

**MINUTES  
of the  
SIXTY-SIXTH MEETING  
of the**

**PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**August 28, 2018  
State Capitol, Room 307  
Santa Fe**

The sixty-sixth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Stephanie Garcia Richard, chair, on August 28, 2018 at 9:10 a.m. in Room 307 of the State Capitol in Santa Fe.

**Present**

Rep. Stephanie Garcia Richard, Chair  
Sen. Craig W. Brandt  
Martha "Marty" Braniff  
Greg Ewing  
Carl Foster  
Rep. Harry Garcia, designee for Rep. Brian Egolf  
Sen. Stuart Ingle  
Rep. Rick Little  
Rep. Patricia A. Lundstrom  
Antonio Ortiz, designee for the Secretary of Public Education  
Sen. Mary Kay Papen  
T.J. Parks  
Richard A. Perea  
Rep. Dennis J. Roch  
Debbie Romero, designee for the Secretary of Finance and Administration  
Stan Rounds  
Eugene Schmidt  
Sen. Benny Shendo, Jr.  
Sen. John Arthur Smith  
Harry Teague

**Advisory Members**

Rep. Eliseo Lee Alcon  
Sen. Gay G. Kernan  
Sen. Mimi Stewart  
Sen. Bill Tallman

**Absent**

Sen. William P. Soules, Vice Chair  
Rep. Brian Egolf  
Kirk Hartom  
Mike Phipps  
Rep. Debbie A. Rodella  
Rep. G. Andrés Romero

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Sen. Daniel A. Ivey-Soto  
Rep. D. Wonda Johnson  
Sen. Howie C. Morales  
Sen. Cliff R. Pirtle  
Sen. Sander Rue  
Sen. Pat Woods

## **Staff**

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

Jeff Eaton, Fiscal Analyst, LCS

Kathleen Dexter, Researcher, LCS

Rebecca Griego, Records Officer, LCS

## **Guests**

The guest list is in the meeting file.

## **Handouts**

Copies of handouts are in the meeting file.

## **Tuesday, August 28**

### **PSCOOTF 2018 Resource Document**

Mr. Eaton presented the 2018 edition of the task force's resource book. The book includes information on public school funding and on the *Zuni* lawsuit that challenged that funding; background information on the task force; information on funding sources and formulas for capital outlay distribution to schools, including school facility condition rankings; a primer on public school capital outlay funding; property tax information for tax year 2017; and a summary of the task force's work during the 2017 interim.

In discussion, task force members noted that the funding formula was recently revised to place more responsibility on local governments and that this change will go into effect next year.

Task force members had questions on current litigation concerning public school funding. Mr. Burciaga offered to provide updated information on the issue. (Note: Following the meeting and after discussion with the chair, a presentation on the status of the litigation was scheduled for inclusion on the agenda for the next PSCOOTF meeting.)

### **Public School Capital Outlay Council (PSCOC) Financial Plan**

Denise Irion, chief financial officer, Public School Facilities Authority (PSFA), and Jonathan Chamblin, director, PSFA, presented the PSCOC financial plan for fiscal year (FY) 2019 through FY 2023.

Ms. Irion opened the presentation with the announcement that at its meeting in June, the PSCOC awarded \$16.5 million to public school projects around the state. Included in that total is \$5 million for pre-kindergarten (pre-K) projects.

In June, the PSCOC approved the issuance of nearly \$107 million in supplemental severance tax bonds. The proceeds of the bond sale were allocated to the Instructional Material Fund, the Public Education Department (PED) transportation distribution, funding through the Public School Capital Improvements Act, referred to as the "SB 9 program", and capital project

awards made from the Public School Capital Outlay Fund. Expenditures from the Public School Capital Outlay Fund for FY 2019 include awards for security projects, lease payment assistance, master plan assistance, broadband deficiencies correction, pre-K classrooms, project inspections and PSFA operations. Ten million dollars was also set aside as an emergency reserve for contingencies, an increase of \$9 million over previous years that the PSCOC plans to continue through FY 2023. Ms. Irion noted that all expense totals presented for FY 2019 on the financial plan summary document, other than the emergency reserve for contingencies, will be adjusted, most likely upward, later in the year.

In regard to the broadband deficiencies correction program, Ms. Irion cautioned that the state match required in the federal E-Rate Program may increase in the next few months. The state match for that program is currently 10 percent.

Based on applications it has received, the PSCOC plans to award \$45.8 million in the third quarter of calendar year 2018 for design and systems projects. Awards planned for the remaining quarter of 2018 and subsequent years total \$34.4 million.

The PSCOC's ending fund balance for FY 2018 is just over \$42 million, Ms. Irion said. The council estimates that its ending balance for FY 2019 will be nearly \$78 million.

On questioning, task force members and the presenters, who were joined by David Abbey, director, Legislative Finance Committee (LFC), and Martica Casias, deputy director, PSFA, addressed the following topics.

***Transportation distribution and school bus replacements.*** The \$2.5 million allocated to the transportation distribution in FY 2019 is for operational expenses; this amount was requested by the PED. The \$25 million that was allocated to school bus replacements in 2017 came from "sponge bonds", which, according to an attorney general opinion, are considered cash and may be used for operational as well as capital costs. The state's recent bond rating downgrade has not significantly added to the cost of sponge bonds because they are issued for only a few days.

The November 2018 general election ballot will include a \$6 million general obligation bond question to replace district-owned school buses. Statute requires that buses be replaced every 12 years; the state is two to three years behind schedule on these replacements. No money was allocated in the General Appropriation Act of 2018 for bus replacements. The PED will submit an application through the Department of Environment for \$6 million in bus replacement funding from the Volkswagen Settlement Agreement.

***Offsets.*** Security projects funded through Senate Bill 239 (2018) are subject to offsets, but projects funded through House Bill 306 (2018) are not.

***SB 9 awards.*** SB 9 awards for FY 2019 will be calculated using the new funding formula.

**Lease payment assistance.** Funding for lease payment assistance is based on eligible square footage in a leased facility, and calculations are set by statute. In the past, charter schools assessed their eligible square footage, but the PSFA has recently conducted its own assessments. Funding is based on the lesser amount calculated using either square footage or school membership, known as "MEM". Changes in the Consumer Price Index are also factored in. The current average lease payment assistance amount is \$10.46 per square foot; the state pays, on average, between \$18.00 and \$20.00 per square foot to lease office space for state agencies.

Alternative off-site spaces and on-site multipurpose spaces that are used for elementary charter school physical education are not included in the lease assistance payment calculation.

**Holloman Elementary School project.** The PSFA met with the federal Department of Defense regarding possible federal funding for improvements under way at Holloman Elementary School to accommodate increased enrollment anticipated at the school with the arrival of a new F-16 squadron at Holloman Air Force Base.

**Project ranking, right-sizing and bids.** The PSFA uses a five-year projected enrollment estimate when ranking projects. Some schools that received a high ranking in the past have since lost a significant portion of their enrollment; their districts need to consider consolidation as a way to right-size their school facilities in the face of enrollment fluctuations.

The number of bidders on higher education projects has decreased because there is a lot of construction work in the state at the moment. Some of these projects have been reconfigured, as higher bids have been submitted from fewer bidders.

**Demolition.** Demolition is an eligible expense pursuant to the Public School Capital Outlay Act.

**PSFA operations.** The PSFA financial plan shows a drop in PSFA operational funding due to attrition. Two positions are currently vacant at the PSFA.

**Facility Condition Index.** Since the *Zuni* lawsuit was filed, the state has spent over \$2 billion to improve school facilities, which has reduced the average weighted New Mexico Facility Condition Index rating from more than 60 percent to approximately 35 percent.

**Local governments.** A member spoke in favor of increasing local government responsibility for projects because the state covers operational costs.

- Ms. Irion will provide information on the potential increase in the state match requirement in the federal E-Rate Program.
- Mr. Chamblin will provide information on:
  - (1) the Gadsden Independent School District systems award from last year; and
  - (2) the number of bidders on the Gallup Thoreau project.

## **Public School Security**

Mr. Chamblin provided a status report on public school security assessments that the PSFA is conducting in school districts statewide in preparation for security improvements.

The PSFA held workshops around the state earlier this year to assess school district concerns about security. Workshops included presentations from security experts such as public safety agencies and local first responders. When surveyed on their top five security concerns, workshop participants cited active shooters, student mental health, bullying, unauthorized access and domestic disputes over custody issues. Lack of funding for security improvements was cited as the most significant barrier that districts face, and for many districts, increased crisis training for staff topped the list of security measures they would implement if resources were available. Security measures that school districts have already implemented range from security camera and key card access systems, which are in use in many school districts, to bulletproof windows and gunshot detection systems, which are installed in only a few schools.

Following the workshops, the PSFA posted on its website a security guidelines document that school districts can use as they apply for security funding through the PSCOC. Forty-seven districts have since applied for funding on projects at 288 school campuses around the state. The PSFA assessed all applicant campuses in July and August and scored their needs based on site access controls, building exteriors and building interiors. In September, the PSFA will forward its recommendations to the PSCOC, which will make the final funding awards in October.

Mr. Chamblin, Ms. Casias and task force members addressed the following topics.

***Funding sources and eligibility.*** Some school districts submitted funding requests for a single project through both the security awards process and the systems awards process; however, projects will receive funding through only one funding stream. SB 9 funds are another funding stream and may be used for certain security equipment purchases. No funding source may be used to reimburse a district for expenses made prior to an award such as for projects that are already completed.

***Local match and offset.*** A local match is required for all security awards, including those for charter schools. The PSCOC will determine whether the awards will affect a school district's funding offset.

***Prioritizing projects.*** School districts consider community conditions such as homelessness and crime when prioritizing school security projects and applying for PSCOC funding. The PSCOC takes into account a facility's age when making awards.

***Assessments and applications.*** All applicant schools were required to have a third-party security assessment and to update their school safety plans. Some school districts did not apply for funding because they felt their security systems were already strong. Approximately two dozen funding applications were submitted by charter schools.

***Safety responsibilities and requirements.*** A district superintendent is responsible for setting and enforcing school safety standards throughout a district. Each school principal is responsible for compliance with those standards. The PED and the federal government require that all schools have a safety plan.

**D** Mr. Chamblin will provide copies of the PSCOC's new prioritization method.

### **School Insurance**

Sammy Quintana, executive director, Public School Insurance Authority (PSIA), opened the PSIA presentation with an announcement of his imminent retirement. Ernestine Chavez, who currently serves as PSIA deputy director, will take over as executive director in September, he said.

**R** Julie Garcia, regional director, Poms and Associates, and James Vautier, senior manager, Risk Services Safety and Security, Poms and Associates, joined Mr. Quintana to report on the PSIA risk program and on school safety issues.

The PSIA insures more than \$25 billion in property assets held by 88 school districts, 96 charter schools and 25 other educational entities and provides liability and workers' compensation coverage for 44,000 public school employees. To reduce both the frequency and severity of claims, the PSIA provides loss prevention programs on a variety of topics — ergonomics, threat assessment, active shooters, special education, predator identification and bullying prevention — for school personnel. The PSIA is also developing guidelines for schools as they consider allowing school employees to carry firearms on campus.

Poms and Associates contracts with the PSIA to conduct on-site school facility audits and to provide school security training. Mr. Vautier, who worked for years as a public school resource officer and now conducts these training sessions, noted that while the probability of a school shooting is still very low, the frequency of shootings has tripled since 2011. Preventing such events and other dangers requires that schools address security issues in both the physical environment, such as a lack of fencing or lockable doors, and in the human environment, such as students, staff or visitors who may pose a safety threat. Each school must identify and prioritize its unique risks and hazards in its safety plan; establish a safety committee and a behavioral threat assessment team; install a reliable emergency notification system; and conduct response training and practice sessions. Mr. Vautier stressed that school security applies to everyone on a school campus; maintaining a culture of awareness, safety and trust among staff and students is the cheapest security measure a school can adopt.

**T** On questioning, the presenters clarified that while the PSIA insures higher education institutions, the safety plans required for those campuses differ from those for elementary, middle and high school campuses.

## **Decommissioning and Disposal of Schools**

Ms. Casias and Mr. Chamblin reported on how a school district may decommission or dispose of a facility that is vacant, unused or no longer needed by the district.

The school facility disposal process involves four entities: the community, the PED, the State Board of Finance and the state auditor. The community may be affected by disposal of a school facility because this can sometimes mean that students must be moved to another school or that a bond issuance is necessary to raise funds for demolition. If a facility is decommissioned but not demolished or disposed of, the abandoned facility remains a liability for the community.

In order to decommission one of its facilities for later disposal, a district must request approval from the PED, which will analyze the request on several points, including financial, transportation and capital outlay issues. Once PED approval is granted, the district must notify the State Board of Finance of its intent to dispose of the facility and provide an assessed valuation for the property. If the State Board of Finance approves the disposition and, subsequently, the state auditor approves it as well, the district can sell, donate, transfer title to or demolish the facility, with certain restrictions: 1) a donation or title transfer may only be made to another public entity; and 2) if the facility is listed on a state or federal historic register, the district must contact the Historic Preservation Division of the Cultural Affairs Department and, if the facility is to be demolished, document the facility prior to demolition.

The presenters noted that \$5.8 million was spent on demolition-only projects in 2008 through 2010, of which \$4.5 million was awarded by the PSCOC and the balance paid by the school districts.

The presenters and task force members addressed the following topics.

***Historic facilities.*** A school district that wishes to dispose of or demolish a facility that is listed on the state historic register must follow the Historic Preservation Division's approval process, which is outlined on the PSFA website. In making its decision, the division will consider whether the facility can be repaired rather than demolished. If approval is granted and the district wishes to sell the facility, it may sell to either a public or private entity.

***Charter schools.*** Charter schools have the first option to buy facilities scheduled for disposal by school districts; however, charter schools cannot operate in facilities that do not meet facility standards and requirements.

***Facility sales.*** Some rural school districts are unable to sell abandoned facilities because the Constitution of New Mexico requires they be sold for fair market value, yet much of the research on market value is conducted in urban areas; buyers are not willing to pay urban market prices for facilities in rural areas. State agencies are in a similar situation with their facilities.

Mr. Eaton will research alternative property disposition used in other states.

## **Pre-K Status and Capital Outlay**

Mr. Chamblin reported on the status of pre-K facilities around the state and their capital outlay funding needs.

Under the Pre-Kindergarten Act, funding for pre-K programs must be split equally between the PED and the Children, Youth and Families Department (CYFD), both of which run pre-K programs. Since 2007, \$23 million has been awarded to build or renovate PED pre-K classrooms, many of which are housed in elementary school facilities. The PSFA is currently assessing pre-K facilities to determine functional minimums for pre-K programs, which need space not only for classrooms but also for playgrounds, secure entries and parent parking areas. Mr. Chamblin noted that renovation of underused elementary school space for pre-K use can be expensive in the short term but save money in the long term through reduced maintenance costs.

On questioning, task force members and the presenters, who were joined by Rachel Gudgel, director, Legislative Education Study Committee (LESC), addressed the following topics.

***Most recent funding cycle.*** The PSFA received funding applications from districts that want to expand their pre-K facilities and districts that plan to build new facilities. All of the \$5 million awarded to pre-K programs went to programs for developmentally delayed children.

***Funding restrictions.*** PSFA funding cannot be used for classroom materials or for portable classrooms, though the PSFA is reconsidering the restriction on portable classrooms. Members discussed the advantages of using portable classrooms and posed the possibility that a pre-K program might use PED grant money to purchase materials.

***Costs, projections and planning.*** The LFC estimates that the cost per student in a full-day pre-K program in FY 2017 was \$7,400. Members noted that the cost projections for pre-K might be high and cited as an example the implementation of full-day kindergarten, which costs one-third of what had been projected at the time. A member spoke about the importance of planning, which may have been a reason the full-day kindergarten projections were inaccurate.

***CYFD pre-K programs.*** The CYFD's pre-K programs are housed primarily in private facilities, though some are located in public schools. Statute does not require that the PED and the CYFD coordinate their programs or facility usage.

***Need for pre-K programs.*** Because other venues, such as child care, are available for young children, it is not known how many children need, but lack access to, pre-K programs.

- Representative Garcia Richard will speak with the chair of the LESL about having LESL staff gather information on pre-K programs, including which districts have programs, which ones want them, which ones have facilities or need facilities for the programs and which ones need teachers.
- Ms. Gudgel will provide information on:

- (1) how charter schools can apply for pre-K funding; and
  - (2) pre-K funding available or appropriated to tribal communities.
- Ms. Casias will provide a list of pre-K funding award recipients, including tribal communities.

### **Minutes Approval**

On a motion duly made, seconded and unanimously adopted, the minutes from the task force's June 13, 2018 meeting were approved with the following change: the list of members who were present at the meeting was revised to include Antonio Ortiz, designee for the secretary of public education.

### **Broadband Deficiencies**

Ovidiu Viorica, senior technology projects manager, PSFA, and Richard Govea, technology projects manager, PSFA, gave a progress report on broadband in public schools and the PSFA's program to correct deficiencies.

Under statutory authority granted temporarily in 2014 and permanently in 2017, the PSCOC spends up to \$10 million annually to correct education technology infrastructure deficiencies in public schools statewide. The PSFA is currently working with 89 school districts and more than 100 charter schools, and it tends to have an average of 100 projects in progress at all times. Eighty percent to 100 percent of project costs are covered by a combination of PSCOC funding and federal funding through the federal E-Rate Program. The PSFA's goal for each project is to provide a scalable broadband system that allows for enrollment fluctuations. The presenters noted that while bandwidth prices have steadily dropped in the last several years, prices are now leveling off, though demand is still increasing. The PSFA recommends that schools share resources, citing as an example a fiber-optic line recently installed for use by both the Pueblo of Jemez and the Pueblo of Zia.

The presenters and task force members addressed the following topics.

***Fiber-based networks versus 5G technology.*** 5G technology has not yet been widely installed, has a limited range of coverage and, because it requires a great number of cell towers to provide full coverage, is best suited to urban areas. 5G networks are also dependent on fiber-optic-based networks to connect to the internet. The Farmington Municipal School District has an extensive fiber-optic-based network that can host 11,000 computers.

***E-Rate Program.*** Because funding has increased in the federal E-Rate Program, the PSCOC has not had to spend its entire \$10 million annual authorization for broadband deficiencies corrections.

### **Adjournment**

There being no further business before the task force, the meeting was adjourned at 3:33 p.m.