School Capital Outlay Fund (PSCOF) annually to building system repairs. The intent of the bill is to increase the life span of school buildings and hold down construction costs by adequately maintaining essential systems in existing facilities. Addressing passage of House Bill (HB) 236, Ms. Ball noted that the Public School Facilities Authority (PSFA) and the State Investment Council (SIC) are on today's agenda to explain the impact of HB 236 on public school capital outlay funding. Ms. Ball also reported on the passage of SB 8, which makes local and state-chartered charter schools eligible to receive a prorated share of education technology equipment purchased by a school district under the Education Technology Equipment Act. Other bills passed during the session relate to liens on school buses, school and transportation information reporting and clarification of the Public School Lease Purchase Act definitions. She noted that SB 236, which was an act to standardize charter school lease provisions and strengthen conflict-of-interest disclosure requirements, passed the senate but did not make it through the house before the end of the session.

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

Steven K. Moise, state investment officer, SIC, presented an overview of the impact of passage and implementation of HB 236 on the Severance Tax Permanent Fund (STPF), as well as the severance tax bonding capacity. Mr. Moise explained that the STPF was established by the legislature as a constitutionally protected endowment in 1976 to receive and invest severance taxes collected on natural resources extracted from New Mexico lands. He described inflows to and distributions from the fund and related concerns about depletion of the corpus of the STPF that prompted enactment of the statutory changes contained in HB 236. The bill changes the percentage split between bond payments from the fund, and deposits to the fund, from the current 95-percent-to-five-percent split to a phased-in 86-percent-to-14-percent split by 2022. Mr. Moise drew a comparison between the Land Grant Permanent Fund

(LGPF) and the STPF, pointing out that the corpus of the STPF had been depleted over time in comparison to the LGPF as a result of direct distributions from the STPF.

Charles Wollmann, director of communications and legislative affairs, SIC, explained the evolution of the legislation contained in HB 236 from an "equal cuts" model for fund beneficiaries to a series of phased-in cuts designed to minimize the immediate impact on the PSCOF, the Tribal Infrastructure Project Fund (TIPF) and the Colonias Infrastructure Project Fund (CIPF). The amended bill maintains the same percentage distributions to the PSCOF for the first three years of the phase-in period. Rapid changes in the percentage distribution are an issue of concern to the task force because of the long-range nature of school construction and facilities planning processes. Mr. Wollmann asserted that an increase in the corpus of the fund will eventually result from increased distributions from the fund.

Representative Martinez pointed out that HB 236 essentially reallocates what is now dedicated state funding back to the general fund and questioned the comparison of the LGPF and the STPF. He stated that the inflows to the LGPF are built upon proceeds from state ownership of sales of gas and oil, as well as proceeds from severance taxes, including those from private lands. Representative Martinez observed that the difference between the funds has more to do with the levels of gas and oil production and sales of those commodities than with distributions from the funds. He stated that the tension between putting more into the corpus of a fund and funding critical needs is a necessary component of government. He further noted that the funding that flows to the TIPF and CIPF from the STPF leverages federal funding at a rate of up to three federal dollars for each state dollar, and the state incurs a concomitant loss of federal dollars with state cutbacks.

Senator Soules explained the vagaries of relying on long-range projections to gauge the growth of the corpus of the STPF, expressing concern that extreme cutbacks in funding for public school capital outlay will result in a poor statewide Facilities Condition Index (FCI) and in increased costs to school districts. Mr. Aguilar noted that the FCI is not a precise indicator of need and that expectations regarding the availability of funding may need to be reexamined.

Rocky Kearney, PSFA deputy director, and Jeffrey Eaton, PSFA director of business operations, presented projections of the levels of funding to be available over the phase-in time of the bill provisions and the way in which the ability of the PSFA to maintain the FCI over that period of time will be affected. The projections show the available education capital levels dropping well below the funding levels needed to maintain the FCI at the end of a 10-year cycle. Mr. Kearney and Mr. Eaton presented a chart illustrating a projected and rapidly climbing FCI (lower is better) at the end of fiscal year (FY) 2022. Ian Kleats, deputy director, Legislative Education Study Committee, presented similar projections as a result of the statutory changes in bonding capacity for education capital included in HB 236. Based on his projections, one out of every \$700 of education capital currently available will no longer be available for public school capital outlay at the end of FY 2022. Mr. Kleats also suggested that the task force revisit the issue of state and local cost shares with respect to education capital, particularly for those districts with median FCIs.

Task force members and the panel discussed the savings that might result from implementation of SB 128, the building systems bill. Task force members generally agreed on the difficulty of projecting the number of projects that will benefit annually from the building systems bill at this time or the degree to which such assistance will mitigate other building needs. Members also discussed the high cost of

lease assistance for charter schools, the rapid and continuing growth in that program and the fact that no cap on lease assistance has been established. The mandate to move charter schools into existing public space continues to present challenges. Secretary Clifford noted that inflation in public school building programs appears to far exceed the rate of inflation in other economic sectors and can significantly deteriorate purchasing power over time.

Senator Stewart, who chaired the task force during the 2014 interim, thanked members for their work on both HB 236 and SB 128 and reported that the compromise reached on the bills during the 2015 legislative session will give the PSFA some time to begin budget adjustments for building programs. She noted that the building systems bill will essentially begin as a pilot project, but it is expected to help maintain the FCI in the face of budget cuts. Senator Stewart suggested that the task force examine the needs of impact aid districts (IADs) and secure the assistance of financial experts to revisit the school funding formula during the interim.

PSCOC and PSFA FY 2014 Annual Report

David Abbey, director of the Legislative Finance Committee and chair of the PSCOC, presented highlights from the PSCOC annual report. The PSCOC awarded a total of \$217.8 million for 102 individual school projects in FY 2014. Mr. Abbey discussed the provisions of the building systems bill and stated that it will be important to track changes in the FCI moving forward to assess the efficacy of the building systems program. He observed that PSCOC awards are at a near record high for the 10-year period ending in FY 2014.

Mr. Kearney reported that because a relatively stable FCI has been established throughout the state, the building systems bill can be used to target systems needs for those schools with a higher weighted New Mexico Facilities Condition Index (wNMCI). Mr. Abbey pointed out that only 16 of the 800 schools in the state have a wNMCI higher than 60 percent, the level indicating a need for facility replacement. Mr. Abbey outlined a number of issues presenting a negative outlook for PSCOC funding, including: too many projects in the queue for available funding; accounting changes making long-term comparisons more difficult; unanticipated changes in project scope and needs; front loading for construction manager at risk projects; inflation of around 8.5 percent per year over the past several years; reductions in revenues by direct appropriations over the last several years; and reduced oil and gas revenue estimates for this year and future years.

Mr. Abbey and Mr. Kearney addressed the following strategic issues facing the PSCOC and the PSFA: implementing building systems legislation; revisiting the state/local share match formula; funding projects beyond the standard of adequacy; the PSFA's role in maintenance; and timely advancement and completion of projects. Mr. Kearney stated that the PSFA and the PSCOC are in the process of developing an application process for the building systems bill.

Representative Martinez pointed out that the original purpose of the funding formula and equalization guarantee was to honor the provisions of the Constitution of New Mexico that mandate a uniform system of free public schools. He noted that public school capital outlay funding is complicated by large variances in district tax bases, recalcitrant school districts (with regard to voter approval of bond issues) and the potentially disequalizing effect of legislation such as the building systems bill. Representative Martinez suggested that these issues may be on a collision course with the cutbacks in distributions from the STPF for the PSCOF.

Status of *Zuni* Lawsuit and Litigant Districts

Mr. Burciaga presented an overview of the origins and current status of the *Zuni* lawsuit, the impetus for the state's effort to establish adequate facilities in school districts throughout the state over the past decade. He also explained a subsequent lawsuit that was filed by the same plaintiff districts requesting that the U.S. Department of Education no longer consider New Mexico to be an "equalized expenditures state" when considering the noncategorical, basic payment portion of federal impact aid flowing to New Mexico. The U.S. Supreme Court confirmed a lower court's decision that the U.S. secretary of education is correct in permitting the state to take credit for the noncategorical, basic payment portion of federal impact aid funding.

Mr. Burciaga further reported that last spring, two different organizations, in conjunction with several parents representing their plaintiff children, filed lawsuits challenging the equity and sufficiency of the state's system for funding public education. One of the original lawsuits seeks to establish education as a fundamental right, and both of the original lawsuits call on the state to provide sufficient funding for public schools. The two new lawsuits have been combined under the title *Louise Martinez v. State of New Mexico*. The combined lawsuit challenges that state government has failed to provide a uniform system of schools sufficient for the education of all children of school age in the state, as required by the Constitution of New Mexico. The plaintiffs are apparently seeking a declaration from the judge that public education in New Mexico is not funded sufficiently and an order from the judge for the state to make reparations in that regard, as well as for the judge to continue to hold jurisdiction over the case. Mr. Burciaga also reported that according to one of the plaintiff attorneys, the plaintiff districts have a 10-day evidentiary hearing scheduled in district court in Gallup in October. In preparation for the evidentiary hearing, plaintiff districts will conduct discovery and take depositions in June and August, respectively.

Task force members noted that during the last interim, the task force spent time in several meetings discussing concerns raised by the plaintiff districts. Members discussed the efforts made to alleviate some of the litigant district concerns and what effect the building systems bill might have in that regard. Discussion ensued regarding the need to invite representatives from the litigant districts to attend one of this year's interim meetings to continue the exchange regarding litigant concerns.

Broadband Deficiencies Corrections Program Update

Kendra Karp, PSFA chief information officer, and Ovidiu Viorica, PSFA Broadband Deficiencies Corrections Program (BDCP) manager, presented an update on the BDCP. Ms. Karp reported that reliable broadband is essential for a twenty-first century education and related a number of testing, professional development, homework, distance-learning and other applications that broadband development will address. The program is collaborating with a number of state agencies to achieve shared development goals in this area. Mr. Viorica described a multilevel statewide effort to phase in needed broadband services and outlined the upcoming components of the plan. Task force members discussed the opportunity to create jobs through the BDCP and encouraged the PSFA to coordinate closely with other agencies in the broadband expansion effort.

Proposed Work Plan and Meeting Schedule

Ms. Ball outlined the proposed work plan for the coming year and reviewed statutory requirements for the task force. Members suggested that the following items be included in the work plan:

- a summary and review of IAD information;
- hearing the concerns of the litigant districts in the *Zuni* lawsuit;
- an examination of providing teacherages to school districts;
- a discussion of the way in which issuance of industrial revenue bonds (IRBs) affects school systems and proposed legislation to support district involvement in decision- making about IRB issuances;
- a review of public school square footage available to charter schools and how to match charter schools with available space; and
- an examination of the issues surrounding reasons that school districts choose not to use PSCOC funding for their capital outlay needs.

Adjournment

There being no further business before the task force, the fifty-first meeting of the PSCOOTF adjourned at 4:30 p.m.

Revised: August 5, 2015

**TENTATIVE AGENDA
for the
FIFTY-SECOND MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**August 11, 2015
Room 322, State Capitol
Santa Fe**

Tuesday, August 11

- 10:00 a.m. **Call to Order, Introductions**
—Senator John M. Sapien, Chair
—Representative Dennis J. Roch, Vice Chair
- 10:05 a.m. **Approval of June 2, 2015 Minutes**
- 10:10 a.m. (1) **Public School Capital Outlay Oversight Task Force (PSCOOTF) Resource Materials: Introduction**
—Sharon Ball, PSCOOTF Staff, Researcher/Drafter, Legislative Council Service (LCS)
- 10:45 a.m. (2) **Public School Capital Outlay Council (PSCOC) Standards-Based Grant Awards, 2015-2016 Funding Cycle**
—Joe Guillen, Chair, PSCOC Awards Subcommittee
—Robert Gorrell, Director, Public School Facilities Authority (PSFA)
- 11:30 a.m. (3) **Zuni Lawsuit Update; October 2015 Hearing**
—Frank Chiapetti, Superintendent, Gallup-McKinley County Schools
- 12:30 p.m. **Lunch**
- 1:30 p.m. (4) **Public School Capital Outlay Standards-Based Process**
—**School District Changes in State and Local Share Determinations**
—Jeff Eaton, PSCOOTF Staff, Research and Fiscal Policy Analyst, LCS

—**Calculation of State and Local Share Formula**
—Antonio Ortiz, Director, Capital Outlay and Transportation Bureaus, Public Education Department

- 2015 Update of 2012 PSCOOTF Policy Brief on Public School Finance Act Policy and Funding Formula Issues with Data Updates**
- Sharon Ball, PSCOOTF Staff, Researcher/Drafter, LCS
- Jeff Eaton, PSCOOTF Staff, Research and Fiscal Policy Analyst, LCS
- Robert Gorrell, Director, PSFA

4:30 p.m.

Adjourn

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

**August 11, 2015
Room 322, State Capitol
Santa Fe**

The fifty-second meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator John M. Sapien, chair, on August 11, 2015 at 10:15 a.m. in Room 322 at the State Capitol in Santa Fe.

Present

Sen. John M. Sapien, Chair
Sec. Tom Clifford
Carl Foster
Rep. James Roger Madalena
Sen. Mary Kay Papen
Sen. Cliff R. Pirtle
Sen. Benny Shendo, Jr.
*Rep. James E. Smith
Jerry Stagner
*Sen. Mimi Stewart
Rep. Don L. Tripp

Absent

Rep. Dennis J. Roch, Vice Chair
Deputy Sec. Paul Aguilar
Rep. Sharon Clahchischilliage
Lisa Grover
Tracy Hofmann
Rep. Larry A. Larrañaga
Rep. W. Ken Martinez
T.J. Parks
Mike Phipps
Sen. Sander Rue
Sen. John Arthur Smith
Allan Tapia
James P. White

Advisory Members

Sen. Howie C. Morales
Rep. Patricio Ruiloba
Sen. John C. Ryan
Sen. William P. Soules
Sen. Pat Woods

Rep. Eliseo Lee Alcon
Sen. Daniel A. Ivey-Soto
Rep. D. Wonda Johnson
Rep. Patricia Roybal Caballero
Sen. William E. Sharer

* Senator Papen designated Senator Stewart to be a voting member for this meeting. Representative Tripp designated Representative Smith to be a voting member for this meeting.

Staff

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

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Tuesday, August 11

Welcome and Introductions

The chair called the meeting to order at approximately 10:20 a.m., welcomed members and guests and asked members to introduce themselves.

Appointment of Voting Members

Mr. Burciaga informed the chair that the task force did not have a quorum, whereupon the chair recognized the appointment by Senator Papen of Senator Stewart as a voting member and the appointment by Representative Tripp of Representative Smith as a voting member for this meeting, thereby providing a quorum.

Approval of Minutes

Without objection, minutes of the June 2 meeting were approved as previously mailed to members and provided in their folders.

PSCOOTF Resource Materials: Introduction

Ms. Ball presented to the PSCOOTF the 2015 resources document consisting of reference documents and information that she indicated members may find useful during the interim. Highlighted items included: the "Public School Capital Outlay Funding Standards-Based Process Flow Chart" (Tab 1); "How Offsets Work" (Tab 4); the "Report of the Special Master in the *Zuni* Lawsuit and the Judge's Order Approving the Report" (Tab 6); "Property Tax Facts" (Tab 9); and "Charter Schools in Public Buildings: Current Status" (Tab 10).

In response to a member's question about the methodology for determining which districts are classified as impact aid districts, Ms. Ball indicated that a listing of districts that qualify as impact aid districts is maintained by the Public Education Department (PED) and is included in members' reference booklets. A task force member added that impact aid funding is a federal program that provides revenue to local government entities, including school districts, in lieu of property taxes not received from federal lands, such as tribal land and military bases. These lands are not taxable lands and therefore reduce the district's ability to raise capital outlay funding. Ms. Ball added that other federal property includes land owned by the U.S. Forest Service, the Bureau of Land Management, Sandia National Laboratories (SNL) and Los Alamos National Laboratory.

In response to discussion and questions about the reason that Albuquerque Public Schools (APS) and other districts without tribal lands receive impact aid funding, Ms. Ball explained that a district can receive funding if a student is attending a school in the district but is not living on the reservation. These students must self-report to the school district that they attend in order for the school district to receive the federal impact aid funding. She also noted that Kirtland Air Force Base and SNL are located within APS boundaries.

A member inquired about the State Land Office (SLO) distributions formula for leases and rents on federal lands and if, and the way in which, those funds affect distribution of the state equalization guarantee (SEG). Secretary Clifford explained that approximately 83 percent to 84 percent of funding collected by the SLO goes to the Permanent School Fund, which is revenue counted as part of the state general fund, which is the primary source for the SEG distribution.

In response to an additional question about the relationship between impact aid funding and the SEG, Ms. Ball indicated that the PED takes credit of 75 percent of basic federal impact aid payments because New Mexico is determined to be an "equalized state" under the federal code. The state takes 75 percent credit for impact aid distributions via a reduction in the SEG distribution. Ms. Ball indicated that the impact aid funding to a school district can be significant, noting that approximately 45 percent of the Zuni Public School District's operating budget is funded from federal sources, while the Santa Fe Public School District receives approximately one-tenth of one percent from federal sources. Task force members requested that additional information on impact aid be presented at a future meeting this interim.

Another member asked how and if current lawsuits are related to the impact aid funding. Mr. Burciaga explained that the state is currently involved in two active lawsuits: the so-called *Zuni* capital outlay lawsuit, which is still active (since being filed in 1998); and a lawsuit filed by the Mexican American Legal Defense and Educational Fund that has been combined with another lawsuit filed by the New Mexico Center on Law and Poverty. He said that the interaction and overlap (if any) of these lawsuits remain to be seen, but both are based on the state constitutional requirements of provision of a "uniform" and "sufficient" education system for all New Mexico students.

Public School Capital Outlay Council (PSCOC) Standards-Based Grant Awards, 2015-2016 Funding Cycle

Joe Guillen, chair, PSCOC Awards Subcommittee, and Robert Gorrell, director, Public School Facilities Authority (PSFA), presented to the task force the recent awards made in July, as well as the funding outlook, status of the statewide Facilities Condition Index (FCI) and the PSCOC "Systems Initiative". This year, three awards were made in three school districts: Roswell (Del Norte Elementary School); Española (Abiquiu Elementary School); and Clovis (Highland Elementary School). Awards were for planning and design with construction award funding to come at a later date.

Mr. Guillen reported that the outlook for PSCOC funding is negative because of a number of factors:

- numerous projects in the current queue;
- Department of Finance and Administration accounting methodology changes from "first-in, first out" to project budgeting;
- unanticipated increases in project scope;
- district requests for funding assistance through waivers and advances;
- project cost inflation;
- increases in the number and amount of direct legislative appropriations from the Public School Capital Outlay Fund; and
- reduced revenue from oil and natural gas.

Mr. Gorrell presented a list of projects indicating that approximately \$207 million was awarded in fiscal year (FY) 2015 (\$9.1 million of roof awards and \$197.9 million in design and construction awards). FY 2016 "out-of-cycle" awards are projected to top \$184.8 million.

Mr. Gorrell provided a description and status update of a new initiative of the PSCOC: "building systems". Legislation passed in 2015 provides for awards up to a total of \$15 million in FY 2016 through FY 2020 to fund building system projects. Mr. Gorrell described the program and indicated that

it would help the state maintain the statewide FCI in the face of reduced funding. Mr. Gorrell testified that improvement or maintenance on the statewide FCI requires sufficient revenue, adequate maintenance and efficient space utilization. The systems bill should help fund projects that could make buildings easier to maintain and, where possible, reduce or remove spaces that have been underutilized by the district. Mr. Gorrell indicated that it is important for the state to emphasize improved maintenance and efficient space utilization in the face of reduced funding if the state is to maintain the gains it has made in lowering the statewide FCI.

Task force discussion centered on PSFA development of a maintenance measurement instrument to be used in evaluating levels of current maintenance in school districts. Members discussed concerns about appropriate maintenance of the state's school buildings and expressed concern that some districts are not adequately maintaining their facilities. Some are small school districts with resource challenges, but task force members also noted that some districts are neither small nor have resource challenges.

Another area of task force concern is the rate of construction inflation that has historically been more than five percent, thus deteriorating the purchasing power of funding available for PSCOC programs. A task force member expressed concern that a recent court decision will increase the wage scale on some projects.

Discussion continued regarding concerns about the gross square footage of current facility construction. Mr. Gorrell said that in response to a need to reduce square footage in school buildings, the PSCOC had developed new planning guidelines a few years ago. He explained that the current PSCOC practice is to make determinations of space needs in the schools at a very early planning phase. He explained that, given the current formula in statute, school districts are still able to fund and build spaces above adequacy levels. Mr. Guillen added that school districts are beginning to make the hard decision of closing and consolidating schools given the tough budget environment they are facing.

In response to a question about the previous roof replacement and repair initiative, Mr. Gorrell acknowledged that the standards-based roof program reached its statutory sunset at the same time that the "systems" legislation was enacted. He explained, however, that roof repair and replacement falls under the current statutory definition of "system". Mr. Guillen added that one of the many positive aspects to the building systems program is that it allows for smaller projects in which school districts can participate. Previously, a project for complete renewal of a facility may have been too expensive for a smaller school district to consider applying for funding from the PSCOC.

Discussion continued with concerns expressed about ranking of school facilities and the statutory formula for providing funding. Mr. Gorrell stated that, from time to time, he hears that some school districts are not applying for funding because the state match percentage is too low to make it worthwhile for some districts on the lower end of the state participation scale.

Zuni Lawsuit Update; October 2015 Hearing

Frank Chiapetti, superintendent, Gallup-McKinley County School District (GMCS D), and Ron Triplehorn, director, facilities maintenance, GMCS D, provided an update on the upcoming October 2015 *Zuni* lawsuit hearing. Superintendent Chiapetti thanked the task force for the opportunity to present the update. He began by saying that determining the adequacy of the current state program is premature. He referred members to information in their meeting folders that includes an amended complaint filed on July 28, 2015 to address old and new issues.

He explained that among the issues that the new complaint addresses is the state's current practice in law of "taking credit" for federal impact aid funds. Impact aid funds are intended to replace property tax revenue loss due to the presence of federal lands, such as tribal lands, within school district boundaries that cannot be taxed to raise revenue for school capital improvements. When calculating the SEG distribution of operational funding to school districts, the PED "takes credit" for 75 percent of certain categories of federal impact aid distributions to the school district.

Regarding the GMCS D student enrollment, Superintendent Chiapetti said that 75 percent of the district's 11,500 students attend schools in urban areas, as opposed to 24 percent who attend in isolated, rural areas, but that only 22 percent of property in the GMCS D is taxable. He noted that the federal government requires the district to determine the number of students who live on tribal land, which forms the basis of the calculation for receiving federal impact aid funds. He explained that the school district revived the lawsuit primarily because of this issue and because the school district seems to have what he termed as no "political clout".

In his remarks, Superintendent Chiapetti cited other issues of concern included in the amended complaint. He noted that after the special master's report and the court's order were entered in 2000, New Mexico established "adequacy standards" for public school construction. He explained that these adequacy standards, as established and implemented by the PSCOC, are not sufficient for the education of all children of school age and, therefore, violate Article 12, Section 1 of the Constitution of New Mexico. He provided the following examples of what he termed as "necessary costs" to build a public school that are not included in the adopted state adequacy standards:

- extension of utilities to school construction sites;
- teacherages for rural schools located on federal or tribal land;
- costs for business activities on the Navajo Nation;
- security features beyond magnetic locks;
- some furniture, fixtures and equipment for newly constructed buildings; and
- athletic fields beyond multipurpose practice fields.

He also stated that the currently adopted adequacy standards are not sufficient for the district to be able to comply with state public education standards, including the following:

- adequate square footage for Navajo language and culture classes required by the Indian Education Act;
- facilities to meet federal Title IX requirements (i.e., equal facilities for both boys' and girls' sports);
- state funded pre-kindergarten program requirements for parent educational rooms;
- federal "response to intervention" classrooms for at-risk students; and
- computers and computer stations for state-mandated computer-based tests.

Noting that the district is very grateful for the facilities provided as a result of implementation of the standards-based process, Superintendent Chiapetti said that with the passage of time, the funding formula that calculates the state and local shares of project costs is skewed to benefit tax-rich districts. He asserted that under the current system, property tax-rich districts are regularly able to exceed adequacy standards while property tax-poor districts do not have the same ability. He said that some districts can and do build bigger, more specialized facilities with more amenities than other less property

tax-wealthy districts do. Continuing, he said that school districts with large populations have a scale advantage that reduces local funding needs, thereby allowing these districts to build facilities that are above adequacy standards. As examples of this trend, he cited Volcano Vista High School and Atrisco Heritage Academy, the latest two high schools to be built in APS, as well as a middle school in Clovis and a new high school in Hobbs.

Superintendent Chiapetti acknowledged that the current system has a waiver process in place by which a district may apply to the PSCOC for a waiver or adjustment to its required local portion of construction costs. He asserted, however, that the waiver process, as it has been applied by the PSCOC, is non-uniform, arbitrary and prone to political influences that favor districts with politically powerful legislators. While acknowledging that the state has supplied significantly more funding from supplemental severance tax bonds since implementation of the current adequacy standards-based process, he said that the funding designated for capital needs far exceeds the amount of available funds because all 89 school districts, together with established charter schools, are able to apply for the funds, whereas only districts with a limited property tax base that had used all available funding were able to apply under the old "critical capital outlay" process. He also noted that only capital funding, not maintenance funding, was included in the original lawsuit.

Among other concerns, Superintendent Chiapetti brought up the following issues.

- Because of the isolated, remote location of Tse'Yi'Gai High School, the district must bear the cost of hauling 100 gallons of diesel fuel per day from Crownpoint.
- The PSCOC requires the school district, in its construction planning, to do "value engineering" that, in particular, caused problems in a school that, because of value engineering data, had to remove drains and pumps from its plans.
- The GMCSD incurs additional costs because of the need to extend utilities to schools in isolated rural areas.
- The district does not have baseball and softball fields, so it cannot host interscholastic tournaments.

In response to task force discussion and questions about the upcoming hearing in October, Superintendent Chiapetti said that he expects the court to consider the extra burden on the district because of the need to provide teacherages in its rural areas.

Other task force discussion centered on the section of the amended complaint filed by the district in July, which states that the GMCSD did not receive any direct legislative appropriations during the recent special session. Task force members asked Superintendent Chiapetti if the district had put in any requests to any of its legislators. Superintendent Chiapetti responded that the district does not request direct appropriations because of the offset in PSCOC awards required by statute for direct appropriations.

Some task force members expressed surprise about the statement in the amended complaint that the PSCOC waiver process is non-uniform and arbitrary.

Public School Capital Outlay Standards-Based Process — School District Changes in State and Local Share Determinations: The Case of the Carlsbad Municipal School District (CMSD)

Antonio Ortiz, director, Capital Outlay Bureau and Transportation Bureau, PED, and Mr. Eaton gave a presentation on the state-local share formula and the way in which that formula has resulted in

recent changes in the state-local share in projects for the CMSD. Mr. Ortiz provided a handout showing the factors that affect the calculation: land valuations, student enrollment and property tax "effort" — measured as the number of mill levies approved by local school district residents.

Mr. Eaton presented a case study of changes in the state and local share determination for the CMSD. The CMSD experienced an unusual increase in the required district match from 75 percent to 88 percent over a two-year period. He explained that the reason for the 13 percent increase is a rise in property values caused by recent oil and gas extraction activity that has resulted in an increase of 81 percent in the assessed valuation of property in the district from 2011 to 2014.

Mr. Eaton explained that the state-local match formula is designed to calibrate the state-local share in an equitable manner by increasing the state's share (percentage) of a PSCOC project award in districts that have low per capita property values and a high level of bonded indebtedness. Relatively poor school districts and districts that make a good "effort" (i.e., that levy taxes on themselves) receive a higher share of project funding from the state. Conversely, school districts with high per capita property values (greater property wealth) have a lower state match percentage. Rapidly increasing property values, relative to other school districts, are the chief cause driving up the local share match percentage for the CMSD and other oil-and-natural- gas-producing school districts.

Task force discussion included the possibility of studying the formula to see if it is still working as intended. Mr. Eaton explained that the idea had been discussed by the PSCOC, but not all PSCOC members supported the idea. Mr. Eaton said that prior to that indication, preliminary contacts had been made by the PSFA regarding a study of the formula by an independent economist. Some task force members urged that this work move forward as it is important to the legislature to make sure that the formula is fair and manages the coming reduction in revenue.

2015 Update of the 2012 PSCOOTF Policy Brief on Public School Finance Act Policy Funding Formula Issues

Ms. Ball and Mr. Eaton presented the "Review of Public School Capital Outlay Act Policy and Funding Formula Issues 2015 Interim Update" to the task force. Ms. Ball presented background on the state share funding formula and its performance as an "equalizing" mechanism since its implementation during the 2004 funding cycle. Ms. Ball explained that the formula and the offset provisions were developed in response to a judge's order in the *Zuni* lawsuit and are the basis of the current standards-based process in the Public School Capital Outlay Act. The formula has an effect on two disqualifying realities:

- because direct legislative appropriations for public school capital outlay purposes are the result of a political process, they cannot be allocated in an equalizing manner for school district facilities in various school districts; and
- because the ability of a school district to raise sufficient funding for school capital outlay needs is primarily based on assessed property valuations per student, school districts with more property tax wealth per student have an advantage over other districts with less property tax wealth per student.

The formula addresses these two issues by adjusting the state and local share of the award granted by the PSCOC.

Ms. Ball explained that among the policy considerations presented in the policy brief of 2012 was a consideration of adjusting the formula to take into account population density as well as the effect of the size of a school district's property tax base per student. Rural school districts with small student populations tend to be at a particular disadvantage because they simply cannot use facility space as efficiently as districts that are densely populated. They are necessarily less space efficient because, even with a small student population, required core classroom spaces and such spaces as food service, administration, libraries and multipurpose rooms can be the same or similar in size as school districts with larger student populations.

The chair noted that even though the issues of the funding formula have been discussed in past years, the funding formula has not had significant changes or been studied since its implementation. Task force members discussed the possibility of making a concerted effort this interim to study the formula anew and make recommendations. Regarding possible funding for such a study, in response to a task force question, Mr. Burciaga said that there may be enough funding for a small, third-party contract to engage an economist to study the issue. Task force discussion involved concerns about a lack of budgeted funds for additional meetings in case a subcommittee is designated to oversee implementation of such a contract, and other concerns about the upcoming hearing in the *Zuni* lawsuit by the GMCSO.

The task force agreed by consensus to study the funding formula issue with the aid of a contract economist working with existing staff and to present policy options to the full task force, if possible, before the 2016 legislative session. The chair appointed Senator Stewart and Mr. Foster to be chair and vice chair, respectively, of a funding formula subcommittee. Additional members will be appointed before a subcommittee meeting held before the next task force meeting on September 16. The subcommittee will work with a potential contract economist to develop a scope of work and report to the task force at the September meeting.

There being no more business to come before the task force, the meeting adjourned at 4:22 p.m.

Revised: September 15, 2015

**TENTATIVE AGENDA
for the
FIFTY-THIRD MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**September 16, 2015
Room 322, State Capitol
Santa Fe**

Wednesday, September 16

- 10:00 a.m. **Call to Order, Introductions**
—Senator John M. Sapien, Chair
—Representative Dennis J. Roch, Vice Chair
- 10:05 a.m. (1) **Public School Capital Outlay Oversight Task Force (PSCOOTF) Funding Formula Subcommittee Report**
—Senator Mimi Stewart, Subcommittee Chair
—Carl Foster, Subcommittee Vice Chair
- 11:00 a.m. (2) **Public School Transportation Capital Outlay Issues**
—Antonio Ortiz, Director, Capital Outlay Bureau and School Transportation Bureau, Public Education Department (invited)
—Sharon Ball, PCSOOTF Staff, Researcher/Drafter, Legislative Council Service
- 12:00 noon **Lunch**
- 1:00 p.m. (3) **Progress Report: Public School Capital Outlay Standards-Based Process**
—Martica Casias, Planning and Design Manager, Public School Facilities Authority (PSFA)
—Chris Aguilar, Facilities Data Manager, PSFA
- 2:15 p.m. (4) **Facilities Master Planning: Community Involvement**
—Martica Casias, Planning and Design Manager, PSFA
—Bill Sprick and John Valdez, Facilities Master Planners, PSFA
- 3:15 p.m. (5) **Maximizing Investments in Public School Buildings: Effective Maintenance**
—Chris Huchton, Facilities Maintenance and Operations Manager, PSFA
—Larry Tillotson, Maintenance Specialist, PSFA
—Chris Aguilar, Facilities Data Manager, PSFA
- 4:30 p.m. **Adjourn**

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

**September 16, 2015
Room 322, State Capitol
Santa Fe**

The fifty-third meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator John M. Sapien, chair, on September 16, 2015 at 10:10 a.m. in Room 322 at the State Capitol in Santa Fe.

Present

Sen. John M. Sapien, Chair
Rep. Dennis J. Roch, Vice Chair
Rep. Sharon Clahchischilliage
Dr. Carl Foster
Tracy Hofmann
Sen. Stuart Ingle
Rep. Larry A. Larrañaga
Rep. W. Ken Martinez
Antonio Ortiz, designee for Paul Aguilar
Sen. Mary Kay Papen
T.J. Parks
Mike Phipps
Sen. John Arthur Smith
Allan Tapia
James P. White

Advisory Members

Sen. Howie C. Morales
Rep. Patricio Ruiloba
Sen. Mimi Stewart
Sen. Pat Woods

Absent

Tom Clifford
Dr. Lisa Grover
Rep. James Roger Madalena
Sen. Cliff R. Pirtle
Sen. Sander Rue
Sen. Benny Shendo, Jr.
Jerry Stagner
Rep. Don L. Tripp

Rep. Eliseo Lee Alcon
Sen. Daniel A. Ivey-Soto
Rep. D. Wonda Johnson
Rep. Patricia Roybal Caballero
Sen. John C. Ryan
Sen. William E. Sharer
Rep. James E. Smith
Sen. William P. Soules

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Sharon S. Ball, Researcher/Drafter, LCS
Jeff Eaton, Legislative 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.

Wednesday, September 16

Welcome and Introductions

The chair welcomed members and guests and asked that members introduce themselves.

PSCOOTF Funding Formula Subcommittee Report

Senator Stewart, chair, Funding Formula Subcommittee, reported that, besides herself, the following task force members attended the Funding Formula Subcommittee meeting this morning: Carl Foster, subcommittee vice chair, Representative Roch, Superintendent Parks, Senator Woods and Senator Soules.

Senator Stewart indicated that the contractor who is tentatively engaged to analyze and make recommendations for possible changes to the existing capital outlay funding formula had presented a budget to the subcommittee that was in excess of the proposed budget amount. As a result, the subcommittee agreed to proceed with the study in two phases. The first phase will consist of creation of a spreadsheet model of the existing funding formula for the period from 2007 through 2015 that will calculate public school facility funding distributions based on the existing formula using independently collected data delivered in November with a report consisting of questions and issues concerning the current and past performance of the state-local share formula; an inventory of relevant data; and an evaluation of the availability and timeliness, reliability and estimated cost. The second phase will consist of a detailed analysis regarding the costs associated with providing capital outlay funding to districts to bring buildings up to adequacy. The contractor and PSCOOTF staff will work with the subcommittee to adjust its proposed budget and scope of work.

Task force members discussed the relative success of the funding formula over the past years, and some members agreed that the intention of the formula is to bring school facilities throughout the state to a condition of adequacy to serve the educational needs of schoolchildren. Some members questioned whether or not the formula had succeeded in this regard and expressed concerns that some inequities may in fact have been exacerbated by the formula. One member pointed out that the Constitution of New Mexico does not mandate an "adequate" system, but rather one that is uniform and sufficient to serve the needs of all New Mexico schoolchildren. The member questioned whether the system has promoted "de facto segregation" as a result of some districts and communities with abundant local resources choosing to opt out of the standards-based process.

In response to task force member questions, Ms. Ball stated that Gallup-McKinley County School District Superintendent Frank Chiapetti has been placed on leave and that the lawsuit challenging the equity and sufficiency of the state's system (the *Zuni* lawsuit originally filed in 1998) for funding public school capital outlay has stalled. She reported that, according to her conversation yesterday with the litigants' legal counsel, the October hearing will involve bringing the court up to date with implementation of the court-ordered standards-based process. One member observed that even though the lawsuit may be on hold, the approach is to continue to attempt to address any inequities that may be inherent in the school capital funding system. The member noted that, at this point, the state equalization

guarantee and the operational funding formula may be more at issue (because of the two lawsuits filed in 2014) than the capital programs funding formula.

Public School Transportation Capital Outlay Issues

Mr. Ortiz, director, Capital Outlay Bureau and School Transportation Bureau, Public Education Department (PED), reported to the task force on the status of school bus replacement needs and changes in the school transportation program. Mr. Ortiz provided a chart showing the PED's upcoming requests for school bus replacement, including replacement of 170 school buses in fiscal year (FY) 2017 at a cost of \$14.5 million. He explained that the amount is based on the mandated 12-year replacement cycle for school buses. In response to task force discussion and questions, Mr. Ortiz pointed out that many of the school buses serving rural areas may not survive the full 12-year cycle and that their best use may be, as one member noted, as "Woodstock" buses.

Task force members discussed the fact that few school bus contractors are able to operate at the current level of reimbursement and that, therefore, ownership of the buses and the responsibility for their operation appears to be shifting gradually and permanently to the PED. Similarly, the source for funding for purchasing buses has been shifting in the past few years to the Public School Capital Outlay Fund (PSCOF) from the general fund, despite the apparent contradiction that the shift poses to the statutorily contemplated uses of PSCOF funds. Senator Stewart pointed out that during the economic downturn, the state turned to the PSCOF for funding for school bus replacement, but given the newly legislated and upcoming reductions to the funding stream for the PSCOF, the continued use of PSCOF funds for the purchase of buses may not be a viable option.

One task force member offered a number of reasons that contracting with companies that own and operate the buses may be less expensive in the long run and posited that a statewide lease or some other statewide procurement process would provide cost savings. In response to task force discussion and questions, Mr. Ortiz reported that the PED has not conducted any cost-benefit analyses of the lease versus purchase issue. He explained that the current transportation funding formula takes contractor fees off the top of the fund and divides the rest of the funding based on a model that considers the numbers of enrolled regular and special education students, among other factors. One member reminded task force members that House Bill 164, an act relating to school transportation, passed during the 2015 regular session of the legislature and changes the reporting requirements and the basis for determining transportation distribution allocations and should provide an additional measure of stability in the transportation budgeting process. Mr. Tapia, superintendent of the Bernalillo Public School District, reported that the transportation budget cut of \$200,000 for his district this year had, nevertheless, resulted in the need to make difficult educational service choices.

Progress Report: Public School Capital Outlay Standards-Based Process

Martica Casias, planning and design manager, Public School Facilities Authority (PSFA), presented a progress report on the standards-based process. Following the initial 2001 appropriation for school facilities deficiencies corrections, standards-based awards began in 2003. In 2010, a roofing deficiencies correction program began and ran concurrently with the standards-based awards until the roofing program expired in June 2015. A broadband deficiencies correction program began implementation in 2014 with a \$10 million annual allocation for each of five years. She reminded task force members that the 2015 legislature passed, and the governor signed, an amendment to the Public School Capital Outlay Act to establish a building systems program that is anticipated to provide the first systems awards in June 2016.

Ms. Casias also reported that the average Facilities Condition Index (FCI) across the state has dropped from 71 percent in 2001 (facilities with an FCI of 60 percent or more need to be replaced) to around 35 percent currently, indicating that the standards-based program has been very effective in improving school facilities conditions statewide.

Chris Aguilar, facilities data manager, PSFA, told the task force that New Mexico now has 61 million square feet of K-12 school facilities built at a cost of \$19 billion and that these facilities require both preventive and correctional maintenance programs. Mr. Aguilar reported that the PSFA faces a challenge in trying to maintain the current statewide average FCI in the range of 35 percent with the upcoming PSCOF cutbacks. He provided information regarding the range of tools the PSFA has developed to address maintenance issues, including the Facilities Assessment Database (FAD), which is continually updated to assist the PSFA and school district staff members in assessing and predicting capital needs, including building system needs.

Facilities Master Planning: Community Involvement

Moving to a discussion about community involvement in facilities master planning, Mr. Aguilar explained that the FAD is designed to assist individual schools, school districts, vendors and the Construction Industries Division of the Regulation and Licensing Department in planning and working toward establishing effective preventive maintenance plans and facilities master plans (FMPs).

Ms. Casias described an FMP as a five-year facilities and capital needs road map. Robert Gorrell, director, PSFA, stressed the importance of early planning in the maintenance and master planning efforts, and he described the tremendous cost benefits that can be realized from such planning.

Bill Sprick, facilities master planner, PSFA, gave an overview of the way in which the PSFA is involved in providing information to the community to assist in "right-sizing" facilities and to assure community support for demonstrated local facilities needs. Mr. Sprick noted that community involvement is critically important to the long-range planning process, including the educational specifications (EdSpec) process. He described the EdSpec as a bridge between educational delivery and facility needs, as well as a school-specific extension of the FMP.

Task force members discussed the relationship between the facility and the learning process. Some members suggested that there should be one template for school facilities that could be replicated across the state. Mr. Gorrell and others noted that in some areas, particularly in those areas that do not rely on PSCOF funding, communities view their schools as important symbols of their community and customize them accordingly. In addition, Mr. Gorrell observed that educational needs are constantly changing, and responding to individual community needs is an important part of the process. He noted that a "one size fits all" approach may increase the chances of repeating costly mistakes but acknowledged that replicating the design of certain "building blocks" included in all school facilities may be a valuable approach.

Members also discussed what some see as the unsafe and unsightly use of portable buildings. One member asserted that students do and should have a relationship with their school facility and that the appearance of that facility is important, serving to promote student well-being, good citizenship and community participation. PSFA staff and school district representatives described the use of portable

buildings as a "necessary evil" in responding to sometimes volatile changes in district enrollment. Mr. Gorrell reported that portable buildings are not part of any planned new facilities at this time.

Maximizing Investments in Public School Buildings: Effective Maintenance

Mr. Gorrell presented a brief overview of the estimated 2015 costs to own and operate K-12 public schools in New Mexico. He described the high cost of facilities maintenance and the PSFA's efforts to develop effective means of addressing maintenance needs, including trying to eliminate excess square footage in school facilities throughout the state. Task force members discussed the near impossibility of, or — at best — the difficulties in, decommissioning or selling school buildings that are no longer needed by a school district. Because the buildings serve highly specific needs, they are difficult to re-purpose, especially in rural areas. Districts with such facilities continue to incur maintenance and insurance costs for those buildings even though they are not in use. Mr. Gorrell reported that the PSFA is working on a plan to dispose of surplus buildings but that the issue is complex and subject to multiple jurisdictions and regulations.

Chris Huchton, facilities and maintenance operations manager, PSFA, described routine and capital maintenance programs and stated that district leadership must treat school facility maintenance as a priority. He stressed the importance of engaging in active preventive maintenance programs rather than reactive maintenance. Mr. Huchton described some of the other tools that the Public School Capital Outlay Council (PSCOC) has provided to help establish goals and performance measures to improve maintenance practices in school districts.

Mr. Aguilar explained to the task force that the Facilities Maintenance Assessment Report (FMAR) is a tool used to determine the maintenance effectiveness at a school and may be used to assess effectiveness down to the building systems level. Mr. Huchton reported that 33 percent of school districts have actively improved their FMAR scores from the five-year baseline using state-provided tools and resources. He reported that the PSFA projects capital outlay savings of \$26 million annually if maintenance activities improve to a satisfactory level.

Task force members asked for information about maintenance tools that are being used by charter schools. It was noted that state-chartered schools use a "hybrid" FMP. Mr. Gorrell outlined a proposal that would allow the New Mexico Finance Authority (NMFA) to make loans to state-chartered schools to purchase existing school buildings, using those buildings as collateral for the loans, as part of the ongoing effort to locate charter schools in public facilities. One member inquired about energy efficiency standards for school facilities. Mr. Gorrell noted that there is a lot of progress to be made in that area and that smaller schools are more energy efficient for obvious reasons. He reported that monitoring and feedback systems can greatly improve energy efficiency even in existing, older buildings. In response to member discussion and questions, Mr. Gorrell stated that the PSFA is working to bridge gaps in maintenance and energy efficiency oversight by improving monitoring of PSFA personnel and that building performance monitoring systems can be installed at a cost of roughly \$30,000 per facility. He further noted that it will be difficult to make progress in the areas of maintenance and energy efficiency without effective measurement and appropriate resources.

Members discussed various features that seem to contribute to facilities maintenance issues, including flat roofs. Mr. Gorrell noted that all roofing systems are now designed with sufficient slope to prevent standing water or other elements that might contribute to the system failure. Senator Morales asked how the FMAR incentivizes good maintenance efforts. Larry Tillotson, maintenance specialist,

PSFA, described the Ben Lujan maintenance awards that recognize outstanding maintenance efforts and reported that those efforts are also now provided for in determining the size of certain PSCOC awards. Senator Morales noted that schools with effective maintenance programs are less likely to come before the PSCOC to request assistance and that, in fact, poor maintenance efforts are likely to result in more funding from the PSCOC to repair or replace buildings. Mr. Gorrell observed that the upcoming implementation of the building systems program presents an opportunity to allow targeted investment in building systems for different districts, independent of the FCI rankings. He reported that the PSCOC is working on the application requirements and guidelines to begin implementation of the building systems program.

Meredith Machen, president, League of Women Voters of New Mexico, addressed the task force and asked how the state can maintain a separation of church and state when some state-chartered schools include religious principles in their charters. Ms. Machen urged the task force to reevaluate the funding formula for operational expenses to reflect current and declining enrollment. Senator Smith noted that the enrollment issue has no easy empirical answer and that it is difficult in those areas with an "accordion economy", based on the gas and oil industry, to predict enrollment and other factors that bear on school funding.

Adjournment

There being no further business before the task force, the fifty-third meeting of the PSCOOTF adjourned at 3:20 p.m.

Revised: October 19, 2015

**TENTATIVE AGENDA
for the
FIFTY-FOURTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**October 20, 2015
Room 307, State Capitol
Santa Fe**

Tuesday, October 20

- 10:00 a.m. **Call to Order, Introductions**
—Senator John M. Sapien, Chair
—Representative Dennis J. Roch, Vice Chair
- 10:05 a.m. **Approval of August 11 and September 16, 2015 Minutes**
- 10:10 a.m. **Funding Formula Subcommittee Report**
—Senator Mimi Stewart, Chair, Funding Formula Subcommittee
—Carl Foster, Vice Chair, Funding Formula Subcommittee
- 11:00 a.m. (3) **Update: Broadband Deficiencies Correction Program Implementation**
—Kendra Karp, Chief Information Officer, Public School Facilities Authority (PSFA)
—Ovidiu Viorica, Project Manager, Broadband Deficiencies Correction Program, PSFA
—Jessica Gonzales, Cabinet Director, Office of the Governor (Invited)
—Michael Archibeque, Chief Information Officer, Public Education Department (Invited)
—Darryl Ackley, Secretary, Department of Information Technology
- 12:00 noon **Lunch**
- 1:00 p.m. (4) **Report: Public School Capital Outlay and Federal Impact Aid Funding**
—Hipolito "Paul" J. Aguilar, Deputy Secretary, Finance and Operations, Public Education Department
- 2:00 p.m. (5) **Discussion: Portables, Prototypical Schools and State Gross Square Footage**
—Robert Gorrell, Director, PSFA
- 3:00 p.m. (6) **Discussion: Variables in Maintenance Costs and Identifying Facilities Spending Through Cost Codes**
—Robert Gorrell, Director, PSFA
—Denise Irion, Chief Financial Officer, PSFA
—Chris Huchton, Facilities Maintenance and Operations Support Manager, PSFA
—Martica Casias, Planning and Design Manager, PSFA
- 4:45 p.m. **Adjourn**

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

October 20, 2015
Room 307, State Capitol
Santa Fe

The fifty-fourth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator John Sapien, chair, on October 20, 2015 at 10:20 a.m. in Room 307 at the State Capitol in Santa Fe.

Present

Sen. John M. Sapien, Chair
Rep. Dennis J. Roch, Vice Chair
Paul Aguilar
Dr. Carl Foster
Tracy Hofmann
Sen. Stuart Ingle
Rep. Larry A. Larrañaga
Sen. Mary Kay Papen
Sen. Cliff R. Pirtle
Debbie Romero, designee for Tom Clifford
Sen. Benny Shendo, Jr.
Allan Tapia
James P. White

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Howie C. Morales
Rep. Patricio Ruiloba
Sen. William P. Soules
Sen. Mimi Stewart
Sen. Pat Woods

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Sharon S. Ball, Researcher/Drafter, LCS
Jeff Eaton, Legislative 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.

Absent

Rep. Sharon Clahchischilliage
Dr. Lisa Grover
Rep. James Roger Madalena
Rep. W. Ken Martinez
T.J. Parks
Mike Phipps
Sen. Sander Rue
Sen. John Arthur Smith
Jerry Stagner
Rep. Don L. Tripp

Sen. Daniel A. Ivey-Soto
Rep. D. Wonda Johnson
Rep. Patricia Roybal Caballero
Sen. John C. Ryan
Sen. William E. Sharer
Rep. James E. Smith

Tuesday, October 20

Welcome and Introductions

The chair welcomed task force members and guests and asked that members introduce themselves.

Approval of August 11 and September 16, 2015 Minutes

Upon a motion duly made and seconded, the minutes for the August 11, 2015 meeting were approved with the following correction: Representative Ruiloba's name was moved from the members' list to the advisory members' list. Upon a motion made and duly seconded, the minutes for the September 16, 2015 meeting were approved.

Funding Formula Subcommittee Report

Senator Stewart, Funding Formula Subcommittee chair, and Dr. Foster, Funding Formula Subcommittee vice chair, reported that earlier in the morning, subcommittee members heard a presentation from Robert Gorrell, director, Public School Facilities Authority (PSFA), and his staff on demographic and other data to be considered as the subcommittee continues to examine funding formula equity issues. The subcommittee also approved execution of a contract with staff at the University of New Mexico's (UNM's) Bureau of Business and Economic Research (BBER) and participated in a conference call with Dr. Jeff Mitchell, BBER director, and Dr. Gwendolyn Aldrich, BBER research scientist. The research team, which consists of Dr. Mitchell and Dr. Aldrich, reported some progress with the research project but indicated that they have been having trouble acquiring data from the Public Education Department (PED) and the Department of Finance and Administration (DFA). Dr. Mitchell indicated that the BBER has had to make Inspection of Public Records Act requests to both agencies. Subcommittee members expressed concern that the agencies have not been more forthcoming in providing the specific information that the BBER researchers need. In response to subcommittee discussion and questions, Dr. Mitchell indicated that he and Dr. Aldrich are not able to use data that are available on agency websites, such as the DFA's Local Government Division's "Certificates of Property Tax Rates" and the PED's "2014 Mill Levy Rates", because these data are sorted by county and not by school districts. The subcommittee noted that some school districts are located in more than one county and that some counties include more than one district.

Senator Stewart indicated that the first phase of the study (the creation of a spreadsheet model of the existing funding formula for the period from 2007 through 2015) to calculate public school facility funding distributions based on the existing formula using independently collected data will likely not be delivered before the 2016 legislature and that the PSCOOTF will need to continue the study during the 2016 interim.

Task force members continued their discussion expressing concerns that requests for data from state agencies requested by a legislatively authorized body are not met in a more timely manner. They also discussed issues related to adequacy and problems created by districts with substantial property tax bases and whether a change to the formula would make any difference.

The chair directed members' attention to a copy of a news story published in the *Gallup Independent* on October 14, 2015 that reports on a status conference in district court in Gallup on Tuesday, October 13, 2015, at which Bob Rosebrough, attorney for the Gallup-McKinley County School District (GMCSA), told District Judge Louis DePauli, that while the state has made progress in

addressing funding disparities, the GMCS D still faces great inequities. The chair noted that the article is local coverage of a local issue.

Update: Broadband Deficiencies Correction Program Implementation

Kendra Karp, chief information officer, PSFA, and Ovidiu Viorica, project manager, Broadband Deficiencies Correction Program (BDCP), PSFA, provided the task force with a presentation on the progress of implementing the BDCP that was funded by the 2014 legislature with passage and enactment of Laws 2014, Chapter 28, which provided \$10 million a year from the Public School Capital Outlay Fund over the five-year period from 2014 to 2019. The panel, which included Darryl Ackley, secretary, Department of Information Technology (DoIT), and Michael Archibeque, chief information officer, PED, discussed the collaboration between the legislature and executive branch agencies on the program's implementation.

Directing task force members' attention to slide 2 on the presentation handout, Mr. Viorica said that the graphic is a good reference since it displays what the BDCP covers under Senate Bill 159 (2014), a bill sponsored by Senator Stewart and Senator Jacob R. Candelaria to provide funding for a program to determine broadband deficiencies throughout school districts statewide. He said that it also clearly defines what is excluded. The first two panels are circled in green to indicate that they are covered by this program. The internet service providers section is the "external pipe" that brings broadband to the school districts; the middle section is labeled "internal equipment" because this program will fix network issues that interfere with the delivery of adequate broadband within schools and districts. Mr. Viorica explained that the Federal Communications Commission (FCC) has adopted goals for 2018 of one megabit per second (Mbps) for internet access per student and staff member. For the wide area network transport, the goal is to have capacity scalable to 10 gigabits per second per school in preparation for an increase in required bandwidth.

Mr. Viorica explained that slide 4 is a graphic provided by the EducationSuperHighway (ESH), a national organization with which New Mexico is partnering, and reflects the three main components of broadband and how the current conditions in New Mexico schools compare to the FCC goals. According to ESH data: (1) on the operational side, districts do not purchase enough internet access to support the needs of their students; (2) in terms of what they are calling the external pipe, New Mexico schools do not have fast enough connections to a district hub; and (3) in terms of external equipment, 92% of schools do not have infrastructure for Wi-Fi connections.

Mr. Viorica pointed out that, according to the ESH, internet access costs have a wide variation across the state. Costs range between \$4.00 and \$25.00 per Mbps (and above). Some districts are doing well; for example, the Clovis Municipal School District is at \$4.00 currently. In an aggregated model, the state's cost goal for internet purchase could be \$1.00 per Mbps per month. The cost to deliver the service to the district point of presence will add to this purchase cost. As an example, he said that Network Nebraska's 2014 internet purchase cost is \$1.38, and UNM's current internet purchase price is \$2.00.

Continuing, Ms. Karp showed task force members four new possible service models for all K-12 schools at one Mbps per student per staff member, including a state-built and -operated model; a state-built and -operated open access aggregation network using private sector service providers to connect districts to the aggregate network; a leased open access private sector aggregation network with private sector service providers connecting districts to the aggregate network; and a managed service network for

all participating schools and districts probably leveraging existing networks. She said that capital costs would be the least for the latter two models with operational costs as yet uncertain depending on the results of using the procurement process. She pointed out that there is no difference in capital cost with service levels of 100 kilobytes per second per user to one Mbps per user. She noted that through the procurement process, fiber will be discovered in areas that will benefit schools, which would be more cost-effective. The procurement process will most likely reveal this type of information.

Mr. Viorica directed members' attention to slide 10, which illustrates a case study of the Central Consolidated School District (CCSD). He explained that this case study is a good example of an area that needs help. The CCSD's current broadband services are costly and difficult to manage, and it appears that the district is receiving only a fraction of what it is actually paying for. The graphic shows that a circuit that is about 400 miles long is used to connect Kirtland to Shiprock through a roundabout path for two sites that are only 16 miles apart. It is clear that this approach is not cost-effective; however, working with the area providers for the last six to eight years did not yield a solution.

Continuing, Mr. Viorica noted that slide 12 is a very straightforward example of the way in which the state's 10% matching funds work with the FCC. For example, if it costs \$100,000 for fiber construction that will support the most cost-effective service over a reasonable period established by the district, E-Rate will pay for 80% (\$80,000) of the cost, and if the state pays for 10% of the build (\$10,000), the FCC will match the 10% (subtracting another \$10,000), totaling a cost of zero for the district. He explained that it is uncertain how long this FCC funding opportunity will last, so he recommends taking full advantage of it as expeditiously as possible.

Mr. Viorica acknowledged a great need to upgrade internal networks in individual schools. Because of the survey work approved by the Public School Capital Outlay Council, the magnitude of the problem is obvious. For example, the most significant equipment findings include the fact that 96% of schools require basic hardware upgrades, especially for switches, and 92% of schools require wireless network upgrades. Most of these upgrades are likely to be needed every five years. The PED and DoIT are working to develop sustainability recommendations to decision-makers regarding the funding needed on a regular basis for service, maintenance and operations and to refresh equipment. E-rate Modernization Order funding is capped at \$150 per student over five years for internal equipment (an estimated \$42 million for New Mexico). Some districts have already taken advantage of this funding availability, yet there is an estimated \$39 million still available for New Mexico schools right now.

Secretary Ackley and Mr. Archibeque spoke about the successful collaboration between the executive agencies and the legislature. During their discussion, task force members discussed the importance of using the available appropriated funds to leverage as much federal and other funding as possible.

Members noted a copy of an *Albuquerque Journal* report in their meeting folders on a news conference that Governor Susana Martinez held in the Bernalillo Public School District on October 16, 2015, during which she discussed a plan that her administration and the ESH will be implementing over the next three years.

Members were particularly interested in the following explanation in the article: "Using 49 million set aside by a 2014 state appropriation for school Internet improvements and using federal funds set aside for subsidizing school Internet bills, Martinez said every public school in the state will have

high-speed Internet access by the start of the school year in 2018". Task force members asked the panel if the article is referring to the plan that is before the task force today. Panel members indicated that the article does refer to the plan under discussion.

Members expressed a great deal of concern that the nearly \$50 million the governor refers to in the news conference comes from the amendments to the Public School Capital Outlay Act to establish an education technology deficiencies correction program and the appropriation from the Public School Capital Outlay Fund to be expended over the five years after the bill was signed, which were legislative initiatives. Members expressed a number of concerns that the 2014 bill sponsors and the Legislative Education Study Committee endorsement were not credited appropriately.

Report: Public School Capital Outlay and Federal Impact Aid Funding

Paul Aguilar, deputy secretary, finance and operations, PED, began his presentation by indicating that, in his opinion, the title of the presentation as represented in the task force agenda is incorrect because federal impact aid funding, as it is used in New Mexico, relates only to sources of operational — not capital outlay — funding. He reminded task force members that New Mexico enacted the Public School Finance Act in 1974 to equalize financial opportunity at the highest possible revenue level and to guarantee each New Mexico public school student equal access to programs and services appropriate to the student's educational needs regardless of geographic location or local economic conditions.

Deputy Secretary Aguilar emphasized that funding distributed through the funding formula is "noncategorical"; i.e., funding is not earmarked for specific programs. These decisions are made by local boards of education according to local priorities within statutory and regulatory guidelines.

He continued, pointing out that rather than requiring school districts to be funded almost entirely through local sources — which vary significantly from district to district depending on local property tax wealth per student — the formula takes an offset for a portion of local resources collected. The net effect is that per student funding across the state is generally equalized.

Deputy Secretary Aguilar explained that "program cost" is the total funding a school district or charter school is entitled to for funding its educational program. Because of the funding formula, the annual legislative appropriation and cost differentials reflect costs associated with providing educational services to students, all of whom have differing needs. Total program cost revenue is made up of the state equalization guarantee distribution and 75% of revenues received directly from the half-mill operational property tax levy, payments for federal property received in lieu of taxes (impact aid) and revenue generated through federal forest reserve funds.

Explaining federal impact aid payments, Deputy Secretary Aguilar explained that many local school districts include within their boundaries parcels of land that are owned by the federal government or that have otherwise been removed from the local tax rolls by the federal government, including Native American tribal lands, national laboratories and U.S. Bureau of Land Management lands, among others. In some states, these school districts face special challenges, e.g, providing an education for children associated with these lands with less revenue than is available for other school districts with taxable lands. In New Mexico, these disparities are mitigated because of the equalization components of the funding formula.

Specifically, he explained that impact aid has four components:

- basic noncategorical payments assist local school districts that have lost a portion of their local tax base because of federal ownership of property;
- categorical payments for children with disabilities provide additional assistance to school districts that educate children who are eligible for services under the federal Individuals with Disabilities Education Act in addition to basic support payments;
- noncategorical Indian "set aside" payments help local school districts that educate students residing on federally connected lands; and
- construction grants (which are very limited) go to local school districts that educate a high percentage of certain federally connected children to pay for the construction and repair of school buildings.

Deputy Secretary Aguilar said that each qualifying school district receives all of its impact aid payments directly from the federal government; however, current state law requires that the state use 75% of the basic impact aid payments as credits in calculating the state equalization guarantee. He emphasized that the state does not take credit for the Indian add-on, special education add-on or capital outlay grants, it only takes credit on the basic, noncategorical payments.

He went on to explain that, in order to take credit for these payments, federal law requires that the state must meet stringent requirements established in federal law. The state must verify each year to the U.S. Department of Education that its equalization formula distribution meets a 25% "disparity requirement". In what is called the "Zuni Impact Aid lawsuit", the plaintiff school districts (the Zuni Public School District, GMCSD and Grants-Cibola County School District) took issue with the wording of the federal law that establishes parameters for determining whether a state meets the criteria to be an equalized expenditures state. The plaintiffs sued the U.S. Department of Education because it makes a yearly determination of qualification for equalized expenditures. The plaintiff districts contended that the state should account for "outliers" by district, rather than by the number of students, and language in federal rules is not definite. Because outliers are distinctly possible in a state with districts ranging in size from nearly 90,000 to fewer than 50 students, the U.S. Department of Education, with the PED participating as an intervener, contended that the number of students, rather than the number of districts, should be the qualifier.

Deputy Secretary Aguilar explained that a federal district court found in the state's favor, and the plaintiffs then appealed to the Tenth Circuit Court of Appeals, which found in the state's favor in an "en banc" hearing from the Tenth Circuit Court of Appeals, which upheld the district court's finding on a 6-6 tie. Thus, the federal district court's ruling stood. Subsequently, the U.S. Supreme Court found that the federal secretary of education is correct in permitting the state to consider the number of school district students, rather than the number of districts.

In response to task force discussion and questions, Deputy Secretary Aguilar explained that New Mexico has been taking credit for about \$50 million a year in federal impact aid basic, noncategorical funding since the 1980s. If the courts had found in favor of the plaintiffs, the state would have had to make up for the \$50 million in credits to avoid creating "loser" districts while the impact aid districts received a "windfall" in additional funding proportional to the number of qualifying students in the district. In response to additional discussion, Deputy Secretary Aguilar explained that school districts must apply for impact aid on a yearly basis and qualify to receive basic support payments if the number of federally connected children enrolled in the district totals at least 400 children or at least 3% of the school district's average daily attendance. Ms. Ball added that, currently, 28 of New Mexico's 89 school

districts qualify for impact aid basic payments, with the Zuni Public School District qualifying for the largest proportional percentage since the district's boundaries coincide exactly with the reservation's boundaries.

Ms. Ball added that changes made to the funding formula in 2001 allow districts to use a 25% credit for both operational and capital outlay expenditures. She said that, before that time, the state took credit for 90% of locally generated funding (including federal payments in lieu of taxes) and required districts to use the remaining 10% for capital outlay expenditures.

Discussion: Portables, Prototypical Schools and State Gross Square Footage

Mr. Gorrell said that the two largest capital assets in New Mexico are its roads and its schools, valued at about \$20 billion each. Capital assets in general have three strategic variables relating to their sustainability:

1. adequate funding available to replace assets and do sufficient maintenance to ensure the expected life of the assets;
2. affordability in terms of the total size of the assets that available funding can support; and
3. maintenance effectiveness in terms of capabilities to accomplish sufficient and appropriate maintenance within available funding.

Mr. Gorrell stated that, if the state's public schools were "sized right", the annual cost per student should be approximately \$850 in amortized facility costs and \$900 in operational costs (including heating, cooling, cleaning and routine maintenance), for a total of \$1,750 per student per year, compared to the current estimated total of \$2,570 per student per year.

Continuing, Mr. Gorrell talked briefly about the use of portable classrooms in public schools. He directed members' attention to a description of a study reported in the *Journal of Educational Administration* (vol. 17, number 3, 2009, pp. 290-304) and mentioned that, if members are interested in delving deeper into the subject, the entire study is available. He said that, according to this study, the use of portable classrooms has no significant impact on teacher perception, teacher morale, teacher job satisfaction, student achievement and student behavior. He also noted that, in his experience, some teachers prefer portable classrooms because they can control the classroom's temperature and they are not subject to as many interruptions as their colleagues in brick-and-mortar classrooms. He noted that, while portables cannot totally replace brick-and-mortar buildings, they can be used strategically for long-term maximization of available funding. He said that portables can maximize districts' and statewide utilization by avoiding overbuilding and therefore minimizing the ownership cost of facilities.

Regarding prototypical schools and the design cost debate, Mr. Gorrell noted that the best school facilities designs are contextual because every community has a different emphasis on learning programs, different weather and even differing site conditions. He asserted that savings from design avoidance are generally not a good return on investment. With their only function as supporting teaching and learning, facilities must be specifically designed to optimize performance, including product quality, minimized operational costs and maximized expected life of a building. The total cost of constructing a facility is estimated to be only 2% of the total whole-life costs associated with a facility.

Mr. Gorrell suggested that, for those interested in a more detailed analysis, he had provided task force staff with several other studies on these issues:

- "Life-Cycle Cost Analysis" from the National Institute of Building Sciences;
- "Public School Principals Report on Their School Facilities: Fall 2005", a statistical analysis report by the National Center for Education Statistics (NCES); and
- "Prototype School Designs: Can Prototypes Be Used Successfully?", a research publication from the Council of Educational Facility Planners International.

All materials are available in the meeting file.

Discussion: Identifying Facilities Spending Through Cost Codes

Because several task force members had engagements in the late afternoon and early evening, members agreed by consensus to end the meeting at approximately 3:00 p.m. Mr. Gorrell indicated that he and his staff would do some more research on the presentation on variables in maintenance costs and provide the presentation at the November meeting. He agreed to focus on the identification of facilities spending through cost codes portion at today's meeting.

Mr. Gorrell noted that in the past decade, the state has invested nearly \$20 billion in public school facilities. He stressed that effective ownership of these facilities is necessary to protect the state's multi-billion dollar investment into the future. Sustaining the current level of the condition of public school facilities will require a school district focus on maintenance to extend the life of facilities. He asserted that knowing how much of their funding (and from what sources) school districts spend on facilities compared to what should be spent is key to improving the life and function of school facilities.

Mr. Gorrell continued, stressing that policymakers need to have the statewide establishment of facilities cost codes to capture and reflect school district expenditures related to capital and noncapital spending. He emphasized that spending on routine maintenance is one of the first budget items to be reduced when educational funding is reduced or does not keep up with increases in the cost of living. He opined that inadequate spending on maintenance is a result of an overall lack of facility management know-how. He pointed out that development and implementation of facilities cost codes that adequately reflect spending on maintenance functions would provide comparable metrics, which would lead to better budgeting and spending decisions.

Mr. Gorrell explained that current cost codes for reporting on facilities maintenance expenditures do not capture capital maintenance costs that provide longer-lasting facilities, such as expenditures for re-roofing, upgrades to heating, ventilating and air conditioning systems and infrastructure building improvements. He also said that current cost codes do not differentiate between preventive routine maintenance expenditures and emergency (or reactive) maintenance, which he asserted is about three times more expensive than preventive routine maintenance.

Mr. Gorrell said costs that should be monitored in order to protect taxpayers' multi-billion dollar investment in public school facilities and include the following costs related to:

1. planning: capital expenditures must be well-planned to be cost-effective and to allow districts to gain voter support for mill levies and bond issues. Mr. Gorrell opined that while planning expenditures are relatively low cost, they are some of the most important expenditures for responsible ownership;
2. acquisition: Mr. Gorrell explained that besides the acquisition of land and facilities, these expenditures include "re-obtaining" through facility renewal;

3. maintenance: Mr. Gorrell explained that maintenance includes all work required to keep a facility fully functional and continually utilized for its expected life and intended purpose. He noted that a facility addition extends the life of the original facility; and
4. operations: Mr. Gorrell explained that operations expenditures include all costs to keep a facility clean, sanitary and tidy so that its occupants are comfortable, healthy and productive. He added that operational expenditures include costs for utilities, snow removal, support services and even demolition, such as weed removal.

Mr. Gorrell said that for purposes of classifying expenditures and budgeting, all school facilities-related activities should fall into one of the four categories he just described. Mr. Gorrell explained that using nonmandatory NCES codes that already exist within the NCES accounting code structure will ensure the identification of adequate and appropriate facilities ownership costs.

Directing members' attention to the presentation materials, Denise Irion, chief financial officer, PSFA, explained the funding definitions crosswalk table that the PSFA is proposing to allow for planning, acquisition (or procurement), maintenance and operations expenditures to be captured within existing, optional NCES account codes. A copy of the crosswalk table can be found in the meeting file.

Task force members discussed the PSFA proposal at length and asked what action the PSCOOTF might take to accomplish the closer tracking of school district maintenance and operational, planning and acquisition activities. Task force members generally agreed that proposing legislation to require cost codes would not be practical since accounting cost codes are primarily a ministerial, rather than a policy, function of government. In response to member discussion and questions, Mr. Gorrell indicated that, at the present time, the PSFA has not been able to schedule a meeting with PED staff to discuss development and implementation possibilities. Members also discussed the possibility of introducing a memorial requesting that the PED, PSFA and other interested stakeholders examine the proposal and report the results to the PSCOOTF during the 2016 interim. Senator Sapien noted that, at this point in the meeting, no one from the PED was present to answer task force questions about working together on possible adjustment to the uniform chart of accounts, and he suggested that perhaps the task force could continue this discussion with a PED representative at the November meeting.

Adjournment

There being no further business before the task force, the fifty-fourth meeting of the PSCOOTF adjourned at 2:58 p.m.

**TENTATIVE AGENDA
for the
FIFTY-FIFTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**December 4, 2015
Room 322, State Capitol
Santa Fe**

Friday, December 4

- 10:00 a.m. **Call to Order, Introductions**
—Senator John M. Sapien, Chair
—Representative Dennis J. Roch, Vice Chair
- 10:05 a.m. **Approval of October 20, 2015 Minutes**
- 10:10 a.m. **Funding Formula Subcommittee Report**
—Senator Mimi Stewart, Chair, Funding Formula Subcommittee
—Carl Foster, Vice Chair, Funding Formula Subcommittee
- 11:00 a.m. (1) **Update: Variables in Maintenance Costs**
—Chris Huchton, Facilities Maintenance and Operations Support Manager,
Public School Facilities Authority (PSFA)
—Larry Tillotson, Maintenance Specialist, PSFA
- 11:45 a.m. (2) **Update: Charter Schools in Public Buildings**
—Martica Casias, Planning and Design Manager, PSFA
—Greta Roskom, Co-Executive Director, New Mexico Coalition for Charter
Schools
- 12:30 p.m. **Lunch**
- 1:30 p.m. (3) **Disposing of Public School Buildings: Challenges and Opportunities**
—Martica Casias, Planning and Design Manager, PSFA
- 2:15 p.m. (4) **Potential Legislation for Task Force Endorsement**
—Task Force Members and Staff
- 3:00 p.m. **Adjourn**

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

**December 4, 2015
Room 322, State Capitol
Santa Fe**

The fifty-fifth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator John M. Sapien, chair, on December 4, 2015 at 10:10 a.m. in Room 322 at the State Capitol in Santa Fe.

Present

Sen. John M. Sapien, Chair
Antonio Ortiz, designee for Deputy Sec.
Paul Aguilar
Rep. Sharon Clahchischilliage
Carl Foster
Sen. Stuart Ingle
Rep. Larry A. Larrañaga
Rep. James Roger Madalena
Mike Phipps
Sen. Cliff R. Pirtle
Sen. Benny Shendo, Jr.
Jerry Stagner
Sen. Mimi Stewart, designee for Sen. Mary Kay Papen
Allan Tapia
Rep. Don L. Tripp
James P. White

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Howie C. Morales
Rep. Patricia Roybal Caballero
Rep. Patricio Ruiloba
Sen. William P. Soules
Sen. Pat Woods

Guest Legislator

Sen. Richard C. Martinez

Minutes Approval

Because the task force will not meet again this year, the minutes for this meeting have not been officially approved by the task force.

Staff

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

Absent

Rep. Dennis J. Roch, Vice Chair
Sec. Tom Clifford
Lisa Grover
Tracy Hofmann
Rep. W. Ken Martinez
Sen. Mary Kay Papen
T.J. Parks
Sen. Sander Rue
Sen. John Arthur Smith

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

Jeff Eaton, 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, December 4

Welcome and Introductions

The chair welcomed members and guests and asked members to introduce themselves.

PSCOOTF Funding Formula Subcommittee Report

Senator Stewart, chair, Funding Formula Subcommittee, directed task force members' attention to the report provided by the Bureau of Business and Economic Research (BBER). Over the past two months, the BBER collected and analyzed data to benchmark the calculation of state district funding shares under the statutory formula. Although the formula includes only three variables, the data collection and standardization process proved to be complex due to geographic overlays and the various means by which the data are reported. The BBER independently collected all of the data for all school districts for the period from 2005 through 2014 and verified the data for the three-year period from 2012 through 2014.

Data collected by the BBER align closely with existing data compiled by the Public Education Department (PED). Senator Stewart reported that the subcommittee has drawn few conclusions from the data at this point, but she noted that the Public School Facilities Authority (PSFA) has independently analyzed some of the relevant data. She asked Robert Gorrell, director, PSFA, to present the PSFA's findings.

Mr. Gorrell presented two spreadsheets comparing the existing educational gross square footage by district with the "right-sized" square footage needed under the "Adequacy Planning Guide" (APG). Under the APG scenario, Mr. Gorrell projected a 34 percent drop in the number of districts needing state assistance. Further, he reported that right-sizing district facilities will help to even out any over-funding and underfunding of districts by the state. Mr. Gorrell drew the members' attention to the Gallup-McKinley County School District (GMCSA). The indicators on both spreadsheets show that the state is putting in approximately the right amount for facilities construction in that district. Mr. Gorrell pointed out that the formula does not take into account the facilities maintenance needs of school districts and that maintenance continues to be a major issue of concern for the GMCSA and many other districts as well.

Certain other districts, including the Zuni Public School District (ZPSD) and the Roswell Independent School District (RISD), would not experience much change in their current need for state assistance under the right-sizing scenario, according to Mr. Gorrell. The ZPSD lacks any tax base, it so will continue to rely on state dollars for school construction. The data in both scenarios show that the RISD is close to being right-sized at present. Mr. Gorrell reiterated the concerns regarding adequate

funding for facilities maintenance and observed that right-sizing district facilities is a process that will require time to complete.

Task force members discussed the following issues related to district property tax bases and the formula:

- in rural areas, private range land and crop land may have substantial taxable value that is not necessarily indicative of the capacity of rural landowners to pay for school facilities;
- property valuations are subject to significant variability in districts in which commodities such as oil and gas extraction comprise a significant share of property valuation;
- property valuations may be high in certain urban areas — for example, in the East Central area in Albuquerque — but may still not be indicative of the local population's ability to pay for school improvements; and
- districts may encompass a mix of charter schools and public schools within a concentrated geographic area, raising questions of the way in which the funding formula addresses overlapping school systems.

One member observed that many school districts jumped on board when the funding formula was established but that some of those districts may no longer require state funding for school facilities development. The member cautioned that upcoming reductions in the funding available for public school capital outlay will necessitate assurances that funds are used to pursue the original intent of the formula in establishing a uniform and sufficient capital funding system to meet the needs of all New Mexico schoolchildren.

Task force members discussed the need to ensure transparency in the process of developing any changes to the funding formula. It was noted that all of the data compiled by the BBER will be publicly available on the BBER website and that the information will continue to be updated by the BBER, contingent upon sufficient funding being made available for that purpose. Dr. Foster summarized the subcommittee's intent to work with Mr. Burciaga and legislative leadership to continue to assess the formula's effectiveness.

Update: Variables in Maintenance Costs

Chris Huchton, facilities maintenance and operations support manager, PSFA, presented information regarding four variables that affect maintenance efforts: people, methods, money and hardware. He noted that reactive maintenance costs three times as much as preventive maintenance and that regular preventive maintenance is the biggest factor contributing to best business practices for extending the life of school facilities and holding down operating costs. Mr. Huchton observed that the PSFA has been able to track and demonstrate the cost savings for those districts whose leadership focuses on this best practice. He noted that many districts face the challenges of a lack of trained maintenance staff, increased numbers of aging facilities and limited maintenance budgets. The PSFA is now working with the PED to develop cost codes to appropriately identify where maintenance efforts are focused to assist districts in improving their maintenance strategies. In addition, the PSFA is working with a number of different organizations, including the Associated General Contractors, to establish training and certification programs for maintenance staff. Mr. Huchton outlined other maintenance variables that challenge districts, including the high cost of maintaining excess square footage, distance from metropolitan areas (affecting the cost of construction) and the state's weather extremes.

Update: Charter Schools in Public Buildings

Martica Casias, planning and design manager, PSFA, updated the task force regarding the 2015 deadline to locate charter schools in public buildings. According to Ms. Casias, 42 charter schools continue to be housed in private facilities. The schools are at risk of losing their charters when they next come up for renewal if they have not relocated to public buildings. Ms. Casias reviewed the educational occupancy standards for charter schools included in statute and the exceptions that are allowed for charter schools in the public buildings mandate.

Greta Roskom, co-executive director of the New Mexico Coalition for Charter Schools (NMCCS), informed the task force that 12 of the 42 charter schools under discussion have lease-to-purchase agreements in place. Ms. Roskom asserted that these schools should be listed with the charter schools in public facilities. One member stated that they will not qualify for that listing until they have completed their purchase.

Patty Matthews, attorney for the NMCCS, addressed the task force regarding lease-to-purchase issues. Ms. Matthews stated that lease-to-purchase agreements could be one of the best ways for charter schools to acquire public buildings; however, the PED has denied approval of the agreements because of concerns that they may violate the Anti-Donation Clause in the Constitution of New Mexico. Having reached an impasse with the PED, the NMCCS requested an opinion regarding the constitutionality of the agreements from the Attorney General's Office (AGO). Ms. Matthews read a letter from the AGO opining that any conflict with the Anti-Donation Clause is speculative. The opinion has not been formalized because of the attorney general's absence, but the NMCCS hopes that the opinion will help with efforts to locate charter schools in public buildings through lease-to-purchase agreements.

Ms. Matthews asked that the task force and the legislature look at revisions to the Public School Lease Purchase Act to facilitate locating charter schools in public buildings. She also noted that there is no database of available public facilities to help charter schools locate appropriate space. Task force members discussed whose responsibility it is to locate space for the charter schools and the numerous times that the statute requiring relocation of the charter schools to public facilities has been amended. Members noted that many legislators oppose extending the deadline again for relocation to public facilities. In response to members' questions, Ms. Casias stated that some of the schools whose charters are coming up for renewal in 2016 may qualify for exceptions to the requirement; however, she could not immediately state how many might qualify for those exemptions. Ms. Casias noted that the PSFA does document exceptions to the space requirements, including the instances in which the charter may be offered space and chooses to refuse that offer.

One member asked how many charter schools have asked for approval of lease-to-purchase agreements and have been refused by the PED. Ms. Matthews stated that 13 of the coalition members were in such situations when the initial lease-to-purchase agreement was submitted to the PED. The other agreements have not been submitted pending resolution of the issues raised by the PED. Two other such agreements are now at issue as well.

Senator Sapien expressed support for charter schools but acknowledged some funding inequities among schools. He stated that the effect of some of the lease-to-purchase agreements is that third parties appear to be making lots of money from the system and that charter schools are not moving fast enough to meet the public facility requirement. Senator Sapien asked Mr. Ortiz to get a letter from the PED to inform the task force of how the attorney general's opinion on the lease-to-purchase issue will affect the

PED's view of those agreements.

Task force members discussed the pending deadline for charter schools to be housed in public buildings and the unlikelihood that the deadline will be extended. One member expressed concern that children's safety is at issue if charter school facilities do not meet the adequacy standards. It was noted that the issue may be addressed at the upcoming meeting of the Legislative Education Study Committee. Mr. Ortiz reported that the PED is doing everything it can to help charter schools comply with the requirements. Senator Sapien offered to discuss the issue with the House Education Committee (HEC) chair, Representative Nora Espinoza, for a possible joint HEC/Senate Education Committee meeting during the upcoming legislative session. He also asked that the issue be placed on the first agenda for the task force during the next interim.

Disposing of Public School Buildings: Challenges and Opportunities

Ms. Casias presented a flow chart detailing the general process for school closure. The chart provides a summary of PED, district, Historic Preservation Division of the Cultural Affairs Department and statute processes and requirements. Each process outlined by Ms. Casias involves lengthy steps and numerous options to arrive at the decision to sell, keep and maintain, or demolish, a facility. If the property cannot be sold or disposed of in another manner at the end of this process, the facility will go back into the district's facilities management plan.

Task force members discussed valuation issues for old buildings and asked whether the facilities must be sold at the appraised value or at fair market value. Mr. Gorrell responded that the PSFA needs to work with the agencies overseeing that to clarify sale opportunities. He noted that Senator Smith had requested that the PSFA work on a plan to dispose of unused or unneeded school facilities and that the flow chart is the first step in defining that process. Mr. Gorrell reported that the PSFA will now be looking into the issues surrounding appraised and fair market values. Members thanked Mr. Gorrell and the PSFA staff for their continuing dedication and hard work on all of the school capital outlay issues.

Adjournment

There being no further business to come before the task force, the fifty-fifth meeting of the PSCOOTF adjourned at 1:05 p.m.